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

IA.NO.1696/MB/C-II/2021
In
CP(IB)No. 3927/MB/C-II/2019

Application filed under section 30(6), 31 and section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal, Rules 2016.

Filed by
Mr. Ajit Gyanchand Jain,
Resolution Professional
Having its office at :- 204, Wall Street-1, near Gujarat College, Ellis Bridge, Ahmedabad, Gujarat – 380006.

...Applicant

In the matter of

Hangji Global Limited
...Operational Creditor

Versus

Globecon Commercial Services Private Limited
...Corporate Debtor

Order Pronounced on :- 23.11.2021

Coram:

Hon'ble Member (Judicial)	**: Mr. Ashok Kumar Borah**
Hon'ble Member (Technical)	**: Mr. Shyam Babu Gautam**

Appearances (through video conferencing)

For the Resolution Applicant : Mr. Shyam Kapadia, Advocate
For the Resolution Professional : Ms. Prajakta Menezes, Advocate

ORDER

Per: Ashok Kumar Borah, Member (Judicial)

1. The present Interlocutory application is filed by **Mr. Ajit Gyanchand Jain** the Applicant, Resolution Professional of **Globecon Commercial Services Private Limited,** the Corporate Debtor by submitting a resolution plan under section 30(6), 31 and 60 (5) of the Insolvency and Bankruptcy Code, 2016 (Code) read with Rule 11 of the National Company Law Tribunal which was duly approved by the requisite majority of the Committee of Creditors (CoC) seeking approval of this Adjudicating Authority under section 31 of the I&B Code.

2. The Applicant submits that the Hangji Global Limited, Operational Creditor initiated the Corporate Insolvency Resolution process (CIRP) against Globecon Commercial Services Private Limited under Section 9 of the Code and was admitted vide an order dated 25.01.2021 and the Applicant herein was appointed as the Interim Resolution professional (IRP) of the Corporate Debtor.

3. The Applicant submits that Public Announcement dated 29.01.2021 in Form A was published on the website of the IBBI and in Free Press Journal (Mumbai Edition – English Language) and Nav Shakti (Mumbai Edition – Marathi Language) newspapers on 29.01.2021.

4. The first meeting of the Committee of Creditors (CoC) was held on 23rd February, 2021 wherein the IRP apprised the members of the CoC regarding the steps taken as the IRP. Further, the IRP Mr. Ajit Gyanchand Jain was confirmed as the Resolution (**RP**) of the Corporate Debtor. The Applicant further submits that the report certifying the Constitution of Committee of Creditors was filed by the Applicant on 17th February 2021 with this Tribunal and post submission of the report, the Applicant received further claims from 3 (three) Financial Creditor and 1 (One) Operational Creditor which was under verification till the holding of the 1st CoC Meeting of the Corporate Debtor.

5. Further in the 2nd meeting of the CoC held on 16th March 2021, the Applicant apprised the members of the CoC about the admission of the claims of all 4 claimants i.e. 3 (three) Financial Creditors and 1 (one) Operational Creditor after verifying claims. The Applicant further reconstituted the CoC of the Corporate Debtor as per Section 21 of the IBC, 2016 and submitted the revised report certifying the Constitution of Committee of Creditors dated 10th March 2021 with the Hon’ble Tribunal. Further, in the same CoC meeting the Applicant informed the members about the appointment of Valuers, CA Fanendra Munot and Mr. Sagar Shah for determining fair and liquidation value of the Corporate Debtor and Transaction Auditor, M/s Goenka Mehta and Associates as the Transaction Auditor of the Corporate Debtor.

