

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**IA No.3878(PB)/2021
IN
CP (IB) No.1935(PB) 2019**

Application under sections 30(6) and 31(1) 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 for approval of Resolution Plan.

In the matter of

ICICI Bank Limited	...	Financial Creditor
Versus		
SMS Paryavaran Limited	...	Corporate Debtor

Memo of parties

In the matter of

Sajeve Bhushan Deora, Resolution Professional of SMS Paryavaran Limited.	...	Applicant
Versus		
Consortium of Mr. Sudhir Narayanrao Modak, Mr. Manimay Sengupta , Mr. Munendra Kumar Singh and Mr. Anil Khandelwal	...	Proforma Respondent

Order pronounced on: 21.02.2023

Coram:

Chief Justice (Retd.) Ramalingam Sudhakar	:	Hon'ble President
Shri Avinash K. Srivastava	:	Hon'ble Member (Technical)

Appearances :

For the RP	:	Mr. Sajeve Bhushan Deora, RP
For the SRA	:	Mr. Abhishek Anand, Advocate
FOR COC	:	Mr. Ankur Mittal, Advocate

ORDER

Per: Chief Justice (Retd.) Ramalingam Sudhakar, President

1. Preliminary

1.1. The present interlocutory application bearing IA No.3878 (PB) 2021 was moved on behalf of Mr. Sajeve Bhushan Deora Resolution Professional ("**RP**") of SMS Paryavaran Limited. (CIN

U41000DL1992PLC047372), under the provisions of Sections 30(6) and 31(1) of the Insolvency & Bankruptcy Code, 2016 [hereinafter referred to as **“the Code”** or **“IBC”**] read with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**“CIRP Regulations”**) for approval of the Resolution Plan in respect of SMS Paryavaran Limited. (**“Corporate Debtor”**).

- 1.2. The corporate debtor is involved in collection, purification and distribution of water.
- 1.3. The underlying Company Petition CP (IB) No.1935(PB)2019 filed by ICICI Bank Limited under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (**“CIRP”**) of the Corporate Debtor was admitted by this Adjudicating Authority vide its order dated 03.01.2020 and Mr. Sajeve Bhushan Doera was appointed as IRP, who was later confirmed as RP by this Adjudicating Authority on 05.03.2020

2. Collation of claims by RP

The Applicant submits that public announcement was made by the IRP on 09.01.2020 in *Financial Express (English)* and *Jansatta (Hindi) (Delhi Edition)* and called for proof of claims from the creditors of the Corporate Debtor. Pursuant to the collation and verification of claims received, the COC was constituted on 24.01.2020 and further reconstituted on 13.02.2020 and 11.05.2021 with six financial Creditors. The total admitted debt due to the financial creditors is as under:

Financial Creditors	Voting Share
Canara Bank	27.39%
IDBI Bank	22.22%
State Bank of India	21.31%
ICICI Bank Limited	18.32%
SIDBI	5.97%
HDFC Bank Limited	4.79%
Total	100%

- 2.1. The RP submits that a total of Thirty Seven CoC meetings have been held during CIRP period.
- 2.2. The appointed registered valuers have submitted their reports providing the fair value of the corporate debtor as Rs. 29,50,65,524/- and liquidation value of the Corporate Debtor as Rs.25,49,89,617/- as per the valuation report.
- 2.3. This Adjudicating Authority has granted a total number of Six extensions in the whole CIR Process on 01.10.2020, 14.12.2020, 22.02.2021, 13.04.2021, 31.05.2021 and 26.07.2021 respectively.

3. Evaluation and voting

- 3.1 The Applicant submits that invitation for Expression of Interest (EoI) in Form-G was issued on 18.03.2020 and was again published with revised timelines on 16.06.2020 due to Covid lockdowns by way of a public notice ("**Public Notice**") whereby prospective resolution applicants (**PRA**) were invited to submit

the EoIs for submitting a resolution plan of the Corporate Debtor on or before 02.09.2020, which was further extended till 30.09.2020.

