NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)

PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 23.03.2022 AT 10.30 AM

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
TCP(IB) No.22/9/AMR/2019	IA(IBC)/31/2022, IA(IBC)/67/2021	9 of IBC	VST Weaves India Pvt Ltd Vs Shivaram Yarns Pvt Ltd

Counsel for Petitioner(s):
Ries

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):
Ries

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

IA(IBC)/31/2022 is dismissed, vide separate orders.

IA(IBC)/67/2021 is allowed, vide separate orders.

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH

I.A.No.31 of 2022
IN
TCP (IB) No.22/9/AMR/2019

Under Section 60(5) of Insolvency and Bankruptcy Code, 2016 Read with Rule 11 of the National Company Law Tribunal Rules, 2016

In the matter of
M/s. SIVA RAM YARNS PRIVATE LIMITED

BETWEEN:

Venkata Rattaiah Medisetty,
Resolution Applicant for M/s.Siva Ram Yarns Private Limited,
#74-14-49, Yanamalakuduru, Lakulu Road,
Near Ayyappanagar, Sri Dhanalakhmi,
Modren Rice Mill, Vijayawada,
Krishna District, Andhra Pradesh -520007

.... Applicant

AND

1. Mr.Dommeti Surya Rama Krishna Saibaba,
Resolution Professional for M/s.Siva Ram Yarns Private Limited,
Flat No.104, Kavuri Supreme Enclave,
Kavuri Hills, Madhapur, Hyderabad -500081
... Resolution Professional/Respondent No.1

2. Committee of Creditor of M/s.Siva Ram Yarns Private Limited,
(State Bank of India, Sole Financial Creditor)

... CoC/Respondent No.2

Orders pronounced on: 23.03.2022

***Coram*:**

Justice Telaprolu Rajani, Member Judicial.

Parties/Counsels present:

For the Applicant : Mr.M.Maharshi Viswaraj, Advocate

For the Respondents : Mr.A. Chandra Shaker, Advocate

ORDER

1. This application is filed under Section 60(5) of Insolvency and Bankruptcy Code, 2016, by the Applicant who is the Unsuccessful Resolution Applicant (URA) against the Respondents seeking to set aside the decision of the Resolution Professional (Respondent No.1 herein) and Committee of Creditors (CoC) (Respondent No.2 herein) in rejecting the Resolution Plan of the Applicant as illegal and to direct the Resolution Professional to place the Resolution Plan of the Applicant before the CoC once again.

2. Before proceeding with the facts of the case it can be noted that the same applicant filed I.A.No.39/2021 seeking the same relief based on the same grounds which are mentioned in this Application, except for certain additional contentions that are raised for the first time in I.A.No.31/2022.

a) As per the averments in I.A.No.31/2022 and I.A.No.39/2021, after the Corporate Debtor M/s. Siva Ram Yarns Private Limited was taken into Corporate Insolvency Resolution Process (CIRP), Resolution Professional was appointed, he issued a public announcement for invitation of Expression of Interest (EoI). The Applicant submitted EoI on 30.12.2020 along with declaration under Section 29A of IBC, 2016. A provisional list of eligible Prospective Resolution Applicants (PRAs) was published, declaring the Applicant as eligible Prospective Resolution Applicant (PRA). Objections were called for from all the stakeholders. No objections came forth.

b) This Applicant was requested to submit the Resolution Plan on or before 13.02.2021, which was submitted as such. But in the 10th CoC meeting, Respondent No.1 declared the Applicant as ineligible. I.A.No.39/2021 was partly allowed and Respondent No.1 was directed to place the Resolution Plan of the Applicant before Respondent No.2.

c) In the 12th CoC meeting held on 02.03.2022, subsequent to the said order, Respondent No.2 rejected the Resolution Plan of the Applicant on the grounds that "as per section 29A (a) and (j), the Applicant is not eligible to submit Resolution Plan and that the Resolution Plan submitted by the Applicant is conditional in nature as the Applicant sought to release collateral securities.