6. That in the 3rd meeting of CoC held on 1st April 2021, the Applicant apprised the members of the CoC regarding the steps taken by him in conducting the CIRP of the Corporate Debtor. Further, it is submitted that

the Applicant informed the members about receiving another claim from 1 (one) Operational Creditor i.e. Sales Tax Department of Maharashtra post in the 2nd CoC meeting and same was duly admitted by the Applicant. Further, in the same CoC meeting the Applicant proposed to publish Form G- Invitation for Expression of Interest on 8th April 2021 and further the CoC unanimously resolved to approve the same. The Applicant submits that in the 3rd meeting of CoC, eligibility criteria for submission of Resolution Plan by Prospective Resolution applicants was also discussed. It is submitted that the eligibility was fixed at positive tangible Net Worth ('TNW') or Auditable turnover at an individual or Group level in the immediately preceding completed Financial year for Body Corporates/ Individuals/Consortium of Investors whether incorporated in India or outside India and Minimum assets under management ('AUM") of Rs. 1 Crore or Committed Funds available for deployment/investment of at least Rs. 50 Lakhs in the immediately preceding completed Financial year for Financial Institutions/PE Funds/ Asset Reconstruction Companies/ Non-Banking Finance Companies/ Other Financial Investors including Consortium of Investor.

7. That the Applicant published Form G- Invitation for Expression of Interest on 8th April 2021 in 2 newspapers namely Free Press Journal (English Daily) and Navshakti (Marathi Daily) of Mumbai Edition and also uploaded on the IBBI website, whereby the last date for receipt of expression of interest (hereinafter referred to as "EOI") was 23rd April 2021 and the last date for submission of the Resolution Plan was 7th June 2021.

8. In the 4th meeting of the CoC held on 29th April 2021 the Applicant apprised the CoC members regarding the dates of issuance of the Form G and about

receiving two (2) EOI's from PRAs i.e M/s PP Metalix Limited and M/s Hangji Global Limited. The members were informed that the Resolution Professional had received 2 (two) emails from the interested parties i.e. M/s Prabhatam Investment vide email dated 19th April 2021 and from Mr. Sambhav Jain on 27th April 2021 (i.e., after the last date for submission of EOI) expressing their interest in submitting EOI, however a formal EOI and supporting documents as per the detailed EOI was not received from them. However, due to the ongoing restrictions in the State of Maharashtra in view of 2nd wave of Covid-19 pandemic, few PRAs were unable to send the stamped and notarized documents as enumerated in the RFRP. Therefore, the Applicant proposed to the members of the CoC to extend the date for submission of EOI as per Regulation 36B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

9. Further, in the same CoC meeting, the Applicant presented the draft Evaluation Matrix and the deliberations on Request for Resolution Plan (hereinafter referred to as '**RFRP**') was made with the members.

10. The Applicant issued information Memorandum, RFRP along with the Evaluation Matrix on 8th May 2021 and also stated the last date for submission of binding Resolution Plans by the Resolution Applicants is 7th June 2021.

11. In in the 5th meeting of the CoC held on 8th June 2021, the Applicant informed the CoC that Hangji Global Limited vide email dated 4th June 2021, submitted the Resolution Plan and further informed the members that the Hangji Global Limited had submitted the Earnest Money Deposit (hereinafter referred to as "EMD") of Rs. 10 Lakhs. The representative of

the Resolution Applicant i.e. Mr. Rakesh Dhoot, Director of Hangji Global Limited gave a brief summary of the Company, their Key Managerial Persons and that they are engaged in the business of Power/Energy, Mining and Infrastructure Development including Real Estate and they are already in process of setting up a slag processing unit in India. Further, representative of Hangji Global Limited also gave a brief summary of the Resolution Plan and stated that the Financial Proposal in the Resolution Plan is of Rs. 40 Lakhs to all the stakeholders including the Insolvency Resolution Process Cost to be paid within 30 days from the date of approval of Resolution Plan by Hon'ble NCLT.

12. It is submitted that in the 6th meeting of the CoC held on 23rd June 2021, the Applicant informed the members about the Valuation Reports as submitted by both the valuers namely CA Fanendra Munot and Mr. Sagar Shah and the same shall be shared only with the Financial Creditor upon the receipt of the confidentiality undertaking. The Applicant also informed the members about receiving of the final Transaction Audit Report from the Transaction Auditors i.e. M/s. Goneka Mehta and Associates and the same also will be shared to the Financial Creditor for their consideration.

