

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT-II**

IA. No. 791/2023

In

CP(IB)No. 434/MB/C-II/2018

Application filed under section 30(6), r/w Section 31(1) of the Insolvency & Bankruptcy Code, 2016 read with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016,

Filed by

**Mr. Shailendra Ajmera,
Resolution Professional**

...Applicant

In the matter of

**Punjab National Bank
(Erstwhile Oriental Bank of Commerce)**

...Financial Creditor

Versus

Mittal Corp Limited

...Corporate Debtor

Order Pronounced on: - 18.10.2023

Coram:

**Anil Raj Chellan
Member (Technical)**

**Kuldip Kumar Kareer
Member (Judicial)**

Appearances -

**For the Resolution Professional : Adv Shyam Kapadia a/w Adv. Shweta
Dubey a/w Adv. Ishita Srivastava,
Adv. Ichchha i/b SD Partners**

For the SRA

: **Sr. Adv.Gaurav Joshi a/w Adv. Shyam Dasgupta i/b Khaitan & Co.**

ORDER

Per: Kuldip Kumar Kareer, Member Judicial

1. The present Interlocutory application is filed by **Mr. Shailendra Ajmera** the Applicant, Resolution Professional of **Mittal Corp Limited**, the Corporate Debtor seeking approval of the resolution plan under section 30(6) of the Insolvency and Bankruptcy Code, 2016 (Code) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 submitted by Shyam Sel and Power Limited. The Plan was duly approved by 100% of the Committee of Creditors (CoC).
2. The Applicant submits that the Financial Creditor, Punjab National Bank (Erstwhile Oriental Bank of Commerce), initiated the Corporate Insolvency Resolution process (CIRP) against the Corporate Debtor under Section 7 of the Code on 10.11.2021 and Mr. Ashok Kumar Gulla was appointed as the Interim Resolution Professional (IRP). Pursuant to the said admission order, the Committee of Creditors (CoC) was constituted on 01.12.2021.
3. In terms of the provisions of Section 25(2)(h) of the Code r/w Regulation 36A (1) of the CIRP Regulations, invitations in Form G for Expression of Interest (EoI) from potential resolution applicants were issued. Form G was published on 17.03.2022, with the last date of submission of EoI being 01.04.2022. This was published in Financial Express (English) circulated

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all India excluding Indore and Mumbai; Navbharat (Hindi) and Navshakti (Marathi) newspapers. The notice was also published on the website of the IBBI.

4. Pursuant to issuance of invitation for EoI, the applicant has received 29 expressions of interest. The 6th meeting of CoC held on 05.04.2022 approved the issuance of fresh Request For Resolution Plan (RFRP) and revised the Evaluation Matrix. The same was approved by the CoC and thereafter, in accordance with the provisions of the CIRP Regulations, the final list of Prospective Resolution Applicants (PRAs) was issued on 12.04.2022 to the member of the CoC, and PRAs have been given access to virtual data room and site visits have also been scheduled in terms of the RFRP. The revised information memorandum, RFRP and evaluation matrix was issued on 11.04.2022.
5. Thereafter, the Applicant filed IA No. 1068 of 2022 for extension the period of CIRP by 90 days from 09.05.2022 to 07.08.2022 and the said Application was allowed by the Tribunal vide Order dated 29.04.2022 thereby extending the period of CIRP by further 90 days.
6. The IRP had appointed two registered valuers to determine the fair value and the liquidation value of the Corporate Debtor in accordance with Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The valuers submitted their report mentioning the fair value and liquidation value in accordance with valuation standards and physical verification of the available inventory and fixed assets of the Corporate Debtor.

