NATIONAL COMPANY LAW APPELLATE TRIBUNAL NEW DELHI

Company Appeal (AT) (Insolvency) No. 533 of 2020

[Arising out of Order dated 06.05.2020 & 30.04.2020 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench in CP (IB) 1830/MB/2018 & Miscellaneous Application No. 1751/2019]

IN THE MATTER OF:

1.Makalu Trading Ltd.
1, Pearl Mansion,
(N), M.Karve Road,
Marine Lines, Mumbai 400 020 ...Appellant No.1

2.Superways Enterprises Pvt. Ltd
1, Pearl Mansion,
(N), M.Karve Road,
Marine Lines, Mumbai 400 020 ...Appellant No.2

3.Dilshad Trading Company Pvt. Ltd
1, Pearl Mansion, (N),
M.Karve Road,
Marine Lines, Mumbai 400 020 ...Appellant No.3

4.Shrilekha Trading Pvt. Ltd.
1, Pearl Mansion,
(N), M.Karve Road,
Marine Lines, Mumbai 400 020 ...Appellant No.4

5.M/s.Subhkaran and Sons
1, Pearl Mansion,
(N), M.Karve Road,
Marine Lines, Mumbai 400 020 ...Appellant No.5

Versus

1.Rajiv Chakraborty,
Resolution Professional for
Uttam Value Steel Ltd
2, Sukhdev Vihar, 1st Floor,
New Delhi – 110 025 ...Respondent No.1

2.Committee of Creditors
Of Uttam Value Steels Limited
Through State bank of India,
State bank of India,
Stressed Asset Management
Branch – II, Raheja Chambers,
Ground Floor, Nariman Point,
Mumbai – 400 021 **...Respondent No.2**

3.CarVal Investors
CarVal Investors, 461,
Fifth Avenue
New York, NY 10017,
United States of America **...Respondent No.3**

Present:

For Appellant : Mr. Zal Andhyarujina, Senior Advocate with Ms. Akanksha Agarwal, Mr. Bharat Merchant and Mr. Neerav Merchant, Advocates

For Respondents: Ms. Fatema Kachwah, Advocates for R-1.

Mr. Arun Kathpalia, Senior Advocate with Mr. Vaijyant, Advocate for R-2, Mr. Rajiv Chakraborthy, Resolution Professional, Mr. Dheeraj and Mr. Rohan Rajadhyaksha, Advocates for R-3.

J U D G M E N T

DR. ASHOK KUMAR MISHRA, TECHNICAL MEMBER

1. The Appellants – 'Makalu Trading Ltd. & Ors., have filed an Appeal Under Section 61 of the 'Insolvency and Bankruptcy Code', 2016 (for short 'I&B

Code,' 2016) against the impugned order dated 06.05.2020 and 30.04.2020 in 'CP(IB)1830/MB/2018' & 'Miscellaneous Application No.1751/2019' passed by the Adjudicating Authority ('National Company Law Tribunal'), Principal Bench, New Delhi.

2. The Appellants pray for the following reliefs:

- Stay the operation of the Impugned orders dated 30.04.2020 and 06.05.2020 passed by the Ld. Principal Bench, NCLT for the aforementioned reasons till the disposal of the Appeal;
- Stay Carval/consortium of Carval/Nithia (in short 'Carval') and its Directors/managers/Officers/representatives/agents/affiliates/sis ter concerns/partners/assigns etc., by whatever name called from given effect to the Order dated 30.05.2020 and 06.05.2020 passed by the Ld. Principal bench, NCLT and refrain Carval and its directors/managers/Officers/representatives/agents/affiliates/sist er concerns/partners/assigns etc. by whatever name called from alienating, transferring, selling, encumbering, leasing or creating or any third party interest, whether directly or indirectly, in any moveable or immovable asset of the Corporate Debtor till the disposal of the Appeal;
- Set aside the order dated 30.04.2020 and 06.05.2020 passed by the Principal bench, NCLT approval Carval's Resolution Plan etc.

3. The Appellants have raised the following issues for quashing the above order passed by the Adjudicating Authority:

a. It is well settled principle in law that when a statutory provision sets out a particular procedure to be followed, it should be done in that particular manner and that failure to do so, shall result in a nullity of the act and that the failure to obtain "prior" approval, results in a nullity in the acts of the Resolution Professional and the Committee of Creditors (for short 'CoC'). Since obtaining the permission of the 'Competition Commission of India' (for short 'CCI') is a condition precedent which has not been fulfilled, therefore, approving of the Plan by the CoC is in contravention of the provisions of the Code. As such, the final approval by the Adjudicating Authority of Carval's Resolution Plan on 30.04.2020 and 06.05.2020 is contrary to the Code and requires to be immediately set aside on the ground alone. It is also important to note that on 19.04.2019, i.e. the date on which e-voting on Carval's Plan dated 15.04.2019 was scheduled for approval, neither did Carval have the mandatory prior approval from the CCI, nor had Carval even made an application for approval to the CCI, knowing this fact, certain CoC members started secretly negotiating certain terms of its Plan with Carval under the garb of "improving" the Plan, and therefore sought cancellation of the e-voting scheduled on 19.04.2019. These negotiations seeking improvement of Carval's Plan were clearly entered into by certain CoC members to push back the e-voting scheduled on 19.04.2019. By getting the e-voting scheduled on 19.04.2019 cancelled and by holding the next CoC meeting on

21.04.2019, the RP and the CoC gave Carval an opportunity to at least file an application before the CCI in terms of the proviso to Section 31(4) of the I&B Code, 2016. Carval pounced on this opportunity and filed the application before the CCI on 20.04.2019, i.e. a day before the CoC meeting held on 21.04.2019. Thereafter, the Resolution Professional at the behest of certain CoC Members called the 15th CoC meeting on 21.04.2019 to approve the revised Resolution Plan submitted by Carval. Though the Appellant and various other CoC members objected this hijacking of the proceedings and the decision to vote on the revised plan, yet the certain CoC Members at whose behest the 15th CoC Meeting was called decided to hold physical voting to approve the revised Plan. At the 15th CoC Meeting held on 21.04.2019, the CoC approved the revised Resolution Plan submitted by Carval by a majority of 81.29% without there being the prior CCI's mandatory approval. The CoC, therefore, on 21.04.2019 is guilty of approving a Resolution Plan that was contrary to the provision to Section 31(4) of the Code that required prior "mandatory" approval from the CCI, which is impermissible. It is well settled position of law decided by the Supreme Court that –

