



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING  
HELD ON **20.03.2024** THROUGH VIDEO CONFERENCE

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**PRESENT:** HON'BLE SHRI SANJIV JAIN, MEMBER (JUDICIAL)  
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

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**IN THE MATTER OF** : IFCI Ltd  
Vs  
GK Steel and Allied Industries Ltd

**MAIN PETITION NUMBER** : CP/1006/IB/2018  
**(IA/MA) APPLICATION NUMBERS**

MA/37/CHE/2021

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**ORDER**

Present: Mr. Mr. V.V.Sivakumar, Ld. Counsel for the Applicant / RP.

Vide separate order pronounced in open court, the Resolution Plan submitted by the Resolution Applicant is approved with reliefs and concessions. We direct that the moratorium imposed under Section 14 of IBC, shall cease to have effect from the date of this order.

MA/37/CHE/2021 is accordingly **disposed of**.

Main petition CP/1006/IB/2018 is **consigned to record room**.

-sd-

**[VENKATARAMAN SUBRAMANIAM]  
MEMBER (TECHNICAL)**

MS

-sd-

**[SANJIV JAIN]  
MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – I, CHENNAI**

**MA/37/CHE/2021 in CP/(IB)/1006/2018**

*(Filed under Section 31 of the Insolvency And Bankruptcy Code, 2016 and Rule 11 of the  
NCLT Rules, 2016)*

*In the matter of G.K.Steel and Allied Industries Ltd*

**J. Karthiga,**  
Resolution Professional of  
G.K. Steel and Allied Industries Ltd.,  
No.1077, Avinashi Road,  
Coimbatore – 641 018.

**... Applicant / Resolution Professional**

-Vs-

1. **State Bank of India,**  
Rep. by its Chief Manager,  
Stressed Assets Management Branch,  
Raja Plaza, First Floor,  
No.1112, Avinashi road,  
Coimbatore – 641 037.
2. **IFCI Limited,**  
Rep. by its DGM,  
IFCI Tower, 61, Nehru Place,  
New Delhi – 110 019.
3. **International Asset Reconstruction  
Company Private Limited,**  
Rep. by its Senior Vice President and Business Head,  
Door No.1, 9<sup>th</sup> Floor,  
“Prashanath Real Gold Tower”,  
D.No.39, North Usmaan Road,  
T. Nagar, Chennai – 600 017.

**... Respondents 1 to 3 / Financial Creditor**

4. **M/s. Rocksand Minerals Private Limited,**  
Rep. by its Director,  
203, Vijuya Enclave,  
Plot No.32, Srinagar Colony,  
Hyderabad – 500 073.

**... Respondent 4 / Resolution Applicant**



Order pronounced on 20<sup>th</sup> March 2024

**CORAM:**

**SANJIV JAIN, MEMBER (JUDICIAL)**  
**VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

*For Applicant : Mr.V.V.Sivakumar, Advocate*

*For Respondents: N.P.Vijaykumar, Advocate for R1*

*Ravi Rajagopalan, Advocate for R3*

*Anirudh Krishnan, Advocate for R4*

**ORDER**

**(Hearing Conducted through Physical Mode)**

MA/37/CHE/2021 is an Application filed by the Resolution Professional of the Corporate Debtor viz. **G.K.STEEL AND ALLIED INDUSTRIES PRIVATE LIMITED** under Section 31 of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC, 2016') read with Rule 11 of the NCLT Rules, 2016 seeking reliefs as follows:

- a) *To approve and give effect to the resolution plan submitted by the successful resolution applicant M/s. Rocksand Minerals Pvt Ltd., being the 4<sup>th</sup> Respondent herein approved by COC by e-voting with 100% of voting share u/s 33(1) of IBC, 2016 of the corporate debtor M/s. G.K. Steel and Allied Industries Ltd.,*
- b) *To pass such other orders or further orders in this regard as this Hon'ble Tribunal may deem fit and proper and thus render justice.*



## **II. CORPORATE INSOLVENCY RESOLUTION PROCESS - IN BRIEF: -**

2. The Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor viz. *G.K.STEEL AND ALLIED INDUSTRIES PRIVATE LIMITED* was initiated by this Tribunal vide order dated 20.12.2021 passed in CP(IB)/1006(CHE)/2018 filed under Section 7 of IBC, 2016 by IFCI Ltd.