13. Further, the authorized representative of the Financial Creditor i.e. Unnao Trading Private Limited and the Sales Tax Department of Maharashtra, Operational Creditor (Statutory/Government Authority) stated that the amount offered by the Resolution Applicant in the proposed plan is very less and should be reconsidered, to which the Resolution Applicant stated that they intend to restructure the distribution under the proposed resolution plan wherein the amount proposed under the

Resolution Plan will be first attributed towards payment of the CIRP cost and the balance amount will be distributed amongst the Creditors proportionately to the amount of claim admitted in the total debt of the Corporate Debtor. He further added that the only asset the Corporate Debtor has is the Steel Slag, that would be used to extract different kinds of metals, considering the same the amount offered by the Resolution Applicant is the maximum and he further added that if the CIRP cost is reduced then the amount left to be distributed to all the stakeholders will gradually be increased.

14. That the Applicant states that the liquidation value and fair value as per the valuation reports submitted by the valuers is as under:

(Amount in Lakhs)

Particulars	**Valuer 1**		**Valuer 2**		**Average**	
	FV	**LV**	**FV**	**LV**	**FV**	**LV**
Securities or Financial Assets	71.26	----	71.26	----	71.26	---
Trade Receivables	45.30	22.65	46.33	23.16	45.81	22.90
Inventories	---	---	---	---	---	---
Advance Tax	---	---	---	---	---	---
MAT Credit entitlement	---	---	---	---	---	---
Deposits	---	---	---	---	---	---
Current Assets	---	---	---	---	---	---
Cash and Cash Equivalent	0.30	0.30	0.30	0.30	0.30	0.30
Total	116.86	22.95	117.89	23.46	117.38	23.21

Thus, the aggregate of the average of Fair Value of all the assets is Rs. 1,17,38,350/- (Rupees One Crore Seventeen Lakhs Thirty-Eight Thousand Three Hundred Fifty Only) and that of the Liquidation Value of all the assets is Rs. 23,21,238/- (Rupees Twenty Lakhs Twenty-one Thousand Two Hundred Thirty -Eight Only).

15. The Applicant in the 7th meeting of the CoC held on 5th July 2021 apprised the members of the CoC that the Transaction Audit Report of the Corporate Debtor submitted by M/s Goenka Mehta and Associates on 17th June 2021 was shared with Financial Creditor of the Corporate Debtor. Further, it was observed by Transaction Auditor's that the company M/s Globecon Commercial Services Private Limited had not violated the provisions of Section 43, 45, 49, 50 and 66 of the IBC, 2016 and there were no such Preferential, Undervalued, Extortionate and Fraudulent Transactions done by the erstwhile management of the Corporate Debtor.

16. That the Applicant also apprised the members of the CoC that the Resolution Applicant submitted a final Revised Resolution Plan on 29th June 2021 after incorporating the final observations and suggestions by the RP and CoC members in the previous meetings of the CoC. Further, the Resolution Applicant suggested to decrease the remuneration of the Resolution Professional from Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand Only) per month to Rs. 75,000/- (Rupees Seventy-Five Thousand Only) per month with effect from the first CoC meeting of the Corporate Debtor held on 23rd February 2021 till the Resolution Professional continues to provide his services, which will decrease the CIRP cost and will increase the percentage of the amount to be distributed amongst the creditors gradually. The members of the CoC opined same

and the Applicant also agreed to the amount as proposed by the members of the CoC.

17. Further, in the same CoC meeting the Applicant informed the members of the CoC that he will issue a compliance certificate in accordance with the provisions of the Code. The Applicant presented the payments proposed to various stakeholders under the resolution plan which had been modified based on the observations pointed out by the CoC and the RP in the previous CoC meeting regarding the distribution structure after payment of CIRP cost and the amount available for distribution to the other creditors. The Applicant further submits that the Resolution for approval of Resolution Plan submitted by Hangji was put up for e-voting and the voting window was kept open from 7th July 2021 till 9th July 2021. The Resolution Plan submitted by Hangji was approved by 100% of the voting share of the members of the CoC.

