

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT – VI

ITEM NO. 1

I.A. 678/ND/2023

IN

C.P. No. IB-1804/ND/2019

IN THE MATTER OF:

EASY TRIP PLANNERS LIMITED

.... FINANCIAL CREDITOR

VERSUS

KRIARJ ENTERTAINMENT PRIVATE LIMITED.

..... CORPORATE DEBTOR

Order under Section 30(6) of Insolvency and Bankruptcy Code,
2016.

Order delivered on 12.10.2023

CORAM:

SHRI MAHENDRA KHANDELWAL

HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR,

HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open Court vide separate sheets.

I.A. 678/ND/2023 in C.P. No. IB-1804/ND/2019 stands allowed.

SD/-

(Rahul Bhatnagar)

Member Technical

SD/-

(Mahendra Khandelwal)

Member Judicial

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH, COURT-VI

I.A. 678/ND/2023

IN

C.P. No. IB-1804/ND/2019

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

EASY TRIP PLANNERS LIMITED

.... FINANCIAL CREDITOR

VERSUS

KRIARJ ENTERTAINMENT PRIVATE LIMITED.

..... CORPORATE DEBTOR

AND

AND IN THE MATTER OF:

MS. MAYA GUPTA
RESOLUTION PROFESSIONAL OF
M/S. KRIARJ ENTERTAINMENT PRIVATE LIMITED.

.... APPLICANT

SH. MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

PRESENT

For the Resolution Professional: Mr. Kunal Godhwani, Adv

ORDER

PER: RAHUL BHATNAGAR MEMBER (TECHNICAL)

ORDER DELIVERED ON: 12.10.2023

The present application has been filed under Section 30(6) read with Section 31(1) of the Insolvency & Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') by Ms. Maya Gupta Resolution Professional (RP) of M/s. Kriarj Entertainment Private Limited ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by M/s ACAIPL Investment and Financial Services Private Limited ('Successful Resolution Applicant') as approved by the Committee of Creditors ('CoC') in its 10th CoC Meeting held on 03.01.2023.

2. Briefly stated, the facts as averred by the applicant in the application are as follows:

- a) That the Corporate Insolvency Resolution Process against the Corporate Debtor was initiated vide order dated 11.02.2022 and Ms. Maya Gupta was appointed as IRP in the matter.
- b) That the IRP prepared a list of Creditors after verification of claim received pursuant to the Public Announcement within 7 days from the last date of receipt of the claims and constituted Committee of Creditors.
- c) The IRP admitted the following claims of the creditors of the Corporate Debtor

Name of Creditor	Claim received	Claim collated	Voting rights (%)	Remark
M/s Easy Trip Planners Limited	241,525,476	186,932,000	100	
M/s Kewal Garg Production	5,000,000	5,000,000	Nil	Other creditor as per provisions of Regulations 9A of CIRP Regulations, 2016
Janvi Productions	6,914,505	-	Nil	Claim form incomplete, no supporting details except bank A/c for payment, purpose of fund is not cleared



