



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.11746-11747 OF 2024

TORRENT POWER LTD.

...APPELLANT

VERSUS

**ASHISH ARJUNKUMAR RATHI
& OTHERS**

...RESPONDENTS

WITH

CIVIL APPEAL NOS.11689-11690 OF 2024

CIVIL APPEAL NOS.12994-12995 OF 2024

J U D G M E N T

NAGARATHNA, J.

Preface:

The Insolvency and Bankruptcy Code, 2016 (for short, “IBC”) marks a fundamental shift in India’s insolvency regime: from a court-centric model to a creditor-driven process. At its core lies the doctrine of commercial wisdom: a conscious legislative choice to vest decisive authority in the Committee of Creditors (for short,

“CoC”), comprising financial creditors who bear the economic consequences of failure.

1.1 The IBC recognises that decisions on viability, valuation, and acceptable haircuts are inherently commercial, not judicial. Courts, therefore, do not substitute their assessment for that of the CoC. The adjudicating authority performs a supervisory role, ensuring statutory compliance and procedural fairness but refrains from second-guessing economic bodies, in this case, the CoC.

1.2 The doctrine of commercial wisdom thus embodies both institutional discipline and legislative intent: insolvency resolution must be efficient, market-responsive and guided by those best placed to evaluate commercial risk.

1.3 With this preface, we now proceed to examine the facts and issues arising in the present civil appeals.

Introduction:

2. The unsuccessful resolution applicants being aggrieved by the dismissal of their appeals by the National Company Law Appellate Tribunal, Principal Bench, New Delhi (for short,

“NCLAT”), are before this Court by filing the present civil appeals under Section 62 of the IBC.

2.1 By the impugned order dated 01.10.2024 in Company Appeal (AT) (Ins) Nos.1621-1622 of 2024, the NCLAT has affirmed the order dated 13.08.2024 in CP (IB) No.893 (MB) of 2021 passed by the National Company Law Tribunal, Mumbai Bench-IV (for short, “NCLT”) which allowed IA No.2794 of 2023 filed by Mr. Ashish Arjunker Rathi, Resolution Professional (for short, “RP”) of SKS Power Generation (Chhattisgarh) Limited (“Corporate Debtor”) for approval of the Resolution Plan submitted by Sarda Energy and Minerals Limited (for sake of convenience, “SEML”). By the same order, the applications filed by the appellants herein – Torrent Power Limited (for short, “Torrent”) being IA No.3399 of 2023, Vantage Point Asset Management Pte. Ltd. (for short, “Vantage”) being IA No.3336 of 2023, and Jindal Power Limited (for short, “Jindal”) being Intervention Petition No.40 of 2024 also came to be rejected by the NCLT.

2.2 By way of this common order, we are disposing of Civil Appeal Nos.11746-47 of 2024, 11689-90 of 2024, and 12994-95 of 2024

preferred by the appellants - Torrent, Vantage, and Jindal respectively.

Brief Facts:

3. SKS Power Generation (Chhattisgarh) Ltd. is the Corporate Debtor against whom an application was filed by Bank of Baroda under Section 7 of the IBC seeking initiation of Corporate Insolvency Resolution Process (for short, "CIRP"). The same was admitted by order dated 29.04.2022 passed by the NCLT in Company Petition (IB) No. 893 of 2021. Respondent No.1 was appointed as the Interim Resolution Professional (for short, "IRP") and he came to be confirmed as the RP by the CoC and subsequently by the NCLT.

3.1 On 17.07.2022, the RP issued Form-G inviting Expressions of Interest (for short, "EoIs") from prospective resolution applicants. On receipt of the EoIs, the RP issued a Request for Resolution Plan (for short, "RFRP"), Information Memorandum, and provided access to the Virtual Data Room of the Corporate Debtor to all prospective resolution applicants on 12.08.2022. After granting several extensions, the final date for submission of Resolution Plans was decided as 30.12.2022. Pursuant thereto, SEML and six

other applicants including the appellants herein submitted their Resolution Plans and negotiations were held from January 2023 to February 2023.

3.2 As its 26th Meeting held on 12.04.2023 and 13.04.2023, the CoC decided to hold an *inter-se* bidding process amongst the applicants on 19.04.2023. A Process Note dated 13.04.2023 (for short, “Process Note”) governing the said bidding process was also issued as per which all the resolution applicants were requested to submit their revised Resolution Plans by 28.04.2023.

3.3 After its 29th meeting on 06.05.2023, the CoC directed the RP to seek clarifications from the resolution applicants on their respective Resolution Plans, without any change in commercial terms as set at the end of the negotiation process on 19.04.2023. By an email dated 08.05.2023, the resolution applicants were called upon to submit clarification in the form of an addendum to their respective Resolution Plans. This was duly submitted by all the resolution applicants.

3.4 On 16.05.2023, the CoC in its 31st Meeting put to vote the seven Resolution Plans and e-voting was conducted from 28.05.2023 to 08.06.2023. The result of the voting was that the

Resolution Plan of SEML read together with the addendum dated 10.05.2023 was approved with a 100% vote share. Consequently, the RP issued a Letter of Intent (for short, “LoI”) to SEML, which was then called upon to submit a Performance Bank Guarantee (for short, “PBG”) of Rs.150 crores. SEML unconditionally accepted the LoI and submitted a PBG of Rs.150 crores.

3.5 On 17.06.2023, the RP filed IA No.2794 of 2023 before the NCLT seeking approval of the Resolution Plan of SEML as approved by the CoC. Parallely, after informing all the other resolution applicants about the result of the voting, the RP refunded the Earnest Money Deposits to the other resolution applicants.

3.6 Meanwhile, IA No.2794 of 2023 was heard and reserved for orders by the NCLT on 10.07.2023. However, on 01.08.2023 and 03.08.2023, interlocutory applications came to be filed by the appellants - Vantage and Torrent bearing Nos.3336 of 2023 and 3399 of 2023 respectively seeking directions for fresh consideration of their plans. The NCLT by its common order dated 06.10.2023 partly allowed the application filed by Torrent, dismissed the application filed by Vantage and remitted the Resolution Plan

pending approval in IA No.2794 of 2023 to the CoC for its reconsideration.

3.7 Consequently, the CoC held its 34th Meeting on 19.10.2023 in which it again deliberated on all the Resolution Plans and reiterated its earlier decision in favour of SEML. In the meantime, the order dated 06.10.2023 passed by the NCLT came to be appealed by SEML (in CA Nos.1395-07 of 2023) and Vantage (in CA No.1445 of 2023), while an intervention application (being Intervention Petition No.40 of 2024) was filed by Jindal before the NCLAT.

3.8 By a common order dated 10.05.2024, the NCLAT set aside the order dated 06.10.2023 passed by the NCLT on the ground that no opportunity was provided to the RP or to the CoC to file a reply in respect of IA Nos.3336 and 3399 of 2023. Accordingly, the plan approval application, i.e., IA No. 2794 of 2023 and the two other applications, i.e. IA No.3336 of 2023 and IA No. 3399 of 2023 were revived before the NCLT for fresh adjudication. Intervention Petition No.40 of 2024 filed by Jindal was rejected on the ground that it did not raise objections before the NCLT.

3.9 The NCLT by its order dated 13.08.2024 allowed the application filed by the RP for approval of the Resolution Plan filed by SEML and rejected IA No.3336 of 2023 and IA No.3399 of 2023. Hence, the unsuccessful resolution applicants filed appeals before the NCLAT.

3.10 However, the NCLAT by the impugned order dated 01.10.2024 dismissed the appeals preferred by the unsuccessful resolution applicants and confirmed the order dated 13.08.2024 passed by the NCLT, holding that the approval of a Resolution Plan by the CoC on the basis of its commercial wisdom cannot be interfered with.