d) The Corporate Debtor is an Micro, Small and Medium Enterprises (MSME) to which Section 29A is not applicable, as Section 240A of IBC, 2016 exempts MSMEs from the Application of Section 29A of IBC, 2016, but the Respondent No.2 bluntly declared the Applicant as ineligible to submit Resolution Plan under the Section 29A of IBC, 2016. Since, the Respondents have failed to follow the provisions of IBC their actions are *non-est in the eye of law*. The Applicant is not an undischarged insolvent. Only because of the reason that the Applicant is a director of M/s.Spads Textiles Private Limited Company which is under liquidation, he cannot be treated as Undischarged Insolvent. None of the provisions of IBC say that the Director of the Company which is undergoing liquidation process is an undischarged insolvent. As such the objection taken by the Respondents is not accordance with law.

e) The Applicant is ready to delete the personal guarantor properties from the Resolution Plan by way of amending the Resolution Plan.

f) The Corporate Debtor as an MSME need not compete with other Resolution Applicants to regain the control of the Corporate Debtor.

g) The Applicant is offering more amount than the Successful Resolution Applicant (SRA) and it will achieve maximisation of assets of the Corporate Debtor.

h) The SRA is the Lessee of the Corporate Debtor property from so many years and he defaulted in paying the lease rentals to the Corporate Debtor. This Tribunal by order dated 24.02.2021 in IA No.168/2020 in TCP (IB) No.22/9/AMR/2019 directed the SRA to pay the pending lease rentals, but till now the order was not complied with.

i) Respondent No.1 has to exercise reasonable care for the Corporate Debtor Company, whose property and affairs are entrusted to him and should meet the requirements of Section 30 of IBC. If, the Resolution Plan does not meet the requirements of Section 30 of IBC, Respondent No.1 is empowered to refuse the Resolution Plan. Hence, this application is filed seeking to set aside the decision of the Respondents in rejecting the Resolution Plan of the Applicant.

3. A comparison of the contents of I.A.No.31/2022 and I.A.No.39/2021 would show, that except for the contention is respect of the lease of the SRA, all the other contentions and contents both the Applications are one and the same.

4. The Respondent No.1 sought to treat the counter filed in I.A.No.39/2021 as the counter in this Application, the contents of which are briefly as follows:

    a) The Applicant is ineligible, as a Company, wherein he was a director was declared as Undischarged Insolvent. The Applicant has concealed the said fact and submitted the Resolution Plan. On verification of Section 29A IBC eligibility of the Resolution Applicants by M/s. Sanjay & Co. LLP Chartered Accountants and from their report, it came to light that the Applicant is ineligible under Section 29A of IBC. The Applicant was informed about his disqualification.

    b) Though the Corporate Debtor is an MSME, due to the ineligibility under Section 29A of IBC his Resolution Plan cannot be accepted. The present Application is filed at the stage of approval of the Resolution Plan with an intention to frustrate the proceedings and delay the CIRP proceedings. Hence, this application is liable to be dismissed.

5. Heard the arguments of both sides and perused the written submissions filed by the Applicant. As already observed, in I.A.No.39/2021 which is filed with the same contentions was partly allowed, since the prayer in the said application was that Respondent No.1 did not place the Resolution Plan of the Applicant before the Respondent No.2 and straightaway rejected. A direction was given

to Respondent No.1 to place the Resolution Plan of this Applicant before Respondent No.2. Complying with the said order, Respondent No.1 placed the Resolution Plan before Respondent No.2 in the 12th CoC and filed Minutes of Meeting along with e-voting sheet. Respondent No.2, after considering the Resolution Plan submitted by the Applicant, rejected the plan on the ground that he is ineligible as per Section 29A of IBC, as he is Undischarged Insolvent and has a connected person not eligible under Clauses (a) to (i).

6. The counsel for the Applicant filed objections to the Resolution Plan submitted by the M/s.Kennington Industries Private Limited and 12th CoC minutes of the meeting. The objections are that, the Applicant is not an Undischarged Insolvent since it is an MSME. Only because of the reason that the Applicant is a director of an Undischarged Insolvent Company i.e., M/s. Spads Textiles Private Limited, he cannot be treated as Undischarged Insolvent. None of the provisions of IBC say that the director of the Company which is undergoing liquidation process is undischarged insolvent.