7. In the 8th meeting of CoC held on 06.05.2022, the members of the CoC further had approved the extension of the last date for submission of the Resolution Plan from 11.05.2022 to 31.05.2022. The applicant received six plans before the last date i.e. 31.05.2022.
8. In the 9th CoC meeting held on 03.06.2022, the Applicant apprised the members of the CoC about the Resolution Plans received.
9. The members of the CoC at its 12th meeting held on 04.07.2022 finalised the framework on the Challenge Process and approved the same. The applicant with the approval of CoC invited all the Resolution Applicants to participate in the Challenge Process. The CoC considered the revised Resolution Plans and appointed Resurgent India for evaluating the feasibility and vitality of the Resolution Plan and submit its report along with the evaluation matrix by 25.07.2022.
10. The Adjudicating Authority on an application filed by the Applicant extended the CIRP period beyond 270 days w.e.f. 07.08.2022 till 21.09.2022.
11. After commencement of voting on revised Resolution Plans on 05.08.2022 an application bearing IA.No.2193/2022 was filed by the one of the Resolution Applicants namely Shyam Sel and Power Limited seeking direction to submit a Revised Resolution Plan which was subsequently allowed by the Adjudicating Authority vide order dated 11.08.2022. However, the above order was challenged by another Resolution Applicant namely, Jindal Stainless Limited before Hon'ble NCLAT, New Delhi which was allowed and the time lost during the pendency of the

appeal was excluded and the CIRP was extended upto till 28.02.2023.

12. Meanwhile, nine lenders of the CD forming part of the CoC, assigned and transferred their debt to Phoenix ARC Private Limited and the same was notified to the applicant vide intimation letter dated 02.12.2022. Pursuant to the above, the CoC was reconstituted and the same was allowed by the Adjudicating Authority on 22.12.2022.
13. While the Resolution Plans were put to vote none of the Resolution Plans received the requisite vote of 66 % in accordance with Section 28(3) of the Code.
14. The members of the CoC through a e-vote on 27.01.2023 decided re-issuance of the RFRP subject to necessary modifications regarding timelines. In response to the re-issued RFRP, two Resolution Plans were received by the Applicant from Shyam Sel and Power Limited, and Saarloha Advanced Material Private Limited. Qua the above Resolution Plans, a challenge process was conducted on 22.02.2023 in which Shyam Set and Power Limited emerged as the highest bidder. However, both the Resolution Applicants were allowed to submit their revised Resolution Plan incorporating their financial offers provided in the challenge process on or before 23.02.2023. Accordingly, Shyam Sel and Power Limited, and Saarloha Advanced Material Private Limited submitted the revised Resolution Plans to the Applicant.
15. Further, the CoC in its 31st meeting held on 23.02.2023, deliberated upon the Revised Resolution Plans and the compliance report was submitted by

the Applicant. After considering the feasibility and viability of the Resolution Plans, both the plans were put to vote in the 31st meeting of the CoC.

16. Pursuant to the same, the Resolution Plan submitted by Shyam Sel and Power Limited (Successful Resolution Applicant) was approved by the CoC by 100% votes. The Applicant issued a Letter of Intent to the Successful Resolution Applicant on 24.02.2023. Further, the SRA submitted a performance security of Rs. 25 Crores by way of performance Bank guarantee.

Brief background of the Corporate Debtor

17. The Corporate Debtor was incorporated on 05.07.1985 under the name of Jewels Steel Limited. The name was later changed to Jewel Seamless Limited and then to Mittal Corp Limited. The Corporate Debtor is a manufacturer of stainless steel bullets, blooms, rolled flats and wire rods of various thickness, width and length.
18. The Corporate Debtor was suffering huge losses continuously and defaulted in repayment of dues to the consortium of banks led by Punjab National Bank. Therefore, the account of the Corporate Debtor was declared as NPA in 2016. The Corporate Debtor was highly overleveraged and had also obtained significantly larger debt than its operations justified and hence it was not possible for the Corporate Debtor to service its interest obligations. The units of the Corporate Debtor were also significantly underutilised which further led to cash flow insufficiencies resulting in the defaults.

Brief background of the Resolution Applicant

19. The Successful Resolution Applicant is a public company in Iron & Steel Sector, incorporated under the Companies Act, 1956.
20. The Resolution Applicant is also engaged in manufacturing of iron and steel products and ferro alloys. Over the years, the Resolution Applicant has integrated its operations by adding products/facilities across the value chain of long steel products i.e. ferro alloys, sponge iron, TMT bars etc. The promoters are well versed in the nitty-gritty of operation in the same line of business.
21. Further, the Resolution Applicant has an established base of clientele which will be used for selling the output estimated from the operations of the Corporate Debtor. The present suppliers of raw material of the Resolution Applicant will be source for input of the Corporate Debtor. The Technical manpower of both the Resolution Applicant and the Corporate Debtor will reciprocate with each other's business expertise and the Resolution Applicant will help to attain perfect synergy to achieve the business targets.
22. To achieve the efficiency and profitability, the Resolution Applicant proposes financial restructuring as well as Corporate restructuring of the Corporate Debtor under this Resolution Plan. However, subsequent to the proposed reorganization of the structure of the Corporate Debtor, the management will initiate suitable measures which will benefit in the turnaround process of the Corporate Debtor. Deployment of workers will be done in a phased manner in accordance with operational requirement

and in the best interest of the Corporate Debtor.