When the statute prescribed a particular method for doing something, that thing can only be done by that method and if that thing is done in some other manner such action is null and void and nugatory, held in Para 42 and 43 of ***Mackinnon Mackenzie ltd Vs. Mackinnon***

Employees Union, *(2015) 4 SCC 544;* "Prior" permission cannot never be equated with subsequent permission. As such, the subsequent permission where the statute prescribes a prior permission is no permission in law at all, held in the judgment relied upon hereinabove ***HMT House Building Cooperative Society Vs. Syed Khader and Ors.*** *1995 SCC (2) 677- Para 19, followed in the case of* ***Bangalore City Cooperative Housing Society Ltd Vs. State of Karnataka & Ors.*** *(2012) 3 SCC 727 – Para 34 & 68.* The Prior permission of the CCI is, in fact, a statutory precondition and as such in the nature of a jurisdictional fact, the absence of which denudes the CoC from any power/authority/jurisdiction to vote on the proposed Resolution Plan as held in ***Arun Kumar and Ors. Vs. Union of India and Ors.*** *2007 (1) SCC 732- para 74 – 76.* That the entire purpose of the Proviso was to make an exception concerning the permission of the CCI in the event of the Resolution Plan containing a provision of combination, the legislative mechanism of making such exceptions by inserting a proviso is a well settled and well established legislative tool, held in ***S.Sundaram Pillai Vs. V.R. Pattabiraman,*** *(1985) 1 SCC 591- Para 28, 37 and 43.*

b. The Appellants submit that apart from the 'Resolution Plan' in contravention of several provisions of the Code and the CIRP Regulations, there has been blatant suppression of material facts before the Adjudicating Authority. The Resolution Professionals has

also acted in breach of his duties and obligations and there is grave irregularity in the exercise of his powers. The Resolution Plan, therefore, by no stretch and imagination can be said to be to the satisfaction of the 'Adjudicating Authority' under the relevant provisions of the Code and therefore, ought to be rejected in the interest of the Corporate Debtor and all its Creditor.

c. The Appellant has also alleged that Carval is ineligible as per Regulation 39 (1)(c) of IBBI Insolvency Resolution Process for Corporate Person Regulation, 2016 (hereinafter, "CIRP Regulations"). Since it has knowingly submitted a Resolution Plan with false information and as such, its plan could not have even been placed before the CoC by the Resolution Professional, let alone be approved by the Adjudicating Authority. Carval had represented that One Dr.Johannes Sittard was a Director of Nithia Capital Resources Advisors LLP (an entity of the Consortium of Carval) in its revised bids on 19.04.2029 and again on 15.05.2019. This was completely false to the knowledge of Carval as Mr. Johannes Sittard had resigned as a Director from Nithia with effect from 01.04.2018, which was much prior to 19.04.2019 and 15.05.2019 and was being falsely represented. As represented in Annexure-2 of the Resolution Plan, of the "Management Team" of Mr.Johannes Sittard and Mr.Jai Saraf, Mr.Johannes Sittard was the only person having any technical knowledge in the field of mining and metals and has prior work experience in Arcelor Mittal. Whereas, Mr.Jai Saraf is Chartered

Accountant (CA) by profession and handles only finances. As such. Carval was only a financing partner of Carval Consortium who had provided the Standby Letter of Credit on behalf of Nithia Capital. After Mr. Johannes Sittard's resignation in 2018, the working partner of Nithia capital is a CA and CARVAL, being an investment fund, there is an absence of technical expert which raises a question on the running of the said plants slated to be taken over. The Books of Account of Nithia Capital make, it is evidenced that the total capital invested in Nithia since inception is only 1000 pounds i.e. Rs. 93,000 as on date and is being managed by persons having only financial knowledge i.e. Mr.Jai Saraf and his wife. Thus, Carval's Resolution Plan clearly violated the terms of Regulation 39(1) (c) of the CIRP Regulations. Though the violation of Regulation 39(1) (c) automatically made Carval ineligible to continue with the insolvency process and attracted penal action against it, despite this, Carvals' plan was approved by the CoC on 21.04.2019 and by the Adjudicating Authority on 30.04.2020 and 06.05.2020. The Appellant had further placed on record that Carval was guilty of suppressing material information at the time of filing its Resolution Plan as such the Directors who were referred to as a part of the Applicant's team had in fact resigned much prior to the date on which the Plan was submitted, and as such Carval was guilty of violating Regulation 39(1) (c) of the CIRP Regulations**.**

d. The Appellants have also alleged that Bank Guarantee not provided by the Resolution Applicant in terms of RFRP, Contravention of the provisions of the Code and Regulations, material irregularity in exercise of powers by the Resolution Professional and fraudulent suppression of facts – the Resolution Applicant was required to provide a Bank Guarantee as per the Request for Resolution Plan ("RFRP"), the relevant clause being 3.4.2. A Performance Bank Guarantee of Rs. 250 Crores (the Bank Guarantee) was provided by the Resolution Applicant which was valid till 30 April, 2020, after which it was required to be extended/renewed till the Upfront Payment Date and/or realization of Rs. 250 Crores, whichever was later. In accordance with the RFRP, the Upfront Payment Date is 30 days from the date of approval of the Resolution Plan on 06.05.2020 i.e. 05.06.2020. Therefore, the Upfront Payment of Rs. 275 Crore (provided in the Resolution Plan) ought to have been received by Corporate Debtor by 05.06.2020. it is pertinent to note that under RFRP, this Upfront Payment was secured by the bank Guarantee to Rs. 250 Crores. Therefore, in the event of a default of payment of the Upfront Payment, the creditors would be entitled to invoke the Bank Guarantee of Rs. 250 Crores. On the issue of dilution in the value of the Bank Guarantee from Rs. 250 Crores to Rs. 50 crores, decided unilaterally by certain "Financial Creditors" which had been suppressed by the Resolution Applicant, Resolution Professional and the "Financial Creditor" before the Adjudicating Authority and from