- 3.2. In pursuant thereto, two PRAs submitted their Resolution Plan till the last date of submission of Plan, they are namely:
- i. Rean Group (consortium of Rean Watertech Private Limited, Boson Green Ventures LLP and Mr. Hitesh Arora)
 - ii. SNM Group (consortium of Mr. SN Modak, Mr. MK Singh and Mr. Manimay Sengupta, Directors of the CD and Mr. Anil Khandelwal, Practicing Chartered Accountant)
- 3.3. It is stated that SNM Group requested that their Resolution Plan be considered without deposit of EMD as they are promoters of the corporate debtor and the latter is a MSME enterprise. The request was not accepted by COC to which the SNM group filed an application against the order of COC which was dismissed by Adjudicating Authority and was also further dismissed by Hon'ble NCLAT.
- 3.4. The resolution plan submitted by Rean Group was opened in the COC meeting dated 01.10.2020 and the resolution plan of SNM Group was opened after submission of EMD amount of Rs. 100 lakhs in the COC meeting dated 03.12.2020.
- 3.5. Thereafter, the proposed Resolution applicants were asked to revise their plan and to improve their financial offers. The plan was circulated to the members of COC on 05.05.2021 and was put up for voting from 14.05.2021 to 30.07.2021.
- 3.6. Pursuant thereto, the resolution plan of Rean Group was

unanimously rejected by members of COC and the Resolution Plan submitted by the Successful Resolution Applicant i.e SNM Group was approved by a majority of 72.99% voting share by the CoC on 30.07.2021 and the application for approval of the resolution plan by this Adjudicating Authority was filed by the RP on 16.08.2021.

- 3.7. During the hearing of the Resolution plan on 02.11.2022, Mr Ankur Mittal , Learned Counsel for the COC stated that he will get instruction from COC for continuance of adjudication of Resolution plan application, subsequent to the PUFEE transactions applications being pending before this Adjudicating Authority.
- 3.8. Subsequently on 02.12.2022, on query by the bench regarding the COC decision, the learned Counsel for RP stated that the COC has taken the decision to proceed with the approval of Resolution Plan application and the learned counsel for the COC also agreed to the same and had not objected the contention as raised by the learned Counsel for the RP. Thereafter the matter was heard and the order was reserved.

4. Details of Resolution Plan/Payment Schedule

- 4.1. The successful Resolution Applicant i.e SNM Group is a consortium of the promoters of the corporate debtor. The consortium members are eligible to submit a resolution Plan under the exemption as specified in Section 240 A(1) of the IBC, 2016 being the promoter of the MSME. Another member of the consortium is Mr. Anil Khandelwal, a practicing CA and a businessman with sound financial background.

4.2. The Successful resolution Applicant stated that the cause of default has been the shortage of working capital, cancellation of orders by government agencies and non implementation of SDR Scheme. The SRA has addressed the reason for insolvency by way of arranging sub contracts for execution of the work and also by arranging credits for buying of raw materials through client's regular suppliers and also by way of arranging funds from NBFC/ surplus from internal accruals.

4.3. The financial proposal/ payment under the resolution Plan has three component which are tabulated as under:

Component 1: Bid amount Rs. 5.30 Cr

Rupees in Crores		
Sl. No.	Particulars	Amount
1.	Admissible debt to be paid upfront to the CIRP	1.42
2.	Admissible debt to be paid upfront to the Operational Creditors	0.13
3.	Admissible debt to be paid upfront to the Financial Creditors	2.83
4.	Admissible debt to be paid upfront to the workmen/ employees	0.46
5.	Statutory Liabilities	0.10
6.	Monitoring Committee Charges	0.36
	Total	5.30

Component 2: Additional amount to Bank FCs- Rs. 15.50 Cr

A	Cost of Scheme	Proposed Payment (Rs. Cr)	Repayment Tenure			
			E+90	E+350	E+2	Total
1.	Proposed Additional Payments to Financial Creditors from internal accruals/ funding against arbitration awards/ loans	15.50	0.00	5.67	9.83	15.50
	Cost of Scheme (Additional Amount FC)	15.50	0.00	5.67	9.83	15.50

Component 3: Rs.12.18 cr. as pass through payment to Bank FCs out of which Rs. 60.09 Cr. is firm amount.