3.11 The case of the appellants has remained the same at every round of litigation including in the present appeals. They contended that SEML had modified its Resolution Plan after the negotiation process had concluded and the commercial offers by all resolution applicants stood frozen. This was firstly, by allegedly enlarging its commitment towards Bank Guarantees (for short, “BGs”) of the Corporate Debtor from Rs.103.39 crores to Rs.180.05 crores, and secondly, by purportedly converting a deferred payment offer of Rs.240 crores into an upfront payment offer.

According to the appellants, these changes were introduced by SEML under the guise of “clarifications” through post-bid communications between the RP/CoC and SEML, in breach of the Process Note governing the negotiation process, thus resulting in discrimination and material irregularity in the resolution process warranting interference by this Court under Section 63 of the Act.

4. Before we consider the arguments of the appellants, the NCLT and NCLAT orders may be summarised as under:

NCLT Order:

4.1 After SEML’s Resolution Plan was declared accepted by the CoC in its 31st meeting dated 16.05.2023, the RP filed an application being IA No.2794 of 2023 before the NCLT under Section 30(6) of the IBC, seeking approval of the Resolution Plan in terms of Section 31(1) thereof.

4.2 Around the same time, on getting to know through newspaper reports that the Resolution Plan submitted by SEML was not the highest bid in terms of value, Torrent filed IA No.3399 of 2023 before the NCLT raising specific concerns, *inter alia*, stating that “...it is not clear how the Second Respondent (SEML) emerged as the highest bidder and how the Resolution Plan submitted by the

Second Respondent (SEML) came to be accepted at all..” Accordingly, it prayed for a thorough examination of the process of selection of SEML as the successful resolution applicant. By its order dated 06.10.2023, the NCLT partly allowed IA No.3399 of 2023 filed by Torrent and remitted the Resolution Plan of SEML back to the CoC for reconsideration.

4.3 SEML filed an appeal CA Nos.1395-07 of 2023 before the NCLAT by assailing the order dated 06.10.2023 on the ground that it was not given the opportunity to reply by the NCLT before passing the order. Therefore, by way of its order dated 10.05.2024, the NCLAT remanded the matter to the NCLT. The NCLT *vide* order dated 13.08.2024 rejected IA No.3399 of 2023 filed by Torrent. Further, it allowed IA No.2794 of 2023 filed by the RP for approval of SEML’s Resolution Plan as approved and reiterated by the CoC.

4.4 Torrent had contended before the NCLT that the RP and the CoC selectively permitted SEML to modify its commercial offer after the conclusion of the negotiation process on 19.04.2023. No other applicant was entitled to modify its commercial offer after the conclusion of the negotiation process. However, the RP and the CoC, under the guise of seeking clarifications by e-mail dated

08.05.2024, permitted SEML to modify its commercial offer by - (i) converting the deferred amount of Rs.240 crores as provided under its Resolution Plan to an upfront amount; and (ii) increasing the amount towards infusion of BGs to approximately Rs.180 crores, when in the Resolution Plan it had only offered to infuse Rs.103.39 crores. Rejecting these contentions raised by Torrent, the NCLT held that the CoC had deliberated at length upon the feasibility and viability of the Resolution Plan(s) submitted by all resolution applicants and the NCLT could not, therefore, undertake any quantitative analysis apropos the same. It was only after such examination that the Resolution Plan(s) were put up for voting during the 31st Meeting of the CoC and the CoC voted in favour of SEML's Resolution Plan. Placing reliance on the judgment of this Court in ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta, (2020) 8 SCC 531*** ("***Essar Steel India Limited***"), the NCLT also noted that it cannot interfere on merits with the commercial decision taken by the CoC and the limited judicial review available to it is to see that the CoC has taken into account the fact that the corporate debtor needs to be kept 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. Once NCLT is satisfied that the CoC has paid attention to these key features, it must necessarily approve the resolution plan, other things being equal.

4.5 The NCLT also categorically held that the clarifications sought by the RP/CoC from SEML did not amount to any modification in the resolution plan and that no case of discrimination or perversity in the process was made out since similar clarifications were sought from all the Resolution Applicants, including the appellants herein, *vide* emails dated 08.05.2023. It was further noted that on a conjoint reading of the terms of Process Note and RFRP, the CoC was empowered to seek clarifications from one/all resolution applicants and give effect to its 'commercial wisdom'. That being so, no interference was called for.

NCLAT Order:

4.6 Aggrieved by the order dated 13.08.2024 passed by the NCLT, Torrent filed Company Appeal (AT)(Ins) Nos.1621-1622 of 2024 before the NCLAT. By the impugned order dated 01.10.2024,

the NCLAT dismissed the appeal holding that (i) there was no modification/deviation by SEML with respect to the treatment of BGs and the payment of Rs.240 crores as an upfront amount; and that (ii) the wisdom of the CoC on these aspects could not be interfered with in any case.

4.7 Dealing first with the contention that SEML's Resolution Plan allegedly provided for replacement of BGs to the extent of Rs.103.39 crores which was only later revised to Rs.180.05 crores, NCLAT noted that SEML's Resolution Plan from the inception provided for replacement of BGs aggregating to Rs.180.05 crores. While considering the plan, the RP, by email dated 08.05.2023 had sought a clarification regarding the treatment of the BGs listed at Item Nos.6 and 7. In response, SEML had clarified on 10.05.2023 that since the BGs at Item Nos.6 and 7 would not continue as per its proposed Resolution Plan, the corresponding margin money of Rs.76.71 crores would be returned to the Corporate Debtor on the transfer date. The NCLAT found that this clarification merely explained and reaffirmed the existing terms of the Resolution Plan and did not amount to any modification or enhancement of the offer. Accordingly, it rejected the contention that the Resolution

Plan was limited to Rs.103.39 crores, holding that SEML's commitment always extended to the full Rs.180.05 crores.

4.8 As regards the second argument, that SEML was allowed to convert a deferred payment of Rs.240 crores into an upfront payment under the guise of a clarification, the NCLAT, upon examining the Resolution Plan noted that it expressly provided for a deferred payment of Rs.301.64 crores, whose net present value (for short, "NPV") was Rs.240 crores. It observed that as per the Resolution Plan, the CoC had the option to choose the deferred payment upfront, and that Rs.240 crores was only the discounted value of Rs.301.64 crores. The NCLAT noted that SEML merely clarified that should the CoC opt to receive the amount upfront, no further discounting would apply, since Rs.240 crores itself already represented a discounted value. The NCLAT held that this clarification did not alter the financial offer or permit substitution of deferred payments with upfront payments. Accordingly, it rejected the contention that SEML had modified its commercial proposal, holding that the commercial terms of the Resolution Plan remained unchanged.

4.9 Lastly, while examining the limited scope of appellate interference with an approved resolution plan under the IBC, the NCLAT upheld that an appeal is maintainable only where there is a material irregularity in the exercise of powers by the RP/CoC and that such appellate interference does not extend to the merits of the commercial decision of the CoC. Noting that the CoC and RP were fully empowered to ask for any clarification from any or all resolution applicants as per the RFRP and that the RP acted on instructions of the CoC in issuing email dated 08.05.2023, it cannot be said that any irregularity was committed by the RP/CoC. Accordingly, the NCLAT dismissed the appeals filed by the unsuccessful resolution applicants.

5. We have heard learned senior counsel and learned counsel for the respective parties and perused the material on record.