SALIENT FEATURES OF THE APPROVED RESOLUTION PLAN

18. The Resolution Professional submits that the Resolution Applicant proposes a total Financial proposal of Rs. 40 Lakhs to be paid for the full and final settlement of all liabilities of the Corporate Debtor. The summary of the payment proposed under the Resolution Plan dated 29.06.2021 are as follows :-

Sr. No.	Stakeholder/Category of Claims	Amount
1.	Payment of CIRP Cost	The Resolution Applicant proposes that out of the Upfront

		Investment Amount, the CIRP Cost shall be paid in full as per the actuals.
2.	Upfront Cash payment to the Unrelated Financial Creditors (to be made within 30 days from the Resolution Plan Approval Date)	The Resolution Applicant proposes that the Resolution Amount (after the CIRP Costs have been paid in full) shall be distributed amongst the Financial Creditors, the Operational Creditors and the Government Creditors on prorate basis in the ratio of their claims verified and admitted by the Resolution Professional. The entitlement of the Unrelated Financial Creditors in the Resolution Amount (Upfront FC Consideration) shall be paid to the Unrelated Financial Creditors of the Corporate Debtor in full and final settlement of their claims. The said amount shall be paid within a period of 30 days from the Resolution Plan Approval Date.
3.	Payment to the Related Financial Creditors	The Resolution Applicant does not propose to make any payment to the Related Financial Creditors of the Corporate Debtor.

4.	Deferred cash payment to the Financial Creditors	The Resolution Plan does not provide for any deferred payment to the Financial Creditor. The entire payment to the Unrelated Financial Creditors shall be made upfront within a period of 30 days from the Resolution Plan Approval Date.
5.	Upfront cash payment to the Workmen and the Employees	The Resolution Applicant understands that the Resolution Professional has not received any claim from any workman or Employee of the Corporate Debtor. If, however, any claim of any workman or Employee is admitted by the Resolution Professional prior to the Resolution Plan Approval Date, the Resolution Applicant proposes that those claims of Workmen or Employees shall be paid in priority before making payment to any other Creditor of the Corporate Debtor. The Resolution Applicant proposes that in full and final settlement of claims, if any, of the Workmen and or Employees, an

		amount equivalent to the higher of the following shall be paid : a. Aggregate amount of INR 5,000 to be distributed on pari-passu basis; or b. The amount that would have been paid to such workmen and/or Employees under Section 53 of the Code in the event of liquidation of the Corporate Debtor; or c. The amount that would have been paid to such workmen and/or employees if the Resolution Amount had been distributed in accordance with the manner of priority set out under Section 53 (1) of the Code. It is hereby clarified that any payment to the Workmen and or Employees shall be made out of the entitlement of the Operational Creditors in the Resolution Amount.
6.	Upfront cash payment to the Operational Creditors (Other than the Government	The Resolution Applicant has proposed

	Creditors and the Workmen and the Employees)	that the Resolution Amount (after the CIRP Costs have been paid in full) shall be distributed amongst the Financial Creditors, the Operational Creditors and the Government Creditors on prorata basis in the ratio of their claims verified and admitted by the Resolution Professional. The Resolution Applicant does not propose to make any payment to the Operational Creditors who are Related Parties of the Corporate Debtor.
7.	Upfront cash payment to the Government Creditor	The Resolution Applicant has proposed that the Resolution Amount (after the CIRP Costs have been paid in full) shall be distributed amongst the Financial Creditors, the Operational Creditors and the Government Creditors on prorata basis in the ratio of their claims verified and admitted by the Resolution Professional.
8.	Existing Equity Shareholders	On the Closing Date, the outstanding Equity Shares held by the Existing Equity Shareholders shall stand

		transferred to the Resolution Applicant for an aggregate consideration of INR 1.
9.	Fresh Fund Infusion to meet the working capital and capital expenditure requirement	Within 12 months from the Closing Date, the Resolution Applicant shall infuse an amount of INR 10,00,000 (over and above the Resolution Amount) to meet the working capital and/or capital expenditure requirement of the Corporate Debtor.