As RA proposes to distribute 21% of the amounts received in bank from the arbitration awards during the period of 7 years from effective date, which is expected to be Rs. 12.18 Crores. The amounts are estimated realization, which may or may not be received and realized. As such the amount that RA proposes to pay additionally from these awards to the Bank FC's, which will be 21% of recovery is likely to vary. However, RA agrees to pay minimum amount of Rs. 6.09 Cr and a maximum of Rs. 12.18 Cr within a period of 7 years irrespective of the amount of the outcome of Arbitration Awards.

Creditors	Guaranteed Firm payment as per 2 year Plan	Pass through payments offered from arbitration awards estimated to be received upto E+ 7 years.	Total
Financial Secured Creditor	18.33	12.18	30.51

5. Compliance of the successful Resolution Plan with various provisions:

- 5.1. The Applicant has submitted the details of various compliances as envisaged by the Code and the CIRP Regulations which a Resolution Plan is required to adhere to, as follows:

Compliance with Section 30(2) of the Code:

Clause of sec. 30(2)	Requirement	How dealt with in the Plan
(a)	Provides for the payment of Insolvency Resolution Process Cost.	Clause 2.7(a) at Pg 27 of the Resolution Plan.
(b)	Plan provide for payment to the Operational Creditors	Clause 2.7(b) and (c) at page 28 and 29 of the Resolution Plan.
(c)	Plan provides for payment to the Financial Creditors who did not vote in favour of the resolution Plan.	Clause 2.7(d) at Pg 29 of the Resolution Plan.
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause 2.10 at Pg 39 and 40 of the Resolution Plan.
(d)	Implementation and Supervision of Resolution Plan.	Clause 2.9 at Pg 38 and 39 of the Resolution Plan.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Clause 2.11 at Pg 40 of the Resolution Plan.
(f)	Conforms to such other requirements as may be specified by the Board	Clause 2.13 at Pg 41 of the Resolution Plan.

Contents of Resolution Plan in terms of Regulation 37 of CIRP Regulations:

Regulation	Requirement	How dealt with in the Plan
A resolution Plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximisation of value of its assets, including but not limited to the following:		
(a)	transfer of all or part of the assets of the corporate debtor to one or more persons;	Sale of assets is provided in case needed by the Resolution Applicant. Clause 2.6, Point 7 provides that <i>“if needed, RA proposes to sell off Corporate Debtor properties, with prior permission from Monitoring Committee and proceeds will be used towards the proposed payments under the plan.”</i>
(b)	sale of all or part of the assets whether subject to any security interest or not;	Sale of assets is provided in case needed by the Resolution Applicant. Clause 2.6, Point 7 provides that <i>“if needed, RA proposes to sell off Corporate Debtor properties, with prior permission from Monitoring Committee and proceeds will be used towards the proposed payments under the plan.”</i>
(c)	the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	Not provided in the Resolution Plan

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Regulation	Requirement	How dealt with in the Plan
(d)	the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	Not provided in the Resolution Plan
(e)	Cancellation or delisting of any shares of corporate debtor, if applicable	Extinguishment of existing shares of the company: Clause 2.4(a) at Pg 21- 22 of the Resolution Plan
(f)	satisfaction or modification of any security interest;	The resolution plan provides that the “ existing security interest and structure will continue till the payments of firm amount of Rs. 20.80 Cr.(Rs. 5.30 Cr as bid amount and Rs. 15.5 Cr as firm additional payments in 2 years . Clause 2.6(a) at Pg 24 of the Resolution Plan
(g)	curing or waiving of any breach of the terms of any debt due from the corporate debtor;	NA
(h)	reduction in the amount payable to the creditors;	Clause 2.3(d) at Pg 19 and Pg 19 and Pg 20 of the Resolution Plan.
(i)	extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	NA

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Regulation	Requirement	How dealt with in the Plan
(j)	amendment of the constitutional documents of the corporate debtor;	NA
(k)	issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	NA
(l)	change in portfolio of goods or services produced or rendered by the corporate debtor;	NA
(m)	change in technology used by the corporate debtor; and	NA
(n)	Obtaining necessary approvals from the Central and State Governments and other authorities.	Clause 2.8(d) at Pg 37 of the Resolution Plan.

