



Sl. No. 1

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Virtual Hearing)**

**PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)
: SHRI SANJAY PURI – MEMBER (TECHNICAL)**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 06.06.2024 AT 01:00 P.M.

TC/CP. Nos.	CA/IA No.	Section / Rule	Name of Parties
TCP(IB)/73/9/AMR/2019	Admitted	9 of IBC	Omega Glass Private Limited Vs Ceasan Glass Private Limited
	IA(IBC)/133/2023 in IA(IBC)/399/2022	11 of NCLT Rules	Mr. Ch.V.N. Raghurama Gupta & another (Suspended Directors/personal Guarantors) Vs. Ceasan Glass Private Limited
	IA(IBC)/399/2022	30(6) of IBC	Mr. Gonugunta Murali, RP of M/s Ceasan Glass Private Limited

ORDER

IA(IBC)/133/2023 in IA(IBC)/399/2022:

Present: Dr. S.V. Ramakrishna, Ld. Counsel for the Applicant
Ms. Mummaneni Vazra Lakshmi, Ld. Counsel for the Respondent
Mr. Gonugunta Murali, RP.

Orders pronounced. IA(IBC)/133/2023 in IA(IBC)/399/2022 is dismissed and disposed of and recorded vide separate sheets.

IA(IBC)/399/2022:

Present: Ms. Mummaneni Vazra Lakshmi, Ld. Counsel for the Applicant
Dr. S.V. Ramakrishna, Ld. Counsel for the Respondent
Mr. Gonugunta Murali for RP

Orders pronounced. IA(IBC)/399/2022 is allowed and disposed of and recorded vide separate sheets.

Sd/-

**SANJAY PURI
MEMBER (TECHNICAL)**

Sd/-

**RAJEEV BHARDWAJ
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI**

IA (IBC)/133/2023

In

IA (IBC)/399/2022

In

TCP (IB)/73/9/AMR/2019

Under Rule 11 of the National Company Law Tribunal Rules, 2016

In the Matter of
M/S CEASAN GLASS PRIVATE LIMITED

BETWEEN:

Mr. Ch. V. N. Raghurama Gupta

S/o. Ch. Lakshmi Narayan

Aged 48 years, Marvel House 1st floor,

Harihara Nagar 1st Line, Near SSN Degree College,

Mangamur Road, Ongole – 523225, A.P.

Suspended Director of Ceasan Glass Pvt. Ltd

...Applicant

And

M/s. Ceasan Glass Pvt. Ltd.

Flat No. 1209, 11th floor

Vasavi MPM Grand, Yella Reddy Guda Road,

Opp. South India Shopping Mall, Ameerpet

Hyderabad – 500 038, Telangana

Represented by its Resolution Professional

Mr. G. Murali

...Respondent

DATE OF ORDER: 06.06.2024

CORAM:

Shri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Shri Sanjay Puri, Hon'ble Member (Technical)

PARTIES/COUNSELS APPEARANCE:

For Applicant : Dr. S. V. Ramakrishna, Advocate

For Respondent : Ms. Mummaneni Vazra Lakshmi, Advocate

Sd/-


Sd/-

ORDER
(Per: Bench)

1. This Application is filed by Mr. Ch. V.N. Raghurama Gupta, promoter-director of the Corporate Debtor/Applicant under Rule 11 of National Company Law Tribunal Rules, 2016 seeking to implead him in IA(IBC)/399/2022 (Resolution Plan Application).
2. The averments put forth by the Applicant are as follows:
 - a. This Applicant, Ch. V. N. Raghurama Gupta is the promoter- director of the Corporate Debtor Company incorporated on 08.01.2007 and running the business of glass sheets etc., manufacturing successfully. Due to severe market recession and adverse business environment, the Corporate Debtor suffered losses and as a result of which there was some delays and defaults in meeting its financial obligations.
 - b. The Tribunal vide its orders dated 24.12.2021 admitted the petition and ordered Corporate Insolvency Resolution Process (CIRP) and appointed Mr. Gonugunta Murali, IRP as the Interim Resolution Professional of the Corporate Debtor Company.
 - c. The Corporate Debtor has availed financial assistance from M/s DBS Bank India Ltd., Hyderabad. The promoters have given personal guarantees as security from repayment of loan amounts. However, as the accounts of Corporate Debtor became NPA in the books of the Bank and Bank has it took over the possession of the properties including the registered office of the Corporate Debtor.