The Applicant is ready to delete the Personal Guarantor properties from the Resolution Plan by way of amending the Resolution Plan and the same is informed at the 12th CoC meeting. As such the objection taken by the Respondents is not maintainable. The promoters of the Corporate Debtor, which is an MSME need not compete with other Resolution Applicants. He cites a judgment of the NCLAT in Company Appeal (AT) (Insolvency) No.344 – 345 of 2020, wherein it was held as follows:

> "*Based on the ratio of the above case law of Hon'ble Supreme Court of India, the CoC indeed, has the power to exercise its commercial wisdom in approval or rejection of the Resolution Plan. However, the same cannot mean that the Resolution Professional, whether the approval of CoC or without that, or in pursuance of Process Memorandum under the guise of maximization of value, is empowered to adopt a procedure in the conduct of CIRP which is, ab-initio illegal, arbitrary and against the Principles of Natural Justice*".

The minutes of the 12th CoC can be looked into.

7. The contention of the Applicant that his Resolution Plan quoted higher amount than the Resolution Plan of the SRA is considered by Respondent No.2 and the Resolution Plan was rejected, inspite of the said fact, by considering that the Resolution Plan is conditional Resolution Plan, as collateral securities valued at Rs.35 Crores given by the Personal Guarantors and also liabilities of personal guarantors worth Rs.19 Crores shall be released by the Financial Creditor on payment of Resolution Plan amount by the Resolution Applicant which results in great loss to the bank and also to the public exchequer. The release of Personal Guarantors and the collateral securities offered by them is also considered and was held that the

same is outside the purview of Respondent No.2. The contention that the Applicant is ready to delete the personal guarantors properties from the Resolution Plan by amending the Resolution Plan was also considered and was considered as being beyond the purview of the CIRP Process which is not denied by the Counsel for the Applicant. Hence the Resolution Plan of the Applicant does not suffer from any vires of IBC.

8. As to whether the said rejection is valid in terms of the provisions of IBC has to be nevertheless looked into. The reason for rejecting the plan is that the Applicant falls under Section 29A of IBC. The relevant parts of Section 29A are reproduced hereunder:

> ***"Section 29A***: *A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person —*
>
> *(a) is an undischarged insolvent;*
>
> (j) *has a connected person not eligible under clauses (a) to (i).*
>
> *Explanation.— For the purposes of this clause, the expression "connected person" means—*
>
> *(i) any person who is the promoter or in the management or control of the resolution applicant; or*

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(ii) *any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or*

(iii) *the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii).*"

From a reading of the Section 29A of IBC, it is clear that if a person or any other person acting jointly or in concert with such person is an undischarged insolvent, he shall not be eligible to submit a Resolution Plan. The fact that the Applicant is a director in M/s.Spads Textiles Private Limited which is under Liquidation is not disputed. But the contention is that he will not fall under the category of Undischarged Insolvent as he is not the one who is declared as Undischarged Insolvent, but it is the Company in which he is a director and hence he escapes from the application of Section 29A. Section 240A (1) is as under:

> "***240A***. *(1) Notwithstanding anything to the contrary contained in this Code, the provisions of clauses (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process [or pre-packaged insolvency resolution process] of any micro, small and medium enterprises*".

What section 240A of IBC exempts is the provisions of Clauses (c) & (h) of Section 29A alone and not Section 29A as a whole. The contention of the Respondent's Counsel that the Clauses other than Clauses (c) & (h) are applicable to the Applicant can be upheld, since the language of Section 240A of IBC to that effect is clear and unambiguous.