the Appellants. Moreover, the said reduction in the amount of the Bank Guarantee is in complete breach of the conditions provided in the RFRP. In event of a default in payment of the Upfront Payment Amount and/or any other default as per the terms of the RFRP, the creditors will not be in a position to invoke the Bank Guarantee for Rs. 250 Crores, but only in Rs.50 Crores, causing loss to all creditors of the Corporate Debtor. In deliberate suppression of the aforesaid, during the hearing before the Adjudicating Authority on 27.04.2020, 28.04.2020 and 30.04.2020 for approval of the Resolution Plan, the Resolution Applicant, Resolution Professional and the "Financial Creditor" did not reveal the fact of reducing the Bank Guarantee before the Adjudicating Authority. The aforesaid facts were not revealed to the Adjudicating Authority in blatant and fraudulent suppression of facts. During the course of the entire hearing, the Resolution Applicant, Resolution Professional and the "Financial Creditors" led the Adjudicating Authority to believe that the Bank Guarantee of Rs. 250 Crores was being extended, in accordance with the RFRP. Moreover, the Resolution Professional had filed an application for an urged hearing of the MA No. 1751 of 2019 before the Adjudicating Authority, on the ground that the Bank Guarantee of Rs. 250 Crores would expired on 30.04.2020, which clearly was false to his knowledge. The Respondents' attempts to suppress the above facts are evident from the fact that the Resolution Professional and CoC deliberately did not respond to the Appellants'

emails dated 02.05.2020, 07.05.2020, 10.06.2020 and 11.06.2020 enquiring about the Bank Guarantee. (*The said emails are annexed on page 807 and 809 of the Appeal)*. It is submitted that the said reduction is illegal and not in accordance with the law and as such is null and void. As such, the Respondents failure to continue to Bank Guarantee in terms of the RFRP has also rendered the Resolution Plan null and void. Moreover, the reduction is a breach of the substantive law and is not a commercial decision of the CoC. It is in fact as is evident is a breach of the substantive law is not a commercial decision of the CoC at all merely that of the "Financial Creditor". The illegal actions being ratified by the Resolution Professional are also a material irregularity in his exercise of powers. The Appellants, further, submitted that the Adjudicating Authority has also failed to discharge its statutory duty under the Proviso to Section 31, as the Resolution Plan cannot be said to satisfy the provisions of effective implementation without a Bank Guarantee. The 'Resolution Professional', 'Financial Creditor' and the 'Resolution Applicant' are also in breach of the following provisions of the Code (viz. Section 24(6), Section 25 (2)(f), Section 208) as well as IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") Regulation 25. The Appellants submit that, contrary to the arguments of the counsel for the CoC, the purpose of the Bank Guarantee is not to secure the Financial Creditors alone, but for securing the entire CIRP. The Bank Guarantee is a

document which provides security and financial solvency and capability of the 'Resolution Applicant' and binds the 'Resolution Applicant' to the bid. The argument made by the CoC before this Appellate Tribunal that the Resolution Applicant was forced to adopt a pragmatic approach in view of the on-going pandemic was, in fact, never made before the Adjudicating Authority nor was it a part of their pleadings before the Adjudicating Authority, which were filed in April i.e. after the pandemic situation had already escalated in India. In fact, the Legislature has made amendments to the on account of the on-going pandemic but no amendments have been providing any concessions in reduction/dilution of payments or guarantees etc.

4. **The Resolution Professional/Respondent No.1 has submitted that :**

a) The issue of prior approval from the CCI under Proviso to Section 31(4) of the I&B Code, 2016 is incorrect and CCI approval is not a condition precedent for the approval of the Resolution Plan. The CCI Approval has been procured on June 4, 2019 in compliance with the provisions of the Code. It is submitted that condition requiring CCI Approval is "directory" and having obtained the same, the provisions Section 31 (4) have been complied with. The Law is amply clear from the judgment of this Appellate Tribunal in the matter of Arcelormittal India Pvt. Ltd. Vs. Abhijeet Guhathakurta & Ors. 2019 SCC Online NCLAT 920, which states as under:

"15. We have noticed and hold that proviso to sub-section (4) of section 31 of the 'I&B Code' which relates to obtaining the approval from the 'Competition Commission of India' under the Competition Act, 2002 prior to the approval of such 'Resolution Plan' by the 'Committee of Creditors' is directory and not mandatory. It is always open to the 'Committee of Creditors', which looks into viability, feasibility and commercial aspect of the 'Resolution Plan' to approve the 'Resolution Plan' subject to the approval by the Commission, which may be obtained prior to the approval of the plan by the Adjudicating Authority under Section 31 of the 'I&B Code'. In the present matter, already approval of the Competition Commission of India has been taken to the 'Resolution Plan".

b) It is further submitted that the law laid down by this Tribunal is not new law which is to operate from the date of its order, but is always the law. The court merely declares the law as it always is. This is succinctly stated in the following judgment of CIT Vs. Saurashtra Kutch Stock Exchange Ltd., (2008) 14 SCC 171.

"Para : 35 – In our judgment, it is also well settled that a judicial decision acts retrospectively. Accordingly to Blackstonian theory, it is not the function of the court to pronounce a "new rule" but to maintain and expound the "old one". In other words, judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier

one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put if differently, even where an earlier decision of the court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood.

Para :36 - Salmond in his well known work states:

"The theory of case law is that a judge does not make law; he merely declares it; and the overruling of a previous decision is a declaration that the supposed rule never was law. Hence, any intermediate transactions made on the strength of the supposed rule are governed by the law established in the overruling decision. The overruling is retrospective, except as regards matters that are res judicatae or accounts that have been settled in the meantime".