Sd/-

Sd/- 2 of 10

- 
- d. The CoC constituted with the Bank with 100% voting power. It is alleged that the Bank has been acting in biased manner prejudicial to interests of Corporate Debtor and its promoters, and even curtailing the ambit of Resolution Professional, and dishonestly selected a pre-determined Resolution Applicant, M/s. Emerge Glass India Pvt. Ltd as per whims and fancies.
- e. The Resolution Professional has issued FORM – G dated 09.03.2022 “Invitation for Expression of Interest” for submission of Resolution plan to Hon’ble Adjudicating Authority but on the instructions of the 100% single CoC i.e., the Bank, the Resolution Professional sought extension after extension and favoured only one Resolution Applicant by not allowing to seek better proposals from public as no further Form-G.
- f. At the 13th CoC meeting held on 19.12.2022 for the first time the suspended director and Applicant was invited, when two representatives of proposed Resolution Applicant, three very senior representatives like Vice President, AVP, and Senior Manager of CoC Bank, and IRP and his team were present. At agenda item nos. 3 & 4, the IRP stated that he received “revised resolution plan” from Emerge Indian Pvt. Ltd., on 17th December, 2022 i.e., two days before the meeting of the CoC. At page 4 of the said minutes, a new untenable and illegal concept of “Personal Guarantee Land as assigned debt in the Resolution Plan” was brought into light and summary of IRP observations on Resolution plan are as under:
- i) The Resolution Applicant has in resolution plan considered the personal guarantee land as assigned debt (in spite of IRP

Sd/

Sd/ 3 of 10



informing the resolution applicant his ambit of powers only on properties of company alone) and paid Rs.1,50,00,000/- for 11.9 acres of land, which is not mentioned by IRP in the Information Memorandum or in RFRP (request of resolution plan) document and IRP brought to the notice of CoC that as per the average fair value from valuation reports (two registered valuers) the fair value for the company's land is Rs. 5,04,05,000/-.

- ii) The proposed resolution plan amount (excluding the assigned debt) of Rs.9,72,00,000/- which is less than the average fair value of Rs.12,13,95,208/- i.e., undervalued by Rs.2,41,95,208/- and which is little bit higher than then average liquidation value by Rs.5,64,995/-
- iii) The IRP has further informed the CoC members that, the wants to take legal opinion whether assigned debt can be formed part of resolution plan or not since there are no provisions under IBC, 2016 but it was not allowed and in a hurried manner at the same CoC meeting, the inconsistent and faulty Resolution Plan was got approved contrary to law and justice.
- iv) The suspended Director offered Rs.50.00 lakhs more than the Resolution Applicant amount and yet the CoC in its own wisdom approved the lesser offer which is against the letter and spirit of law misusing its 100% voting power.
- v) The alleged Resolution Plan four times Modified by the same Resolution Applicant submission on 07.05.2022 and then revised on 25.05.2022, 10.12.2022, 14.12.2022, and 17.12.2022 approved on 19.12.2022 in CoC meeting.

Sd/L

Sd/L 4 of 10



- g. The present Application filed under Rule 11 of NCLT, Rules 2016 by Suspended Director/ Personal Guarantor Challenging the approval of Resolution Application submitted by M/s Emerge Glass India Ltd. Which is clearly exhibiting pre-settled and favoured Resolution Plan with dishonest intention of approving at much lower value even when the suspended director proposed to pay Rs. 50.00 lakhs more and also shows the nexus between the 100% single CoC private Bank and the proposed Resolution Applicant and even bypassing the suggestions of the Resolution Professional as explained in the Application.
- h. In the above circumstances, the Applicant contended that it is quite evident that the manner and method of approving the Resolution Application is highly suspicious particularly when new fresh bids were allowed by CoC even when the Resolution Professional proposed to issue fresh FORM "G". Thus, it is absolutely clear how the provisions of IBC, 2016 have been violated and abused for private benefit of Resolution Applicant and deprive the higher value to the Corporate Debtor and also burdening the Personal Guarantors in the process.
3. The Respondent filed the Counter and averred the following:-
- a. The Respondent contended that the Respondent Company Represented by its Interim Resolution Professional is undergoing corporate Insolvency Resolution Process by an order of this Tribunal dated 24.12.2021 and moratorium was declared and appointed Gonugunta Murali as an Interim Resolution Professional.

