

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**I.A. No. 1170 of 2021**

**IN**

**Company Appeal (AT) (Insolvency) No. 454 of 2021**

[Arising out of Order dated 07.06.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-II, in IA 623/2021 in IA 449/2021 in CP(IB) 4258/MB/2019]

**In the matter of:**

**63 Moons Technologies Limited  
Formerly Known as Financial Technologies (India)  
Ltd.**

**Represented by its Authorized Signatory,  
Having its corporate office at FT Tower,  
CTS Nos. 256 and 257, Suren Road, Chakala,  
Andheri (E), Mumbai- 400093  
E-mail: [info@63moons.com](mailto:info@63moons.com)**

**....Appellant**

**Vs.**

**1. The Administrator of Dewan Housing Finance  
Corporation Limited  
Having its office at 6<sup>th</sup> Floor, HDIL Towers, Anant  
Kanekar Marg,  
Station Road, Bandra (East) Mumbai- 400051  
E-mail:- [dhfladministrator@dhfl.com](mailto:dhfladministrator@dhfl.com)**

**2. Piramal Capital & Housing Finance Limited  
Having its office at  
4<sup>th</sup> Floor, Piramal Tower, Peninsula Corporate Park,  
Ganpatrao Kadam Marg, Lower Parel (west),  
Lower Parel, Mumbai, Maharashtra- 400013  
E-mail:- [Bipin.Singh@piramal.com](mailto:Bipin.Singh@piramal.com)**

**3. Committee of Creditors of Dewan Housing Finance  
Corporation Ltd.  
Through Union Bank of India  
Having its office:  
M-93, Cannaught Place, New Delhi  
E-mail:- [raunak.dillon@cyrilshroff.com](mailto:raunak.dillon@cyrilshroff.com)**

**....Respondents**

**For Appellant:**

**Mr. Navroz H. Seervai, Mr. Anupam Lal Das, Sr.  
Advocates with Ms. Misha Rohatgi Mohta, Mr. Rahul  
Sarda, Mr. Arvind Lakhawat, Mr. Mihir Kamdar, Mr.**

**Mantul Bajpai, Ms. Priyanka Vohra and Mr. Devansh Srivastava, Advocates.**

**For Respondents: Mr. Ravi Kadam, Sr. Advocate with Mr. Liz Mathew, Ms. Sonali Jain, Mr. Rohan Rajadhyaksha and Mr. Navneet R. Advocates for R-1.**

**Dr. Abhishek Manu Singhvi and Mr. Ashish Dholakia, Senior Advocates with Mr. Ashish Bhan, Mr. Ketan Gaur, Ms. Chitra Rentala, Mr. Aayush Mitruka, Ms. Samriddhi Shukla, Mr. Dhritiman Roy, Mr. Avishkar Singhvi, Advocates for R-2.**

**Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Mr. Animesh Bisht, Ms. Saloni Kapadia, Ms. Madhavi Khanna, Mr. Subhankar Jain, Ms. Rajshree Chaudhary and Ms. Fatema Kachwalla, Advocates for R-3 (CoC).**

**I.A No. 1173 of 2021**

**IN**

**Company Appeal (AT) (Insolvency) No. 455 of 2021**

[Arising out of Order dated 07.06.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-II, in IA No. 449/MB/C-II/2021 in CP(IB) No. 4258/MB/C-II/2019]

**In the matter of:**

**63 Moons Technologies Limited  
Formerly Known as Financial Technologies (India)  
Ltd.**

**Represented by its Authorized Signatory,  
Having its corporate office at FT Tower,  
CTS Nos. 256 and 257, Suren Road, Chakala,  
Andheri (E), Mumbai- 400093  
E-mail: info@63moons.com**

**....Appellant**

**Vs.**

**1. The Administrator of Dewan Housing Finance  
Corporation Limited  
Having its office at 6<sup>th</sup> Floor, HDIL Towers, Anant  
Kaneekar Marg, Station Road, Bandra**

(EastOMumbai- 400051

E-mail:- [dhfladministrator@dhfl.com](mailto:dhfladministrator@dhfl.com)