Mandatory contents of Resolution Plan in terms of Regulation 38(1) of CIRP Regulations:

Regulation	Requirement	How dealt with in the Plan
38(1)	(a) The amount payable to the operational creditors under a resolution plan shall be paid in priority over financial creditor.	Clause 2.7(c) at Pg 28-29 of the Resolution Plan.
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	Clause 2.12 at Pg 27-35 of the Resolution Plan.

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Regulation	Requirement	How dealt with in the Plan
	operational creditors of the corporate debtor.	
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has 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.	Clause 2.12 at Pg 144 of the Resolution Plan.
38(2)	A resolution plan shall provide:	
	(a) the term of the plan and its implementation schedule;	Clause 2.8 at Pg 35-38 of the Resolution Plan
	(b) the management and control of the business of the corporate debtor during its term; and	Clause 2.10 at Pg 39-40 of the Resolution Plan
	(b) Adequate means for supervising its implementation	Clause 2.4 at Pg 21-22 of the Resolution Plan
38(3)	A resolution plan shall demonstrate that-	
	(a) it addresses the cause of default;	Clause 4 at Pg 45-46 of the Resolution Plan
	(b) it is feasible and viable;	Clause 6 at Pg 46-48 of the Resolution Plan
	(c) it has provisions for its effective implementation;	Clause 2.9 at Pg 38-39 of the Resolution Plan
	(d) it has provisions for approvals required and the timeline for the same; and	Clause 2.8(d) at Pg 36-38 of the Resolution Plan
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Clause 2.4 at Pg 21-22 of the Resolution Plan

5.2. The Applicant submits that each member of SNM Group being

the successful resolution applicant has submitted an affidavit in regard to the eligibility under section 29A of the Code, as required by Regulation 39(1)(a) of the CIRP Regulations. An undertaking has also been submitted by the successful Resolution Applicant, as mandated in terms of regulation 39(1)(c) of the CIRP Regulations.

- 5.3. The Applicant has filed a Compliance Certificate in prescribed Form, i.e Form 'H' in compliance with Regulation 39(4) of the CIRP Regulations¹. The RP has issued the Letter of Intent to the Successful Resolution Applicant on 11.08.2021. Evidence of receipt of performance Security is not annexed with the present application. Thus, the RP is hereby directed to report compliance and submit a copy of the duly renewed PBG, coterminous with the tenure of Resolution Plan, within one week from the date of this order.

6. Details of Resolution Plan/ Payment Schedule

- 6.1. The Applicant submits the relevant information about the amount claimed, amount admitted, and the amount proposed to be paid by the Successful Resolution Applicant, *i.e.*, SNM Group, under the said Resolution Plan is tabulated as under:

Sl. No.	Category of Stakeholder	Sub category	Amount Claimed	Amount Admitted	Amount provided under the Plan	Amount Provided to the Amount claimed (%)
1.	Secured Financial Creditors		₹142,12,20,550	₹1,36,18,87,824	₹24,42,00,000	17.93%

¹ Page 162-193 of the Application

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2.	Unsecured Financial Creditors		₹12,15,20,000	₹4,36,17,610	-	-
3.	Operational Creditors	(a) Related Party of the Corporate debtor	₹3,06,95,040	₹21,39,330	-	-
		(b) Other than (a) above				
		(i) Government	₹4,48,75,897	₹4,46,48,317	₹10,00,000	2.24%
		(ii) Employees	₹8,29,23,173	₹3,48,35,060	₹46,00,000	13.21%
		(iii) Operational Creditors	₹30,10,65,451	₹5,98,45,138	₹13,00,000	2.17%
		Total((a)+(b))	₹45,95,59,561	₹14,14,64,845	₹69,00,000	0.06%
4	Other Debts and dues		-	-	-	-
Grand Total			₹200,23,00,111	₹154,69,70,279	₹25,11,00,000	-