Sd/-

Sd/- 5 of 10



- b. Pursuant to the Expression of Interest in Form G, issued by the IRP on 09.03.2022 one Resolution Plan was received from Prospective Resolution Applicant M/s Emerge Glass Private Limited.
- c. After negotiations and discussion Prospective Resolution Applicant submitted revised resolution plan on 17.12.2022 and the IRP conducted 13th meeting of CoC on 19.12.2022 and the members of CoC discussed in length with the Resolution Applicant about the plan submitted. It is humbly submitted that Member of CoC present in person with 100% voting rights approved the Resolution Plan and informed the Interim Resolution Professional to submit the approved Resolution Plan to the Adjudicating Authority. Accordingly, the IRP failed an application IA(IBC)/399/2022 before this Tribunal for the approval of the Resolution Plan and the same is pending. The Applicant herein filed an Application IA(IBC)/20/2023 challenging the approval of Resolution Plan (and the same was dismissed vide order dated 25.04.2024).
- d. The applicant has not supported the IRP from the date of commencement of CIRP even though the directions passed by this Bench against non-cooperation application filed by the IRP. This Bench has issued bailable warrant against the suspended directors against the contempt application filed by the IRP. The applicant intentionally delaying the process by way of filing this application and the Applicant is not a necessary party to this Application.
4. The Applicant filed Rejoinder reiterating the facts as initially stated in the Application.

Sd/

Sd/ e 6 of 10



5. The Respondent filed written submissions reiterating the same facts as mentioned in his counter.
6. After hearing the arguments of both the Counsels and perusal of records, the following issue comes up for our consideration:

Whether the Applicant/Suspended Director is entitled to participate in the proceedings and be heard on all issues concerning approval of the resolution plan by the Committee of Creditors?


- a. According to Sub-Section 4 of Section 30 of the IB Code, the resolution plan approved by the Committee of Creditors fulfills the requirements mentioned in Sub-Section 2 of Section 30 of the Code, and the Adjudicating Authority will approve it in accordance with Section 31 of the IB Code.
- b. 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 Court observed that the role of the NCLT is No more and No less”.

The Hon'ble 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

Sd/-

Sd/- : 7 of 10



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.

- c. **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 have 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 v. Indian Overseas Bank & Others.**”*

- d. The Hon'ble Supreme Court of India, in **re Vallal RCK vs M/s Siva Industries and Holdings Limited & Ors**, has held as under:-

*21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in the cases of **K. Sashidhar v. Indian Overseas Bank and Others, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta***

Sd/-

Sd/- of 10



and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another, and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.

27. This Court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the case of Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another:

“95.However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.....”

7. Therefore, it is a well-established law that this Tribunal cannot ordinarily intervene with the Committee of Creditors' decision-making when it comes to voting or rejecting the resolution plan. When evaluating the Resolution Professional's request for approval of the Resolution Plan approved by the Committee of Creditors, this Tribunal may consider the grounds that the applicant has pleaded, if necessary. There is no provision in the Code for participation in the Committee of Creditors' decision-making process and as such. It is not possible for the Applicant to take part in the Committee of

Sd/-

Sd/- 9 of 10



Creditors' decision-making process. Therefore, we are of the view that the applicant has no locus standi, to seek the intervention in the plan approval application.

8. In view of the reasons stated above, the Application is not maintainable and the same is liable to be dismissed. Accordingly, IA (IBC)/133/2023 in IA(IBC)/399/2022 in TCP (IB)/73/9/AMR/2019 is hereby dismissed.

A yellow rectangular sticky note with the handwritten signature 'Sd/-' in black ink.

Shri Sanjay Puri
Member (Technical)

A yellow rectangular sticky note with the handwritten signature 'Sd/-' in black ink.