Salient features of the approved Resolution Plan

23. The Successful Resolution Applicant i.e. Shyam Sel and Power Limited, based on the relevant information provided with regard to the amount claimed amount admitted and other liabilities of the Corporate Debtor proposed total discharge amount of Rs.351 crore to the stake holders of the Corporate Debtor as under:

Sr. No	Category of Creditor	Amount of Claim (Rs. in Cr.)	Amount Admitted (Rs. in Cr.)	Amount Provided in the Plan (Rs. in Cr.)	% of claim Admitted
1.	Insolvency Resolution Process Cost			Rs. 10.91 (As on 15.09.2023)	At Actuals
2.	Workmen & Employees' Dues	3.08	0.74	0.73	98.65%
3.	Secured Financial Creditors	1,593.52	1,587.51	348.77 (subject to adjustments proposed under the Resolution Plan)	21.97%

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4.	Operational Creditors (Statutory /Governmental Dues)	167.74	73.27	1	1.36%
5.	Operational Creditors (Other than Workmen and Employees and Statutory Dues)	128.39	105.97	0.50	0.47%
6.	Unsecured Financial Creditors	NA	NA	NA	NA
7.	Provision for essential services	NA	NA	NA	NA
8.	Working Capital	NA	NA	90	NA
9.	Capex	NA	NA	504	NA
	Total	1892.73	1767.49	351.00	19.86%

It is pertinent to mention that the Resolution Plan provides that any unpaid dues accrued till the Insolvency Commencement Date, towards provident fund, gratuity fund and pension fund of the workmen and Employees after deducting the amounts already paid (if any) post the Insolvency Commencement Date, shall be paid by the Successful Resolution Applicant in full.

A. Payment of the CIRP cost

- a) As per the Code, the CIRP costs are accorded highest priority amongst the Creditors of the Corporate Debtor and the CIRP costs include the costs, fees and charges incurred by the Resolution Professional in running operations of the Corporate Debtor as a going concern.
- b) The CIRP costs, to the extent not paid out of the internal accruals and cash flows of the Corporate Debtor, i.e. the Balance CIRP costs, shall be paid within 30 days of the effective date and prior to payment to any other Creditors. The amount payable towards the Balance CIRP costs shall be paid out of and adjusted against the FC consideration (FC consideration is the aggregate of the interest payment amount, the Assignment Consideration 1 and the Assignment Consideration 2, less the Adjustment amounts).

B. Proposal for Operational Creditors (Workmen and Employees)

- a) The admitted Workmen's and Employee Dues are approximately 0.73 Crores as on the date of submission of the Resolution Plan. In the interest of revival of the Corporate Debtor, the Resolution Applicant has decided that the claims of the workmen and employees and all other claims, benefits, unpaid TDS, dues accrued, admitted shall be settled at a maximum amount of Rs. 73,00,000/- within 30 days of the effective date.

C. Proposal for Financial Creditors

It is submitted that the Resolution Plan proposes that the debt owed to the Financial Creditors of the Corporate Debtor shall be assigned to the Successful Resolution Applicant and a group company of the Successful Resolution Applicant in the following manner.

- (I) As regards the Financial Creditors, out of the total claims filed by the Financial Creditors, claims aggregating to approx. Rs. 1,587.52 Crores constituted of outstanding principal amount of approx. Rs. 656.19 Crores (admitted Principal of Financial Creditors) and outstanding interest amount of approx. Rs. 931.33 Crores (admitted interest of Financial Creditors) have been verified and admitted for the purpose of CIRP by the Resolution Professional (collectively admitted debt of Financial Creditors).
- (II) Towards admitted debt of the Financial Creditors, the Successful Resolution Applicant shall pay within 30 (thirty) days from the approval of this Hon'ble Tribunal, first the Interest Payment Amount and thereafter the NBFC Assignee shall pay the Assignment Consideration 1 and thereafter the Successful Resolution Applicant shall pay the Assignment Consideration 2 (collectively referred to as the "FC Consideration"), in the manner stated below, as a full, final and complete discharge of the Claims of Financial Creditors (whether filed or not, whether admitted or not and whether or not set out in the Balance Sheet of the Corporate Debtor or the List of Creditors):
- a) out of the total Admitted interest of Financial Creditors, a sum equal to INR 343,76,99,900/- (Indian Rupees Three Hundred Forty Three