Since the CCI Approval for the Resolution Plan has already been obtained on June 4, 2019 the same is not in violation of the provisions of the Code. The Objection is without any merit or legal basis and must be rejected. Further, under the provisions of the I&B Code, 2016, the CIRP is a time bound process. Any delay in approval of the plan would have resulted in liquidation of the Corporate Debtor. It is pertinent to note that the Respondent No.2 had approved the said plan, subject to CCI's approval. Vide email dated June 4, 2019, the successful Resolution Applicant informed

Respondent No.1 that the CCI approval has been obtained. It is submitted that the provisions of the Code are to be construed harmoniously with the intent of the legislature, which is definitely not to push the Corporate Debtor into liquidation.

c) As far as Extension of Performance Bank Guarantee ('PBG') is concerned, the Respondent No.1/Resolution Professional has submitted that the 'Performance Bank Guarantee' ("PBG") was maintained by the Resolution Applicant/Respondent No.3 for almost a period of one year from approval of the Resolution Plan. In light of the financial crisis faced by several companies in view of the pandemic, COVID-19, Respondent No.3 requested for a reduction in the amount of the PBG. It is submitted that by this time, the contesting Resolution Applicant, the Consortium of Investment Opportunities IV Pte. Ltd., Singapore, Synergy Metals and Mining Fund LLP, Dubai and Art Special Finance (India) Limited, New Delhi ("SSG") had already withdrawn its bid for Corporate Debtor. Therefore, Respondent No.3, was the only resolution applicant for the Corporate Debtor. In the interest of the Successful Resolution of the Corporate Debtor, Respondent No.2 accepted the request of Respondent No.3 seeking reduction in the amount of the PBG. It is submitted that the decision of the Respondent No.2 permitting reduction of the amount of the PBG, is the commercial decision of

Respondent No.2 taken in concurrence with other members of the CoC, in the interest of all the stakeholders of the Corporate Debtor.

d) As regards failure to appoint Dr. Johannes Sittard for implementation of the Resolution Plan is concerned, the Respondent No.1/Resolution Professional has contended that one Dr. Johannes Sittard who was material to the implementation of the Resolution Plan left the organization of the Respondent No.3, which in turn will prejudice the successful implementation of the Resolution Plan. The Appellant has misrepresented the facts of the matter. Respondent No.1 had in fact examined the Resolution Plan of Respondent No.3 to confirm that the same provides for the management of the debtor's affairs after the approval of such plan. Annexure 2 of the Resolution Plan clearly sets out that Dr. Johannes Sittard and Jai Saraf both have been key players and instrumental in laying the initial foundation and shaping the success story for the largest steel company in the world – Arcelor Mittal and its predecessors Mittal Steels and Ispat International NV. It is further to be noted that Dr. Johannes Sittard was in any case holding a non-executive position on the board of Nithia Capital and it is Mr. Saraf who is the Founder CEO and Director of Nithya Capital. Therefore, the allegations of the Appellant in this regard are completely baseless.

5. **It was stated by Committee of Creditors (CoC)/Respondent No.2 that:**

a. On the issue of approval from the CCI is concerned, it is based primarily on interpretation of proviso to Section 31(4) of the Code which provides that the approval of the CCI shall be obtained prior to approval of the Resolution Plan by the Committee of Creditors. It is also submitted that this issue is, no longer, res integra and has been settled by this Appellate Tribunal in Arcelor Mittal India Pvt. Ltd. Vs. Abjijit Guhathakurta, 2019 SCC Online NCLAT 920 ("Arcelor decision"). In the said case, this Appellate Tribunal has categorically held that the proviso to Section 31(4) is "directory" and "not mandatory" in nature. The Appellate Tribunal has further clarified that as long as the approval from the CCI has been obtained, prior to approval of the Resolution Plan by the Adjudicating Authority, such an action would not be in contravention of the provisions of the Code. In the present case, the Successful Resolution Applicant had applied for the approval from CCI prior to the Resolution Plan having been put to vote by the CoC. The approval from CCI is dated 03.06.2019. the final orders in M.A 1751 of 2019 in CP(IB) No. 1830 of 2017 i.e. Resolution Plan approval application, were pronounced on 30.04.2020 and the judgment was made available on 06.05.2020. Thus, clearly, the Resolution Plan by the Adjudicating Authority has been approved only after the CCI approval and thus, the requirement of CCI approval for a combination under the Competition Act, 2002, is complied with, albeit after CoC approval of the Resolution Plan. This is however, permissible in terms

of the Arcelor decision cited above. Even otherwise, it is trite law that mere usage of the term "shall" does not make a provision 'mandatory'. Ordinarily, a matter of process, especially when there is no consequence/penalty stipulated on account of non-compliance of such process, is treated as 'directory' and 'not mandatory', as held by this Appellate Tribunal in decision cited above. Lastly, the interpretation of the Appellants would also defeat the purpose of resolution under the Code, if the argument of the Appellants is accepted, it would make the entire provision un-workable and several resolution plans would not get approved because of lack of CCI approval prior to approval by the CoC. In fact, the strict timelines contemplated under the Code are not in consonance with the timelines provided under the Competition Act, 2002. In terms of Section 31(11) of the Competition Act, 2002, CCI is required to give its approval for a combination, which in its opinion will not have an appreciate adverse effect on competition within 210 days at the end of which the 'combination' would be deemed to have been approved. The I&B Code on the other hand contemplates that the entire CIRP should ideally be concluded within 180 days and a maximum extension of 90 days may be granted to deserving cases. Thus, in any event the entire process should be concluded within 270 days. Thus, if the approval of CCI is taken to be a mandatory requirement even prior to the approval of the Resolution Plan by the CoC, it would be extremely difficult for the CoC to consider any Resolution Plan that triggers

requirement of CCI approval under the Competition Act, 2002. To put the matter in context, it may be noted that the model timelines of a CIRP prescribed by Regulation 40A of the IBBI (Insolvency Resolution Process for a Corporate Persons) Regulations, 2016 provides that the Invitation of Expression of Interest (EOI) is to be published by the 75th day of the insolvency commencement, the final resolution plans must be submitted by the 135th day and the resolution plans, approved by the CoC are required to be submitted to Adjudicating Authority by the 165th day. Thus, only a period of 90 days is available from date of EOI till submission of the Resolution Plans for approval of the Adjudicating Authority.