- d) That the IRP convened the first Meeting of Committee of Creditors (“COC”) on 11.03.2022. In the said meeting, the COC resolved to appoint the Applicant i.e., Ms. Maya Gupta as Resolution Professional which was subsequently confirmed by this Tribunal vide order dated 29.03.2022.
- e) That in the 2nd Meeting of CoC, the CoC resolved to publish Expression of Interest/ Form G to invite prospective resolution applicants for submission of Resolution Plan.
- f) That the applicant published Form G on 26.04.2022, inviting expression of interest from the prospective resolution applicants for the purpose of submitting a Resolution Plan in the CIRP for the Corporate Debtor. As per the Form G dated 26.04.2022, published by Applicant, the last date of submission of expression of interest for the purpose of submitting a Resolution Plan was 11.05.2022.
- g) The Applicant received two expressions of interest from the Prospective Resolution Applicant’s for the purpose of submitting the Resolution Plan during the CIRP of Corporate Debtor.
- h) Amongst the two Prospective Resolution Applicants, one was found ineligible and the other Prospective Resolution Applicant was not meeting the eligibility criteria set by the Resolution Professional in consultation with the CoC of Corporate Debtor.
- i) That on 27.05.2022, the above issues were deliberated by the CoC in its 3rd meeting, wherein, it was decided to issue a fresh Form G with revised terms of Invitation of Expression of Interest.
- j) The second Form G was published by the Applicant wherein the last date of submission of the Resolution Plan was envisaged as 15.07.2022.
- k) That in response to Form G dated 27.05.2022 (Second Form G), one Expression of Interest was received from a Prospective Resolution Applicant and having found eligible he was provided with the Information Memorandum and other relevant documents for the purpose of submitting the Resolution Plan in the CIRP of Corporate Debtor.
- l) The Prospective Resolution Applicant was not able to submit the Resolution Plan on or before 15.07.2022 and accordingly, sought an extension till 09.08.2022, the above request of the Prospective Resolution Applicant was placed before the CoC in its 4th meeting held on 03.08.2022, wherein the CoC decided to extend the timeline for submitting Resolution Plan in the CIRP of Corporate Debtor till 17.08.2022.
- m) That in the 7th meeting of the CoC held on 04.11.2022, the Resolution Plan of M/s ACAIPL Investment and Financial Services Private Limited was approved by the CoC of the Corporate Debtor

after detailed discussion and deliberation with 100% voting share. Resolution passed by the CoC is reproduced below:-



RESOLVED THAT, the Resolution Plan submitted by /s ACAIPL Investment and Financial Services Private Limited which conforms to the conditions referred in Section 30(2) of the Insolvency and Bankruptcy Code, 2016, be and is hereby approved by the Committee of Creditors.

RESOLVED FURTHER THAT, the Resolution Professional be and is hereby authorized to submit the Resolution Plan approved by the members of the committee before the Adjudicating Authority as required under section 30(6) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

RESOLVED FURTHER THAT, the consent of Committee of Creditors be and is hereby accorded for the payment of all the expenses to be incurred by the Resolution Professional as CIRP cost during the period from the date of last CoC Meeting till the date of order of Hon'ble Adjudicating Authority approving the resolution plan or liquidation of the Corporate Debtor, as the case may be, on the basis of amount and/or rates already approved by the Committee of Creditors in its meetings for payment of Remuneration to Resolution Professional including fee payable to Advocate and other professional charges and expenses which may be incurred by the Resolution professional in order to maintain the Corporate Debtor as going concern

RESOLVED FURTHER THAT, the consent of Committee of Creditors be and is hereby accorded for the payment of all the expenses to be incurred by the Resolution Professional as CIRP cost during the period from the date of last CoC Meeting till the date of order of Hon'ble Adjudicating Authority approving the resolution plan or liquidation of the Corporate Debtor, as the case may be, on the basis of amount and/or rates already approved by the Committee of Creditors in its meetings for payment of Remuneration to Resolution Professional including fee payable to Advocate and other professional charges and expenses which may be incurred by the Resolution professional in order to maintain the Corporate Debtor as going concern.

RESOLVED FURTHER THAT, the consent of committee of Creditors be and is hereby accorded for the statutory fee being paid to the Insolvency and Bankruptcy Board of India in accordance with the Regulation 31A of the CIRP Regulations, 2016 and same shall form the part of Corporate Insolvency Resolution Process Cost.”