Shri Rajeev Bhardwaj
Member (Judicial)

Chandu, LRA

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI**

*** **

IA (IBC)/399/2022

In

TCP (IB)/73/9/AMR/2019

Under section 30(6) and 31(1) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

In the Matter of M/s CEASAN GLASS PRIVATE LIMITED

BETWEEN:

Mr. Gonugunta Murali

Reg. No. (IBBI/IPA – 001/ IP-P00654/2017-18/11139

Interim/Deemed Resolution Professional of

M/s. Ceasan Glass Private Limited

MSKM Group, Unit No. 1209, 11th Floor,

Vasavi MPM Grand, Yellareddyguda Road,

Ameerpet, Hyderabad – 500073

...Applicant/IRP

Date of Order: 06.06.2024

CORAM:

Shri. Rajeev Bhardwaj, Hon'ble Member (Judicial)

Shri. Sanjay Puri, Hon'ble Member (Technical)

Appearance:

For Applicant : Ms. Mummaneni Vazra Laxmi, Advocate

ORDER

1. The Interim Resolution Professional (in short the IRP) in respect of M/s. Ceasan Glass Private Limited (the Corporate Debtor) (“CD”) seeks approval of the Resolution Plan (in short the Plan) submitted by M/s. Omega Glass Private Limited (herein referred to as Successful Resolution Applicant) (“SRA”) filed under Section 30(6) & 31(1) of

Sd/-

Sd/-




Insolvency and Bankruptcy Code, 2016 Read with Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016.

2. The brief facts leading to the Application are as follows:
 - a. This Bench, vide its order dated 24.12.2021 initiated Corporate Insolvency Resolution Process (CIRP) against the CD and Mr. Gonugunta Murali was appointed as an Interim Resolution Professional (IRP) and on 30.12.2021, the IRP made public announcement for inviting claims from the Creditors and after verifying the claims, constituted Committee of Creditors (CoC) and same was filed before this Tribunal.
 - b. In the 1st CoC meeting held on 27.01.2022, members of CoC decided to replace the Interim Resolution Professional (IRP), until the IRP will be continued and performing the duties of Resolution Professional (RP).
 - c. In the 2nd CoC meeting held on 07.03.2022, CoC directed the IRP to issue Form G and the IRP issued Form G on 09.03.2022 for inviting Expression of Interest (EoI) from the Prospective Resolution Applicants (PRAs). In response to the Form-G, the IRP received one (1) EoI from PRA's and CoC discussed about the request for Resolution Plan document conditions and Evaluation Matrix Criteria in their 3rd CoC meeting held on 22.03.2022.
 - d. The Applicant filed an Application before this Tribunal seeking directions to the suspended management for cooperation with the IRP and the same was allowed by this Tribunal vide orders dated 31.03.2022. But there is no positive response from the Suspended

Sd/-

Sd/- of 18




Directors and then the IRP filed Contempt Application IA No. 70 of 2022 against the suspended directors and the same was allowed by this Tribunal vide orders dated 17.11.2022 referring the matter to Insolvency and Bankruptcy Board of India (IBBI) for appropriate actions in terms of Section 236 of IBC, 2016.

- e. In the 4th CoC meeting held on 26.04. 2022 and the applicant informed about the EoI received with the CoC members. In the 5th CoC meeting held on 13.05.2022, the Applicant opened the sealed resolution plan in front of the CoC members and discussed about the resolution plan in the sixth CoC meeting held on 23.05.2022.
- f. The valuers have done valuations based on the information available with lead bank i.e., DBS bank and IRP and physical inspection of the plant, due to lack of fixed assets registers, no tally data except balance sheet on 31.03.2016, lack of Provisional financial statements as on commencement of CIRP i.e. on 24.12.2021.
- g. The IRP and CoC members have informed the situation to Prospective Resolution Applicant regarding the lack of provisional financial statement as on date of commencement except balance sheet available on 31.03.2016 and the prospective resolution applicant have agreed and submitted the resolution plan without any objections.
- h. In the 7th CoC meeting held on 04.06.2022, the CoC directed the IRP to file an application seeking for extension of CIRP period by 90 days and the applicant filed an IA (IBC)/123/2022 for

Sd/-

Pa Sd/- 3




extension of 90 days from 22.06.2022 to 20.09.2022 and the same has allowed by this Tribunal vide orders dated 05.07.2022.