b. As far as the Variation to the terms of the Performance Bank Guarantee is concerned, it is submitted that the present process has been marred by unprecedented circumstances which were not contemplated at any stage by any of the stakeholders. As per the provisions of the Code, the entire CIRP including the approval of the Resolution Plan by the Adjudicating Authority should have concluded within a maximum period of 330 days. In fact, clause 3.4.2 of the RFRP itself contemplates that the initial validity period of PBG shall be six months (Approx. 180 days) and the same shall be renewed/extended for further periods are required, so that the same is valid uptil the payment of upfront payment amounts or payment of Rs.250 Crores by the Successful Resolution Applicant, whichever is later. The CoC, however, in exercise of its right

under Clause 6.4 of the RFRP (see page 157 of the Appeal), agreed to allow modification in the validity period of PBG i.e. allowing a validity period of one year till 30.04.2020. The said fact, alongwith the minutes of the 16th meeting of the CoC where decision to allow 1 year validity period was taken by the CoC and the copy of the PBG, were duly placed on record of the Adjudicating Authority as part of the Application for approval of the Resolution Plan. It is expressly denied that any unfair advantage was conferred on the successful Resolution Applicants since the PBG was for the full amount of Rs. 250 Crores for a period of one whole year. At that stage parties had not contemplated that the exceptional circumstances which have marred the present case and resulted into a process which did not culminate into approval of the Resolution Plan by the Adjudicating Authority even after one whole year. In any event, clause 6.4 (a) of the RFRP grants right to the Resolution Professional acting on the instruction of the CoC to amend or modify the terms and conditions as set out in the RFRP. Thus, the amendment to the validity period of PBG has been within the four corners of the terms of the RFRP and hence, the PBG has been appropriately amended by the CoC keeping in mind commercial exigency of the matters in hand. In the present case the application seeking approval of the Resolution Plan i.e. M.A 1751 of 2019 in CP(IB) No.1830 of 2017 was filed by the Resolution Professional on 07.05.2019, the arguments of the Resolution Professional and the

objectors on procedural issues were heard and reserved for orders on 08.08.2019 by the NCLT Mumbai. However, on 31.12.2019, the Hon'ble Members of NCLT, Mumbai who had heard the matter, delivered a split verdict in the matter. This issue was accordingly, placed before the Hon'ble President of the NCLT, who decided the issues on which the Hon'ble Members of the NCLT, Mumbai had given conflicting decision vide his judgment dated 13.04.2020. Unfortunately, in the meantime the entire world was hit by the coronavirus pandemic, which naturally created enormous uncertainties for all stakeholders. The Resolution Professional accordingly filed an application seeking urgent hearing of MA 1751 of 2019 in CP(IB) No. 1830 of 2017 before the Adjudicating Authority, since the PBG was set to expire on 30.04.2020. In parallel, the financial creditors had also started negotiations with Respondent No.3 for renewal of the PBG. The fact that the renewal of the PBG was being negotiated with the Respondent No.3 was also duly informed to the Adjudicating Authority. In the above background of exceptional delay in approval of the Resolution Plan, the pandemic and the market conditions, the financial creditors in exercise of their commercial wisdom considered it appropriate to accept PBG for an amount of Rs. 50 Crores, issued on 30.04.2020, instead of the initially contemplated Rs. 250 Crores. Such an action cannot be said to have provided undue advantage to the Respondent No.3. In any event, by this stage the only other resolution application in fray had expressly withdrawn their

Resolution Plan, after having bitterly contested approval process and litigation thereto.

c. On the issue of Resignation of Johannes Sittard, at the outset it is submitted that the Respondent No.3 has specifically clarified during their arguments that the understanding of the Appellants regarding resignation of Mr. Johannes Sittard is completely incorrect. Even otherwise, the understanding of the Appellants that Mr. Johannes Sittard is the only person who has the technical knowledge to implement the Resolution Plan is without basis or cause. The Resolution Plan neither contemplates that it would be technically not feasible to implement the Resolution Plan without Mr. Johannes Sittard nor had CoC made any such assumptions as the basis of the approval of the Resolution Plan. In any case, viability and feasibility of a Resolution Plan falls within the commercial domain of CoC and no ground of challenge on this count is within the limits of judicial review.

6. **While the Respondent No.3/Successful Resolution Applicant have submitted that:**

a) The Successful Resolution Applicant/Respondent No.3 has adopted the submissions made by the counsel for CoC/Respondent No.2 on the aspect of approval of CCI as contained in Section 31(4) of the Code.

b) On the issue of Successful Resolution Application lacks the expertise for effective implementation of the Resolution Plan, it is

stated by the Respondent No.3/Resolution Applicant that in support of the contention, that Appellants seem to have relied upon a filing dated 05.02.2019, (annexed to the appeal at page No.486 of the Appeal paper Book) made by Nithia Capital Resources i.e. 'LLPSC07' is the 'Notice of ceasing to be person with significant control (PSC) of a Limited Liability Partnership'. The said allegation is completely misconceived. It is submitted that Nithia Capital Resources is a Limited Liability partnership registered under the laws of United Kingdom, Dr. Sittard was a partner of Nithia Capital Resources and was internally designated as 'Non-Executive Chairman and Director' Dr. Sittard's designation as Director of Nithia Capital Resources was only for the purposes of internal hierarchy and such designation was not in nature of a director as is in a company under Indian Company Law. Nithia Capital Resources being a limited liability partnership registered in United Kingdom could never have a designated director (as is the case in a company under the Indian Company Law). As is evident from abovementioned filing dated February 5, 2019 made by Nithia Capital Resources, Dr. Sittard resigned only as a partner of Nithia Capital Resources on April 1, 2018. It is important to note that despite his resignation as a partner, Dr. Sittard continued to be associated with Nithia Capital Resources in his capacity and designation was Non-Executive Chairman and Director of Nithia Capital Resources and as on date he continues to hold the