2.1. The Applicant herein was appointed as Interim Resolution Professional (IRP). The IRP made Public Announcement on 26.12.2019 and called proof of claims from the Financial and Operational Creditors, Workers and Employees of the Company in the specified forms till 07.01.2020. Pursuant to the receipt of claims, the IRP constituted the Committee of Creditors (CoC) on 16.01.2020 with three CoC Members. The details are as follows:

S.NO	NAME OF THE CREDITOR	VOTING SHARE
1	State Bank of India	53.64%
2	International Asset Reconstruction Company Limited	20.04%
3	IFCI Limited	26.32%

2.2. A total of six CoC meetings were held during the CIRP periods as follows:



S.No	PARTICULARS	DATE OF CoC MEETING
1	1 <sup>st</sup> CoC Meeting	24.01.2020
2	2 <sup>nd</sup> CoC Meeting	19.02.2020
3	3 <sup>rd</sup> CoC Meeting	06.08.2020
4	4 <sup>th</sup> CoC Meeting	10.11.210
5	5 <sup>th</sup> CoC Meeting	01.12.2020
6	6 <sup>th</sup> CoC Meeting	21.1 2.2020

### **III. EXPRESSION OF INTEREST (EOI)**

3. Form-G was published on 09.08.2020. The last date for receipt of Expression of Interest (EoI) was 30.09.2020.

3.1. In response to Form-G, two Expression of Interests (EoIs) were received from the Resolution Applicants viz., (1) Rocksand Minerals Pvt. Ltd and (2) Mr. Niranjan Karthikeyan, ED of Pannai Group. Information memorandum, evaluation matrix and request for Resolution Plan were issued to the two prospective resolution applicants on 09.04.2020 and the last date for submission of Resolution Plan was extended till 21.10.2020. As on last date of submissions of resolution plan i.e., till 21.10.2020, (i) M/s. Rocks and Minerals Private Limited and (ii) Niranjan Karthikeyan, ED of Panni Group submitted their Resolution Plans.



3.2. The Applicant opened the Resolution Plans in the 4<sup>th</sup> CoC meeting held on 10.11.2020 in front of the CoC members and the prospective resolution applicants. The Resolution Professional evaluated the Resolution Plans and sought for certain clarifications from the resolution applicants.

3.3. The plans were discussed in the 4<sup>th</sup> and 5<sup>th</sup> CoC meeting, held on 10.11.2020 and 01.12.2020 and the CoC asked the Resolution Applicants to submit better offers and the prospective resolution applicants participated in the out bidding process. In the 6<sup>th</sup> CoC meeting (adjourned), held on 21.12.2020, both the plans were put up for voting and the resolution plan of Niranjana Karthikeyan, ED of Pannai Group was rejected and the resolution plan of M/s. Rocks and Minerals Private Limited was approved by 100% voting percentage.

#### **IV. PROFILE OF RESOLUTION APPLICANT:**

4. Rocksand Minerals is an ISO 9001:2000 company established in the year 2002 and is the largest manufacturer of rock sand & sand aggregates of 10mm, 20mm, 40mm in having units in Andhra Pradesh, Telangana & Odisha with regular supply to all ready mix concrete plants and many reputed builders in Hyderabad.



4.1. The Company, through consistent on-time supply of specified products, has acquired a broad based acceptance in the Industry. The reference list includes RMC units, corporate clients as well as many Prestigious Projects. Indeed the Company acknowledges its Committed Client base as an invaluable Asset.

**V. INFORMATION ABOUT THE CORPORATE DEBTOR:-**

5. G.K Steel and Allied Industries Limited, is a company registered under the Companies Act 1956 having registered office currently at its factory premises located at Thamaraipadi Village, Trichy Road, Dindigal District, Tamil Nadu and the Company was incorporated on 12th day of August, 1986 before the Registrar of Companies Chennai. The main object of the company is to carry on the business of manufacturing of Steel Billets and Steel Ingots from metal scraps product.

5.1. The unit was in the process of manufacturing Steel Billets and Steel Ingots from metal scraps. The machineries in the premises were reported to be erected in the year 1986 and the production/manufacturing was stopped more than 25 years before.



5.2. There were no operations in the company, the Corporate Debtor was declared as a Sick Industrial Company by the Hon'ble Board of Industrial and Financial Reconstruction (BIFR) by order dated 06.01.1999 in Case No.245/1998. The Corporate Debtor, during the financial stress ceased to carry on business and has no worker.

