

ADJUDICATING AUTHORITY: SCOPE OF JURISDICTION DURING THE CORPORATE INSOLVENCY RESOLUTION PROCESS

The Statement of objects and reasons of the Insolvency and Bankruptcy Code, 2016 (**‘the Code’**) states that it is enacted with a view to achieve insolvency resolution of corporate persons in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders.

In order to achieve the aforementioned object, the Hon’ble National Company Law Tribunal (**‘Adjudicating Authority’**) has a significant role to discharge. Upon the admission of an application for initiation of Corporate Insolvency Resolution Process (**‘CIRP’**), the role of the Adjudicating Authority does not end.

The Code and the regulations framed thereunder lay down numerous instances in which the concerned are constrained to approach the Adjudicating Authority in order to assure the smooth conclusion of the CIRP proceedings.

The present article shall focus on the scope of jurisdiction and the role of the Adjudicating Authority during the CIRP proceedings and illustratively deals with the following aspects:

I.	The initial steps taken by the Adjudicating Authority vide the order admitting a Section 7, 9 or 10 application.
II.	Extensions and exclusions of time period from the CIRP proceedings
III.	Ensuring fair conduct on the part of the Resolution Professional who is appointed by the Adjudicating Authority to manage the affairs of the Corporate Debtor, which shall involve consideration of the following stages: <ol style="list-style-type: none"> 1. Submission of claims 2. Meetings of Committee of Creditors 3. Insolvency Resolution Process Cost 4. Invitation of Expression of Interest and declaration of Prospective Resolution Applicants (This step shall also elaborate the role of Adjudicating Authority with respect to Resolution Applicants) 5. Presentation of Resolution Plans to Committee of Creditors

➤ **STEPS TO ENSURE SMOOTH EXECUTION OF CORPORATE INSOLVENCY RESOLUTION PROCESS: MANAGEMENT OF THE CIRP PROCEEDINGS**

I. INITIAL STEPS TO BE TAKEN POST THE ADMISSION OF APPLICATION

1. As per the **Report of the Bankruptcy Law Reforms Committee of November, 2015**¹, upon admission of an application under Section 7 or 9 or 10 of the Code, in order to ensure an orderly and timely resolution of the Corporate Debtor, the Adjudicating Authority has to declare a ‘calm period’ with a definite time of closure that will assure both the debtor and creditors of a time-bound and level field in their negotiations to assess viability. The first steps that the Adjudicator takes are enumerated below:

- 1.1 **Declaration of Moratorium:** Vide the order admitting the application under Section 7 or 9 or 10, the Adjudicating Authority provides a breathing spell by declaring a moratorium in terms of Section 14 thereby prohibiting institution and continuation of suits or proceedings for recovery, enforcement of security interest, transfer of assets or any other legal right or recovery of any property. However, criminal proceedings do not fall within the purview of such moratorium. It has been clarified by the Hon’ble Bombay High Court, in the

¹ https://ibbi.gov.in/BLRCReportVol1_04112015.pdf

matter of *Tayal Cotton Pvt. Ltd. V/s The State of Maharashtra and Ors.*², wherein it was observed and held that since the Legislature has not conspicuously used the word 'criminal' as an adjective to 'proceedings' or to the noun 'Court of law', it is assumed that Section 14 is not applicable to criminal proceedings.

- 1.2 **Appointment of Interim Resolution Professional:** An Interim Resolution Professional ('IRP') is appointed, as proposed by the applicant. Such IRP is vested with the management of the Corporate Debtor and has the duty to run it as a going concern till the appointment of a Resolution Professional under Section 22, and
 - 1.3 **Public announcement:** A public announcement inviting claims of liabilities has to be made within 3 days of appointment of IRP, as per Section 15 read with Regulation 16 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations'), and
 - 1.4 **Committee of Creditors:** The creation of a Committee of Creditors ('CoC') done upon collation of claims of all the financial creditors and their verification in terms of Regulation 12 and 13 of the CIRP Regulations.
 - 1.5 **Appointment of Authorised Representative:** As per Section 21(6A)(b), in case a financial debt is owed to a class of creditors, an application is moved by the IRP consisting of a list of all such financial creditors and a name of an Insolvency Professional other than the IRP, to be appointed as an Authorised Representative of such creditors. Upon receipt thereof, the Adjudicating Authority shall appoint such professional as the Authorised Representative before the first meeting of the CoC is held.
 - 1.6 **Appointment of Resolution Professional:** As per Section 22 of the Code, in its first meeting, by an affirmative vote of not less than 66% of financial creditors, the CoC may resolve to appoint the IRP as the Resolution Professional or replace him with another Insolvency Professional. In the latter case, the CoC is required to move an application before the Adjudicating Authority for the appointment of a proposed Resolution Professional along with his/her written consent. The Adjudicating Authority then forwards such name to the Insolvency and Bankruptcy Board ('the Board') and appoints him as the Resolution Professional after obtaining confirmation from the Board. The same procedure is required to be followed in case of replacement of the Resolution Professional so appointed as stipulated in Section 27 of the Code.
2. It is significant to mention that the non-obstante Clause of **Section 60(5)** which concerns the jurisdiction of the Adjudicating Authority states that:

60. Adjudicating Authority for Corporate Persons

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of--

- a) any application or proceeding by or against the corporate debtor or corporate person;*
- b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and*
- c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.*

² Criminal Writ Petition 1437 of 2017 (Bombay High Court)

3. Section 60(5)(c) is in the nature of a residuary jurisdiction vested in the Adjudicating Authority so that the it may decide all questions of law or fact arising out of or in relation to insolvency resolution or liquidation under the Code. Numerous applications are moved before the Adjudicating Authority under this section. The purpose of this clause is to ensure that the Adjudicating Authority alone has jurisdiction when it comes to applications and proceedings by or against a Corporate Debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings.³
4. It is plausible that post the admission of an application, the CIRP process effectively involves **four major players** who participate in the proceedings to achieve the objective of the Code – i.e., (i) the Adjudicating Authority, (ii) the CoC, (iii) the IRP, and (iv) the Corporate Debtor. The subsequent sections of this Article shall provide an overview of the interrelation of the above four players and the role of the Adjudicating Authority in ensuring that the entire CIRP proceedings are conducted in a fair and transparent manner.

II. EXTENSIONS AND EXCLUSIONS UNDER THE CODE

1. Extension of the CIRP Period:

- 1.1 As per the mandate of the Code, the CIRP proceedings are to be concluded in a time bound manner stipulated under Section 12 read with Regulation 40 of the CIRP Regulations.

Pre-amendment Position

- i. Upon admission of an application, the initial period of **180 days** is provided for the completion of the proceedings. [Section 12(1)]
- ii. However, upon a resolution passed by the CoC, the Resolution Professional may make an application before the Adjudicating Authority for an extension. If the Adjudicating Authority is of the view that CIRP cannot be completed within 180 days, **an extension of 90 days** may be provided. [Section 12(3)]

Therefore, a the CIRP proceedings were required to be completed within 180 plus 90 – i.e., 270 days.

Post-amendment Position

- iii. Vide **the Insolvency and Bankruptcy Code (Amendment) Act, 2019**, the second proviso to Section 12(3) was inserted according to which the CIRP proceedings are required to be mandatorily completed within a period of **330 days** including the time period of extensions and legal proceedings. However, the Hon'ble Supreme Court of India, in the matter of **Committee of Creditors of Essar Steel India Limited Through Authorised Signatory V/s Satish Kumar Gupta & Ors.**⁴ struck down the word "mandatorily" from the provision holding it to be manifestly arbitrary under Article 14 of the Constitution of India and an unreasonable restriction on the litigant's right to carry on business under Article 19(1)(g) of the Constitution. This judgement has been further discussed in 3.1 hereunder.
- 1.2 The third proviso to Section 12(3) was also inserted vide the aforementioned Amendment Act. It states that if the pending CIRP proceedings are not concluded within 330 days, as at the date of the Amendment

³ ArcelorMittal India Private Limited V/s Satish Kumar Gupta and Ors. 2018 SCC Online SC 1733 (Supreme Court)

⁴ 2019 SCC Online SC 1478 (Supreme Court)

Act, the same shall be concluded within a period of 90 days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019 – i.e., 16.08.2019. In pursuance to this Amendment Act, the Hon'ble NCLAT utilized the said proviso and granted an extension of 90 days to M/s Earth Infrastructure Ltd. i.e., the Corporate Debtor in the matter of *M/s Alpha Corp Development Pvt. Ltd. V/s M/s Earth Infrastructure Ltd. (Through the Resolution Professional, Shri Aakash Shinghal)*⁵.