2. Piramal Capital & Housing Finance Limited Having its office at 4<sup>th</sup> Floor, Piramal Tower, Peninsula Corporate Park, Ganpatrao Kadam Marg, Lower Parel (west), Lower Parel, Mumbai, Maharashtra-400013

E-mail:- [Bipin.Singh@piramal.com](mailto:Bipin.Singh@piramal.com)

3. Committee of Creditors of Dewan Housing Finance Corporation Ltd. Through Union Bank of India, Having its office: M-93, Cannaught Place, New Delhi

...Respondents

E-mail:- [raunak.dillon@cyrilshroff.com](mailto:raunak.dillon@cyrilshroff.com)

**For Appellant:**

**Mr. Anupam Lal Das, Sr. Advocate with Ms. Misha Rohatgi Mohta, Mr. Rahul Sardar, Mr. Arvind Lakhawat, Mr. Mihir Kamdar, Mr. Mantul Bajpai, Ms. Priyanka Vohra and Mr. Devansh Srivastava, Advocates.**

**For Respondents:**

**Mr. Ravi Kadam, Sr. Advocate with Mr. Liz Mathew, Ms. Sonali Jain, Mr. Rohan Rajadhyaksha and Mr. Navneet R. Advocates for R-1.**

**Dr. Abhishek Manu Singhvi and Mr. Ashish Dholakia, Senior Advocates with Mr. Ashish Bhan, Mr. Ketan Gaur, Ms. Chitra Rentala, Mr. Aayush Mitruka, Ms. Samridhi Shukla, Mr. Dhritiman Roy, Mr. Avishkar Singhvi, Advocates for R-2.**

**Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Mr. Animesh Bisht, Ms. Saloni Kapadia, Ms. Madhavi Khanna, Mr. Subhankar Jain, Ms. Rajshree Chaudhary and Ms. Fatema Kachwalla, Advocates for R-3 (CoC).**

**J U D G M E N T**  
**(23<sup>rd</sup> July, 2021)**

**A.I.S. Cheema, J.**

1. Company Appeal (AT) (Insolvency) No.454 of 2021 has been filed against impugned order dated 7<sup>th</sup> June, 2021 passed in IA 623/2021 in IA 449/MB/C-II/2021 in CP (IB) 4258/MB/C-II/2019. By the impugned order, the Interlocutory Application of the Appellant seeking dismissal of I.A. 449/2021 filed in the Company Petition; and seeking rejection of the Resolution Plan of Respondent No.2 was dismissed. The Appellant had also prayed in the alternative before the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court-II) that any term in the Resolution Plan expressly or impliedly providing that the benefit of any orders passed in the avoidance application filed or to be filed by the Respondent No.1- Administrator under Sections 43 to 51 or under Section 66 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) shall be for the benefit of Respondent No.2- 'Piramal Capital & Housing Finance Limited' (Successful Resolution Applicant) and not for the benefit of the creditors of DHFL- such term should be declared as contrary to law. The Appellant had also sought declaration to the effect that recoveries/ contributions in the avoidance application should be for the sole benefit of the creditors of DHFL- Corporate Debtor. The Adjudicating Authority, after hearing the parties, dismissed the Application.

**2.** Company Appeal (AT) (Insolvency) No. 455 of 2021 has been filed against impugned order passed in IA No. 449/MB/C-II/2021 in CP(IB) No. 4258/MB/C-II/2019 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court-II) vide which the Interlocutory Application of the Administrator under Section 30(6) and Section 31 of the IBC was approved and the Resolution Plan of Respondent No.2- 'Piramal Capital & Housing Finance Limited' was accepted by the Adjudicating Authority.

**3.** In these Appeals I.A Nos. 1170 and 1173 of 2021 respectively have been filed for stay of the respective impugned orders.

**4.** When these matters came up, we had requested Counsel for both sides that the Appeals are at the stage of admission and question to be dealt with at this stage is limited to the question whether the interim relief as sought in the Appeals should be granted. Counsel for both sides, however, have made various submissions which are more with regard to the merits of the Appeals themselves to be decided. We will make brief reference to the submissions.