Submissions by the Appellants:

Torrent:

5.1 Dr. Abhishek Manu Singhvi, learned senior counsel appearing for Torrent advanced the following submissions before us:

- a) During the CIRP, the RP and the CoC had conducted a negotiation process (for short, “negotiation process”) with the resolution applicants on 19.04.2023 in terms of Regulation 39(1A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (for short, “CIRP Regulations”).
- b) The Process Note dated 13.04.2023 shared with the resolution applicants which governed the negotiation process contemplated an *inter-se* bidding process to be conducted amongst the resolution applicants where, in each bidding round, the resolution applicants were required to submit the key commercial terms of their resolution plans including the upfront and deferred components of their proposed offers (“Key Commercial Terms”).
- c) As per Step 6(i) of the Annexure to the Process Note, all resolution applicants were required to submit a draft resolution plan by 28.04.2023 incorporating only those figures of their Key Commercial Terms, as was submitted in their respective Appendices, at the end of the negotiation process on 19.04.2023. As such, at the end of the negotiation process,

there was no scope - (i) for modification of the Key Commercial Terms once the negotiation process had been completed, or (ii) to insert any additional offer(s) (as a potential inducement) in the resolution plan submitted on 28.04.2023 which were not already part of the proposal submitted by such resolution applicant in Appendix I.

- d) Despite the above, SEML was selectively permitted to increase its commercial offer on two separate occasions leading to discrimination and material irregularity in the process in terms of Section 61(3)(1) of the IBC.
- e) SEML had provided payment of Rs.40 crores as a deferred payment in Appendix I submitted on 19.04.2023 at the end of the negotiation process. However, while submitting its resolution plan on 28.04.2023 after the end of the negotiation process, SEML for the first time provided the CoC with the choice of converting a deferred payment of Rs. 240 crores (as provided in its Appendix I) to an upfront payment (not contemplated in Appendix I, when the commercial offer stood frozen).

- f) As per the RFRP, (i) all resolution applicants were required to replace the existing BGs of the Corporate Debtor amounting to Rs.180.49 crores approximately backed by 100% existing margin money, i.e., Rs.180.49 crores [Clause 3.4 (w) of the RFRP]; (ii) the existing margin money released upon replacement of the BGs would form part of the cash balances of the Corporate Debtor and would be passed on to the CoC [Clause 3.4 (x) (A), (B) of the RFRP]; (iii) such existing margin money passed on to the CoC would not be construed as the applicant's contribution into the Corporate Debtor [Clause 1.4.65 of the RFRP]; and would therefore not form part of the upfront offer of the resolution applicant; and (iv) the fresh infusion of funds by a resolution applicant towards replacement margin money would only be counted as the applicant's contribution into the Corporate Debtor [Clause 1.4.70 of the RFRP].
- g) SEML had initially proposed to infuse only Rs.103.39 crores towards BGs listed at Item Nos.1 to 5 in its resolution plan. It did not provide for any treatment of BGs listed at Item Nos.6 and 7 amounting to approximately Rs.76 crores. However, the

RP/CoC under the garb of a clarification by email dated 08.05.2023, sought SEML's response to treatment of the BGs listed at Item Nos.6 and 7. In response, SEML, by way of email dated 10.05.2023, under the garb of a clarification, for the first time proposed to infuse Rs.76 crores towards the BGs listed at Item Nos.6 and 7, thereby taking its contribution towards the BGs to approximately Rs.180 crores from the original figure of Rs.103.39 crores.

- h) The CoC's acceptance of SEML's revised offer post 19.04.2023 constitutes a clear breach of the binding terms of the Process Note and RFRP, which expressly prohibited any modification thereafter.
- i) Even from a commercial point of view, Torrent's overall bid was Rs.2,000 crores (Rs.1810 crores + Rs.190 crores for CIRP costs), and the entire amount was proposed to be paid by way of an upfront cash payment with no deferred payments. Thus, in Torrent's plan, the lenders would get almost all their dues (Rs.1810 crores to be recovered against the admitted financial creditors' dues of Rs.1876 crores). Despite this, the CoC

proceeded to approve SEML's plan, which raises serious doubts on the *bona fides* of the CoC and the RP.

- j) In any case, while the CoC's commercial wisdom is generally accorded primacy, it is well-settled that such commercial wisdom must be exercised strictly within the four corners of the IBC, the CIRP Regulations, and the process prescribed in the RFRP and the Process Note. Thus, notwithstanding that the commercial wisdom of the CoC is ordinarily non-justiciable, this immunity cannot extend to decisions that are patently capricious, arbitrary, and/or irrational. In the present case, the CoC's decision is demonstrably de hors the provisions of the IBC, the Rules, and in manifest breach of the governing Process Note and the RFRP.
- k) For the foregoing reasons, SEML's revised offer dated 10.05.2023 is *non est* in law, and the process, suffering from manifest irregularity, warrants judicial interference.

Vantage:

5.2 Mr. Kapil Sibal, learned senior counsel appearing for Vantage advanced the following submissions before us:

- a) Vantage's Resolution Plan offered the highest upfront payment of Rs.2191.43 crores with no deferred payment proposed, making it far superior to other Resolution Plans including SEML's Resolution Plan.
- b) Vantage being the highest bidder, the CoC could not have achieved value maximisation of the assets of the Corporate Debtor by approving SEML's Resolution Plan.
- c) By emails dated 14.06.2023 and 16.06.2023, Vantage revised its Resolution Plan by further increasing its bids, which would have led to further value maximisation of the Corporate Debtor.
- d) The purported exercise of commercial wisdom by the CoC is materially incorrect, arbitrary, and unreasonable.
- e) Funds and asset managers across the world and in India regularly invest in construction projects and assets as financial investors in order to earn returns, and in turn appoint operating personnel and management teams which are well-equipped to manage and operate the asset. The eligibility criteria as set out under the EoI for the Corporate Debtor

clearly and categorically stated that resolution applicants can be strategic investors and/or financial investors which was duly satisfied by Vantage. Therefore, any adverse inference against Vantage because it is a fund manager rather than a power-sector operator, is commercially unsound and contrary to the IBC, which expressly permits and encourages participation of such sophisticated financial investors in CIRP.

With the view to demonstrate the rival merits of Vantage's proposed plan over SEML's Resolution Plan, Mr. Sibal drew our attention to the relevant figures in Vantage's proposed Resolution Plan in the tables being part of the compilations.

Jindal:

5.3 The learned counsel appearing for Jindal advanced the following submissions before us:

- a) That upon the conclusion of the bidding process on 19.04.2023, SEML's offer amounted to Rs.1995 crores whereas Jindal's offer on the same date stood at Rs.2003 crores and in the event, the 10% equity upside offered by Jindal is added, the said amount would have become Rs.2130.10 crores.

- b) The objective of the IBC being value maximisation, the CoC's decision to approve SEML's plan is contrary to the IBC and the CoC cannot hide under the guise of "commercial wisdom" to escape judicial scrutiny of its decisions.

Submissions by the Respondents:

RP:

6. The learned senior counsel appearing for the RP advanced the following submissions before us:
- a) In its 29th meeting dated 06.05.2023, the CoC directed the RP to seek clarifications from the resolution applicants. Acting on specific instructions of the CoC, the RP by email dated 08.05.2023 sought clarifications from the appellants - Torrent, Vantage, Jindal as well as the respondent - SEML on their respective Resolution Plans. Clarifications having been solicited from all applicants, no case of discrimination can be made out.
- b) SEML's Resolution Plan provided that Rs.240 crores would be paid by SEML to the CoC and two options were provided by SEML to the CoC to avail the said money. The first of this was that Rs.240 crores be availed by the CoC in a deferred manner

through the issuance of non-convertible debentures (for short, “NCDs”) which shall bear coupon interest, meaning that interest on Rs.240 crores shall be paid from the date of issuance of NCDs till their redemption. The second option was that the CoC could opt to take the amount as upfront cash, in which case only Rs.240 crores would be paid to the CoC.