designation of Non-Executive Chairman and Director of Nithia Capital Resources. In the Resolution Plan of Successful Resolution Applicant which was approved by the Adjudicating Authority on 06.05.2019, the Successful Resolution Applicant has stated that Dr. Sittard is the Non-Executive Chairman and Director of Nithia Capital Resources. In view of the aforesaid this statement was fully accurate and continues to be as on date. Therefore, it is submitted that the Appellants have made false and misleading allegations that the Successful Resolution Applicant has given a false undertaking with respect to Dr. Sittard.

7. It seems that the Appellants are aggrieved with the allocation of tiny amount of 0.18% of the outstanding dues. The collective admitted operational Debt of the Appellant was Rs.423.82 Crore which was 80.88% of the total Operational Debt of the Corporate Debtor total being Rs.524 Crore (as per data submitted). The Appellant was also representative of the Operational Creditor in the meeting of CoC, being holder of more than 10% of the total admitted debt of Rs.3003 Crores. They have also alleged that the Adjudicating Authority has approved the Resolution Plan, where the Appellant is getting hardly 0.18%/0.19% of its claims. **The Appellant is logically upset that they are paid 0.19% whereas the Financial Creditors (CoC decision takers) are getting 41.75% of their claims. The figure cited by the Operational Creditor, that the Financial Creditor have got Rs.1035 Crore from an admitted debt of Rs.2479**

Crore (41.75%). The details of amount admitted/amount provided under the plan etc. are available ***at Para-8 & Para 20*** of the Adjudicating Authority order dated 30.04.2020. The Adjudicating Authority has cited the provisions of Section 30(2)(b) of the I&B Code, 2016 read with Section 53 (1) of the I&B Code, 2016 has disposed of the matter. The Adjudicating Authority has also cited the Hon'ble Supreme Court Judgment like *K.Sasidhar Vs. Indian Overseas Bank (2019 SCC Online SC 257); Swiss Ribbons Private Limited Vs. Union of India (2019 SCC Online SC 17); CoC of Essar Steel India Limited Vs. Satish Kumar Gupta (2019 SCC Online SC 1478,* that the commercial decision with regard to the approval of the plan is within the domain of the CoC and the Adjudicating Authority is not permitted to transgress into the commercial wisdom of CoC in approving the Plan. The Appellant has raised the issue of bona fide on the part of the Respondents in being unfair and unequitable. **No doubt, if out of balance of Rs.100 Crores Operational Debtor, there are some Micro, Small, and Medium Enterprises ('MSME') or Small and Medium Enterprises ('SME'), their business will collapse in the present economy scenario. The purpose of IBC, so far as, promoting entrepreneurship will be failed to achieve "Ease of doing business and facilitating more investments leading to higher economic Growth and Development". However, these issues for judicial review fall within the domain of Hon'ble Supreme Court under Article 142 of the Constitution of India. Hence, presently we will have to go by the Hon'ble Supreme Court**

judgment *CoC of Essar India Limited Vs. Satish Kumar Gupta 2019 SCC online SC 1478* which has held that the different classes of Creditors can be paid different amounts and as long as minimum payments in terms of Section 30(2)(b) of the Code are made to operational Creditor, Resolution Plan shall be treated as compliant as submitted by Respondent No.2/CoC.

8. Section 30 & Section 31 of I&B Code, 2016 are enumerated below:

Section 30: Submission of Resolution Plan:-. (1) A resolution applicant may submit a resolution plan to the resolution professional prepared on the basis of the information memorandum.

(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 repayment of other debts of the corporate debtor;

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

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

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

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

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

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

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

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered: Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.

Section 31: Approval of Resolution Plan - (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1),—

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

9. Regulation 39 and Regulation 40 of IBBI (Insolvency Resolution Process for corporate persons) Regulation 2016 are enumerated below:

Regulation 39 - Approval of resolution plan.

> *(1) A prospective resolution applicant in the final list may submit resolution plan or plans prepared in accordance with the Code and these regulations to the resolution professional electronically within the time given in the request for resolution plans under regulation 36B along with*
>
> *(a) an affidavit stating that it is eligible under section 29A to submit resolution plans;*
>
> *[***]*
>
> *(c) an undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code.*
>
> *(1A) A resolution plan which does not comply with the provisions of sub-regulation (1) shall be rejected.]*
>
> *(2) [The resolution professional shall submit to the committee all resolution plans which comply with the requirements of the Code and regulations made thereunder along with the details of following transactions, if any, observed, found or determined by him: -*

(a) preferential transactions under section 43;

(b) undervalued transactions under section 45;

(c) extortionate credit transactions under section 50; and

(d) fraudulent transactions under section 66, and the orders, if any, of the adjudicating authority in respect of such transactions.]

(3) The committee shall-

(a) evaluate the resolution plans received under sub-regulation (2) as per evaluation matrix;

(b) record its deliberations on the feasibility and viability of each resolution plan; and

(c) vote on all such resolution plans simultaneously.

(3A) Where only one resolution plan is put to vote, it shall be considered approved if it receives requisite votes.

(3B) Where two or more resolution plans are put to vote simultaneously, the resolution plan, which receives the highest votes, but not less than requisite votes, shall be considered as approved:

Provided that where two or more resolution plans receive equal votes, but not less than requisite votes, the committee shall approve any one of them, as per the tie-breaker formula announced before voting:

Provided further that where none of the resolution plans receives requisite votes, the committee shall again vote on the resolution plan that received the highest votes, subject to the timelines under the Code.