**5.** The Learned Counsel for the Appellant referring to the impugned order in Company Appeal (AT) (Insolvency) No. 454 of 2021 submitted that the legal issue involved is whether the Respondent No.2- 'Piramal Capital & Housing Finance Limited' (Successful Resolution Applicant) can appropriate recoveries, if any, from avoidance applications filed by Respondent No.1-

Administrator under Section 66 of the 'I&B Code' which is involving amounts in excess of Rs.45,000 Crores. The Learned Senior Advocate Shri Navroz H. Seervai submitted that if the Resolution Plan, as has been approved, is implemented, the position of all stakeholders would be irreversibly altered and it will amount to *fait accompli*. It has been argued by Learned Senior Counsel that future recoveries for avoidance applications which have challenged the fraudulent transactions cannot enure to the benefit of DHFL in its new Avatar i.e. the Respondent No.2- 'Piramal Capital & Housing Finance Limited' (Successful Resolution Applicant). The Question raised is whether such stipulation in the Resolution Plan amounted to an illegality or whether the same could be said to be in the commercial domain of the Committee of Creditors. It is stated, if it was an illegality, it could not be saved by any strength of majority or voting of the Committee of Creditors. The Learned Senior Counsel submitted that before the Adjudicating Authority, the matter was argued for eight days in which several judgments were cited and detailed written submissions were filed. The impugned order however, did not deal with the same and simply recorded reasons that the Adjudicating Authority could not substitute its own wisdom with the commercial wisdom of Committee of Creditors. The Learned Counsel insisted that the Adjudicating Authority was bound to deal with all the issues which were raised and then decide the same. It is argued that the Adjudicating Authority abdicated its powers and functions which is bad in law.

6. The Learned Senior Counsel for the Appellant argued that judgment in the matter of **“M/s. Venus Recruiters Pvt. Ltd. vs. Union of India & Ors.”** [W.P. (C) No. 8705/2019 and CM Appl. 36026 of 2019] passed by the Hon’ble High Court of Delhi at New Delhi dated 26.11.2020, it was held that avoidance applications are meant to give benefit to the creditors of the Corporate Debtor and that the same were not for the Corporate Debtor in its new Avatar after the approval of the Resolution Plan.

7. It is argued that the Resolution Plan is a contract and the considerations have to be lawful. The stipulation in the Resolution Plan approved will deprive the persons who were defrauded by fraudulent transactions for which the avoidance applications have been filed. If such benefit is not given to the persons defrauded, it would be against the public policy. It is argued that ascribing a value of Rupee 1 to the future recoveries (involving amounts in excess of Rs.45,000 Crores) is not adequately factoring in the Resolution Plan amount. It is argued that ascribing of such value of Rupee 1 to the future recoveries has not take into consideration the aspect of value maximisation of the assets of DHFL.

8. Learned Senior Counsel for the Appellant vehemently submitted that the impugned order (in Company Appeal (AT) (Insolvency) No. 454 of 2021) is an unreasoned and non-speaking and thus deserves to be stayed. The Resolution Plan was in contravention of provisions of law and thus deserves to be stayed. The Adjudicating Authority, while deciding the Application, wrongly relied on the case of **“Interups Inc. vs. Kuldeep Kumar Bassi &**

**Ors.”** [Company Appeal (AT) (Insolvency) No. 1079 of 2020] of this Tribunal which was not cited by any parties. The Adjudicating Authority did not consider that the judgment has to be read in the context of the facts in which the judgment was rendered. Appellant claims that it has *prima facie* case to stay the impugned orders.

**9.** Shri Anupam Lal Das, Learned Senior Counsel for the Appellant (in Company Appeal (AT) (Insolvency) No. 455 of 2021) has also made similar submissions on similar lines to support I.A No.1173 of 2021 in Company Appeal (AT) (Insolvency) No. 455 of 2021.