1.3 If the proceedings are not concluded within the period stipulated under Section 12, the Adjudicating Authority is required to pass an order requiring the Corporate Debtor to be liquidated in the manner specified in Chapter III of the Code.

1.4 The initial extension of 90 days and thereafter, 60 days may be granted by the Adjudicating Authority if it is satisfied of the reasons as to why the CIRP could not be concluded within the said time frame. However, claiming extension beyond a period of 330 days is only granted in exceptional circumstances as clarified by the Hon'ble Supreme Court in the matter of *Committee of Creditors of Essar Steel India Limited Through Authorised Signatory V/s Satish Kumar Gupta & Ors.*⁶, observed and held that if on the facts of the case, it can be shown to the Adjudicating Authority or the Hon'ble National Company Law Appellate Tribunal ('NCLAT') that only a short duration of time is left for completion of 330 days and that the Corporate Debtor can be put back on its feet instead of being put into liquidation and that the delay is on account of tardy process of Adjudicating Authority or NCLAT, it may be open for the Adjudicating Authority to extend the time period beyond 330 days. Similarly, if for the aforesaid reasons, the grace period of 90 days provided under the third proviso to Section 12(3) also expires, it may be extended. It was further clarified that the time period must be extended only in the aforesaid exceptional circumstances. Hence, it is only in the above mentioned extraordinary situations that an extension beyond 330 days can be provided.

2. **Exclusion from the CIRP period:**

2.1 If an application is moved before the Adjudicating Authority for exclusion of time for valid reasons, it may pass appropriate orders. The Hon'ble NCLAT in the matter of *Quinn Logistics India Pvt. Ltd. V/s Mack Soft Tech Pvt. Ltd.*⁷, observed and clarified that if an application is filed by the Resolution Professional or the CoC or any aggrieved person for justified reasons, it is always open to the Adjudicating Authority or NCLAT to exclude certain period for the purpose of calculating the total period of 270 days (180 plus 90). It further provides an illustrative list of unforeseen circumstances or reasons in which the exclusion may be granted which are listed below:

- i. If the CIRP proceedings are stayed by a Court of law or the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court.
- ii. If no Resolution Professional is functioning for one or other reason during the CIRP, such as removal.
- iii. The period between the date of order of admission/moratorium is passed and the actual date on which the Resolution Professional takes charge for completing the CIRP.

⁵ Company Appeal (AT) (Insolvency) No. 902 of 2019

⁶ 2019 SCC Online SC 1478 (Supreme Court)

⁷ Company Appeal (AT) (Insolvency) No. 185 of 2018 (NCLAT)

- iv. On hearing a case, if order is reserved by the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court and finally pass order enabling the Resolution Professional to complete the CIRP.
 - v. If the CIRP is set aside by the Appellate Tribunal or order of the Appellate Tribunal is reversed by the Hon'ble Supreme Court and CIRP is restored.
 - vi. Any other circumstances which justifies exclusion of certain period.
3. It is also pertinent to mention that if the CIRP is delayed on account of lackadaisical approach of the Resolution Professional, the Adjudicating Authority may take appropriate action or recommend that the Insolvency and Bankruptcy Board of India ('**the Board**') may initiate disciplinary proceedings against the Resolution Professional. However, the Hon'ble NCLAT in the matter of ***Insolvency and Bankruptcy Board of India V/s Shri Rishi Prakash Vats & Ors.***⁸, wherein there was a delay in the proceedings due to inexplicable lackadaisical attitude of the Resolution Professional led to Adjudicating Authority passing a direction to the Board to initiate proceedings against him, observed and held that the Adjudicating Authority does not have the power to quash the proceedings initiated by the Board even though the same were initiated on the recommendation of the Adjudicating Authority.

