Insolvency and Bankruptcy Board of India
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8th February, 2019

Subject: Judgement[1] dated 5th February, 2019 of the Hon'ble Supreme Court of India in the matter of *K. Sashidhar Vs. Indian Overseas Bank & Ors.* [CA No. 10673 of 2018 with CA No. 10719 of 2018, CA No. 10971 of 2018 and SLP (C) No. 29181 of 2018]

While dismissing appeals against the common order dated 6th September, 2018 of the NCLAT, the Hon'ble Supreme Court made several important findings and rulings as under:

Sl. No.	Issue/ Theme	Ruling	Para / Page No.
1	Whether the percentage of voting share of the FCs specified in section 30(4) of the Code is mandatory?	a.The provisions in Part II of the Code is self-contained, providing for the procedure for consideration of the resolution plan by the CoC.	20 / 41
		b. If CoC approves the resolution plan by requisite percentage of voting share, it is imperative for the RP to submit the same to the AA. On receipt of such proposal, the AA is required to satisfy itself that the plan approved by CoC meets the requirements specified in section 30 (2). No more no less.	21 / 42
		c. If the resolution plan is expressly rejected by not less than 25% of voting shares of the FCs, the RP is under no obligation to submit the plan under section 30(6) to AA.	25 / 49
		d. The word "may" in section 30(4) is ascribable to the discretion of the CoC - to approve the resolution plan or not to approve the same. What is significant is the second part of the said provision, which stipulates the requisite threshold of "not less than seventy five percent of voting share of the financial creditors" to treat the resolution plan as duly approved by it. The stipulation of "not less than seventy five percent of voting share of the financial creditors" is the quintessence and is mandatory for approval of the resolution plan. Any other interpretation would result in rewriting of the provision and doing violence to the legislative intent.	26 / 50
		e. The members of the CoC need not participate during voting *propria persona* or in person but can do so through video conferencing or other audio or visual means as per regulation 23 of the CIRP Regulations.	28 / 52

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		f. "the percent of voting share of financial creditors" approving vis-à-vis dissenting is required to be reckoned. It is not on the basis of members present and voting as such. At any rate, the approving votes must fulfill the threshold percent of voting share of the FCs. It is not possible to countenance any other construction or interpretation.	29 / 56
		g. The fact that the substantial or majority percent of FCs have accorded approval to the plan would be of no avail, unless it is approved by vote of not less than 75% of voting share of the FCs.	39 / 70
		h. The legislative intent is to uphold the opinion of the minority dissenting FCs. That must prevail, if it not less than specified percent (25%). The inevitable outcome of voting by not less than requisite percent of voting share of FCs to disapprove the proposed resolution plan, *de jure*, entails in its deemed rejection.	39 / 70
		i. The scrutiny of the resolution plan is required to pass through the litmus test of not less than requisite voting share – a strict regime.The resolution plan must appear, to not less than requisite voting share of the FCs, to be an overall credible plan, capable of achieving timelines spcefied in the Code generally, assuring successful revival of the CD and disavowing endless speculation.	40 / 71
2	Whether it is open to the adjudicating authority / appellate authority to reckon any other factor other than those specified in sections 30(2) and 61(3) of the Code which, according to the resolution	a. The AA is expected to deal with two situations. The first is when it does not receive a resolution plan under section 30(6) or when the plan has been rejected by RP for non-compliance of section 30(2) or when the plan fails to garner approval of not less than 75% of voting share of FCs and there is no alternate plan mooted before expiry of the statutory period. The second is when a resolution plan duly approved by not less than 75% of voting share is submitted before it under section 30(6) for its approval. In first situtation, the AA has no other option but to initiate liquidation process in terms of section 33(1).	31 / 57
		b. Upon receipt of a "rejected" resolution plan, the AA is not expected to do anything more; but is obligated to initiate liquidation process under section 33(1). The legislature has not endowed the AA with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC muchless to enquire into the justness of the rejection of the resolution plan by the dissenting FCs.	33 / 59
		c. The Code provides a swift resolution process to be completed within 270 days failing which, initiation of liquidation process is inevitable and mandatory. It grants paramount status to the commercial wisdom of the CoC, without any judicial intervention, for ensuring completion of the processes within timelimit. The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual FCs or their collective decision before AA. That is not justiceable.	33 / 60

	applicant and the stakeholders supporting the resolution plan, may be relevant?	d. The discretion of the AA is circumscribed by section 31 to scrutiny of resolution plan "as approved" by the requisite percent of voting share of FCs. The ground for rejection is limited to the matters specified under section 30(2). e. The powers and functions of the IBBI are delineated in section 196 of the Code. None of the functions of the IBBI directly or indirectly pertain to regulating the manner in which the FCs ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under section 30(4) of the Code. f. The jurisdiction bestowed upon the appellate authority is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in section 61(3), which is limited to matters "other than" enquiry into the automony or commercial wisdom of dissenting FCs. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the Code and not act as a court of equity or exercise plenary powers. g. From the legislative history there is contra indication that the commercial or business decisions of FCs are not open to any judicial review by AA/ NCLAT.	35 / 64 35 / 65 38 / 69 42 / 73
3	Role of Resolution Professional in resolution plan.	a.The CoC is called upon to consider the resolution plan under section 30(4) after it is vetted and verified by RP as being compliant with all the statutory requirements specified under section 30(2). b. The Resolution Professional is not required to express his opinion on matters within the domain of the finanacial creditors, to approve or reject the resolution plan, under section 30(4).	19 / 40 44 / 74
4	Whether the amendment dated 6th June, 2018 to section 30(4) regarding voting percentage is prospective or retrospective?	a. By this amendment, a new norm and qualifying standard for approval of a resolution plan has been introduced. That cannot be treated as a declatory / clarificatory or *stricto sensu* procedural matter as such. The amendment Act makes it expressly clear that it shall be deemed to come into force on 6th June, 2018. There is no indication in the amendment Act that the legislature intended to undo and/or govern the decisions already taken by the CoC of the concerned CDs prior to 6th June, 2018. b. The amendment Act will have prospective application and apply only to the decision of CoC taken on or after that date concerning the approval of plan. c. The amendment to regulation 39(3) of the CIRP Regulations can not have retrospective effect so as to impact the decision of the CoC of taken before amendment of the said regulation.	51 / 81 53 / 86 60 / 94