**10.** Learned Senior Counsel for the Administrator of DHFL has submitted that the Resolution Plan submitted by Respondent No.2- ‘Piramal Capital & Housing Finance Limited’ (Successful Resolution Applicant) has been approved by the majority of Committee of Creditors to the extent of 93.65% and that Reserve Bank of India as well as Competition Commission of India have also approved the plan. It was argued that the Appeal is not maintainable. The Appellant is a Financial Creditor of DHFL holding Non-convertible Debentures (NCD) worth Rs.200 Crores (which is 0.2% on Committee of Creditors) and that the Appellant was a part of class of NCD holders. In terms of Section 21(6A) of the ‘I&B Code’, the Appellant was represented in the Committee of Creditors by its debenture trustee, ‘Catalyst Trusteeship Ltd.’. Knowing fully well the provisions of the Resolution Plan, the Appellant voted in favour of the Resolution Plan within its class of NCD, which was approved by 98.94% votes. Subsequently, catalyst voted in favour



of the Resolution Plan before Committee of Creditors where the Resolution Plan has been approved by majority of 93.65% votes of the Committee of Creditors. The argument is that the Appellant who voted in favour of the Resolution Plan cannot maintain the Appeal against the approved Resolution Plan. Learned Senior Counsel relied on judgment in the matter of **“Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Ltd. & Ors.”** [(2021) SCC Online SC 253] to submit that it has been held that once a class has voted in favour of the Resolution Plan, a constituent of the class cannot be separately heard in opposition to the plan by way of objection or Appeal. Thus, it is argued that the Appellant needs to be estopped from raising any objections to the Resolution Plan.

**11.** Learned Counsel for the Administrator further submitted that Request for Resolution Plan (RFRP), and the clause in question, was formulated with the consent of the Appellant which formed a part of the class of NCD holders which voted to amend the RFRP further to the 7<sup>th</sup> meeting of the Committee of Creditors. As per deliberations and decisions in the Committee of Creditors, the Resolution Plan ascribing a value of Rupee 1 to the recoveries was accepted. The Resolution Plan was in compliance of RFRP. The Committee of Creditors even had right to accept and approve a departure from the RFRP and that it would be a commercial decision. It is stated that the Appellant had not pointed out anything which is illegal and contrary to the Resolution Plan. It is submitted that the whole claim of the Appellant hinges on judgment in the matter of **“M/s. Venus Recruiters Pvt. Ltd.”**

(Supra). The argument is that the decision in the matter of **“M/s. Venus Recruiters Pvt. Ltd.”** did not deal with the issue of entitlement to recoveries of avoidance applications, in the event the Resolution Plan provides for a mechanism to deal with the same. In the matter of **“M/s. Venus Recruiters Pvt. Ltd.”** neither the RFRP nor the Resolution Plan provided for treatment of proceeds arising from avoidable transactions. In the present matter, however, both in the RFRP and the Resolution Plan, the requirements and provisions for dealing with proceeds from avoidable transactions has been dealt with. It is argued that as held in the matter of judgment of **“Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.”** [(2020) 8 SCC 531], the Adjudicating Authority could not interfere with the commercial wisdom of the Committee of Creditors. It is also argued that the ascribing of value Rupee 1 to the avoidance transactions must not be viewed in isolation, but that it should be viewed in overall Resolution amount which was proposed by Respondent No.2 and which has been accepted by the Committee of Creditors.

**12.** Learned Senior Counsel for Respondent No.2 submitted that when the Appellant has voted in favour of the Resolution Plan, the Appellant cannot turn around and question the Resolution Plan. Reliance has been placed on **“Indian Renewable Energy Development Agency Ltd. v. Bhuvesh Maheshwari & Ors.”** [Company Appeal (AT) (Insolvency) No. 971 of 2020 dated 12.02.2021] of this Tribunal. When the NCD holders as a class approved the Resolution Plan, the Appellant as an individual NCD holder

cannot challenge the Resolution Plan and deserves to be estopped in view of the observations in **“Jaypee Kensington Boulevard Apartments Welfare Association & Ors.”** (Supra). It is argued that the Resolution Plan is compliant with law and the Request for Resolution Plan (RFRP). It has been submitted that Section 66 of the ‘I&B Code’ or any other provisions of Code do not create any bar or impediment on the Resolution Applicant availing the proceeds, if any, from the avoidance applications. There is no provisions in the ‘I&B Code’ for the treatment of such proceeds and if the Committee of Creditors in its commercial assessment of the assets of the Corporate Debtor has decided to give up the contingent recoveries from the avoidance applications under Section 66 to the Resolution Applicant in exchange for a higher upfront resolution amount, the discretion is commercial decision and cannot be interfered with. The Committee of Creditors comprising of 77 financial creditors consciously decided after extensive deliberations that all recoveries under Section 66 of the ‘I&B Code’ will accrue to the Resolution Applicant whereas recoveries from avoidance applications under Sections 43-50 will be for the benefit of the Committee of Creditors. It is stated by the Learned Senior Counsel for the Respondent No.2 that the Adjudicating Authority, therefore, rightly refused to interfere with the commercial decision. It has been argued that it is not possible to ascribe value to the future contingent recoveries that may arise from avoidance applications under Section 66 given the uncertain nature of such proceedings and it’s protracting nature and it may very well be possible that the recoveries against such applications may be zero. It is also argued that two