6.2. The pass through Payments (not firm) of up to amount of Rs. 6.09 Crores has been provided by the Resolution Applicant, which has not been considered in the “ Amount provided under the Plan “ column in above table. The same would be distributed to all financial creditors (Secured), including Dissenting Financial Creditors, in voting Share percentage on receipt.

6.3. The above amounts are exclusive of CIRP costs to be paid by the Resolution Applicant.

6.4. The Resolution plan size is approximately ₹32,88,00,000/- (Rupees Thirty two Crores Eighty Eight Lakhs Only). The

Resolution Plan defines “**Effective Date**” as the date on which the approval to the resolution Plan is granted by this Adjudicating Authority.

7. Monitoring Committee

7.1. The monitoring Committee shall comprise of 5 members which include:

- a. 2(two) representative of the Financial Creditors;
- b. 2(Two) representative of the Resolution Applicant;
- c. The Resolution Professional

8. Term of Plan and its implementation Schedule is extracted below:

RA has proposed following Term of the plan and its implementation Schedule:

Sr. No.	Activity	Timeline for completion
	APPROVAL PROCESS OF THE PROPOSED PLAN	
	Final Approval by NCLT/Adjudicating Authority (“Effective date”)	E
	Closing Date shall be E+120 days	C=E+120 Days
	RA to assume full control of the Corporate Debtor	C
	Upon approval of this Resolution Plan by the Adjudicating Authority, the Monitoring Committee shall be appointed with members as indicated in the Resolution Plan.	E
	Intimation to all creditors, existing shareholders, and other stake holders of the Company	E+14 days
	Other approvals and filings required under the plan as defined in terms of section 31(iv) (“Effective date”) <ul style="list-style-type: none"> - Filing of various documents with NCLT, ROC - Other Authorities Such extended timelines as prescribed by the COC	E+365 days

	or the Adjudicating Authority	
	Change the Memorandum and Articles of Association, amendment of the constitutional documents of the corporate debtor (as applicable) and other documentation as required under the proposed plan, after obtaining necessary approvals from Monitoring Committee.	C
CAPITAL INFUSION		
	Extinguishment of Existing Shares of the company	C
	Infusion of RA contribution of Rs 0.25 Cr as Equity Share Capital.	E+90 days
	Infusion of RA's contribution of Rs. 5.05 Cr as Unsecured Loan (Quasi Equity)/or generating internal accruals more than this amount.	E+350 days
	Internal Accruals/Funding against Arbitration awards/Loans – Rs 5.67 Cr	E+350 days
	Internal Accruals/Funding against Arbitration awards/Loans – Rs 9.83 Cr	E+2 Years
	Management of Company (i) Reconstitution of new Board; (ii) Appointment of key managerial personnel; and (iii) Resolution Applicant shall appoint statutory auditors of their choice, subject to applicable regulations.	C C C
Payment of CIRP Costs as approved by CoC		
	Payment of CIRP Costs as approved by CoC	E+90 days
	Payment of Operational Creditors	E+90 days
	Payment to Financial Creditors	E+90 Days – Rs 0.50 Cr E+350 Days – Rs 8.00 Cr E+2 Years – Rs 9.83 Cr

9. Details on fraudulent and avoidance transaction

9.1. The Resolution Plan provides in Clause 2.16 and 2.17 at Page 41 of the Resolution Plan that the avoidable transactions applications shall be continued to be pursued by the Resolution

Professional or Monitoring Committee even after the approval of the Resolution Plan and the benefits accruing, if any, from the avoidance transaction application shall accrue to the financial creditors of the Corporate debtor.