Illustration. - The committee is voting on two resolution plans, namely, A and B, simultaneously. The voting outcome is as under:

Volume Outcome	*% of votes in favour of*		*Status of approval*
1	*Plan A 55*	*Plan B 60*	*No Plan is approved, as neither of the Plans received requisite votes. The committee shall vote again on Plan B, which received the higher votes, subject to the timelines under the Code.*
2	*70*	*75*	*Plan B is approved, as it received higher votes, which is not less than requisite votes.*
3	*75*	*75*	*The committee shall approve either Plan A or Plan B, as per the tie-breaker formula announced before voting.]*

****]*

[(4) The resolution professional shall endeavour to submit the resolution plan approved by the committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under section 12, along with a compliance certificate in 68[Form H of the

Schedule and the evidence of receipt of performance security required under sub-regulation (4A) of regulation 36B.]]

(5)The resolution professional shall forthwith send a copy of the order of the Adjudicating Authority approving or rejecting a resolution plan to the participants and the resolution applicant.

(6)A provision in a resolution plan which would otherwise require the consent of the members or partners of the corporate debtor, as the case may be, under the terms of the constitutional documents of the corporate debtor, shareholders' agreement, joint venture agreement or other document of a similar nature, shall take effect notwithstanding that such consent has not been obtained.

(7)No proceedings shall be initiated against the interim resolution professional or the resolution professional, as the case may be, for any actions of the corporate debtor, prior to the insolvency commencement date.

(8)A person in charge of the management or control of the business and operations of the corporate debtor after a resolution plan is approved by the Adjudicating Authority, may make an application to the Adjudicating Authority for an order seeking the assistance of the local district administration in implementing the terms of a resolution plan.

[(9) A creditor, who is aggrieved by non-implementation of a resolution plan approved under sub-section (1) of section 31, may apply to the Adjudicating Authority for directions.]

40. Extension of the corporate insolvency resolution process period- (1) The committee may instruct the resolution professional to make an application to the Adjudicating Authority under section 12 to extend the insolvency resolution process period.

(2) The resolution professional shall, on receiving an instruction from the committee under this Regulation, make an application to the Adjudicating Authority for such extension.

10. Section 5 & Section 31 of the Competition Act, 2002 are enumerated below:

Section 5 – Combination:—The acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises, if—

(a) any acquisition where—

(i) the parties to the acquisition, being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or are being acquired jointly have,—

(A) either, in India, the assets of the value of more than rupees one thousand crore or turnover more than rupees three thousand crore; or

(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover of more than fifteen hundred million US dollars; or

(ii) the group, to which the enterprise whose control, shares, assets or voting rights have been acquired or are being acquired, would belong after the acquisition, jointly have or would jointly have,—

(A) either in India, the assets of the value of more than rupees four thousand crore or turnover of more than rupees twelve thousand crore; or

(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars or turnover of more than six billion US dollars; or

(b) acquiring of control by a person over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service, if—

(i) the enterprise over which control has been acquired along with the enterprise over which the acquirer already has direct or indirect control jointly have,—

(A) either in India, the assets of the value of more than rupees one thousand crore or turnover of more than rupees three thousand crore; or

(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or

(ii) the group, to which enterprise whose control has been acquired, or is being acquired would belong after the acquisition, jointly have or would jointly have,—

(A) either in India, the assets of the value of more than rupees four thousand crore or turnover of more than rupees twelve thousand crore; or

(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars or turnover of more than six billion US dollars; or

(c) any merger or amalgamation in which—

(i) the enterprise remaining after merger or the enterprise created as a result of the amalgamation, as the case may be, have,—

(A) either in India, the assets of the value of more than rupees one thousand crore or turnover of more than rupees three thousand crore; or

(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover of more than fifteen hundred million US dollars; or

(ii) the group, to which the enterprise remaining after the merger or the enterprise created as a result of the amalgamation, would belong after the merger or the amalgamation, as the case may be, have or would have,—

(A) either in India, the assets of the value of more than rupees four thousand crore or turnover of more than rupees twelve thousand crore; or

(B) in India or outside India, the assets of the value of more than two billion US dollars or turnover of more than six billion US dollars. Explanation.—For the purposes of this section,—

(a) "control" includes controlling the affairs or management by—

(i) one or more enterprises, either jointly or singly, over another enterprise or group;

(ii) one or more groups, either jointly or singly, over another group or enterprise;

(b) "group" means two or more enterprises which, directly or indirectly, are in a position to—

(i) exercise twenty-six per cent. or more of the voting rights in the other enterprise; or

(ii) appoint more than fifty per cent. of the members of the board of directors in the other enterprise; or

(iii) control the management or affairs of the other enterprise;

(c) the value of assets shall be determined by taking the book value of the assets as shown, in the audited books of account of the enterprise, in the financial year immediately preceding the financial year in which the date of proposed merger falls, as reduced by any depreciation, and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout-design or similar other commercial rights, if any, referred to in sub-section (5) of section 3.

Section 31- Orders of Commission on certain combinations.—

(1) Where the Commission is of the opinion that any combination does not, or is not likely to, have an appreciable adverse effect on competition, it shall, by order, approve that combination including the combination in respect of which a notice has been given under sub-section (2) of section 6.

(2) Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall direct that the combination shall not take effect.

(3) Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition but such adverse effect can be eliminated by suitable modification to

such combination, it may propose appropriate modification to the combination, to the parties to such combination.

(4) The parties, who accept the modification proposed by the Commission under sub-section (3), shall carry out such modification within the period specified by the Commission.

(5) If the parties to the combination, who have accepted the modification under sub-section (4), fail to carry out the modification within the period specified by the Commission, such combination shall be deemed to have an appreciable adverse effect on competition and the Commission shall deal with such combination in accordance with the provisions of this Act.

(6) If the parties to the combination do not accept the modification proposed by the Commission under sub-section (3), such parties may, within thirty working days of the modification proposed by the Commission, submit amendment to the modification proposed by the Commission under that sub-section.