19. The Resolution Applicant proposes to infuse Rs. 10,00,000/- as working capital over and above the total cash consideration of Rs. 40 Lakhs within 12 months from the closing date of the Resolution Plan.

20. Further it is submitted that the infusion of funds by the Resolution Applicant shall be in following manner :-

Days from the Effective Date	**Upfront Cash payment**	**Sources of Funds**
30 Days	40,00,000	Equity
Upfront Cash Payment	**40,00,000**	

21. Further the details of proposed payments are as follows :-

a. Payment of Corporate Insolvency Resolution Process Costs (CIRP Cost)

i. The actual Insolvency Resolution Process Cost (hereinafter referred to as 'CIRPC') will be intimated to the Resolution Applicant in the course of the acceptance of the Resolution Plan by the Hon'ble NCLT and hence has made a provision of Rs. 13,14,816/- (Rupees Thirteen Lakhs Fourteen Thousand Eight Hundred Sixteen Only) in total towards CIRP costs.

ii. The CIRP cost remaining unpaid as on the plan Approval Date shall be paid in full in priority to all the creditors in terms of Section 30(2) of the IBC 2016.

iii. The CIRP costs shall be paid at actuals by the Resolution Applicant within 30 days from the Resolution Plan Approval Date.

b. Payment to Operational Creditors (Excluding Statutory Authorities and workmen and employees)

i. It is submitted that the Applicant has admitted a total claim of Rs. 1,17,23,102/- (Rupees One Crore Seventeen Lakhs Twenty-Three Thousand One Hundred and Two Only) towards the claim of Operational Creditors (Excluding Statutory Authority and workmen and employees).

ii. It is submitted that the claims of Operational Creditors (Excluding Statutory Authorities and workmen and employees) shall be paid in compliance with Regulation 38 of the IBBI (CIRP) Regulation, 2016. The Resolution Applicant has proposed that subject to the terms set out in the Resolution Plan and after the payment of CIRP costs in full, the balance Resolution amount shall be distributed amongst the Unrelated Financial Creditors, the Operational Creditors (Other than the Government Creditors and Workmen and Employee) and the Government Creditor on pro-rata basis in the ratio of their claims as admitted by Resolution Professional as on Resolution Plan Approval Date.

iii. It is submitted that in any event the amount payable to the Operational Creditors (other than the Government Creditors and Workmen & Employees) shall not be less than (i) the Liquidation Value owed to the Operational Creditor (other than the employee & workmen dues and the statutory liabilities); or (ii) the amount that would have been paid to such Operational Creditors if the Resolution Amount had been distributed in accordance with the order of priority in section 53(1) of the Code, whichever is higher.

iv. It is submitted that in the event any claim is not submitted to the Resolution Professional or such claim pertains to prior period to the approval of the Resolution Plan, such Operational Creditors shall not be entitled to receive payment under Resolution Plan with respect to such claims. It is also hereby submitted that the Resolution Applicant does not propose to make any payment to any Operational Creditor who is a Related Party or an Affiliate of the Corporate Debtor or a part of the Group Company.

c. Payment to Financial Creditors

i. It is submitted that the Applicant has admitted a total claim of Rs.1,04,72,063/- (Rupees One Crore Four Lakhs Seventy-Two Thousand Sixty-Three Only) towards the claim of Financial Creditors out of which Rs.40,00,000/- (Rupees Forty Lakhs Only) is the admitted claim of Unrelated Financial Creditors of the Corporate Debtor.

ii. The Financial Creditor are proposed to be paid that after the CIRP Cost have been paid in full, the balance Resolution Amount shall be distributed amongst the Unrelated Financial Creditors, the Operational Creditors and the Government Creditors on pro-rata basis in the ratio of their claims admitted by the Resolution Professional as on the Resolution Plan Approval Date. The entitlement of the Unrelated Financial Creditors in the Resolution Amount shall be paid to the Unrelated Financial Creditors in full and final settlement of the Admitted Unrelated Financial Debt within 30 from the Resolution Plan Approval Date.