- i. In the 9th CoC meeting held on 09.09.2022, the CoC members informed the Applicant that they need some more time to decide on the resolution plan and the IRP informed to the COC that the CIRP period of 270 days will expire on 20.09.2022 and needs to file an application for extension of time and in the same meeting the CoC approved and passed a resolution for filing an application seeking for extension of CIRP by another 60 days, with 100% voting. Accordingly, the Applicant filed an IA(IBC)/232/2022 before this Tribunal and the same has allowed by this Tribunal vide order dated 28.09.2022, extended the CIRP period until 20.11.2022.
- j. In the 10th CoC meeting held on 10.10.2022, the CoC deferred the agenda item on the resolution plan as they want to further negotiations with Resolution Applicant. On 14.11.2022, the Applicant sent a mail to the Resolution Applicant requesting them to submit final resolution plan or to consider the plan submitted on 26.05.2022 and to place the same before CoC for further consideration. The Resolution Applicant replied on 15.11.2022 stating as follows:

Please refer to our letter dated May 07, 2022 addressed to resolution professional in respect of Ceasan Glass Pvt. Ltd submitting our Resolution Plan and our ongoing discussions with respect to complexities involved in the matter especially pertaining to land ownership. As part of our due diligence process, it has

Sdl

Sdl 18




come to our notice that part of the land on which plant & machinery is situated is owned by personal guarantors (erstwhile promoters) and access road to factory is also passing through the said land owned by personal guarantors.

- k. In the 11th CoC meeting held on 15.11.2022, the IRP discussed with the CoC members about the mail dated 15.11.2022 received from the Resolution Applicant and the members opined that as the query raised is a technical issue and need some more time to clarify and to further negotiate with the Resolution Applicant and requested the IRP to file an application for extension of time. Accordingly, IRP filed an application (IA/331/2022) for extension of time for further 30 days beyond 330 days and the same is allowed by Tribunal vide order dated 22.11.2022, extended the CIRP period by 30 days until 20.12.2022.
- l. During the twelfth (12th) meeting of CoC held on 10.12.2022, members of CoC discussed about the revised Resolution Plan received from the Resolution Applicant M/s. Emerge Glass India Private Limited and requested some clarifications on the Revised Resolution Plan.
- m. In addition to the above IRP raised an objection /clarification regarding the “**Assignment of Debt**” related to personal guarantee properties considered in the Revised Resolution Plan. Member of CoC Mr. Nitin Parmar, representative of the DBS Bank has clarified that, the plant is situated on the CD land and other personal guarantees adjacent lands due to part of the plant situated

Sd/-

P Sd/- 8




in the personal guarantee lands and the land is situated at four sides of the plant. Hence, it is advisable to allow to club the personal guarantee land with the company land to the extent not possible to separate from the company properties due to lack of separation. In addition to the above, he is also informed to the IRP that there are few case laws available to support clubbing of personal guarantee properties in the resolution plan where there is no possibility of separation of company's properties from the personal guarantee's properties. It is further submitted that IRP informed the CoC that he will appoint the legal professional to validate the revised resolution plan whether it's complied the provisions of the IBC, 2016 or not to place before the CoC members for their approval. The CoC members have agreed the same. The IRP also informed to the CoC members that he will get the quotations from the legal professionals and will be shared to the CoC members for their approval before appointment of the legal professional. The CoC members have agreed for the same, and the IRP after calling for quotations, appointed Mummaneni Vazra Laxmi, Advocate to validate the plan. IRP after receiving objections/clarifications of certain clauses on the submitted resolution plan from the Advocate appointed, forwarded the same to the Resolution Applicant and requested for modifications/ clarifications of the same. The Resolution Applicant after elaborate discussions with the Advocate and member of CoC submitted the revised resolution plan on 17.12.2022.