- c) SEML was, *inter alia*, called upon to confirm if in case of the second option, the amount of Rs.240 crores will be paid fully and not be discounted to a lower value. This was only to obviate any misconception about the offer made by SEML which could have arisen on account of possible interpretation of the phrase “discounted amount of Rs.240 crores” as occurring in SEML’s Resolution Plan.
- d) SEML by email dated 10.05.2023 clarified that in case the CoC opts to avail the second option, Rs.240 crores shall be paid to the CoC without any discount. As such, no modification of the Resolution Plan could be said to have occurred.
- e) Additionally, as per the Process Note, the evaluation of the resolution plans was to be carried out on the basis of NPV [Clause 9v(xii)]. There is no change in NPV offered under the

first and the second option by SEML as it offered an upfront payment of Rs.1,553 crores and a deferred payment of Rs.240 crores, payable over three years with a 10% coupon. As a result of the interest component, SEML's deferred payments aggregated to Rs.301.64 crores, payable in instalments at the end of the second and third years. When discounted as per the prescribed discount rate, the present value of this aggregate amount equals Rs.240 crores. Therefore, the clarification did not lead to enhancement of the commercial offer.

- f) As for the contention that SEML had enhanced its offer for replacement of BGs from Rs.103.39 crores to Rs.180 crores, it was submitted that SEML's response did not enhance the offer. Clause 6.3.14 of SEML's Resolution Plan expressly provided that margin money aggregating to Rs.180 crores would be returned to the CoC and utilised for payment to secured financial creditors. Separately, the Resolution Plan recorded that SEML would infuse Rs.103.39 crores as fresh funds towards margin money for BGs listed at Serial Nos.1 to 5. However, the manner in which the balance margin money of Rs.76.66 crores, corresponding to BGs at Serial Nos.6 and 7,

would be released was not explicitly set out in Clauses 6.3.14 and 6.3.15 of the Resolution Plan.

- g) In response, SEML clarified that since the BGs at Serial Nos. 6 and 7 were proposed to be extinguished under its Resolution Plan, the corresponding margin money of Rs.76.66 crores would also be released and returned to the CoC for payment to secured financial creditors. The clarification thus confirmed that SEML had, at all times, provided for payment of the entire Rs.180 crores to secured financial creditors, consistent with the Resolution Plan.

SEML:

6.1 The learned counsel appearing for SEML advanced the following submissions before us:

- a) The appellants are unsuccessful resolution applicants, whose resolution plans were unanimously rejected by 100% of the CoC. As such, they have no vested right to claim that their plans should have been accepted by the CoC.
- b) Further, the appellants voluntarily took back their Earnest Money Deposit after being informed by the RP of the approval of SEML's Resolution Plan. This shows that the appellants only

want to take a chance through litigation, without having any skin in the game.

- c) The present appeals by Torrent must be tested strictly with reference to Section 61(3) of the IBC, which limits the scope of challenge to an approved resolution plan before the NCLAT on the grounds only of - (a) non-compliance with Section 30(2) of the IBC; or (b) material irregularity in the process by the RP.
- d) Admittedly, no grounds for non-compliance with Section 30(2) of the IBC have been made out or even pleaded in the present appeal. As regards “material irregularity”, the provision refers to “material irregularity by the RP”. Hence, it does not cover matters where the CoC has taken a decision with respect to a resolution plan in its commercial wisdom, as is the case in the present matter.
- e) In the present matter, the CoC decided to seek clarifications from all resolution applicants based on the contents of their respective resolution plans. Further, it was the CoC’s decision to approve the Resolution Plan of SEML and reject the resolution plan of all other resolution applicants based on its assessment of their feasibility and viability thereof. Thus, no

material irregularity can be said to have been committed by the RP.

- f) Finally, the CoC has already achieved value maximisation and has already implemented the Resolution Plan and paid the amounts to the creditors in terms of the same. In light of the above, the impugned order ought not to be set aside and the appeals ought to be outrightly dismissed with heavy costs.

CoC:

6.2 The learned counsel appearing for the CoC advanced the following submissions before us:

- a) SEML had paid the entire payment as required pursuant to its Resolution Plan on 19.08.2024 itself and its Resolution Plan stands fully implemented as on date.
- b) Further, it has been laid down in a catena of judgements by this Court that the commercial decision of the CoC to approve or reject a resolution plan is non-justiciable and that an unsuccessful resolution applicant has no vested right to have its resolution plan considered. That being so, the present appeals are liable to be dismissed *in limine*.

- c) Section 62(1) of the IBC provides that any person aggrieved by an order of the NCLAT may file an appeal to the Supreme Court on a question of law arising out of such order under the IBC within forty-five days from the date of receipt of such order. But the present appeals raise no question of law.
- d) The appellate jurisdiction of the NCLAT is extremely circumscribed under the IBC. One of the grounds set out under Section 61(3)(ii) of the IBC warranting the NCLAT's appellate jurisdiction is if "there has been material irregularity in exercise of the powers by the RP during the CIRP". Only a "material irregularity" by the RP is a ground for appeal. Matters pertaining to commercial decision-making by the CoC are not even grounds for appeal before the NCLAT, let alone before the Supreme Court. In this regard, reliance is placed on the judgment in ***Kalparaj Dharamshi vs. Kotak Investment Advisors Ltd., (2021) 10 SCC 401***, wherein it was held that if the actions of the RP in inviting EOIs after the last date have the seal of approval of the CoC, then the decision of the CoC cannot be interfered with.

- e) The legislature has consciously kept any factual determination or adjudication on matters pertaining to commercial decision-making by the CoC outside the scope of Sections 61(3) and 62 of the IBC.
- f) In any case, the NCLT and the NCLAT have both given concurrent findings that there has been no “material irregularity” in the process. It is trite law that the Supreme Court would not ordinarily interfere in cases where there are concurrent findings by the NCLT and the NCLAT *vide* **Essar Steel India Limited**. Therefore, the question of “material irregularity” cannot be raised afresh now.
- g) The RFRP in clause 4.1.8 clearly provided that “*Subject to such final Resolution Plan of the Resolution Applicant being a Compliant Resolution Plan, the CoC may vote on one or more of the Resolution Plan to approve and/or reject such Resolution Plans. It is made abundantly clear that the CoC is under no obligation to any of the Resolution Applicants or any other person to approve a Resolution Plan which has scored the highest as per the Evaluation Criteria and any Resolution Plan*

shall be approved solely on the basis of the CoC's commercial wisdom.” Therefore, it was always known to each of the resolution applicants right from inception that the CoC will approve a resolution plan based on its own commercial wisdom and further that the CoC shall not be bound to approve any resolution plan solely for the reason that it quoted the highest bid.

Issues:

7. Two broad issues arise for our consideration in these appeals which are as under:
 - a) Whether the clarifications furnished by SEML pursuant to queries raised by the RP in relation to the treatment and replacement of BGs and the option of upfront payment, resulted in any enhancement or modification of SEML’s Resolution Plan?
 - b) Whether, the Resolution Plan having been approved by the NCLT and the NCLAT and implemented as on date, any interference is permissible by this Court at this stage in the instant case?

Analysis and Findings:

7.1 At the outset, it is to be noted that an appeal to this Court under Section 62 of the IBC is available only on a question of law.

Section 62 is extracted as under for immediate reference:

“62. Appeal to Supreme Court.—(1) Any person aggrieved by an order of the National Company Law Appellate Tribunal may file an appeal to the Supreme Court on a question of law arising out of such order under this Code within forty-five days from the date of receipt of such order.

(2) The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within forty-five days, allow the appeal to be filed within a further period not exceeding fifteen days.”

7.2 Further, an appeal provided under Section 61 of the IBC before the NCLAT is available only on the following five grounds:

“61. Appeals and Appellate Authority.

xxx

(3) In appeal against an order approving a resolution plan under Section 31 may be filed on the following grounds, namely:—

(i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;

(ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;

(iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;

(iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or

(v) the resolution plan does not comply with any other criteria specified by the Board.”