III. ENSURING FAIR CONDUCT ON THE PART OF THE RESOLUTION PROFESSIONAL

1. SUBMISSION OF CLAIMS

- 1.1 A creditor is required to submit his claim along with the proof thereof on or before the last date mentioned in the public announcement in terms of Regulation 12 of the CIRP Regulations. As per sub-regulation (2) of Regulation 12, a creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the IRP or the Resolution Professional, as the case may be, on or before the 90th day of the insolvency commencement date. However, the Adjudicating Authority has the jurisdiction to condone the delayed submission of claims on account of cogent and genuine grounds. The Adjudicating Authority in the matter of ***JBF Industries Ltd. V/s Anup Kumar Singh***⁹ condoned the delay where the condonation was sought on the ground that the creditor had no knowledge to submit the claim in Form C to the IRP. Upon being satisfied of the reason for late submission of claim, it was observed that since the CIRP is pending, the delay can be condoned but it is upon the Resolution Professional to admit or reject the same upon proper verification of the claim. Further, in the matter of ***Edelweiss Asset Reconstruction Co. Pvt. Ltd. vs. Adel Landmarks Ltd.***¹⁰, the Adjudicating Authority observed and directed the Resolution Professionals to take a note of the fact that the rejection of claim on the ground of delay is not sustainable because the provision regarding submission and verification of claims has been held to be directory.
- 1.2 As far as the quantum of claims is concerned, the Adjudicating Authority may direct the Resolution Professional to re-consider the claim, if it is of the opinion that the claim has been wrongly rejected or accepted. The said mandate of law has been observed in ***Mr. Navneet Kumar Gupta (Resolution Professional of Monnet Ispat Power Company Limited) V/s Bharat Heavy Electricals Limited***¹¹. In this case, the Resolution Professional had wrongly disallowed a claim and the Adjudicating Authority

⁸ Company Appeal (AT) (Insolvency) No. 324 of 2019 (NCLAT)

⁹ [2019] 154 SC L362 (NCLT)

¹⁰ (IB)-1083(PB)/2018 (NCLT)

¹¹ Company Appeal (AT) (Insolvency) No. 743 of 2018 (NCLAT)

directed the Resolution Professional to re-examine the claim of an operational creditor. The Hon'ble National Company Law Appellate Tribunal ('NCLAT') upheld the decision of the Adjudicating Authority.

2. MEETINGS OF COMMITTEE OF CREDITORS

- 2.1 **Notice requirement:** In terms of Section 24(3) read with Regulation 19, a meeting of the CoC is called by giving not less than 5 days' notice in writing to the following participants, at the address they have provided to the Resolution Professional:
- i. Members of the CoC including the Authorised Representative
 - ii. Members of Suspended Board of Directors or partners of the Corporate Debtor
 - iii. Operational creditors or their representatives if the amount of their aggregate debt is not less than 10% of the debt.

Upon receipt of an application by a creditor forming part of the CoC aggrieved by the violation of the aforementioned provision, the Adjudicating Authority may pass appropriate directions to the Resolution Professional to ensure that a fair and transparent procedure is adopted while conducting CIRP proceedings.

- 2.2 **Calculation of Voting Results:** If at the time of calculation of voting results, the Resolution Professional resorts to erroneous methodology, the aggrieved stakeholder may approach the Adjudicating Authority for relief as the same can have the effect of jeopardizing the its interests. The Adjudicating Authority may pass appropriate orders in order to prevent the same. Hence, the Adjudicating Authority ensures that the Resolution Professional properly calculates the voting share of the CoC for declaring whether a resolution has been passed or rejected.
- 2.3 **Proper Representation of Financial Creditors:** It is pertinent to mention that the IRP or the Resolution Professional and the Authorised Representative who are appointed by the Adjudicating Authority are required to conduct the entire process in a completely transparent manner and without discrimination of stakeholders. In a situation where no proper representation is given to the class of financial creditors or their non-inclusion in the CoC meetings, the Adjudicating Authority has a significant role to play to ensure that the meetings are conducted in accordance with the provisions of law. The Adjudicating Authority in an application filed in the matter of **Mr. Deepak Khanna V/s Earth Infrastructure Ltd.**¹², wherein the Resolution Professional and the Authorised Representative were engaged in improper conduct and failed to give proper representation to the financial creditors, stayed the subsequent meeting of the CoC and sought a detailed response from the Resolution Professional regarding his conduct.