iii. It is of pertinence to note that there is no dissenting financial creditor.

iv. It is further submitted that the Resolution Applicant does not propose to make any payment to any Financial Creditor who is
(A) a related Party of the Corporate Debtor, or
(B) an Affiliate of the Corporate Debtor; or
(C) a Group Company

v. It is submitted that any claims from any person claiming to be

Financial Creditors of the Corporate Debtor (Related or Unrelated) that is not admitted by the Resolution Professional as payable by the Corporate Debtor shall stand extinguished and shall no longer be payable.

d. Payment to Workmen and Employees

i. It is submitted that there are no dues outstanding towards the employees and workmen and no claims have been received from the workmen and Employees of the Corporate Debtor.

ii. It is submitted that in the event the Resolution Professional receives and admits any claim of any Workman or Employee or the Corporate Debtor prior to the Resolution Plan Approval Date, such Workmen or Employees shall be paid, in full and final settlement of their claims, an amount equivalent to (a) INR 5,000 (Rupees Five Thousand); or (b) the amount to be paid to such Workmen and employees under Section 53 of the Code in the event of liquidation of the Corporate Debtor; or (c) the amount that would have been paid to such Workmen and/or Employees if the Resolution Amount had been distributed in accordance with the priority in Section 53(1) of the Code, whichever is higher.

iv. Such payment shall be made out of the entitlement of the Operational Creditors (other than the Government Creditors) in the Resolution Amount and the amount payable to the Operational Creditors (other than the Government Creditors) shall stand reduced accordingly. Any payment to the Workmen and/or Employees pursuant to this

Resolution Plan shall be made before any amount are paid to the Unrelated Financial Creditors.

e. Payment to Government Creditors (Statutory liabilities including outstanding Governmental Authority dues, taxes, etc.)

i. It is submitted that the Applicant has admitted a total claim of Rs. 1,62,49,504/- (Rupees One Crore Sixty-two Lakhs Forty-Nine Thousand Five Hundred Four Only) towards the claim of statutory authorities.

ii. It is submitted that subject to the terms set out in the Resolution Plan and after the CIRP Costs have been paid in full, the Resolution Amount shall be distributed amongst the Unrelated Financial Creditors, the Operational Creditors (other than the Government Creditors and Workmen & Employees) and the Government Creditors on pro-rata basis in the ratio of their claims admitted by the Resolution Professional as on the Resolution Plan Approval Date. The entitlement of the Government Creditors in the Resolution Amount ("Government Creditors Dues") shall be paid as full and final settlement of all claims of the Government Creditors against the Corporate Debtor till the Resolution Plan Approval Date in accordance with the terms of this Resolution Plan. The payment of the Government Creditors Dues shall be made out of the Upfront Investment Amount in priority to any amounts paid to the Unrelated Financial Creditors of the Corporate Debtor.

iii. It is of pertinence to note that in any event the amount payable to the Government Creditors shall not be less than (i) the Liquidation Value owed to the Government Creditors; or (ii) the amount that would have been paid to the Government Creditors if the Resolution Amount had been distributed in accordance with the order of priority in section 53(1) of the Code, whichever is higher.

f. Payment to Equity Shareholders

i. Under the Resolution Plan, it is proposed that the shares held by the existing shareholders of the Corporate Debtor shall be extinguished.

ii. It is submitted that under the Resolution Plan, the existing shareholders whether equity or preference shall be transferred to the Resolution Applicant for an aggregate consideration of INR 1 (Rupee One) as an integral part of this Resolution Plan without requiring any further action on the part of the Existing Equity Shareholders or the Resolution Applicant and any amount of transfer, cancellation or reduction of their share capital and any claims in relation thereto shall stand extinguished without any payment or recourse.

g. Payment to other Creditors and Related Parties of the Corporate Debtor.

i. The Resolution Plan does not propose to make any payment to the other Creditors and /or Related Parties of the Corporate Debtor.

ii. It is submitted that all the Claims of the Related Parties against the

Corporate Debtor as on the Closing Date shall stand extinguished and deemed to be fully settled against 'NIL' consideration in accordance with the Resolution Plan without any further liability or obligation of the Resolution Applicant and/or the Corporate Debtor.