8. A perusal of the material placed on record in the present case would reveal that the appeal before the NCLAT does not fit into any of the aforesaid criteria. The only semblance of a ground invoked by the appellants is that of “material irregularity” in the exercise of powers by the RP under Section 61(3)(ii) of the IBC. However, in our view, this ground is also not made out in the present case. It is an admitted fact that in the present case, the RP has acted strictly on the instructions of the CoC. During the evaluation of the Resolution Plans submitted by the resolution applicants, the CoC identified certain ambiguities and directed the RP to seek clarifications from all the resolution applicants. Pursuant to the CoC’s directions, the RP issued email dated 08.05.2023 seeking clarifications from all the resolution applicants including SEML on certain specific aspects *vis-à-vis* each resolution applicant and plan. The RP did not take any independent or unilateral decision; he merely communicated the CoC’s queries and placed all

responses including that of SEML dated 10.05.2023 before the CoC for its consideration.

8.1 Where the RP acts on the instructions of the CoC, such conduct cannot, by any stretch of imagination, be characterised as a “material irregularity” within the meaning of Section 61(3)(ii). To hold otherwise would be to conflate the statutorily distinct roles of the RP and the CoC and to indirectly subject decisions of the CoC to judicial review, contrary to the scheme of the IBC.

8.2 Having observed thus, since an appeal before the NCLAT itself was not made out on any of the grounds under Section 61(3), we find that the appeals before this Court on a conjoint reading of Sections 61 and 62 are also not tenable since no question of law pertaining to any of the five grounds specified in Section 61 of the IBC arises for our consideration.

8.3 In addition, as the respondents have also pointed out, this is a case arising out of concurrent findings. It is settled law that when a concurrent view has been taken by two adjudicating authorities, unless it is found that such a view was in ignorance of the mandatory statutory provisions or was based on irrelevant considerations or was *ex-facie* arbitrary or perverse, an interference

by this Court would not be permissible. In the present case, the findings on all the issues are concurrent. As held by this Court in ***Kalyani Transco vs. Bhushan Power & Steel Ltd., 2025 SCC OnLine SC 2093 (“Kalyani Transco”)***:

“94. It can thus be seen that this court has taken a view that when a concurrent view has been taken by two Adjudicating Authorities provided under the special statute, unless it is found that such a view was in ignorance of the mandatory statutory provisions or was based on extraneous consideration or was ex facie arbitrary or illegal, an interference would not be warranted.”

(underlining by us)

9. Although these appeals could be dismissed at the threshold only on the basis of the concurrent findings of the NCLT and the NCLAT and non-application of Section 62 of the IBC, we nonetheless proceed to examine the contentions advanced on their merits.

9.1 As already noted above, the two main grounds of attack against the approval of the Resolution Plan pertain to the alleged modification of the commercial offer by SEML by (i) increasing the amount towards infusion in the BGs to approximately Rs.180.05 crores, when in the Resolution Plan, SEML had offered to infuse only Rs.103.39 crores; and (ii) converting the deferred amount of

Rs.240 crores to an upfront amount. We will proceed to test both the arguments.

A. Increase in amount towards infusion in BGs:

10. In order to consider this argument, we need to turn to the email dated 08.05.2023, which was sent by the RP to SEML. The entire email is extracted below for immediate reference:

“Dear Resolution Applicant,

This is with reference to the Resolution Plan submitted by you on April 28, 2023 ("Resolution Plan") in the corporate insolvency resolution process of SKS Power Generation (Chhattisgarh) Limited. While the Resolution Plan is being reviewed and evaluated by the Resolution Professional ("RP") and the Committee of Creditors ("CoC") alongwith their respective advisors, we request you to kindly provide necessary clarifications to the points attached in this email, to enable a comprehensive evaluation of the Resolution Plan.

Clarifications sought

1. We note that under clause 6.3.14 of the Resolution Plan, the Resolution Applicant has provided that the margin money of INR 180.05 crore provided against bank guarantees will be returned by the relevant issuing bank to the Corporate Debtor on the Transfer Date and utilised for payment to the Secured Finance Creditors or in the manner decided by the CoC. Further, as per clause 6.3.15 of the Resolution Plan, the Resolution Applicant has undertaken to infuse INR 103.39 crore as part of Initial Infusion Amount for utilising towards providing 100% margin money for the Relevant BGs (as defined in the Resolution Plan). The Margin Money Replacement Amount (as defined in the Resolution Plan) is proposed to be utilised for replacement/renewal/securing of the Relevant

BGs. It is further clarified in the Resolution Plan that in the event any Relevant BG is encashed and paid out to the beneficiary by the relevant issuing bank, then Margin Money Replacement Amount corresponding to such encashment shall be utilised for making payment to the Secured Financial Creditors or to creditors as decided by the CoC, on the Transfer Date.

In this regard please clarify the following:

(i) Will the Resolution Applicant replace all the BGs that are secured by the margin money of INR 180.05 crore since such amount of INR 180.05 Crores is sought to be returned to the Corporate Debtor on the Transfer Date and utilised for making payment to the Secured Financial Creditors or to creditors as decided by the CoC under clause 6.3.14 of the Resolution Plan?

(ii) In case the Resolution Applicant will not replace all the BGs as above that are currently secured by margin money of INR 180.05 crore, then what will be the treatment of the bank guarantees at Item Nos. 6 and 7 of Annexure 3 which are currently secured by margin money of INR 76.66 crore? The treatment of the aforesaid BGs is not clear from the Resolution Plan. Further, please clarify the treatment of the underlying margin money, if it is not released by the relevant issuing banks.

(iii) If the Relevant BGs are invoked prior to the Transfer Date and the existing margin money securing such Relevant BGs is utilised to adjust against the invoked amount, will the Resolution Applicant still pay the difference between INR 103.39 Crores and such utilised margin money on the Transfer Date to make payments as envisaged under the Resolution Plan?

(iv) Please clarify the treatment of the Exclusive Margin Money (as defined in the RFRP) proposed under the Resolution Plan which is required to be provided as per clause 3.4(x)(A) & (C) of the RFRP?

(v) Whether the release of the margin money is being sought before arranging for infusion of the fresh margin

money for the Relevant BGs? Please clarify that the replacement of the bank guarantees will be undertaken in a manner which does not leave the issuing bank's exposure unsecured for any moment prior to, on or after the Transfer Date for the following categories of BG:

- i. BGs of INR 103.39 Crores - defined as Relevant BGs
- ii. BGs of INR 76.61 Crores (with specific mention of exclusive margin)

(vi) There seems to be an error in calculation of Annexure 3 viz aggregate of PGCIL/ SECL/ Rajasthan PPA is INR 103.83 Cr. Please clarify.

2. Are "Litigation Recovery" and "Litigation Benefits" intended to be used inter-changeably? If not please clarify the usage in the last sentence of Clause 6 3.4(a).

3. Clause 6 3. 4(b) provides that the Litigation Recovery received by the Corporate Debtor after the Insolvency Commencement Date shall not be construed as part of the Surplus Cash. Further, the Litigation Recovery is proposed to be paid after the Transfer Date as per Clause 6.3.4(d) Accordingly, please clarify whether the Litigation Recovery is also included within Clause 6.5 12.

4. Clause 6.3.5 (j) of the Resolution Plan stipulates that the treatment in relation to Avoidance Benefits shall come into effect only when the RA is provided with a copy of the pleadings filed by the RP in relation to the Avoidance Transaction Litigations and that RA has reserved the right (in consultation with the CoC) to retain the Avoidance Benefits for the benefit of the Corporate Debtor (and not for Secured Financial Creditors) if in its reasonable opinion the Avoidance Benefits are necessary for operations of the Corporate Debtor. This is inconsistent with Clause 6.3. 5(a). In this regard, as also informed earlier, the pleadings in relation to Avoidance Transaction litigation were already made available in the Data Room to all the resolution applicant [VDR Ref No. 12_CIRP/Avoidance Application and 13_Additional Data/ Additional Date_27 April 2023/

Avoidance Application]. Accordingly, please clarify the treatment of Avoidance Benefits.