3. INSOLVENCY RESOLUTION PROCESS COST

- 3.1 It is imperative to highlight that as per Regulation 34 of CIRP Regulations, the CoC fixes the expenses to be incurred on or by the Resolution Professional and the expenses shall constitute the CIRP costs. As per the provisions of law and the observations of Adjudicating Authority and NCLAT, for claiming a certain CIRP cost, a Resolution Professional is required to obtain the approval of the COC.
- 3.2 Moreover, Clause 25 of the Code of Conduct for Insolvency Professionals under the First Schedule to the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, clearly specifies '*remuneration to be charged as a reasonable reflection of the work necessarily and properly undertaken*

¹² IB-401/ND/2017 (CA No. 197/C-III/ND/2018) (NCLT)

by an Insolvency Professional.' Further, a Resolution Professional must comply with Circular No. IP/003/2018 issued by the Board.

- 3.3 The Adjudicating Authority may intervene in case exemplary and unjustifiable cost is claimed by the Resolution Professional. In the matter of ***Braj Bhusandas Binani and Ors. V/s Vijaykumar V. Iyer***¹³ wherein the Resolution Professional had incurred exemplary cost in violation of the provisions of the Code and the Circular, the Adjudicating Authority observed that the cost must be on the basis of the volume of work performed and complexity of the resolution process and held that by making unnecessary appointments, it inflicted more burden on an already sinking company and that the Resolution Professional had not taken proper care to ensure that the resolution costs are not reasonable.

4. INVITING EXPRESSION OF INTEREST AND DECLARATION OF PROSPECTIVE RESOLUTION APPLICANTS

(Role of Adjudicating Authority in interaction with Resolution Applicants)

- 4.1 As per Regulation 36A of the CIRP Regulations, the Resolution Professional is required to invite Expression of Interest ('EOI') in Form G from the eligible Resolution Applicants. A Prospective Resolution Applicant ('PRA') who fulfils the requirements of invitation of EOI may submit their EOI within the time specified. On consideration of the EOI submitted, the Resolution Professional issues a provisional list of PRAs and subsequently, a final list of PRAs eligible to file a Resolution Plan for the Corporate Debtor.
- 4.2 Further, as per Regulation 36B, the Resolution Professional is required to issue the following within 5 days of publishing the provisional list of PRAs:
- i. The Information Memorandum ('IM') containing details of assets and liabilities of the Corporate Debtor, its latest annual financial statements, list of creditors etc.,
 - ii. The Request for Resolution Plan ('RFRP') which is a processual document explaining the procedure to prepare and submit a Resolution Plan, and
 - iii. The Evaluation Matrix providing the manner and weightage of different elements of Resolution Plan on the basis of which the CoC evaluates a Resolution Plan.
- 4.3 It is pertinent to mention that if a PRA submits an EOI later than the last date mentioned in Form G, the Resolution Professional might place an agenda before the CoC and the EOI shall be accepted only if the CoC passes a resolution to that effect. The Adjudicating Authority does not have any power to intervene into or question the commercial wisdom of the CoC.
- 4.4 **Receipt of Resolution Plan(s) by Resolution Professional:** According to Regulation 39 of CIRP Regulations, such Resolution Plans are submitted along with the mandatory documents mentioned herein below:
- i. an affidavit stating that the Resolution Applicant is eligible under section 29A to submit Resolution Plans;
 - ii. an undertaking by the PRA 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

¹³ [2018] 146 CLA 114

render the PRA ineligible to continue in the CIRP, forfeit any refundable deposit, and attract penal action under the Code.

Upon receipt of the Resolution Plan(s), the foremost duty of a Resolution Professional involves undertaking a thorough check and verification as to whether the Plans are compliant with the statutory requirements of Section 30(2), Regulation 37 to 39 of the CIRP Regulations. Subsequently, he is required to place the compliant Resolution Plans before the CoC for evaluation and voting.