22. Further the Applicant states that as per the RFRP dated 08.05.2021, the Successful Resolution Applicant shall within 4 Business Days from the date of issuance of the Letter of Intent (LoI) (or earlier in case the Application for approval of Resolution Plan is to be submitted to NCLT earlier) provide an irrevocable and unconditional Performance Bank Guarantee (PBG) of an amount aggregating to 10% of the Resolution Applicant Contribution in favour of the Corporate Debtor which comes to Rs. 4,00,000/-. Further the Applicant has issued (LoI) dated 10.07.2021 to the Resolution Applicant, to which the Resolution Applicant issued an Unconditional Letter of Acceptance to the Applicant. However, the Resolution Applicant vide email dated 13.07.2021 apprised the Applicant that in the Resolution Plan they have proposed to adjust the PBG against the EMD of INR 10 Lakhs and the remaining balance amount to be adjusted as a part of Upfront Investment Amount.

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

OBSERVATIONS OF THE ADJUDICATING AUTHORITY

24. We have heard the Applicant and perused the Resolution Plan and related documents submitted along with Application.

25. It is seen that the Resolution Applicant will infuse required working capital in to the Corporate Debtor to set up a steel slag processing unit which will process the Steel Slag to extract Nickel and other elements. The elements will be further sold and distributed to local buyers and overseas market.

26. Further, the Net Worth of the Resolution Applicant is $ 122,542,041 (One Hundred Twenty Two Million Five Hundred Forty Two Thousand Forty Zone U.S Dollars and Zero Cents) as per the Audited Financial Statements of FY 2019-20 which duly qualifies the Resolution Applicant to become eligible to submit the Resolution Plan.

27. Further ,it is observed that 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;

a) The implementation and supervision of the resolution plan;

b) Does not contravene any of the provisions of the law for the time being in force;

c) Confirms to such other requirements as may be specified by the Board.

28. 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.

29. 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.

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

Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.

a) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
b) 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.
c) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.

31. The RP has certified through affidavit that the Resolution Plan is not in contravention to any of the provisions of law, for the time being in force, as specified u/s 30(2)(e) of the Code. In terms of Regulation 27 of the Regulations, Liquidation value was ascertained through two registered valuers. The aggregate of the average of Fair Value of all the assets is Rs. 1,17,38,350/- (Rupees One Crore Seventeen Lakhs Thirty Eight Thousand Three Hundred Fifty Only) and that of the Liquidation Value of all the assets is Rs. 23,21,238/- (Rupees Twenty Three Lakhs Twenty One Thousand Two Hundred Thirty Eight Only).

32. One of the justifications for approval of this resolution plan is that the amount proposed under the plan is higher than liquidation value of the Corporate Debtor.

33. 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), 38(2)(a),38(2)(b), 38(2)(c) & 38(3) of the Regulations.

34. 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.

35. The Resolution Plan has been approved by the CoC in the 7th meeting with 100% votes.

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

37. 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 para42 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)."*

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

ORDER

The Application IA No. 1696 of 2021 in CP 3927 of 2019 be and the same is allowed. The Resolution Plan annexed to the Application is approved. It shall become effective from this date and shall form part of this order.

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

iii. This Tribunal will not deter such authorities to deal with any of the issues arising after giving effect to the Resolution Plan.

iv. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Mumbai, Maharashtra 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.

v. The moratorium under Section 14 of the Code shall cease to have effect from this date.

vi. 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.

vii. 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.

viii. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

Dated 23rd November, 2021

Sd/-

SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

Sd/-

ASHOK KUMAR BORAH
MEMBER (JUDICIAL)