5. We note that Clause 2.2.7 deals with furnishing of a report by the Interim Accounting Agency (IAC). Responsibilities of IAC are yet to be defined. The CoC cannot vote on the terms/ obligations of the IAC. Monitoring committee may take up this responsibility. Please clarify that furnishing of the report by IAC is not a prerequisite to distribution of plan amounts and determination of CIRP costs.

6. Clause 6.3.2(b) states that Resolution Applicant will pay a "discounted amount of INR 240 Cr" to the CoC, in case CoC wishes to obtain the deferred portion of INR 240 Cr upfront. Please clarify whether Resolution Applicant is offering a value lower than INR 240 Cr (i.e. INR 240 Cr discounted to a lower value), if the option to obtain the value upfront is exercised.

7. We note that Clause 6.4.8 states that Monitoring Committee (MC) will pay costs incurred during the monitoring period as and when they fall due during the monitoring period. Please clarify that this is subject to Clause 6.2. 7.

8. In Clause 6.4.9, all dues relating to employees are sought to be extinguished. Gratuity of continuing employees which may fall due after takeover, but relate to prior period, cannot be extinguished. Please clarify that gratuity and other similar obligations that fall after the Insolvency commencement date shall not be extinguished.

9. We note that Clause 7.3.2 stipulates that the RP shall inform of expiring licenses to the Resolution Applicant on transfer date. Please clarify that such responsibility will be that of the Monitoring Committee, of which the Resolution Applicant will be a part.

10. In Clause 9.2.6, please clarify that the Monitoring Committee will be bound to take actions on a reasonable efforts basis, as provided in Clause 9.2.1.

11. Clause 12.3 states that if any court sets aside or unilaterally modifies the plan resulting into an increased financial outlay, the amounts paid till then shall be returned to the Resolution Applicant. Please clarify that, if the adjudicating authority orders a payment over and above the plan value and the RA was present and was heard during the proceedings (i.e. not unilaterally), the clause cannot operate.

We request you to kindly provide the necessary clarification to the aforesaid queries by way of an addendum to the Resolution Plan at the earliest but no later than 11:59 p.m. IST of the 9th day of May 2023 by way of an email to irp.skspower@gmail.com, to enable the CoC and the RP to evaluate the Resolution Plan and complete the CIRP within the timelines prescribed under the Insolvency and Bankruptcy Code, 2016 (Code). Please note that the clarifications must be provided by way of an addendum to the Resolution Plan submitted by you on April 28, 2023. The addendum may contain necessary consequential changes (if any) pursuant to the points raised on your Resolution Plan.

The aforesaid clarifications are necessary and important for the complete assessment of the feasibility and viability as well as commercial acceptability of each of the resolution plans and to bring about clarity and uniformity in the assessment to the resolution plans in order to arrive at a considered decision, in accordance with the provisions of the Code and the regulations thereunder.

This communication has been issued without prejudice to the rights of the CoC and the Resolution Professional to undertake all actions permissible under law and the RFRP to achieve the objectives of the Code.”

(underlining by us)

10.1 We may now notice the reply to the queries as given by the SEML by its email dated 10.05.2023:

“Response:

In our Resolution Plan, it is proposed that the entire Margin Money will be utilised for payment to Secured Financial Creditors. In our Resolution Plan, we had proposed continuation of certain Bank Guarantees listed in Annexure 3 (except BGs listed in point 6 and 7) to ensure going concern status of the Corporate Debtor and had accordingly provided for replacement of the Margin Money with respect to such BGs. In respect of BGs listed in point 6 and 7 of Annexure 3 since the underlying liabilities of the Corporate Debtor towards the beneficiaries (for which Remaining BGs have been given) would be extinguished under the Resolution Plan, such BGs will not be continued. We clarify that the corresponding Margin Money (of INR 76.61 crs.) is therefore also sought to be returned to the Corporate Debtor for further payment to the Secured Financial Creditors as per the Resolution Plan.

However, to provide assurance to the issuing banks, we clarify that all BGs listed in Annexure 3 will be secured by 100% Margin Money at all times. Therefore, pending the cancellation, expiry, release of BGs listed in point 6 and 7 of Annexure 3, we will be providing replacement Margin Money to the issuing banks on the Transfer Date.

If any of the BGs listed in point 6 and 7 of Annexure 3 are invoked prior to the Transfer Date then the equivalent Margin Money of such invoked BGs shall be paid by the Resolution Applicant which shall be utilised to make payment to the Secured Financial Creditors or in the manner as decided by the CoC, on the Transfer Date.

In case any of the BGs listed in point 6 and 7 of Annexure 3 are live or uninvoked as on the Transfer Date, the Resolution Applicant shall provide replacement margin money to the issuing banks on the Transfer Date which shall be utilised for replacement/ renewal/securing of the Remaining BGs and the relevant Margin Money shall be returned by the issuing banks to Corporate Debtor which Margin Money shall be utilised for the purposes of

payment to the Secured Financial Creditors or in the manner as decided by the CoC, on the Transfer Date.

Notwithstanding anything to contrary, the benefit relating to the Exclusive Margin Money (as defined in the RFRP) shall be provided to the State Bank of India in accordance with the terms of the RFRP.

The aforesaid clarification and rectification of calculation errors are provided in the Addendum to the Resolution Plan.”

(underlining by us)

10.2 The relevant clauses of the Resolution Plan dealing with replacement of BGs, as referenced by the RP and SEML in the above emails, are 6.3.13 to 6.3.15. These are as under:

“Bank Guarantees:

6.3.13. The Resolution Applicant understands that there are bank guarantees issued by various banks as listed in Annexure 3 (such bank guarantees, the "BGs"). All BGS are secured against 100% Margin Money.

6.3.14. The Margin Money of INR 180.05 Crores provided against the BGs will be returned by the relevant issuing bank to the Corporate Debtor on the Transfer Date and utilized for making payment to the Secured Financial Creditors or in the manner decided by the CoC. It is clarified that in the event any BG is returned prior to the Transfer Date, the Margin Money provided against such BGs shall be returned by the relevant issuing bank to the account of the Corporate Debtor prior to the Transfer Date for purposes of payment to the Secured Financial Creditors or to creditors as decided by the CoC, on the Transfer Date.

6.3.15. In order to maintain the going concern status of the Corporate Debtor and secure the continuity of the BGs, the Resolution Applicant shall provide 100% margin

money to the relevant issuing banks towards the BGs listed at Item No. 1 - Item No. 5 of Annexure 3 ("Relevant BGs") on the Transfer Date. For such purpose, the Resolution Applicant shall infuse INR 103.39 Crores ("Margin Money Replacement Amount") in the Escrow Account (as a part of Initial Infusion Amount) which shall be utilised to provide such margins towards the Relevant BGs. It is clarified that the Margin Money Replacement Amount shall be utilised for replacement/renewal/securing of the Relevant BGs. It is further clarified that in the event any Relevant BG is encashed and paid out to the beneficiary by the relevant issuing bank, the Margin Money Replacement Amount corresponding to such encashment shall be utilised for making payment to the Secured Financial Creditors or to creditors as decided by the CoC on the Transfer Date."