- n) That Sony Pictures Films India Private Limited filed IA No. 4317 of 2022 to consider its claim. This Tribunal vide order dated 09.11.2022 allowed the I.A. No. 4317 of 2022 filed by Sony Pictures Films India Private Limited subject to payment of cost of Rs. 7.5 Lakhs by Sony Pictures Private Limited within a period of 7 working days.
- o) That the eighth meeting of CoC was convened on 15.11.2022 wherein the Resolution Professional informed about the application for condonation of delay in filing of claim by Sony Pictures Films India Pvt. Ltd. for an amount of Rs. 6.83 cr.
- p) In the 9th CoC meeting convened on 24.12.2022 the Applicant informed the members that pursuant to the adjudication upon the application filed by Sony Pictures Films India Pvt. Ltd. for condonation of delay in filing of claim, Resolution Professional filed an application for extension of CIRP period for another 60 days beyond 270 days. Hon'ble Adjudicating Authority extended the period of CIRP process by another 60 days w.e.f. 09.11.2022 and thus, upon consideration of claim of Sony Pictures Films India Pvt. Ltd., the resolution plan submitted by the Successful resolution applicant be modified and accordingly the said decision was communicated to the Resolution Applicant.
- q) In furtherance to the discussions taken place at the meeting, M/s ACAIPL Investment and Financial Services Private Limited, the Resolution Applicant has submitted the modified plan on 02.01.2023 through email after considering the claim of the operational creditor in accordance with the order given by the Hon'ble Adjudicating Authority.
- r) That on receipt of the copy of the plan, the Applicant analysed the plan to check the compliance with the provision of the Code and circulated to the members for their review along with the notice and agenda for the 10th COC meeting and the compliance certificate thereof.
- s) The Resolution Professional conducted the 10th meeting of CoC on 03.01.2023 wherein the members of CoC after detailed discussion and deliberation on the Resolution Plan submitted by the RA on January 2, 2023, asserted that the Resolution Plan is considering the interest of all the stakeholders, thus the Resolution Plan is very much feasible and viable and meets the required provisions of Section 30 of the Code and passed the following resolution with 100% voting share:-
“RESOLVED THAT, the Resolution Plan submitted by /s ACAIPL Investment and Financial Services Private Limited which conforms to the conditions referred in Section 30(2) of the Insolvency and



Bankruptcy Code, 2016, be and is hereby approved by the Committee of Creditors.

RESOLVED FURTHER THAT, the Resolution Professional be and is hereby authorized to submit the Resolution Plan approved by the members of the committee before the Adjudicating Authority as required under section 30(6) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

RESOLVED FURTHER THAT, the consent of Committee of Creditors be and is hereby accorded for the payment of all the expenses to be incurred by the Resolution Professional as CIRP cost during the period from the date of last CoC Meeting till the date of order of Hon'ble Adjudicating Authority approving the resolution plan or liquidation of the Corporate Debtor, as the case may be, on the basis of amount and/or rates already approved by the Committee of Creditors in its meetings for payment of Remuneration to Resolution Professional including fee payable to Advocate and other professional charges and expenses which may be incurred by the Resolution professional in order to maintain the Corporate Debtor as going concern.

RESOLVED FURTHER THAT, the consent of committee of Creditors be and is hereby accorded for the statutory fee being paid to the Insolvency and Bankruptcy Board of India in accordance with the Regulation 31A of the CIRP Regulations, 2016 and same shall form the part of Corporate Insolvency Resolution Process Cost.”

- t) That the Resolution Applicant has submitted an undertaking stating that the Resolution Applicant is eligible under Section 29A of the Code.
- u) That the average fair value is Rs. 17,08,48,353 and average liquidation value is Rs. 1,44,46,080.
- v) The Resolution Applicant has stated in its Resolution Plan that the Resolution Applicant shall pursue all the pending avoidance applications under Sections 43, 45, 49, 50, 56 filed with the Adjudicating Authority, by engaging their own lawyer/law firms. The proceeds received from all these transactions shall be utilized as Working Capital for revival of the business operations of the Corporate Debtor.

3. We have heard the submissions made by the Ld. Counsel for the applicant and have gone through the documents produced on record.

4. That some key features of the Resolution Plan are as follows:



i. **OVERVIEW OF THE CORPORATE DEBTOR**

The Corporate Debtor i.e., Kriarj Entertainment is an Indian motion picture Production Company founded by Ms. Perna Arora. As per the valuation report submitted by Mr. Ram Kamal Saraogi, valuer of Financial Assets, it was submitted that there is no visibility of the assets. However, considering that the Trademark is Registered, it may be purchased by someone for the uniqueness of name & logo and accordingly may get some price. As a token the valuer determined the Fair Value & Liquidation value at Rs. 1/- for the Trademark no. 3288390 registered under certificate no. 1522799.