6. In the Application, the RP has arrayed the following as Respondents:

*(1) State Bank of India;*

*(2) IFCI Limited;*

*(3) International Asset Reconstruction Company Private Limited; and*

*(4) Rocksand Minerals Pvt. Ltd.*

7. The Applicant sent mail confirming receipt of Performance guarantee on 29.12.2020 and the same was accepted by the Successful Resolution Applicant on 31.12.2020.

8. It is stated that the Resolution Plan submitted by Rocksand Minerals Pvt. Ltd was approved by the CoC with 100% of voting shares by e-voting. Form-H is attached with the Application at page Nos. 142 to 147.





9. During the hearing held on 28.03.2022, it was observed that Form-H had several blanks. Subsequent to the same, the RP filed additional documents vide SR.No.3270 dated 25.05.2022 whereby the RP filed a revised Form-H.

10. The minutes of the 6<sup>th</sup> CoC meeting held on 21.12.2020 are also filed along with the Memo dated 25.05.2022. From the minutes of the CoC meeting it is seen that the two Resolution Applicants and the suspended director Mr. Narayanasamy were present during the meeting beside the other members of the CoC.

11. The two Resolution Applicants were provided opportunity by the CoC during 6<sup>th</sup> CoC to apprise their Resolution Plan and ultimately Rocksand Minerals Pvt. Ltd submitted the revised Resolution Plan wherein the value of Rs.7.6 crores is inclusive of Rs.10 lakhs towards CIRP cost.

#### **VI. DELIBERATIONS OF COC ON FEASIBILITY OF THE RESOLUTION PLAN**

12. It can be seen from the 6<sup>th</sup> CoC Meeting held on 21.12.2020 that the Committee after detailed discussions approved the Resolution Plan by passing the following resolution. The copy of the 6<sup>th</sup> CoC Meeting minutes is



placed as "Annexure-3 of the application typeset and the same is extracted hereunder:

*7. With the above assurance from the said applicant, the CoC accepted and approved the resolution, subject to incorporation of modifications in the plan.*

***"RESOLVED THAT the resolution plan submitted by the resolution applicant viz., Rocks and Minerals Pvt Ltd., be hereby approved by CoC by 100% voting share, subject to incorporation of required modifications and resubmission of modified resolution plan."***

13. A query was posed by this Tribunal vide its order dated 08.01.2024 as to whether the modified Resolution Plan was placed before the CoC for voting, to which an Affidavit has been filed by the RP stating that no meeting of the CoC was held for approval of the Revised plan and that there were only communications from the CoC taking note of the Revised Plan. Further, the RP sought permission from this Tribunal to convene a meeting of the CoC to seek approval of the Revised Plan submitted by the SRA. Accordingly, this Tribunal vide its order dated 31.01.2024 permitted the RP to convene the CoC meeting. In pursuance of the same, the CoC meeting was convened on 12.02.2024 and the revised Resolution Plan was placed before the CoC for its approval. The CoC with 100% voting rights approved the Revised Resolution Plan submitted by the SRA. The minutes of the CoC meeting unanimously



approving the Revised Resolution Plan is filed as an additional document vide SR No. 842 dated 16.02.2024.

14. It is stated that the Resolution Applicant has submitted necessary undertaking/declarations before the RP under Section 29A that it does not fall under ineligible category as per the above section.

**VII. VALUATION:**

15. The Applicant submits that as per the IBC regulations, valuers were appointed. The summary of the valuation as provided by the valuers are provided as below:-

S.No	Name of the Valuer	Market Value Land & Building Rs	Liquidation Value Land & Building Rs	Market Value Plant & Machineries Rs	Liquidation Value Plant & Machineries Rs	Market Value Land & Building and Plant & Machineries	Liquidation Value Land & Building and Plant and Machineries Rs.
1	P. Krishnamurthy	3,52,40,000/-	2,81,92,000/-				
2	Sri Hari	3,01,80,000/-	2,11,00,000/-				
3	K. Rasheeth	---	---	37,69,000/-	35,81,000/-		
4	N.S.Vaidhyanathan	---	---	33,00,000/-	31,35,000/-		
	Average	3,27,10,000/-	2,46,46,000/-	35,34,500/-	33,58,000/-	3,62,44,500/-	2,80,04,000/-