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Crores Seventy Six Lakhs Ninety-Nine Thousand and Nine Hundred Only) less the Adjustment Amounts, being the Interest Payment Amount, shall be settled by paying an equivalent sum (i.e., INR 343,76,99,900/- less the Adjustment Amounts) within 30 (thirty) days of the Effective Date;

- b) out of the balance Admitted Debt of Financial Creditors (approximately INR 1243.75 Crores) after paying as per (a) above, a sum equal to INR 10,00,00,000/- (Indian Rupees Ten Crores Only), along with all Third Party Debt Collateral including any guarantee given by any Person on behalf of the Corporate Debtor ("Assigned Debt 1") shall stand assigned in favour of the NBFC Assignee against payment of INR 5,00,00,000/- (Indian Rupees Five Crores Only) ("Assignment Consideration 1") which shall be distributed proportionately among the Financial Creditors;
- c) the balance Admitted Debt of Financial Creditors (which would be approximately INR 1233.75 Crores) left after paying and assigning as per (a) and (b) above along with Principal Debt Collateral ("Assigned Debt 2") shall stand assigned in favour of the Resolution Applicant against payment of INR 100/- (Indian Rupees One Hundred Only), being the Assignment Consideration 2, which shall be divided proportionately among the Financial Creditors
- d) Immediately following the assignment of Assigned Debt 2 in favour of the Resolution Applicant, the Assigned Debt 2 shall stand converted Into Equity Shares of the Corporate Debtor at Face Value itself, without the requirement of any further consent, approval, deed, documentation or action.
- e) Subsequent to infusion of amounts towards the New Equity Shares of the Corporate Debtor, or such later date as may be agreed with the Monitoring Agency (which shall be referred to as the "Transfer Date"), the nominees of the Successful Resolution Applicant shall be appointed as the directors of the Corporate Debtor and the existing board of directors of the Corporate Debtor shall stand vacated.

D. Proposal for Operational Creditors (other than employees and Workmen and Statutory dues)

The Total claims filed by the Operational Creditors (other than employees and workmen and statutory dues and claims) of the Corporate Debtor amounts to approx. 121.86 Crores out of which 105.95 Crores have been verified and admitted by the RP. However, in the interest of revival of the Corporate Debtor, within 30 days from the Plan approval date by the Adjudicating Authority, the Resolution Applicant shall pay an amount of Rs. 50,00,000/- which shall be distributed proportionately towards the full and final settlement of the Admitted Debt of the Operational Creditors to the extent of Rs. 50,00,000/- and the balance admitted debt of the Operational Creditor i.e. 105.46 Crores shall stand converted into equity shares of the Corporate Debtor which Equity shares immediately following conversion shall stand cancelled or extinguished.

E. Proposal for Operational Creditors (Statutory liabilities including outstanding dues of Governmental Authorities, Taxes, etc.)

The total claims filed by the Operational Creditors towards the statutory dues amount to approx. 167.74 Crores out of which claims aggregating to Rs. 73.27 Crores have been verified and admitted by the RP. In the interest of the revival of the Corporate Debtor and with the intent of seeking co-operation of the

Government and statutory authorities, the Resolution Applicant pay an amount of Rs. 1,00,00,000/- to be paid under the Resolution Plan towards full and final discharge of the entire Statutory dues and claims proportionately towards the dues of the Governmental and statutory authorities including any claims or unpaid TDS admitted by the RP.

F. Sources of Funds :-

24. The Successful Resolution Applicant shall infuse up to Rs. 351,00,00,000/- (Rupees Three Hundred and Fifty-One Crores Only) in one or more tranches in to the Corporate Debtor in the manner as under :-

- a. At least Rs. 1,00,000/- (Rupees One Lakhs) towards the subscription to new Equity Shares of the Corporate Debtor. (New Equity Shares)
- b. Balance amount as debt or convertible securities or subordinate convertible loans or any other appropriate means as deemed fit by the Successful Resolution Applicant.