OVERVIEW OF THE RESOLUTION APPLICANT

- ii. The Resolution Applicant, M/s ACAIPL Investment and Financial Services Private Limited having registered address at D-511, 5th Floor, Kanakia Zillion, Junction of LBS Road & CST Road, B.K.C Annexe, Kurla (West) Mumbai 400070.
- a. The Financial Outlay and Implementation Schedule, as proposed under the Resolution Plan is as follows:

Particulars	Amount	Time Frame
A. Payment towards CIRP Cost: The RA proposes to pay an amount of INR 0.60 Crores towards CIRP Cost, as per the details of CIRP Cost provided by the RP as on September, 2022. Any additional CIRP Cost, which may be incurred from October, 2022, till the approval of the Resolution Plan, shall be subject to	0.60 Crores	On receipt of order of NCLT approval



<p>approval of the Members of the CoC and shall have to be borne/contributed by the Members. As per the IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2022, the fees of the Resolution Professional shall be paid upto the submission of application for approval of resolution plan under Section 30;</p> <p>As per the IBBI (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2022, the regulatory fee to be paid under Regulation 31(A)(2) has been considered under the CIRP Cost and it shall be the duty of the RP to pay the respective amount to the Board</p>		
<p>B) Payment towards Operational Creditors (Workman and Employees dues) No information is provided regarding the outstanding dues of Operational Creditors (Workman and Employees dues). Further, no claim has been received from the</p>	N.A.	N.A.



Operational Creditors (Workman and Employees) by the Resolution Professional.		
C) Payments towards remaining Operational Creditor: The RA proposes to pay an amount of INR. 0.045 Crores towards Operational Creditors pursuant to order passed by the Adjudicating authority admitting an amount of Claim of Sony Pictures Films India Pvt. Ltd as per the terms of this resolution Plan that the aforesaid claim shall be appropriated if the above claim is to be admitted pursuant to approval of the Adjudicating Authority	0.045 Cr.	On receipt of order of NCLT approval
D) Payment towards Financial Creditor: Total consideration is to be distributed between all the financial creditors in the ratio of their voting rights in COC. In case, if any new creditor is added as Financial Creditor by order of the Adjudicating Authority, then the said Creditor shall be paid within the plan value in proportion to the ratio of their voting rights	0.35 Crores	On receipt of order of NCLT approval



E) Payment to other Creditors	0.005 crores	On receipt of order of NCLT approval
F) Payment to Shareholders, Related party dues, Contingency Liability	NA	NA
G) Working Capital: RA will infuse funds as per the working capital requirement of corporate debtor	NA	As and when required

iii. The amount provided for the stakeholders under the Resolution Plan is reproduced as under: -

Sr. No	Name of the Creditor	Type of Creditor	Claim amount admitted	Settlement Amount
1.	Easy Trip Planners Limited	Unsecured Financial Creditor	18.69 Cr	0.35 Cr.
2.	Keval Garg Production	Other Creditor	0.50 Cr.	0.005.
3.	Sony Pictures Films India Pvt. Ltd	Operational Creditor	6.83 Cr.	0.045 Cr.

iv. That the final Resolution Plan submitted by SRA meets the requirements of Section 30(2) of the Code as under: -

Section	Provisions under Section 30(2) of the Code	Compliance under Resolution Plan
30(2)(a)	provides for the payment of insolvency resolution process costs in a manner specified by	YES Clause 5.2 of the Resolution Plan



	<p>the Board in priority to the payment of other debts of the corporate debtor;</p>	<p>provides for payment of the Insolvency Resolution Process Cost. The RA has provided as under:</p> <p>The RA proposes to pay an amount of INR 0.60 Crores towards CIRP Cost, as per the details of CIRP Cost provided by the RP as on September, 2022. Any additional CIRP Cost, which may be incurred from October, 2022, till the approval of the Resolution Plan, shall be subject to approval of the Members of the CoC and shall have to be borne/contributed by the Members. The EMD of 1 Crore shall be adjusted/utilized towards payment of the above mentioned CIRP Cost. In terms of Section 30(2) (a) of the IBC, the CIRP costs are to be paid in priority to any other Creditor of the Corporate debtor. Accordingly, RA have</p>
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		proposed to allocate INR 0.60 Crores towards CIRP which will be paid in priority to all other debt
30(2)(b)	provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than- <ul style="list-style-type: none">(i) the amount to be paid to such creditors in the event of a 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	Yes Clause 5.3 and 5.4 of the Resolution Plan
30(2)(c)	provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;	Yes Clause 6 of the Resolution Plan provides for the