- 1) Total Liquidation Value of the Asset : Rs.2,80,04,000/-
- 2) Total Claim Amount : Rs.3,93,58,38,375/-
- 3) % of liquidation value : Rs.0.7%



## VIII. FINANCIAL PROPOSAL FOR RESOLUTION PLAN:

16. The summary and payment schedule as provided by the Resolution Applicants is extracted below.

S.No	CREDITORS/EXPENSES	AMOUNT IN RS. LACS	REMARKS
1	CIRP Expenses	10.00	Acceptable as per actual incurred
2	Operational Creditors – Employees and Workmen (No Employees & Workers)	0.00	No employees & workers
3	Financial Creditor – State Bank of India	750.00 All together	That the limit of sanctioned amount and charge is very low. But the claim made by the SBI including interest is very high.
4	Financial Creditor – International Asset Reconstruction Company Private Limited		That the limit of sanctioned amount and charge is very low.
5	Financial Creditor – IFCI Ltd		That the limit of sanctioned amount and charge is very low.
	<b>Total</b>	<b>760 lacs</b>	

16.1. The composition of the CoC matrix is provided below:

Sl.No	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dismissed / Abstained)
1	State Bank of India	53.64%	Voted for



2	International Asset Reconstruction Company Private Limited	20.04%	Voted for
3	IFCI Limited	26.32%	Voted for

16.2. The position of the Financial Creditors is provided as below.

S.No.	Name of the Creditors	Amount claimed in INR	Amount Admitted in INR
1	State Bank of India (SAM- Coimbatore)	2,11,10,56,442	2,11,10,56,442
2	International Asset Reconstruction Company Pvt Limited	78,86,80,723	78,86,80,723
3	IFCI Limited	1,03,61,01,211	1,03,61,01,211
	<b>Total</b>	<b>3,93,58,38,375</b>	<b>3,93,58,38,375</b>

16.3. It is reported that as per Information Memorandum (IM), there were no Operational Creditors, statutory dues or employees.

16.4. The Resolution Plan of Rocksand Minerals Pvt. Ltd which is attached to the Application as Annexure-4 states as under.

*The Sales Tax (Addl. Commissioner-P.N.Palayam Circle), Coimbatore submitted their claim through Form-F for due amount of Rs.32,83,34,741/-.*

16.5. However, as the claim has not been admitted, it has not been considered by the RP. Thereafter, the Sales Tax (Addl. Commissioner-



P.N.Palayam Circle), Coimbatore filed an application bearing IA/(IBC)/734/CHE/2022 for setting aside the rejection of claim passed by the RP. IA/(IBC)/734/CHE/2022 was dismissed by this Tribunal vide order dated 29.11.2023.

**IX. SOURCE OF FUNDS:**

17. The offered amount i.e., Rs.7.60.Crores will be brought by Applicant Company through a Reserves & Surpluses. Equity, Reserves & surpluses are already been obtained in prior and balance will be by way of Equity from shareholders of Applicant Company.

**17.1. RELEASE OF FUNDS:**

**Release of Funds:**  
As far as the releases of the funds are concerned we agree as follows:

No	Details	Amount Rs. In Crores
1	Within 45 days from the Receipt of Official Communication Received from COC and Resolution Professional about the Approval of Resolution Plan by the Adjudicating Authority (NCLT) and upon handing over of the original title deeds of the assets of the CD. *(Performance Guarantee of 1 crore will be provided within 7 days of approval of Resolution Plan by COC through Escrow Account and rest of the balance of Rs.6.60 Crores will be paid within 45 days of approval of plan by the NCLT(AA) and upon handing over the original title deeds to the resolution applicant.	7.60
	<b>Total</b>	<b>7.60</b>



## **X. MONITORING COMMITTEE:**

18. As per terms and conditions of the Resolution Plan which is stipulated in page 21 of the Resolution plan, a Monitoring Committee shall be formed for supervising the implementation of the Resolution Plan. The Monitoring Committee shall comprise of the following persons:

- (a) Resolution Applicant
- (b) Resolution Professional and
- (c) A Representative of the Financial Creditors for supervising and monitoring the implementation plan as per the resolution plan approved by NCLT.