9.2. It is directed that since the benefits from the avoidance applications will accrue to the Financial Creditors, hence, we deem it proper that the avoidance applications be pursued by the Financial Creditors.

10. Waivers, Reliefs and Exemptions

The SRA has prayed for the reliefs, waivers and concessions as enumerated under the Resolution Plan approved by the CoC , namely, that from the plan approval date all inquiries, investigation and proceedings, whether civil or criminal, suits, claims, disputes, interests and damages in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the plan approval date, or arising on account of implementation of this Resolution Plan, shall stand withdrawn, satisfied and discharged. From the date of approval of the 'Resolution Plan', the Resolution Applicant shall be legally authorized to seek appropriate orders from respective authorities/courts/tribunals for renewal of licenses/withdrawal/dismissal or abetment of the proceedings as the case may be.

11. Analysis & Findings:

11.1. The Hon'ble Supreme Court in the matter of **Committee of Creditors of Essar Steels -Vs- Satish Kumar Gupta & Ors. in Civil Appeal No. 8766 – 67 of 2019** at para 42 has held as follows;

42.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.

11.2. The Supreme Court in its recent decision in **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Ltd. & Ors.** in *Civil Appeal no. 3395 of 2020* dated 24.03.2021 has held as follows;

76. The expositions aforesaid make it clear that the decision as to whether corporate debtor should continue as a going concern or should be liquidated is essentially a business decision; and in the scheme of IBC, this decision has been left to the Committee of Creditors, comprising of the financial creditors. Differently put, in regard to the insolvency resolution, the decision as to whether a particular resolution plan is to be accepted or not is ultimately in the hands of the Committee of Creditors; and even in such a decision making process, a resolution plan cannot be taken as approved if the same is not approved by votes of at least 66% of the voting share of financial creditors. Thus, broadly put, a resolution plan is approved only when the collective commercial wisdom of the financial creditors, having at least 2/3rd majority of voting share in the Committee of Creditors, stands in its favour.

77. In the scheme of IBC, where approval of resolution plan is exclusively in the domain of the commercial wisdom of CoC, the scope of judicial review is correspondingly circumscribed by the provisions contained in Section 31 as regards approval of the Adjudicating Authority and in Section 32 read with Section 61 as regards the scope of appeal against the order of approval.

77.1. Such limitations on judicial review have been duly underscored by this Court in the decisions above-referred, where it has been laid down in explicit terms that the powers of the Adjudicating Authority dealing with the resolution plan do not extend to examine the correctness or otherwise of the commercial wisdom exercised by the CoC. The limited judicial review available to Adjudicating Authority lies within the four corners of Section 30(2) of the Code, which would essentially be to examine that the

resolution plan does not contravene any of the provisions of law for the time being in force, it conforms to such other requirements as may be specified by the Board, and it provides for: (a) payment of insolvency resolution process costs in priority; (b) payment of debts of operational creditors; (c) payment of debts of dissenting financial creditors; (d) for management of affairs of corporate debtor after approval of the resolution plan; and (e) implementation and supervision of the resolution plan.

77.2. The limitations on the scope of judicial review are reinforced by the limited ground provided for an appeal against an order approving a resolution plan, namely, if the plan is in contravention of the provisions of any law for the time being in force; or there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period; or the debts owed to the operational creditors have not been provided for; or the insolvency resolution process costs have not been provided for repayment in priority; or the resolution plan does not comply with any other criteria specified by the Board

77.6.1. The assessment about maximisation of the value of assets, in the scheme of the Code, would always be subjective in nature and the question, as to whether a particular resolution plan and its propositions are leading to maximisation of value of assets or not, would be the matter of enquiry and assessment of the Committee of Creditors alone. When the Committee of Creditors takes the decision in its commercial wisdom and by the requisite majority; and there is no valid reason in law to question the decision so taken by the Committee of Creditors, the adjudicatory process, whether by the Adjudicating Authority or the Appellate Authority, cannot enter into any quantitative analysis to adjudge as to whether the prescription of the resolution plan results in maximisation of the value of assets or not. The generalised submissions and objections made in relation to this aspect of value maximisation do not, by themselves, make out a case of interference in the decision taken by the Committee of Creditors in its commercial wisdom