		management of the affairs of the Corporate Debtor.
30(2)(d)	the implementation and supervision of the resolution plan;	Yes Clause 8 of the Resolution Plan provides for the implementation and supervision of the Resolution Plan.
30(2)(e)	does not contravene any of the provisions of the law for the time being in force	Yes Statement has been included in the Resolution Plan in Clause 12.8.
30(2)(f)	conforms to such other requirements as may be specified by the Board.	Yes Statement has been included in the Resolution Plan in Clause 12.8.

- v. The Resolution Applicant has stated in its Resolution Plan that the Resolution Applicant shall pursue all the pending avoidance applications under Sections 43, 45, 49, 50, 56 filed with the Hon'ble Adjudicating Authority, by engaging their own lawyer/law firms. The proceeds received from all these transactions shall be utilized as Working Capital for revival of the business operations of the Corporate Debtor.
- vi. The Resolution Applicant has submitted plan value of Rs. 100 Lakh at the time of submission of resolution plan in August 2022 however, after as per the modified Resolution Plan the RA provide additional 3.50 Lakhs to Sony Pictures Films India Private Limited

vii. That the Resolution Applicant has submitted an undertaking stating that the Resolution Applicant is eligible under Section 29A of the Code. Copy of undertaking submitted by the Resolution Applicant under Section 29A of the Code is annexed with this application.



viii. Mandatory Contents as specified under Regulation 38 of IBBI CIRP Regulations 2016 are as under: -

Regulation	Provisions under Regulation 38 of IBBI CIRP Regulations 2016.	Compliance under Resolution Plan
38(1)(a)	The amount payable under a resolution plan – (a) to the operational creditors shall be paid in priority over financial creditors; and (b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.]	Yes Clause 5.3, 5.4 and 9.2
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.]	Yes Clause 5 and 9
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has	Yes Clause 9



	failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.]	
38(2)(a)	A resolution plan shall provide the term of the plan and its implementation schedule;	Yes Clause 8
38(2)(b)	A resolution plan shall provide the management and control of the business of the corporate debtor during its term; and	Yes Clause 8
38(2)(c)	A resolution plan shall provide adequate means for supervising its implementation	Yes Clause 7 and 8
38(2)(d)	provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed:	Resolution Applicant shall pursue all the pending avoidance applications under Sections 43, 45, 49, 50, 56 filed with the Hon'ble Adjudicating Authority, by engaging their own lawyer/law firms. The proceeds received from all these transactions shall be utilized as Working Capital for revival of the business operations of the Corporate Debtor.
38(3)(a)	A resolution plan shall	Yes



	demonstrate that – it addresses the cause of default;	Clause 4
38(3)(b)	A resolution plan shall demonstrate that – it is feasible and viable;	Yes Clause 9
38(3)(c)	A resolution plan shall demonstrate that – it has provisions for its effective implementation;	Yes Clause 8
38(3)(d)	A resolution plan shall demonstrate that – it has provisions for approvals required and the timeline for the same; and	Yes Clause 10
38(3)(e)	A resolution plan shall demonstrate that – the resolution applicant has the capability to implement the resolution plan.]	Yes Clause 9

- x. There are no objections to the Resolution Plan by any of the stakeholders.
- xi. With respect of compliance regarding Regulation 39(4) of the CIRP Regulations, the applicant has filed compliance certificate in Form-H certifying that the Resolution Plan submitted by the successful resolution applicant meets the requirements as laid down in various sections of the Code and the CIRP Regulations and there are sufficient provisions in the Plan for its effective implementation as required under the Code. Further, an affidavit has been obtained from the Successful Resolution Applicant stating that he is not ineligible under the provisions of Section 29A of the Code, 2016.
- xii. The applicant has prayed for number of waivers in the Resolution Plan. As to the relief and concessions sought in the resolution plan, by taking into consideration the decision of the Hon'ble Supreme Court in the matter of **Embassy Property Development Private Limited v. State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019**, we direct the Successful Resolution Applicant to file necessary application before the necessary forum/ authority in order to avail

the necessary relief and concessions, in accordance with respective laws. The relevant part of the judgement is reproduced herein below:-

39. *Another important aspect is that under Section 25 (2) (b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:*

“25. Duties of resolution professional –

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions:-

(a).....