## **XI. MANAGEMENT AND CONTROL OF BUSINESS OF THE CORPORATE DEBTOR**

19. The resolution applicant would assume the management and control of the corporate debtor after implementation of the proposed resolution plan. For change of management, all the required statutory and legal formalities would be complied only after completion of implementation of the resolution plan.



## XII. MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS

20. The examination of the Resolution Plan within the contours of Section 30(2) of the IBC, 2016. A comparison *vis-à-vis* with the Mandatory compliance under the IBC and the Compliance made under the Resolution Plan is captured hereunder;

Section of the Code/ Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan (Page No.)	Compliance (Yes/No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Page Nos1 - 11	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?		Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Yes. Dated 03.08.2020	Yes
Section 30(2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment to the operational creditors? (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan (d) provides for the management of the affairs of the corporate debtor	19    21	Yes  N/A  N/A  Yes





	(e) provides for the implementation and supervision of the resolution plan? (f) contravenes any of the provisions of the law for the time being in force?	21	Yes  No
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) Has been approved by the CoC with 66% voting share?		(a) Yes  (b) Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	21	Yes
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date under intimation to the Board?	No PUFÉ applications are pending	N/A
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	N/A	
Regulation 38 (1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	19	Yes
Regulation 38 (1B)	i. Whether the Resolution Applicant or any of the related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. ii. If so, whether the Resolution Applicant has	NO	



	submitted the statement giving details of such non-implementation?		N/A
Regulation 38 (2)	Whether the Resolution Plan provides: a) the term of the plan and its implementation schedule? b) for the management and control of the business of the corporate debtor during its term? c) adequate means for supervising its implementation?	19 21 21	Yes Yes Yes
38 (3)	Whether the resolution plan demonstrates that – a) it addresses the cause of default ? b) it is feasible and viable? c) it has provisions for its effective implementation ? d) it has provisions for approvals required and the timeline for the same? e) the resolution applicant has the capability to implement the resolution plan?	2 2 2 2 3	Yes Yes Yes Yes Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	No applications filed	N/A
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	20	Yes, Rs.1 Crore received into Escrow account within 7 days of approval of CoC.



21. During the hearing held on 28.03.2022, directions were issued to the RP to clarify the position of title deeds of the Corporate Debtor. Vide Memo dated 25.05.2022, the RP has filed a letter dated 09.02.2021 issued from IDBI Bank stating that IDBI Bank has handed over the original title deeds / security creation documents to the RP.

22. Perusal of the said letter from IDBI Bank shows that IDBI Bank was one of the lenders to the Company and that their dues were settled by the Corporate Debtor by way of One Time Settlement (OTS).

23. As such the RP is holding the original title deeds of the Corporate Debtor as of now.

### **XIII. ANALYSIS AND FINDINGS OF THIS TRIBUNAL**

24. The Applicant has filed revised Form – H dated 15.09.2023 in accordance with the IBBI (Corporate Insolvency Resolution Process for Corporate Persons) Regulations, 2016 as Additional typeset. It can be seen from revised FORM-H that the Resolution plan that has come for approval before this adjudicating authority is much higher than the liquidation value. The fair value and liquidation value as per the revised Form-H filed is extracted hereunder:-



1.	<b>FAIR VALUE</b>	Rs. 3,62,44,500
2.	<b>LIQUIDATION VALUE</b>	Rs. 2,80,04,000

24.1. The present Resolution Plan submitted by the Resolution Applicant is for a value of **Rs.7,60,00,000/- ( Rupess Seven Crores Sixty Lakhs Only)**

24.2. It is seen from the revised Form – H, that the RP has not filed any avoidance transactions under Section 43, 45 and 50 and fraudulent trading / wrongful trading applications under Section 66 of IBC, 2016.

**XIV. RELEVANT JUDICIAL PRONOUNCEMENTS OF THE HON'BLE SUPREME COURT:**

25. In so far as the approval of the Resolution Plan is concerned, this Authority is not sitting on an appeal against the decision of the Committee of Creditors and this Authority is duty bound to follow the much-celebrated Judgment of the Hon'ble Supreme Court in the matter of **K. Sashidhar –Vs– Indian Overseas Bank (2019) 12 SCC 150**, wherein in para 19 and 62 it is held as under;

*“19... ....In the present case, however, our focus must be on the dispensation governing the process of approval or rejection of resolution plan by the CoC. The CoC is called upon to consider the resolution plan under Section 30(4) of the I&B Code after it is verified and vetted by the resolution professional as being compliant with all the statutory requirements specified in Section 30(2).*