(underlining by us)

10.3 Clause 6.3.13 refers to Annexure 3, which contains the details of BGs from Serial Nos.1 to 7. Annexure 3 is extracted below:

“ANNEXURE 3:

BANK GUARANTEES (as on 28 FEBRUARY, 2023)

S. No.	Name of the Beneficiary	Amounts (in crores)	Remarks
1	Power Grid Corporation of India Limited	37.50	A claim has been filed by PGCIL for this amount which has been duly admitted by the RP.
2	South Eastern Coal fields Limited	36.33	This was provided under the Coal Supply Agreement.
3	Ajmer Vidyut Vitran Nigam Limited (Rajasthan PPA)	8.14	Issued to Rajasthan Discom

S. No.	Name of the Beneficiary	Amounts (in crores)	Remarks
4	Jaipur Vidyut Vitran Nigam Limited (Rajasthan PPA)	12.08	Issued to Rajasthan Discom
5	Jodhpur Vidyut Vitran Nigam Limited (Rajasthan PPA)	9.78	Issued to Rajasthan Discom
6	Excise Department	69.77	
7	Customs	6.89	
	TOTAL	180.05	

10.4 What emerges from the above can be further analysed thus: The Resolution Plan of SEML (in clause 6.3.14) itself provided that “... *The Margin Money of Rs.180.05 crores provided against the BGs will be returned by the relevant issuing bank to the Corporate Debtor on the Transfer Date and utilized for making payment to the Secured Financial Creditors or in the manner decided by the CoC.*” Therefore, the Resolution Plan, from its inception, contemplated that the entire margin money of Rs.180.05 crores lying with the issuing banks would ultimately flow to the CoC for payment to secured financial creditors. Clause 6.3.14 leaves no ambiguity on this aspect - irrespective of whether the BGs were continued or discontinued, the margin money backing those guarantees was to

be returned to the Corporate Debtor on the transfer date and utilised as directed by the CoC.

10.5 The confusion arose in the mind of the CoC when under its Resolution Plan, SEML proposed to continue BGs aggregating to Rs.103.39 crores (Serial Nos.1 to 5) and accordingly undertook to infuse fresh funds to replace the margin money backing those guarantees. At the same time, though, it proposed to discontinue the remaining BGs aggregating to Rs.76.61 crores (Serial Nos.6 and 7), as the liabilities underlying these were proposed to be extinguished under the Resolution Plan.

10.6 We note that Rs.103.39 crores did not represent the “extent of SEML’s offer” in relation to BGs. Rather, it represented the incremental funding requirement arising from SEML’s decision to continue certain BGs. Continuing a guarantee necessarily requires substitution of collateral; discontinuing it does not. The Plan therefore required fresh infusion only for those guarantees which were to be continued. The remaining guarantees, aggregating to Rs.76.61 crores, stood on a different footing. SEML proposed extinguishment of liabilities underlying these guarantees. Once the liabilities were extinguished, the guarantees would inevitably be

cancelled, and the margin money backing them would be released. That margin money, like the rest, was already earmarked for the CoC.

10.7 The real issue, therefore, was not whether the CoC would receive Rs.76.61 crores, but how and when. Since SEML did not intend to replace BGs amounting to Rs.76.61 crores, the CoC asked what would happen to the BGs at Serial Nos.6 and 7 and what would happen to the margin money backing those guarantees. Accordingly, on 10.05.2023, SEML clarified that the margin money of Rs.76.61 crores relating to the BGs at Serial Nos.6 and 7 was also to be returned to the CoC and paid to the secured financial creditors, exactly as provided in the Resolution Plan. At the same time, SEML clarified that until those BGs were cancelled, expired, or released, the issuing banks would continue to have live obligations under the guarantees. To ensure that the issuing banks were not left unsecured during this period, SEML stated that it would provide replacement margin money so that all BGs would remain backed by 100% margin money at all times. What is relevant is that in any event, upon the release of the BGs, the underlying margin money, i.e., Rs.76.61 crores was to be passed

on to the CoC together with Rs.103.39 crores. All that the clarification did was address the issuing banks' interim exposure pending formal return of these BGs. This did not result in any increase in payment to the CoC. The payment to the CoC was Rs.180.49 crores before clarification and remained Rs.180.49 crores even after the clarification.

10.8 Therefore, we do not find any force in the appellants' contention that SEML had enhanced its offer for replacement of BGs from Rs.103.39 crores to Rs.180 crores. The contention is wholly erroneous and is not accepted by us.

B. Increase in Upfront Amount:

11. The second attack against SEML is that by way of the same clarification dated 10.05.2023, it increased the deferred amount payable under its Resolution Plan even as other resolution applicants were not given a similar opportunity to do so.

We may note paragraph 6 of the email dated 08.05.2023 by which the CoC sought clarifications from SEML extracted above:

“6. Clause 6.3.2.(b) states that Resolution Applicant will pay a "discounted amount of INR 240 Cr" to the CoC, in case CoC wishes to obtain the deferred portion of INR 240 Cr upfront. Please clarify whether Resolution Applicant is offering a value lower than INR 240 Cr (i.e. INR 240 Cr

discounted to a lower value), if the option to obtain the value upfront is exercised.”

We now notice Clause 6.3.2(b) (referred above):

“6.3.2 (b) Secured Financial Creditors shall be issued NCDs by the Corporate Debtor for an amount equal to Deferred Amount (INR 240 Crores). The NCDs will be unsecured and issued in 2 different series of INR 120 Crore, being Series A & B. The NCDs will carry a coupon (Interest on Deferred Amount) and shall be redeemed as per the terms set out in Annexure 5. In the event CoC does not propose to subscribe to the NCDs on the Transfer Date, the Resolution Applicant shall pay a discounted amount of INR 240 Crore to the Secured Financial Creditors on the Transfer Date, in lieu of the Deferred Amount ("Deferred Amount Compensation"), The CoC shall inform the Resolution Applicant regarding its decision to subscribe to the NCDs or opt for discounted payment in lieu of the Deferred Amount to the Resolution Applicant in the LoI to be issued to the Resolution Applicant upon approval of its Resolution Plan. It is clarified that in case the CoC decides to take the Deferred Amount Compensation, no NCDs shall be issued and no Interest on the Deferred Amount shall be payable to the Secured Financial Creditors:”

The reply of SEML with regard to the query is as follows:

“No. The value of INR 240 crores is the discounted value of deferred payment (which includes principal amount of NCDs i.e. INR 240 Crore plus interest on such NCDs). If CoC exercises the option to obtain the value upfront, then the RA will pay INR 240 Crores upfront i.e. the principal amount of NCDs.”

11.1 What transpired as extracted above is simple: SEML proposed to issue NCDs at a face value of Rs.240 crores with a coupon rate of 10%. However, it also gave the CoC the option to

either - (i) take the NCDs, i.e., Rs.240 crores with 10% coupon (which comes to a total of Rs.301.64 crores over three years); or (ii) take Rs.240 crores upfront.

11.2 The RP specifically sought SEML's response in relation to clause 6.3.2.(b) of its Resolution Plan, *"...which stated that Resolution Applicant will pay a "discounted amount of Rs.240 Cr" to the CoC, in case CoC wishes to obtain the deferred portion of Rs.240 Cr upfront. Please clarify whether Resolution Applicant is offering a value lower than Rs.240 Cr (i.e. Rs.240 Cr discounted to a lower value), if the option to obtain the value upfront is exercised."* Thus, the question to SEML was, whether, it would provide a further discount on Rs.240 crores in the event of the CoC choosing the upfront payment option.

11.3 On 10.05.2023, SEML clarified that Rs.240 crores is in fact the discounted value of the deferred payment. Quite clearly, SEML had not converted Rs.240 crores deferred into Rs.240 crores upfront as argued by the appellants. Instead, it gave the CoC an option to either take Rs.301.64 crores over time (Rs.240 crores + 10% over three years) or take a discounted amount of Rs.240 crores upfront (i.e., the present day value/NPV of Rs.301.64 crores). It

was the CoC's choice to either take a higher value later or take its present value upfront. Hence, it is obvious that there was no change made to SEML's Resolution Plan through its clarification.

Commercial Wisdom of the CoC Paramount:

12. Having concluded that neither of the issues raised by the appellants establishes any modification of the Resolution Plan or any material irregularity in the conduct of the RP, the challenge stands stripped of its factual foundation. What remains is, in substance, a challenge to the commercial decision taken by the CoC. The IBC leaves no scope for judicial intervention even here.