independent valuers appointed by the Administrator in discharge of its duties under the 'I&B Code' ascribed NIL Value to avoidance applications. The ascribing of INR 1 to the avoidance transactions must be looked at with the other parts of the Resolution Plan in a holistic manner and the same cannot be looked at in isolation and dehors the consideration/ value that the Resolution Plan contemplates. Learned Senior Counsel submitted that the Resolution Plan contemplates a sum of INR 37,250 Crores comprising a combination of cash and non-cash considerations including an upfront cash payment of INR 14,700 Crores. It was also argued that the ascribing a notional value of INR 1 to uncertain claims/ claims under litigation has earlier been accepted by Courts. The Learned Senior Counsel referred in the matter of **"Committee of Creditors of Essar Steel India Limited"** (Supra) for instance. It is also argued that judgment in the matter of **"M/s. Venus Recruiters Pvt. Ltd."** (Supra) relied on heavily by the Appellant had different factual matrix and the same dealt with question whether the avoidance application under Section 43 could survive after the approval of the Resolution Plan and not the treatment of the proceeds of avoidance applications. In the matter of **"M/s. Venus Recruiters Pvt. Ltd."** (Supra), the case was different as in that matter the Resolution Plan did not provide any provision to deal with the treatment of recoveries arising from Resolution Plan. It was argued that orders if stayed the whole process of Resolution would get seriously affected.

**13.** The Learned Senior Counsel for the Committee of Creditors submitted that the Resolution Plan has been duly approved and it has been approved by the Adjudicating Authority and thus in both the Appeals, no *prima facie* case has been made out to stay the impugned orders. The Learned Senior Counsel also stated that the Appellant voted in favour of the Resolution Plan and thus deserves to be estopped from challenging the same. It is argued that the treatment of recoveries arising from avoidance applications fall within the domain of the commercial wisdom of Committee of Creditors and 'T&B Code' does not prevent the Committee of Creditors from dealing with such recoveries. The Resolution Plan is in the line with the RFRP and was finalized and was submitted by the Resolution Applicant (Respondent No.2) after negotiations.

**14.** The Adjudicating Authority in the impugned order in Company Appeal (AT) (Insolvency) No. 454 of 2021 in paras 2 to 4 observed, as under:-

*"2. As far as the claims of avoidance transactions, COC has consciously decided that the money realised through these avoidance transactions would accrue to the members of the COC and at the same time they have also consciously decided after lot of deliberations, negotiations that the monies realised if any under Section 66 of IBC i.e Fraudulent Transactions, COC has ascribed the value of Rs.1 and if any positive money recovery the same would go to the Resolution Applicant/ future Corporate Debtor.*

*3. COC is comprised of 77 Financial Creditors and deliberations they have protected their interest and ascribed the value based on their Commercial Wisdom and Adjudicating Authority has limited jurisdiction to interfere with the same as per various judgments quoted in the detailed order passed in IA 449/2021 (Approving*

the Resolution Plan). During the course of various hearings Learned Senior Counsels appearing for the Administrator, COC, Successful Resolution Applicant submitted that after hard bargain, various rounds of negotiations the plan amount was increased substantially by the Successful Resolution Applicant finally to Rs.37,250 Crores. **Respondents also submitted that 63 Moons Technologies Limited, the applicant also voted in favour of the Resolution Plan and it cannot agitate the same now when 94.5% of COC members approved the plan.** The COC by exercising its Commercial Wisdom have accepted, approved the resolution plan including the monies to be recovered if any from the Fraudulent Transactions. Therefore, we as Adjudicating Authority reluctant to substitute our wisdom at this stage as against their Commercial Wisdom of the COC. Further by following the judicial precedents, discipline and various Judgements of the Hon'ble Supreme Court we restrain ourselves from interfering with the commercial decision of the CoC.