(7) If the Commission agrees with the amendment submitted by the parties under sub-section (6), it shall, by order, approve the combination.

(8) If the Commission does not accept the amendment submitted under sub-section (6), then, the parties shall be allowed a further period of thirty working days within which such parties shall accept the modification proposed by the Commission under sub-section (3).

(9) If the parties fail to accept the modification proposed by the Commission within thirty working days referred to in sub-section (6) or within a further period of thirty working days referred to in sub-section (8), the combination shall be deemed to have an appreciable adverse effect on competition and be dealt with in accordance with the provisions of this Act.

(10) Where the Commission has directed under sub-section (2) that the combination shall not take effect or the combination is deemed

to have an appreciable adverse effect on competition under sub-section (9), then, without prejudice to any penalty which may be imposed or any prosecution which may be initiated under this Act, the Commission may order that—

(a) the acquisition referred to in clause (a) of section 5; or

(b) the acquiring of control referred to in clause (b) of section 5; or

(c) the merger or amalgamation referred to in clause (c) of section 5, shall not be given effect to: Provided that the Commission may, if it considers appropriate, frame a scheme to implement its order under this sub-section.

(11) If the Commission does not, on the expiry of a period of ninety working days from the date of publication referred to in sub-section (2) of section 29, pass an order or issue direction in accordance with the provisions of sub-section (1) or sub-section (2) or sub-section (7), the combination shall be deemed to have been approved by the Commission. Explanation.—For the purposes of determining the period of ninety working days specified in this sub-section, the period of thirty working days specified in sub-section (6) and a further period of thirty working days specified in sub-section (8) shall be excluded.

(12) Where any extension of time is sought by the parties to the combination, the period of ninety working days shall be reckoned after deducting the extended time granted at the request of the parties.

(13) Where the Commission has ordered a combination to be void, the acquisition or acquiring of control or merger or amalgamation referred to in section 5, shall be dealt with by the authorities under any other law for the time being in force as if such acquisition or acquiring of control or merger or amalgamation had not taken place and the parties to the combination shall be dealt with accordingly.

(14) Nothing contained in this Chapter shall affect any proceeding initiated or which may be initiated under any other law for the time being in force.

11. We have gone through the various submissions including citations made by the Appellants and Respondents and also the various orders of the Adjudicating Authority. On the issue of prior permission of the CCI was not obtained under Proviso to Section 31(4) is a material irregularity by the Respondents and contravention of Section 30 of the I&B Code, 2016; it seems that the purpose of the IBC is to ensure that wherever a "Combination" as referred in Section 5 of the Competition Act, 2002 the requirement is the concerned Resolution Applicant shall obtain the approval of CCI prior to the approval of such Resolution plan by the CoC. The purpose is complied with in the present case, the approval from CCI has been obtained in June, 2019 and approval of the Resolution plan has been made by the Adjudicating Authority in April, 2020/May, 2020, this aspect has been taken care of by the Adjudicating Authority. The Adjudicating Authority, while approving the plan has also stated vide its order dated 30.04.2020 para 17(2) that wherever approval/ permissions are required the same is to be obtained within a period of one year from the date of the approval of the Resolution Plan. In Para 17 of the impugned order dated 30.04.2020, the Adjudicating Authority has provided various directions to various authorities to assist the Corporate Debtors, so that the Resolution Plan is operational. All this suggests that the Adjudicating

Authority was conscious of CCI approval and hence, ignoring the fact that CCI approval has been obtained post CoC approval of the Resolution Plan is in order and is reiterating the view taken by this Tribunal in *P.T.Ranjan Vs. T.P.M Sahir & Ors. 2003 8 SCC 498, para 45 Sharif-Ud-Din-V Abdul Gani Lone 1980 1 SCC 403, para 9 and Arcelor Mittal India Pvt. Ltd. Vs. Abjijit Guhathakurta, 2019 SCC Online NCLAT 920 ("Arcelor decision")* and we find this is in order.

12. Another issue of Suppression of Fact regarding implementation of Resolution Plan resulting from resignation of Mr.Johannes Sittard on 01.04.2018 and being only a person technically competent to run the Corporate Debtor was also examined and it is found that Dr. Sittard resigned only as a partner of Nittah Capital Resources on 01.04.2018 but he is still associated with Nittah Capital Resources in his capacity and designation as Non-Executive Chairman and Director Nittah Capital Resources and as on date he continues to hold the designation of Non-Executive Chairman and Director of Nittah Capital Resources. However, the Adjudicating Authority has already made appropriate arrangement by putting a specific condition that the Resolution Applicant would appoint an observer. In any case, individual can come and go and Company is to run. **However, a responsibility is fixed on the Resolution Applicant/Respondent No.3 that Dr. Sittard should continue for next one year or for such extended period till the Corporate Debtor stands on its feet.**

13. As far as the issue of extension of Performance Bank Guarantee and its variation in terms of the Request for Resolution Plan (RFRP) is concerned, it is found that the Bank Guarantee for the requisite amount was kept for one year for full amount of Rs. 250 Crore but after one year due to the financial crisis faced by pandemic Covid-19, the Resolution Applicant requested for reduction of amount of Performance Bank Guarantee and CoC has accepted the lower amount of Rs. 50 Crore in place of PBG of Rs. 250 Crore as required by RFRP after expiry of the PBG on 30.04.2020. the CoC has exercised its right under Clause 6.4 of the RFRP, agreed to allow for modification in the validity period of PBG. The Adjudicating Authority has elaborately covered this issue in para 61 of its order dated 30.04.2020.

14. With aforesaid observations, we find that there is no merit in this Appeal and the Appeal is hereby dismissed. Pending IA, if any, are disposed of in terms of above observations and directions. Interim orders, if any, stand vacated. There shall be no order as to costs.

[Justice Bansi Lal Bhat]
Acting Chairperson

[Justice Anant Bijay Singh]
Member (Judicial)

[Dr. Ashok Kumar Mishra]
Member (Technical)

New Delhi

9th September, 2020
RK