12.1 It has been the consistent view of this Court that the commercial wisdom of the CoC cannot be interfered with by the NCLT, the NCLAT or this Court as was held in ***K. Sashidhar vs.***

Indian Overseas Bank, (2019) 12 SCC 150 as under:

“55. Whereas, 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 financial 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. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner

in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.

xxx

58. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with Section 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters “other than” enquiry into the autonomy or commercial wisdom of the dissenting

financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers.”

(Underlining by us)

12.2 Similarly, in ***Kalyani Transco***, decided on 26.09.2025, a three-Judge Bench of this Court held as follows:

“179. It can thus be seen that this Court has held that the legislature purposefully did not include a means to challenge the commercial wisdom exercised by the CoC. This makes a challenge to the same non – justiciable. It has been further held that a challenge cannot be raised against the decision making of the CoC unless and until the grounds for challenge as given in the Code are satisfied. Any interference in the paramount objective of the CoC of exercising its commercial wisdom would amount to the Court rewriting the law and going against the very objectives of the IBC.

180. We are therefore of the opinion that in the present matter as well, the CoC exercised its commercial wisdom while approving the Resolution Plan whereby the Appellant – Jaldhi was classified as a contingent creditor and such a decision is deemed to be non – justiciable by this Court in view of K. Sashidhar (supra) which has been subsequently followed in a catena of judgments. The NCLT, and the NCLAT have also approved the Resolution Plan, and in light of the settled principle of law, we find no question of law being raised by the Appellant – Jaldhi and therefore, the appeal filed by it is liable to be dismissed.”

(underlining by us)

12.3 We note the observations in ***Essar Steel India Limited***, clarifying that once the NCLT is satisfied that the CoC has applied

its mind to the statutory requirements spelt out in sub-section (2) of Section 30 it must necessarily pass the resolution plan, as under:

“73. ...Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors 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 has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal.”

(Underlining by us)

12.4 We also note the observations in ***Pratap Technocrats Private Ltd. vs. Monitoring Committee of Reliance Infratel Limited, (2021) 10 SCC 623*** wherein this Court categorically held as follows:

“29. The jurisdiction which has been conferred upon the adjudicating authority in regard to the approval of a resolution plan is statutorily structured by sub-section (1) of Section 31. The jurisdiction is limited to determining

whether the requirements which are specified in sub-section (2) of Section 30 have been fulfilled. This is a jurisdiction which is statutorily-defined, recognised and conferred, and hence cannot be equated with a jurisdiction in equity, that operates independently of the provisions of the statute. The adjudicating authority as a body owing its existence to the statute, must abide by the nature and extent of its jurisdiction as defined in the statute itself.

44. ...the jurisdiction of the adjudicating authority and the appellate authority cannot extend into entering upon merits of a business decision made by a requisite majority of the CoC in its commercial wisdom. Nor is there a residual equity based jurisdiction in the adjudicating authority or the appellate authority to interfere in this decision, so long as it is otherwise in conformity with the provisions of IBC and the Regulations under the enactment.”

(Underlining by us)

12.5 The issue is no longer *res integra*, the law having been settled that the commercial wisdom of the CoC enjoys primacy and cannot be supplanted by judicial review. Neither the NCLT, nor the NCLAT nor even this Court is empowered to substitute its assessment in place of the commercial decision arrived at by a requisite majority of the CoC.

13. The appeals before us typify the growing strategic use of the judicial system by unsuccessful resolution applicants, who seek to reopen almost every commercial decision under the guise of procedural impropriety. This converts the corporate resolution

process into a protracted adversarial contest and erodes the value of the Corporate Debtor. Such an approach incentivises delay, rent-seeking, and strategic obstruction and is fundamentally inconsistent with the economic logic and statutory design of the IBC.

13.1 In the present case, the Resolution Plan stands approved by both the NCLT and the NCLAT and has since been implemented, leaving absolutely no scope for intervention by this Court.

13.2 In view of the foregoing, we do not find any merit in the appeals. With the above observations, these appeals are dismissed. Therefore, the Impugned Judgment dated 01.10.2024 passed by the NCLAT is affirmed.

14. Before parting, we wish to add a few words of caution. The IBC represents a conscious legislative choice to privilege speed, certainty, and creditor-driven decision-making over exhaustive judicial scrutiny. Experience shows that unsuccessful bidders will always try to spin commercial decisions of the CoC as procedurally faulty in order to secure a second shot through litigation by filing

applications or making representations. However, courts need to remain vigilant against any temptation to expand the scope of review beyond the narrow boundaries prescribed by the IBC.

14.1 From an *ex post perspective*, excessive judicial review in the CIRP carries significant economic costs that run counter to the objects of IBC. The IBC is premised on the recognition that delay and uncertainty are value-destructive in distressed situations. When commercial decisions taken by the CoC are subjected to expansive judicial scrutiny, resolution timelines lengthen, transaction costs rise, and the going-concern value of the Corporate Debtor erodes. The consequence therefore is not merely delay, but a tangible loss of economic value for all stakeholders.

14.2 From an *ex ante* perspective also, the expectation of expansive judicial review distorts incentives for future bidders. Future resolution applicants may price legal uncertainty into their bids, either by discounting their offers or by refraining from participation in the CIRP altogether. This will weaken competition in the resolution process and reduce recoveries for creditors.

14.3 Excessive review also encourages strategic litigation. Stakeholders with little to no economic interest in the Corporate Debtor may resort to litigation as a bargaining tool to delay implementation of the Resolution Plan or extract concessions, thereby converting the insolvency process into an adversarial contest. Such conduct takes the process away from its objective of value maximisation.

14.4 This Court, in ***Swiss Ribbons Private Ltd. vs. Union of India, (2019) 4 SCC 17***, underlined that the IBC prioritises time-bound reorganisation to maximise asset value, revive corporate debtors as going concerns, and ultimately strengthen credit markets.

“27. ...The Code is first and foremost, a Code for reorganisation and insolvency resolution of corporate debtors. Unless such reorganisation is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximisation of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a

beneficiary of the resolution scheme—workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximise their investment. Timely resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development of credit markets. Since more investment can be made with funds that have come back into the economy, business then eases up, which leads, overall, to higher economic growth and development of the Indian economy. ...

28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends.

(Underlining by us)

14.5 From an institutional design point of view, the law must secure three interdependent economic freedoms *viz.* entry into the market, continuation of business operations under conditions of

competitive neutrality, and exit from the market. While easy entry and operation enable risk-taking and value creation, exit performs a critical function too by ensuring that failure, an inevitable by-product of risk taking, is resolved efficiently rather than postponed indefinitely. An efficient insolvency resolution system performs an important allocative function: it preserves viable firms through timely reorganisation while ensuring swift liquidation and exit of non-viable businesses. Where insolvency laws are tardily enforced, viable firms are driven into failure, and non-viable firms are permitted to persist.

14.6 For the longest time under Indian law, the freedom of exit remained under-institutionalised. The enactment of the IBC was a decisive correction of this imbalance by introducing a predictable and time-bound mechanism for insolvency resolution. While predictability allows market participants to form stable expectations about enforcement outcomes, finality curtails strategic delay and rent-seeking, ensuring timely deployment of capital and labour into more productive use.

14.7 Predictability and finality are thus essential to maintaining a robust insolvency regime. Judicial intervention

beyond the narrow statutory confines undermines both predictability and finality. Recognising this, the IBC deliberately confines judicial review to strict statutory compliance under Sections 30(2) and 61(3). Respecting these limits will preserve the economic sense of the IBC and ensure that insolvency remains a predictable, time-bound, and market-driven process.

15. With the above observations, the impugned judgment dated 01.10.2024 passed by the NCLAT is affirmed and consequently, the appeals are dismissed. We however refrain from imposing costs.

.....J.
(B.V. NAGARATHNA)

.....J.
(R. MAHADEVAN)

**NEW DELHI;
FEBRUARY 27, 2026.**