Further, post implementation of the Resolution Plan, the Resolution Applicant plans to infuse working capital (both fund and non-fund based) of Rs. 90,00,00,000/- (Rupees Ninety Crore Only) and capex of Rs. 504,00,00,000/- (Indian Rupees Five Hundred and Four Crore Only) as and when required to the extent considered necessary by the Resolution Applicant.

25. Immediately upon the implementation of the aforesaid steps and as an integral part of the Resolution Plan, the Corporate Debtor (Transferor

Company) will merge with the Successful Resolution Applicant (Transferee Company) (“**Merger**”) with effect from the Scheme Appointed Date (being 17.02.2023). The merger of the Corporate Debtor with the Successful Resolution Applicant has been approved by Board of Directors of the Successful Resolution Applicant in the Board meeting dated 08.07.2022 and by the Shareholders in the extra ordinary General Meeting dated 15.07.2022. The broad contours of the Scheme of Merger are as follows :-

- a. Any and all assets, liabilities, rights and obligations of the Corporate Debtor, as the transferor company, will be transferred to and vested in the Successful Resolution Applicant, as the assets, liabilities, rights and obligations of the Corporate Debtor, as the transferor company, will become the assets, liabilities, rights and obligations of the Successful Resolution Applicant, as the transferee company.
- b. Upon Merger, inter-company loans and advances will be cancelled and difference on account of the same will credited either to the capital reserve or debited to the goodwill, as the case may be.
- c. The authorized share capital of the Corporate Debtor, as the transferor company, will be merged with the authorized share capital of the Successful Resolution Applicant, as the transferee company. The Successful Resolution Applicant will be entitled to take the benefit of the stamp duty and registration fees already paid by the Corporate Debtor, as the transferor company, on its authorized share capital.

- d. The Corporate Debtor, as the transferor company, will stand dissolved without winding up.
 - e. In consideration of the Merger, the New Equity Shares and Equity Shares arising out of conversion of Assigned Debt 2 shall stand cancelled without the requirement of any further act, deed or documentation.
 - f. Further, in terms of the Code, approval of the shareholders of the Corporate Debtor to the transactions contemplated under the Resolution Plan including the Merger shall be deemed to have been given on the Approval Date.
26. The Resolution Plan submitted by Shyam Sel and Power Limited was approved by the CoC with 100% votes. Under instructions of the CoC and as per Clause 15 (ii) of the RFRP, the Applicant issued a letter of Intent to Shyam Sel and Power Limited on 24.02.2023 which was duly accepted on 24.02.2023. Shyam Sel and Power Limited also submitted a performance security of INR 25 Crores by way of performance bank guarantee in accordance with Clause 18(i) of the RFRP and Regulation 36B(4A) of CIRP Regulations.

Monitoring Committee for Supervision and Implementation of the Plan

- I. Further, for the supervision of the Resolution Plan, a Monitoring Committee shall be formed comprising of 3 (three) members which shall include the implementing agency as the Chairperson, one

Authorized Representative of the Committee of Creditors and one nominee of the Resolution Applicant.

- II. The Applicant further submits that the Resolution Plan submitted is in compliance **with Section 30 (2) of the Code and Regulation 38 (A) of the CIRP Regulations**. The RP has provided a compliance certificate in “**FORM H**” as mandated under the Code for seeking approval of the Resolution Plan from this Bench.

OBSERVATIONS OF THE ADJUDICATING AUTHORITY

27. We have heard the Applicant and perused the Resolution Plan and related documents submitted along with Application.
28. As referred to the above summary of the Resolution Plan, we are satisfied that all the requirements of Section 30 (2) are fulfilled and no provision of the law for the time being in force appears to have been contravened.
29. Section 30 (4) of the Code reads as follows:

“(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six percent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.

30. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority. Section 31 of the Code deals with the approval of the Resolution Plan by the Authority, if it is satisfied that the Resolution Plan as approved by the CoC under section 30(4) meets the requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan as approved by the CoC meets the above requirements.

31. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:

- a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
- b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
- c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified u/s 30(2)(c) of the Code.
- d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.