*62. ....In the present case, however, we are concerned with the provisions of I&B Code dealing with the resolution process. The dispensation provided in the I&B Code is entirely different. In terms of Section 30 of the*



*I&B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC and they express their opinion on the proposed resolution plan in the form of votes, as per their voting share. In the meeting of the CoC, the proposed resolution plan is placed for discussion and after full interaction in the presence of all concerned and the Resolution Professional, the constituents of the CoC finally proceed to exercise their option (business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, non-recording of reasons would not per-se vitiate the collective decision of the financial creditors. The legislature has not envisaged challenge to the “commercial/business decision” of the financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count.”*

25.1. The Hon’ble Supreme Court of India 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 under;

*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 (supra).*

25.2 The Hon'ble Supreme Court in the matter of **K. Sashidhar v. Indian Overseas Bank and Ors. (2019) 12 SCC 150** has lucidly delineated the scope and interference of the Adjudicating Authority in the process of approval of the Resolution Plan and held as under;

*“55. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite per cent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides: (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed*



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

58. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with Section 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters “other than” enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers.”

(emphasis supplied)

25.3. The Hon’ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Ors.**

(2020) 8 SCC 531 after referring to the decision in **K. Sashidhar (supra)** has

held as under;

“73. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or sub-class of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section



*30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal.”*  
(emphasis supplied)

25.4. The Hon'ble 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 under;

*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.*





25.5. 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 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.

25.6. 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 with **100 %** voting share. As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Bench. On perusal of the documents on record, we are also 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.

25.7. The Resolution Plan is hereby **Approved** by this Adjudicating Authority. The Resolution Plan shall form part of this Order. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that the revival of the Debtor Company shall come into force with immediate



effect. The Moratorium imposed under section 14 shall cease to have effect from the date of this Order.

#### **XV. RELIEFS AND CONCESSIONS:**

Following reliefs and concessions have been prayed and granted:

a)	The (i) Department of Registration and Stamps and Governmental Authorities of the States and geographies where the Corporate Debtor or the Resolution Applicant carries on its business and operations or where its assets are located; and (ii) the Ministry of Corporate Affairs; shall exempt the Resolution Applicant and the Corporate Debtor from the levy of stamp duty and fees, applicable in relation to this Resolution Plan and its implementation.	<b>This is for the appropriate authorities to consider, keeping in view of the clean slate principle envisaged under IBC, 2016.</b>
b)	The requirement of obtaining a no objection certificate under section 281 of the Income- tax Act 1961 and provisions of taking over its predecessors Tax liability under section 170 of the income- tax Act shall not be applicable. Further, the transaction shall not be treated as void under section 281 of the Income Tax Act, 1961 for any claims in respect of Tax or any other sum payable by the Corporate Debtor. Similarly, any requirements to obtain waivers from any Tax Authorities including in terms of Section 79 and Section 115B of the Income Tax Act, 1961 is deemed to have been granted upon approval of this Resolution Plan on the Plan Approval Date.	<b>This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016</b>
c)	The Corporate Debtor and the Resolution Applicant shall be granted an exemption from all Taxes, levies, fees, transfer charges, transfer premiums, and surcharges that arise from or relate to implementation of the Resolution Plan, since payment of these amounts may make the Resolution Plan unviable. Foregoing reference to Taxes shall	<b>Granted, subject to the provisions of the Companies Act, 2013 and other Applicable laws.</b>



	<p>include the following:</p> <ul style="list-style-type: none"><li>i. Transaction cost: Any transfer premiums or charges, change of ownership/control charges payable in connection with the implementation of this Resolution Plan and the consequent change in ownership and control of the Corporate Debtor.</li><li>ii. Relevant Governmental Authority includes but is not limited to the relevant authorities of the states in which the Corporate Debtor and Resolution Applicant undertake business.</li></ul>	
d)	All actions undertaken pursuant to implementation of the Resolution Plan approved by the Adjudicating Authority shall be deemed to be exempt from any Tax and stamp duty.	<b>This is for the appropriate authorities to consider, keeping in view of the clean slate principle envisaged under IBC, 2016.</b>
e)	Upon approval of the Resolution Plan by the Adjudicating Authority, all Non-Compliances of the Corporate Debtor for the period prior to the Plan Approval Date (including but not limited to those relating to Tax), shall be deemed to be waived by all the Governmental Authorities. Immunity shall be deemed to have been granted to the Corporate Debtor and Subsidiaries from all Proceedings and penalties under all applicable laws for any Non-Compliance for the period prior to the Plan Approval Date. Without prejudice to the foregoing, in relation to any non-compliance arising under any tax and duty benefit scheme (including, the Export Promotion Credit Guarantee Scheme), the relevant Government Authority (including, without limitation, the Director General of Foreign Trade) shall waive all such non-compliances by the Corporate Debtor without levying any fee, penalty or additional duty, and the Corporate Debtor shall be allowed sufficient time (and in any event not less than two years from the Plan Approval Date) to fulfill its	<b>Granted to the extent in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited</i>.</b>  <i>2021 SCC Online SC 313</i>