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings.”

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”

5. In so far as the approval of the resolution plan is concerned, this Adjudicating Authority is duty bound to follow the judgement of the **Hon’ble Supreme Court in the matter of K.Sashidhar v. Indian Overseas Bank (2019) 12 CC 150**, wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as follow:-



35. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 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. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.

6. Also the Hon’ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019, vid its judgement dated 15.11.2019** has observed as follows:

“38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best

resolution plan, which is finally accepted after negotiation of its terms by such Committee with Prospective resolution applicants.”




7. It is observed that the Resolution Plan value is less than the Liquidation value of the Corporate Debtor, However, the Hon'ble Supreme Court in in the matter of *Maharashtra Seamless Steel Ltd. v. Padmanabhan Venkatesh & Ors Civil Appeal No. 4242 of 2019* upheld the primacy of 'commercial wisdom' of the Committee of Creditors and held that the approved resolution plan can provide for payment of amounts lower than the liquidation value of the Corporate Debtor if it complies with the provisions of Section 30 (2) (b) of the IBC. Relevant paras of the aforesaid judgement is reproduced as under: -

*17. We shall address two issues in this appeal. **The first one is whether the scheme of the Code contemplates that the sum forming part of the resolution plan should match the liquidation value or not.***

...

*26. **No provision in the Code or Regulations has been brought to our notice under which the bid of any Resolution Applicant has to match liquidation value arrived at in the manner provided in Clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.** This point has been dealt with in the case of *Essar Steel (supra)*. We have quoted above the relevant passages from this judgment.*

*27. **It appears to us that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Once, a resolution plan is approved by the CoC, the statutory mandate on the Adjudicating Authority under Section 31(1) of the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4)***



of Section 30 thereof. We, per se, do not find any breach of the said provisions in the order of the Adjudicating Authority in approving the resolution plan.

8. Thus, from the judgements cited supra, it is amply clear that only limited judicial review is available to the Adjudicating Authority under Section 30(2) read with Section 31 of the Code, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the committee of the creditors. The CoC discussed the aspect that the Resolution Plan's value is less than the liquidation value. Despite the lower value, the CoC with a 100% voting share approved the Resolution Plan in its 10th CoC meeting
9. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan. Accordingly, we hereby **approve the Resolution Plan**, which shall be binding on the corporate debtor and its employees, shareholders of corporate debtor, creditors including the Central Government, any State Government or any local authority to whom statutory dues are owed, guarantors, successful resolution applicant and other stakeholders involved. In view of the above, **I.A. 678/ND/2023 stands allowed.**
10. It is declared that the moratorium order passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of pronouncement of this order.
11. However, the resolution plan shall not be construed as waiver to any statutory obligations/liabilities arising out of the approved resolution plan and the same shall be dealt in accordance with the appropriate authorities concerned as per relevant laws. We are of the considered view that if any waiver is sought in the resolution plan, the same shall be subject to approval by the concerned authorities. The same view has been held by the Hon'ble Supreme Court in **Ghanshyam Mishra and**

Sons Private Limited vs. Edelweiss Asset Reconstruction Company

Limited and Embassy Property Development case (supra).



Accordingly, MoA and AoA of the corporate debtor shall be amended and filed with the RoC for information and record as prescribed. While approving the 'resolution plan' as mentioned above, it is clarified that the resolution applicant shall pursuant to the resolution plan approved under section 31(1) of the Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for such in law.

13. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the corporate debtor and the Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code. The Resolution Professional is further directed to handover all the records, premises, properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.
14. The approved 'Resolution Plan' shall become effective from the date of passing of this order. The Approved Resolution Plan shall be part of this order.
15. Let the copy of the order be served to the parties

SD/-

(RAHUL BHATNAGAR)
MEMBER TECHNICAL

SD/-

(MAHENDRA KHANDELWAL)
MEMBER JUDICIAL