32. The RP has certified through affidavit that the Resolution Plan is not in contravention to any of the provisions of law, for the time being in force, as specified u/s 30(2)(e) of the Code. In terms of Regulation 27 of the Regulations, Liquidation value was ascertained through two registered valuers which is as under :-

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Sr. No.	Name of the Registered valuer	Fair Value (in Lakhs)	Liquidation value (in Lakhs)
1.	Adroit Appraisers and Research Private Limited	Rs. 15,594.11	Rs.11,302.61
2.	Protocol Valuers Private Limited	Rs. 20,433.23	Rs. 11,532.56
	Average Value	18,013.67	11,417.59

33. The RP has complied with the requirements of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations.

34. The Successful Resolution Applicant also sought certain reliefs, concessions and dispensations. However, the Resolution Plan makes it clear that implementation of the Resolution Plan is not conditional or contingent upon grant of any or all of such reliefs, concessions and dispensations by the Adjudicating Authority.

35. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal the same is found to be in order. The Resolution Plan includes a statement under regulation 38(1A) of The Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and the Regulations.

36. The Resolution Plan has been approved by the CoC in the with 100% votes in terms of Section 30(4) of the Code.

37. In *K Sashidhar v. Indian Overseas Bank & Others (in Civil Appeal No.10673/2018 decided on 05.02.2019)* the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan, as approved by CoC, meets the requirements specified in Section 30(2). The Hon'ble Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

38. In *CoC of Essar Steel* (Civil Appeal No. 8766-67 of 2019 decided on 15.11.2019) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom has approved. In para 42 Hon'ble Court observed as under:

"Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code,

insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra).”

39. In view of the discussions and the law thus settled, we are of the considered view that the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. We are thus inclined to allow the Application in the following terms.

ORDER

- (i) **The Application IA No. 791 of 2023 in CP 434 of 2018 be and the same is allowed.** The Resolution Plan submitted by Shyam Sel and Power Limited is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
- (ii) Further, no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the Resolution Plan.

(iii) We have perused the reliefs, concessions and dispensations referred in Section 8 of the Resolution Plan and in Annexure 3 of the Resolution Plan. While some of the reliefs, concessions and dispensations sought by the Successful Resolution Applicant come within the purview of the Code while many others including stamp duty fall under the power and jurisdiction of different government/departments. This Adjudicating Authority has power to grant relief, waivers and concessions only in relation to the Code and the Companies Act, 2013 (within the powers of the NCLT) and are granted. No reliefs, concessions and dispensations that fall within the domain of other government department/authorities are granted. The reliefs, concessions and dispensations that pertain to other governmental authorities/departments shall be dealt with by the respective competent authorities/fora/offices, Government (State or Central) with regard to the respective reliefs. Insolvency resolution process/implementation of the Resolution Plan under the Code will not be the sole ground for denying any of such reliefs, concessions and dispensations. Hence, the competent authorities including the appellate authorities may consider grant of such reliefs, concessions and dispensations keeping the spirit of the Code.

(iv) The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.

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- (v) This Tribunal will not deter such authorities to deal with any of the issues arising after giving effect to the Resolution Plan.
- (vi) Further, the pending avoidance Applications under section 43, 45, 50 and 66 of the Code filed by the Interim Resolution Professional/Resolution Professional shall remain with the CoC and pursued by CoC as contained in Section 3.15 of the Scheme. Any recoveries made by the Corporate Debtor or the Successful Resolution Applicant shall be passed to the assenting Financial Creditors (excluding dissenting Financial Creditors, Financial Creditors who are related parties and Financial Creditors against whom an order has been passed).
- (vii) As regards the other reliefs and concessions as sought for which exempts the Corporate Debtor from holding them liable for any offences committed prior to the commencement of CIRP as stipulated under Section 32A of the Code, is granted to the Resolution Applicants. With regard to other concessions and reliefs, most of them shall stand subsumed in the reliefs granted above.
- (viii) The exemptions, if any, sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted.
- (ix) Further, in terms of the Judgment of Hon'ble Supreme Court in the matter of **Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited**, (*Civil Appeal No. 8129 of 2019 decided on 13.04.2021*) the

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Hon'ble Apex Court on the date of the approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of the Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which are not a part of the Resolution Plan.

- (x) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the concerned Registrar of Companies (RoC), for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- (xi) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- (xii) The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- (xiii) The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)