5. PRESENTATION OF RESOLUTION PLAN TO THE COMMITTEE OF CREDITORS AND THE RIGHT OF RESOLUTION APPLICANTS

5.1 **Revised Resolution Plan:** The CoC shall evaluate and consider the Resolution Plan in accordance with the Evaluation Matrix issued under Regulation 36B of the CIRP Regulations, the provisions of the Code, CIRP Regulations and the RFRP. The CoC has the right to negotiate with the PRAs and evaluate the best plans. By way of a clarification in the RFRP document, the CoC may reserve a right to negotiate better terms with the PRAs who have submitted their Resolution Plans and granting more opportunity to the PRAs to submit revised financial offers is well within the right of the CoC. It is not within the purview of the Adjudicating Authority to issue any directions to the CoC in this regard. The said position of law has been reaffirmed by the Hon'ble Supreme Court in the matter of **Tata Steel Limited V/s Liberty House Group Pte. Ltd. & Ors.**¹⁴ wherein Tata Steel Limited moved in appeal before the Supreme Court as one other PRA was allowed to submit improved financial offer which was later approved by the CoC. It was held that the CoC has absolute discretion to negotiate better terms with the PRAs including allowing them time to submit improved financial offers. The most viable and feasible Resolution Plan will be identified, and the CoC may approve the plan by a majority of not less than 66% vote, with such modifications as it deems fit. The PRA whose Resolution Plan is approved by the CoC would be identified as the Successful Applicant.

5.2 **Participation in CoC Meeting:**

5.2.1 In this context, it is cogent to mention the provision contained in Section 30(5) of the Code. It states that the "**Resolution Applicant may attend the CoC meeting in which the Resolution Plan of the applicant is considered**". The proviso to this sub-section states that the Resolution Applicant shall not have a right to vote at the CoC meeting unless such Resolution Applicant is also a financial creditor. It is the Resolution Professional who conducts such meeting. Hence, it is incumbent upon him to comply with the above requirement.

5.2.2 It transpires that Resolution Applicants are entitled to attend the CoC meeting in which their Resolution Plans are considered. Further, the participants of the CoC meeting are not supposed to attend the meeting as mere spectators. They do not have the right to vote but are entitled to express their views and such views are required to be taken into consideration by the CoC while approving or rejecting a Resolution Plan. The reasons for approving or rejecting a Resolution Plan are also required to be recorded by the CoC in writing.

¹⁴ Company Appeal (AT) (Insolvency) No. 198 of 2018

5.2.3 The Hon'ble Adjudicating Authority has reaffirmed the above tenet of law in ***Nitrex Chemicals India Limited V/s Ravindra Beleyur and Ors.***¹⁵ wherein it was observed that the CoC while approving or rejecting a Resolution Plan should follow such procedure which is transparent. The members of the CoC including the Resolution Applicant, though not entitled to vote, may express their views to the CoC to enable it to come to a conclusion. The Hon'ble NCLAT has reiterated the abovementioned tenet of law in ***ANG Industries Limited V/s Shah Brothers Ispat Private Limited and Ors.***¹⁶ and in ***Rajputana Properties (P.) Ltd. V/s Ultra Tech Cement Ltd.***¹⁷

6. FILING OF RESOLUTION PLAN BEFORE THE ADJUDICATING AUTHORITY FOR APPROVAL

Finally, the Resolution Professional places the Resolution Plan approved by the CoC by a majority vote of not less than 66%, before the Adjudicating Authority for approval as required under Section 30(6) of the Code and sub-regulation 4 of Regulation 39 of the CIRP Regulations. This section has been dealt in the subsequent Article.

IV. CONCLUSION

It is apparent that as far as interrelation between Resolution Professional, CoC and the Adjudicating Authority is concerned, the Resolution Professional is a facilitator of the insolvency process, whose administrative functions are overseen by CoC and the Adjudicating Authority.¹⁸ It is primarily the commercial wisdom of CoC which is given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the Code.

It is a well settled proposition of law that commercial and business decisions of CoC are not open to judicial review even by the Adjudicating Authority or NCLAT. However, it is plausible that the irregularities with regard to procedure or lack of transparency on the part of the CoC and the Resolution Professional respectively, has time and again attracted the attention of the Adjudicating Authority and each time, the Adjudicating Authority has played a significant role in ensuring the smooth conduct of the CIRP proceedings. The endeavour must be to maintain a balanced approach between ensuring a time bound resolution of the Corporate Debtor and the Corporate Debtor otherwise being put into liquidation. Every sincere effort must be made by the Adjudicating Authority to save the Corporate Debtor from dying as the daily bread of numerous persons is dependent on the outcome of the CIRP proceedings.

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¹⁵ [2019]149CLA472

¹⁶ [2018]209CompCas110

¹⁷ Company Appeal (AT)(Insolvency) No. 188 of 2018

¹⁸ Swiss Ribbons Pvt. Ltd. V/s Union of India (UOI) and Ors. AIR 2019 SC 739