9. The counsel for the Respondent submits that Section 29A (j) disqualifies a person from submitting the Resolution Plan if he has a connected person not eligible under Clauses (a) to (i). Hence if the Applicant has a connected person who is an Undischarged Insolvent, he would undoubtedly be ineligible inspite of being an MSME. The connected person as defined under Explanation (i) to Section 29A (j) is as follows:

> ***29A (j)***: "*has a connected person not eligible under clauses (a) to (i).*
>
> *Explanation. — For the purposes of this clause, the expression "connected person" means—*
>
> *(i) any person who is the promoter or in the management or control of the resolution applicant; or*
>
> (ii) *any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or*

(iii) *the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii).*"

The definition of related party is provided under Section 5 (24) (d) and is the provision which applies to the Applicant, which is as follows:

"***5 (24) (d) "related party"***: *a private company in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent of its share capital*".

So the related party which falls under the definition of connected person includes a Private Company in which a director, partner or manager of the Corporate Debtor is a director and holds along with his relative more than two percent of its share capital. There is no denial of the holding of the Applicant in M/s. Spads Textiles Pvt Ltd which is undisputedly taken under liquidation.

10. The Counsel for the Respondent relies on the judgment of Supreme Court in ***Swiss Ribbons Pvt Ltd vs. Union of India 2019 4 SCC 17*** which has discussed about the term related party and held that persons who act jointly or in concert with others are connected with the business activity of the Resolution Applicant. It is also held all

categories in Section 29A (a) (j) of IBC deal with persons natural as well as artificial, who are connected with the business activity of the Resolution Applicant. It is said that the expression "related party" therefore and "relative" contained in the definition sections must be read *Noscitur a sociis* with the categories of persons mentioned in Explanation -1 and so read would include only persons who are connected with the business activity of the Resolution Applicant.

The judgment of the Supreme Court in ***Arun Kumar Jagatramka vs. Jindal Steel and Power Ltd., (2021) 125 taxman.com 244 (SC)***, is also relied upon wherein it was held that Section 29A of IBC is a part of the resolution mechanism, the object and purpose of which is to prevent a back-door entry to the promoter who should not be allowed to have advantage of their own wrong. The ineligibility under Section 29A, which forms a part of Chapter II of the IBC, is only during the Resolution Process. The rationale for imposing an ineligibility under Section 29A in the Resolution Process is that the SRA under Section 31 of IBC obtained the Company on a clean slate, as indicated in the decision of the Supreme Court in ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta [201] 111 taxman.com 234.***

The contention that an order was passed by this Tribunal on 24.02.2021 directing the SRA to pay certain amounts which are due to the Corporate Debtor and to vacate the property and to facilitate the Resolution Professional to proceed with the CIRP Process and that the said order was not complied with and that the SRA has committed contempt of the court does not have any support. It is true that an order as stated by the applicant is nevertheless made by this Tribunal but that the order is not complied with is not proved by the applicant. There is no grievance in that regard expressed by the Respondent No.1 who is the person who moved the Tribunal for such order. Hence the said contention stands marginalised.

Hence after examining all the above aspects it is clear that the exemption under Section 240A does not help the Applicant who still stands to be hit by Section 29A. Hence the application is dismissed.

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

Swamy Naidu

NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH

I.A.No.67of 2021
IN
TCP (IB) No.22/9/AMR/2019
IN
CP(IB) No.173/9/HDB/2018

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

In the matter of
M/s. SIVA RAM YARNS PRIVATE LIMITED

BETWEEN:

M/s. Siva Ram Yarns Private Limited,
Represented by Resolution Professional
Dommeti Surya Rama Krishna Saibaba,
D.No.74-14-49, Yanamalakuduru,
Vijayawada, Andhra Pradesh – 520007.

.... Applicant/Resolution Professional

AND

M/s.VST Weaves India Private Limited,
31-E, KRPAD Road, Pallipalaya, Erode,
TN-638006.

.... Respondent/Operational Creditor

<u>Orders pronounced on: 23.03.2022</u>

Coram:

Justice Telaprolu Rajani, Member Judicial.