78. To put in a nutshell, the Adjudicating Authority has limited jurisdiction in the matter of approval of a resolution plan, which is well defined and circumscribed by Sections 30(2) and 31 of the Code read with the parameters delineated by this Court in the decisions above referred. The jurisdiction of the Appellate Authority is also circumscribed by the limited grounds of appeal provided in Section 61 of the Code. In the adjudicatory process

concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by the CoC. Within its limited jurisdiction, if the Adjudicating Authority or the Appellate Authority, as the case may be, would find any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by Code and exposted by this Court.

- 11.3. Thus, from the catena of judgments rendered by the Hon'ble Supreme Court on the scope of approval of the Resolution Plan, it is amply made clear that only limited judicial review is available for the Adjudicating Authority under Section 30(2) and Section 31 of IBC, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the Committee of Creditors.
- 11.4. On hearing the submissions made by the Ld. Counsel for the Resolution Professional and perusing the record, we find that the Resolution Plan has been approved by the CoC with 72.99% of the members voting in favour of the Resolution Plan. As per the CoC, the Plan meets the requirement of being a viable and feasible revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Bench.
- 11.5. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- 11.6. The reliefs, concessions and waivers sought by the Successful Resolution Applicant will be dealt with strictly as per law.
- 11.7. Further for any approvals that may be required from Govt Authorities (including tax authorities) in connection with the implementation of

the Resolution Plan necessary applications in this regard shall be made before the appropriate authorities, who shall consider the same keeping in view the letter and spirit of the Insolvency and Bankruptcy Code, 2016 which is to enable a fresh start for the corporate debtor.

- 11.8. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.
- 11.9. In case of non-compliance of this order or withdrawal of Resolution Plan within the stipulated time, in addition to other consequences which follow under law, the CoC shall forfeit the EMD amount already paid by the Resolution Applicant as well as the Performance Bank Guarantee.

12. Orders

- 12.1. Subject to the observations made, IA No. 3878(PB) 2021 is allowed and the Resolution Plan of ₹32,88,00,000/- ((Rupees Thirty two Crores Eighty Eight Lakhs Only) is hereby **approved. The Resolution Plan shall form part of this Order.**
- 12.2. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect.
- 12.3. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
- 12.4. It is also directed that since the benefits from the avoidance applications will accrue to the Financial Creditors, we deem it proper that the avoidance applications be pursued by the Financial Creditors.
- 12.5. The RP is also directed to submit the following documents within one

week of this order:

- i. The duly renewed PBG, coterminous with the tenure of Resolution Plan.
 - ii. The minutes of the COC meeting in which COC decided to go ahead with the approval of Resolution Plan, pending PUFEE transactions applications as submitted by the learned counsel for the COC and RP during the hearing on 02.12.2022.
 - iii. Annexure A as mentioned in Pg. 120 Para (c) of the application, which proves the existence of the corporate debtor as MSME.
 - iv. Details regarding the amount of Rs. 2,55,34,370/- as mentioned in Pg. 172 of the application whether be included in the plan size or not.
- 12.6. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- 12.7. **IA (IB) No.3878 (PB) 2021** shall stand ***disposed of*** accordingly.
- 12.8. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
- 12.9. Liberty is hereby granted for moving any application if required in connection with implementation of this Resolution Plan.
- 12.10. A copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies, NCT of Delhi & Haryana.
- 12.11. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those

duties that are enjoined upon him for implementation of the approved Resolution Plan.

- 12.12. The Resolution Professional is further directed to hand over all records, premises/ factories/documents available with it to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records and premises through the Resolution Professional to finalise the further course of action required for starting of operations of the Corporate Debtor.
- 12.13. The Registry is directed to send copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 12.14. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities

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RAMALINGAM SUDHAKAR
PRESIDENT

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AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)