- n. The IRP conducted 13th meeting of CoC on 19.12.2022 and discussed about the revised resolution plan received on 17th

Sd/-

Page

Sd/-



December, 2022 and consideration of the personal guarantee land as assigned debt in their resolution plan irrespective of Information Memorandum and RFRP document and about resolution applicant's proposal of Rs.1,50,00,000/- as assignment debt for 11.86 acres of the personal guarantors land. The IRP informed the member of CoC that the assignment of debt of Personal guarantors is beyond the scope of the RFRP and Information Memorandum document. But the Members of CoC opined that as part of the plant is constructed on the personal guarantors lands and it is not possible to segregate the land and for maximization of the value of the assets of the CD, which is the aim and objective of IBC they are willing to assign the debt to the Resolution Applicant and informed the IRP that it will be part of the Resolution Plan and approved the Resolution Plan, with 100 % voting and informed the Interim Resolution Professional to submit the approved Resolution Plan to the Adjudicating Authority.

o. The salient features of the Resolution Plan are as follows:

Sl. No.	Outstanding dues in order of priority as per section 53 of IBC 2016	Claims as on 24.12.2021 admitted by RP	Total Amount offered	Remarks
1	Insolvency resolution process cost		44,89,035	(Estimated up to 20.12.2022) shall be paid within 30 days of receipt of certified copy of NCLT Order approving resolution plan

Sd/-

Page

Sd/-



2	Debts due to financial creditors as on 24.12.2021 (DBS Bank)	46,22,90,194	9,01,00,000	Rs. 3,41,00,000/- within 60 days of receipt of certified copy of NCLT Order approving resolution plan and thereafter the balance Rs. Five crore sixty lakhs to be paid in two equal monthly instalment of Rs. 2,80,00,000/- (Rupees two crore eighty lac only) after the first payment of instalment of Rs. 3,41,00,000/-.
3	Assigned debts		1,50,00,000	Within 120 days of receipt of certified copy of NCLT Order approving resolution plan.
4	Operational creditors' claims filed and admitted	17,83,36,372	26,10,965	The operational creditors shall be paid in priority over financial creditors within 60 days of receipt of certified copy of NCLT Order approving resolution plan.
TOTAL			11,22,00,000	

p. The assigned land as per the Resolution Plan – 11.86 acres in the below name of the persons:

Description	Directors	No of Acres
Ch V N Raghurama Gupta	Yes	7.9
Ch Lakshmi Narayana	No	
G Venkata Subbarao	Yes	
G Satish Kumar	No	
Ch Nagesh Kumar	Yes	
Ch V N Raghurama Gupta		3.96
Total Assigned land in the Resolution plan		11.86

Sd/-

Sd/-



The above assigned land is personal guarantee land and not given either lease or rent to the company.


- q. The RP submitted the Compliance Certificate in Form-H under Regulation 39(4) of the Regulations showing the compliances of the Plan with mandatory requirements under the Code. The Regulations and the Plan were approved by the CoC.
- r. The constitution of the Monitoring Committee consisting of Three (5) members for implementation of the Resolution Plan as proposed by SRA and approved by the CoC, as given below:-
- Mr. Gonugunta Murali, Resolution Professional, shall be the Chairman of the Monitoring Committee.
 - Three Representatives of the Successful Resolution Applicant.
 - One Representative of the CoC
- s. The Resolution applicant has sought for certain grants and reliefs at clause 23.3 of the Plan which are as follows:
SEEK GRANT FROM GOVERNMENT/ AND RESPECTIVE AUHTORITIES TO FAVORABLY CONSIDER THE FOLLOWINGS:

23.3.1 On approval of the plan by Hon'ble NCLT, the resolution applicant request the state and Central Government to treat the operation of the CD as the new industrial unit or to allow the incentive as available to new industrial unit and/ or sick industrial unit under the latest industrial policy of

Sd/-

Page

Sd/-



the state Government as amended from time to time and consequently grant all the relief/ concession as available to a New Industrial Unit under the said scheme.

23.3.3 State electricity Board / Department to continue supply the electricity without any payment of the old dues and without insisting on reconnection charges. Further the security deposit of the CDs with the electricity board to continue with the new management of the CDs (without any additional securities) and the same shall not be adjusted against the old dues.


23.3.4 It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, Income Tax Department 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.

- t. As per Section 31 of IBC, 2016 the approved the resolution plan shall be binding on the CD and 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, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan, but due to avoid any sort of delays in getting the approvals/ permissions etc., the

Sd/-

Pa

Sd/-



Resolution Applicant is seeking the above mentioned grants/reliefs from this Hon'ble Tribunal.