Parties/Counsels present:

For the Applicant/RP :Mr.A.Chandra Shaker, Advocate

ORDER

1. This application is filed by the Resolution Professional (RP) seeking to approve the Resolution Plan dated 30.03.2021 under Section 31 of IBC, 2016 submitted by M/s.Kennigton Industries Private Limited in terms of Section 30(1) of the IBC, 2016 as approved by the CoC.
2. M/s.Siva Ram Yarns Private Limited is a private limited Company registered under the Companies Act. M/s.VST Weaves (India) Private Limited is also a registered company, who supplied material to M/s.Siva Ram Yarns Private Limited. As payments were not received, an application was moved by M/s.VST Weaves (India) Private Limited and CIRP was ordered against M/s.Siva Ram Yarns Private Limited. The Resolution Professional (RP) has made public announcement after taking over the proceedings and invited claims from the Creditors. He Constituted Committee of Creditors consisting of lone Financial Creditor. Interim Resolution Professional

(IRP), who was appointed by this Tribunal, was replaced in the first CoC meeting. Eleven CoC meetings were conducted thereafter. Registered valuers were appointed for valuation of each of the assets of the Corporate Debtor. Notice was published, inviting Expression of Interest (EoI). Expression of Interest (EoI) was received from only one Applicant i.e., M/s.Kennigton Industries Private Limited. In the meantime lockdown was imposed. Therefore, the Resolution Applicant could not submit the Resolution Plan before 31.03.2020 and requested for extension of time. The Resolution Applicant could not submit the Resolution Plan inspite of the time being extended for several times. In the 7th CoC meeting held on 04.09.2020, RP was advised to seek approval of the NCLT for exclusion of Covid-19 pandemic period. As such an application was filed allowed. A fresh notice inviting Expression of Interest (EoI) was published in two newspapers. In response, two Applicants submitted their Resolution Plans i.e., M/s.Kennigton Industries Private Limited and Sri M.V.Rattayya, Director of the Suspended Board of M/s.Siva Ram Yarns Private Limited. Both of them submitted self-declaration under Section 29A. As such the provisional and final list of the Resolution Applicants was published, subject to verification of their eligibility under Section 29-A. In the meantime due diligence under Section 29-A was conducted by

M/s.Sanjay and Co LLP Chartered Accountants. The report disqualified Mr.M.V.Rattaiah as he is ineligible under Section 29-A being one of the Directors in M/s.Spads Textiles Limited which is declared as un-discharged insolvent. In the 10th CoC meeting, the Resolution Plans submitted by the two Resolution Applicants were evaluated and the Resolution Plan of Mr.M.V.Rattaiah was taken up for discussion, as he is ineligible under Section 29-A of IBC. The Resolution Plan submitted by M/s.Kennigton Industries Private Limited was presented to the CoC members. After deliberations, CoC advised to improve their offer and submit a revised Resolution Plan. The revised Resolution Plan submitted by M/s.Kennigton Industries Private Limited has been examined by the RP and has been found to be complying with the mandatory provisions of Section 30(2) of IBC. Total outlay of the plan, including CIRP expenses, is Rs.16 Crores. The revised Plan was submitted to the 11th CoC meeting for approval and was approved with 100% voting.

3. I have heard the Applicant and perused the Resolution Plan and related documents submitted along with Application. Hence, the only task remaining is to see whether the Plan approved by the CoC fulfils the regulations of 30(2) of IBC.

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 a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

   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-

      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, 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 this section –

(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).

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.

5. 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."

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

7. 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.

8. In terms of Regulation 27 of the Regulations, Liquidation value was ascertained through registered valuers and the average Liquidation value is Rs.16,34,69,241/- and the Resolution Plan offers Rs.16 Crores.

9. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1-A),

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38 (1-B) 38(2) & 38(3) of the Regulations. The Plan also provides for keeping the Company as a going concern and operates in its normal course of business upon implementation of Resolution Plan. No objection has been filed by any other person in this regard.

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

11. The Resolution Plan has been approved by the CoC meeting held on 15.04.2021 with 100% votes.

12. In ***K Sashidhar v. Indian Overseas Bank & Others*** (in Civil Appeal No.10673/2018decided 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.

13. **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** (supra).*"

14. In view of the discussions and the law thus settled, the instant Resolution Plan is found to be meeting the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved. 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.

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, I.A.No.67/2021 in TCP (IB) No.22/9/AMR/2019 is disposed of.

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

Swamy Naidu