4. Ld. Sr. Counsel appearing from the side of the applicant argued that the matter be sent back to COC for its reconsideration. However Ld. Senior Counsel appearing for the COC vehemently argued that there is no case for sending back to COC as they have already exercised their Commercial Wisdom and already taken a conscious decision after analysing various facts and considerations including Net Present Value (NPV) concept, as per general saying that a bird in hand is better than few in bush, risk of recovery is transferred to the Successful Resolution Applicant etc and ascribed an amount of Rs.1 for this Section 66 Fraudulent Transactions.”

15. The Adjudicating Authority then referred to judgment in the matter of **“M/s. Venus Recruiters Pvt. Ltd.”** (Supra) which has been heavily relied by the Learned Counsel for the Appellant and referring to Judgment in the matter of **“Interups Inc. vs. Kuldeep Kumar Bassi & Ors.”** (Supra) passed by this Tribunal observed that the judgment in the matter of **“M/s. Venus**

**Recruiters Pvt. Ltd.**” is misplaced. The Learned Senior Counsel for the Appellant heavily objected to such observations. It would be appropriate to reproduce the portion concerned from Judgment in the matter of **“Interups Inc. vs. Kuldeep Kumar Bassi & Ors.”** wherein Para 9, the observations of this Tribunal were:-

“9. ....Interups reliance on Delhi High Court’s Judgment dated 26.11.2020 in Venus Recruiters Private Limited Vs. Union of India 7 Ors. (W.P. No. 8705 of 2019) (“Delhi High Court Judgment”) is misplaced, as it has not held that a resolution plan approved by an Adjudicating Authority will be vitiated/liable to be set aside if an avoidance application is kept pending while the resolution plan approval application is decided. Further in para 89 of the Delhi High Court Judgement it has been held that “the NCLT also has no jurisdiction to entertain and decide avoidance applications, in respect of a corporate debtor which is now under a new management unless provision is made in the final Resolution Plan. In the present case, such a provision has been provided for in the JSW Plan.....”

**16.** We will not deliberate on the words used by the Adjudicating Authority wherein it was held that ‘the judgment in the matter of **“M/s. Venus Recruiters Pvt. Ltd.”** is misplaced’.

**17.** The Learned Counsel for the Appellant referred to various paragraphs in the matter of **“M/s. Venus Recruiters Pvt. Ltd.”** to emphasize on the submissions that the Hon’ble High Court of Delhi has held that the benefits of the preferential transactions are for the creditors of the Corporate Debtor and not for the Resolution Applicant who steps into the shoes of the Corporate Debtor in its new Avatar.

Para 70 of the Judgment reads as under:-

*“70. An avoidance application for any preferential transaction is meant to give some benefit to the creditors of the Corporate Debtor. The benefit is not meant for the Corporate Debtor in its new avatar, after the approval of the Resolution Plan. This is clear from a perusal of Section 44 of the IBC, which sets out the kind of orders which can be passed by the NCLT in case of preferential transactions. **The benefit of these orders would be for the Corporate Debtor, prior to approval of the Resolution Plan. Any property transferred or sum acquired in an order passed in respect of a preferential transaction would have to form part of the final Resolution Plan. The Resolution Plan would have to take into consideration such amounts and benefits which can be given to the Corporate Debtor for the benefit of the CoC.** The benefit of an avoidance application is not meant for the company, after the Resolution Plan is considered by the CoC and approved by the NCLT.”*

*(Emphasis supplied)*

**18.** The chronology of events noted by the Hon’ble Delhi High Court in that matter in paras 58 to 62 are noticed as under:-

*“58. In the present case, the alleged preferential transaction was a manpower resource agreement entered into between the Petitioner- Venus Recruiters and the erstwhile Corporate Debtor- M/s. Bhushan Steel Ltd. (BSL). The said agreement was entered into on 3<sup>rd</sup> October, 2009. The application for initiation of CIRP was admitted by the NCLT on 26<sup>th</sup> July, 2017. The IRP was also appointed and a call for submissions was made. On 20<sup>th</sup> March, 2018, the CoC approved the Resolution Plan, proposed by Tata Steel Ltd. The approved Resolution Plan was filed by the RP under Section 31 before the NCLT on 28<sup>th</sup> March, 2018.*