- u. Therefore in the view of the mentioned facts, IRP praying the Hon'ble Tribunal to pass an order approving the Resolution Plan submitted by M/s Emerge Glass India Private Limited (which has been approved by COC with 100% voting rights) under section 31(1) of IBC, 2016 and to discharge or provide immunity from all the liabilities/disputes/proceedings/penalties/suits/attachments/cases whether civil or criminal filed against the CD whether accounted/known or not on payment of the agreed consideration by Resolution Applicant.
3. We have heard the Ld. Counsel for the Applicant and perused the record. It has been found that the Resolution Plan, as presented by the Resolution Applicant, satisfies all requirements set forth in the IBC, 2016—most notably, Section 30 (2) of the IBC Code, Regulation 38 (1A), and any applicable CIRP Regulations. It doesn't violate any legal requirements. It addresses every stakeholder's interest.
4. Section 30 (2) of the Code as amended up to date enjoins upon the Resolution Professional to examine each Resolution Plan received by him to confirm that such plan –
- a) provides for the payment of insolvency resolution process costs in the manner specified by the Board in priority to the payment of other debts of the corporate debtor;

Sd/-

P. Sd/- 18



- b) provides for the payment of debts of the operational creditors in such manner as may be specified by the Board, which shall not be less than-
- i. the amount to be paid to such creditors, in the event of liquidation of the corporate debtor under section 53; or
 - ii. the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation - For the purpose of the above provision is as under:

- (i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients if the proceeds are insufficient to meet the debts in full; and
- (ii) The term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).

Sd/-

Sd/-



- c) Provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
- d) The implementation and supervision of the resolution plan;
- e) Does not contravene any of the provisions of the law for the time being in force;
- f) Confirms to such other requirements as may be specified by the Board.

3. 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.”

4. The Resolution Professional shall forward the Resolution Plan, as authorized by the CoC, to the Adjudicating Authority in accordance with Section 30(6) of the Code. Section 31 of the Code addresses the Authority's acceptance of the Resolution Plan in the event that it is satisfied that the Resolution Plan satisfies the conditions stipulated in Section 30(2) of the Code as approved by the CoC under Section 30(4). Therefore, the Adjudicating Authority has the responsibility to ensure

Sd/-

Sd/-



that the Resolution Plan, as approved by the CoC, satisfies the aforementioned standards.

5. 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.
 - e) 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.
6. In accordance with Section 30(2)(a) through Section 30(2)(f) of the Code and Regulations 38(1), 38(1-A), 38 (1-B), 38(2), and 38(3) of the Regulations, the RP has complied. The Plan also stipulates that upon the adoption of the Resolution Plan, the Company shall continue as a going concern and conduct business as usual.
7. Along with the Plan, the RP has submitted a Compliance Certificate in Form-H. Upon examination, the same is discovered to be in order. According to Regulation 38(1A) of the Regulations, the Resolution Plan contains a statement detailing how it has addressed the interests of the stakeholders in accordance with the Code and the Regulations.

Sd/-


Sd/-



8. 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 Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble 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.
9. 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 have 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

Sd/-



*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).”*


10. The Hon’ble Supreme Court of India, in the recent ruling in re **Vallal RCK vs M/s Siva Industries and Holdings Limited & Ors – in Civil Appeal Nos.1811-1812 of 2022 pronounced on 03.06.2022**, has held as under:-

*21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in the cases of **K. Sashidhar v. Indian Overseas Bank and Others, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another, and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.***

*27. This Court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the case of **Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another:***

Sd/-

Sd/-



“95.However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.....”

11. The instantaneous Resolution Plan is determined to comply with Section 30(2) of the Code and Regulations 37, 38, 38(1A), and 39 (4) of the Regulations in light of the discussions and the legislation so settled. The Resolution Plan is compliant with the law and does not violate any of the clauses found in Section 29A of the Code. The same is in need of approval. Hence ordered.

ORDER

- i. The Resolution Plan annexed to the Application 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.

Sd/-

Sd/-



- ii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Andhra Pradesh 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.
- iii. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- iv. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.
- v. 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.
- vi. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant.

Accordingly, IA (IBC)/399/2022 in TCP (IB)/73/9/AMR/2019 is disposed of.


Shri Sanjay Furi
Member (Technical)


Shri Rajeev Bhardwaj
Member (Judicial)

Chandu