*59. A Forensic Audit Report of the Forensic Consultant (Deloitte Touche Tohmatsu India LLP) was submitted to the RP on 3<sup>rd</sup> April, 2018 i.e. after the*



Resolution Plan was approved by the CoC. In the said report, an allegation was made that 10% service charge paid to the petitioner in lieu of the manpower supplied **“could have been preferential in nature”**. On the strength of this report, the RP filed an application under Sections 25(2) (j), 43 to 51 and 66 of the IBC for avoidance of this, as well as, other suspect transactions on 9<sup>th</sup> April, 2018 before the NCLT.

60. The submissions before the NCLT on the Resolution Plan commenced on 5<sup>th</sup> April, 2018 and judgment was reserved by the NCLT on 11<sup>th</sup> April, 2018. Thus, it was only two days before the judgment was being reserved by the NCLT that the avoidance application as filed by the RP.

61. On 15<sup>th</sup> May, 2018, the NCLT passed the final order approving the Resolution Plan and closing was achieved on 18<sup>th</sup> May, 2018 i.e. the 297<sup>th</sup> day after initiation of CIRP.

62. The avoidance application filed on 9<sup>th</sup> April, 2018, was taken up for the first time on 24<sup>th</sup> July, 2018 by the NCLT. A fresh memo of parties was filed in the application by the counsel claiming to be appointed by the **‘Former RP’** on 14<sup>th</sup> August, 2018. Notice was issued in the avoidance application to the non-applicants. The Petitioner was thereafter impleaded and notice was issued to it on 25<sup>th</sup> October, 2018, upon an application by the RP. The said order, impleading the Petitioner, is challenged before this Court, on the ground that the entire proceedings are without jurisdiction.”

19. Thus what appears is that in matter of **“M/s. Venus Recruiters Pvt. Ltd.”** (Supra) Committee of Creditors had no occasion to deal with transaction which was later filed as Application under Sections 25(2) (j), 43 to 51 and 66 of the ‘I&B Code’. It is in the above context that the Learned Counsel for the Respondents are submitting that the context in which judgment of **“M/s. Venus Recruiters Pvt. Ltd.”** was passed was different

and in that matter Committee of Creditors had not dealt with question as to how the benefits from the avoidance applications are to be treated. Per contra, in the present matter, the learned Counsel for the Respondents are submitting that here there were detailed deliberations on how to deal with the avoidance application under Section 66 of the 'I&B Code' and once it has been thoroughly discussed and decisions taken by the Committee of Creditors by majority, the same are not open for deliberations specially in the context where the Appellant has voted in favour of the Resolution Plan in the group to which the Appellant belonged.

**20.** It appears to us that the Company Appeal (AT) (Insolvency) No. 454 of 2021 is heavily based on the observations in the matter of **“M/s. Venus Recruiters Pvt. Ltd.”**. At this preliminary stage, it will not appropriate for us to make detail observations as it may be treated as a finding in the Appeals. Suffice it to say that having gone through the rival contentions of the Learned Counsel for both sides, we do not find that these are Appeals where interim order should be passed for grounds being raised by the Appellant. The objections raised to the Resolution Plan which has been challenged in Company Appeal (AT) (Insolvency) No. 455 of 2021 are also based on similar footing. The rival claims, which are more questions of law would require deliberation and decision at appropriate stage. If the averments made by Appellant are juxtaposed with averments made by Respondents, we do not find it a fit case to pass interim orders as sought.

We do not think that any interim order as sought with regard to Resolution Plan approved needs to be passed.

**21.** The Learned Counsel for the Appellant argued that the execution of the Resolution Plan should be subject to the outcome of these Appeals. On 06.07.2021 itself, we have observed that it is a matter of law and we need not pass any specific orders. Both the Applications in both the Appeals stand disposed of accordingly.

**[Justice A.I.S. Cheema]  
The Officiating Chairperson**

**[Dr. Alok Srivastava]  
Member (Technical)**

**New Delhi**  
Anjali