	<p>obligation under such tax and duty benefit schemes (including, any export obligations contained therein). Further, as the Resolution Applicant has not had the opportunity to undertake a comprehensive and exhaustive legal diligence on the Corporate Debtor and its Affiliates, subsidiaries and associates, the Resolution Applicant shall be granted a waiver, from all actions, Proceedings or penalties under any applicable Law for any Non-Compliance, for an additional period of 24 months starting from the day following the Plan Approval Date.</p>	
f)	<p>The Resolution Applicant is yet to complete a diligence on the Corporate Debtor, its group entities and respective employees to verify compliance with various anti-bribery/corruption statutes. Considering the above, upon approval of the Resolution Plan, immunity shall be deemed to have been granted to the Corporate Debtor from any actions / penalties under any laws for any non-compliance, which was existing on or prior to the Plan Approval Date and which shall continue for a period of 24 months after the Plan Approval Date</p>	<p><b>Granted, subject to the provisions of Section 32A of IBC, 2016.</b></p>
g)	<p>All Business Permits of the Corporate Debtor that may have lapsed or expired, shall be renewed by the respective Governmental Authorities with effect from the Plan Approval Date and the Resolution Professional shall take all necessary steps to ensure such renewal in furtherance of its statutory duties under Section 20(1) read with Section 23 (2) of the Code.</p>	<p><b>This is for the concerned Governmental authorities to consider, keeping in view of the clean slate principle envisaged in IBC, 2016.</b></p>
h)	<p>From the Plan Approval Date, all inquiries, investigations and proceedings, whether civil or criminal, suits, claims, disputes, Proceedings in connection with the Corporate Debtor or affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the Plan Approval Date or arising</p>	<p><b>Granted in terms of the judgment of</b></p>



	<p>on account of implementation of this Resolution Plan shall stand withdrawn and dismissed and all liabilities and obligations therefore, whether or not set out in the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor will be deemed to have been written off fully, and permanently extinguished and no adverse orders passed in the said matters should apply to the Corporate Debtor or the Resolution Applicant. Upon approval of this Resolution Plan, all new inquiries, investigations, notices, suits, claims, disputes, litigations, arbitrations or other judicial, regulatory or administrative proceedings will be deemed to be barred and will not be initiated or admitted against the Corporate Debtor in relation to any period prior to the Plan Approval Date.</p>	<p><b>the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i></b></p> <p>2021 SCC Online SC 313</p>
i)	<p>Upon approval of the Resolution Plan by the Adjudicating Authority, unless otherwise required by the Resolution Applicant, all financial obligations under any contract to which the Corporate Debtor is a party relatable to the period prior to the Plan Approval Date shall stand extinguished as per directions of the Resolution Applicant. From and on the Plan Approval Date, all assets of the Corporate Debtor (including freehold properties, leasehold interests, or rights of the Corporate Debtor under leave and license agreements executed by it prior to the Plan Approval Date) shall be vested in the Resolution Applicant, free and clear of all Encumbrances, other than Encumbrances required to be assigned / notated along with the outstanding loans of the Corporate Debtor.</p>	<p><b>Granted, subject to the provisions of IBC, 2016.</b></p>
j)	<p>No Governmental Authority (including regulatory, judicial and quasi-judicial authority) shall issue any orders, directions, decrees, judgments etc. that will be in contravention of the provisions of the Resolution Plan (including the</p>	<p><b>Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i></b></p>



	Financial Plan).	2021 SCC Online SC 313
k)	Any approvals that may be required from Governmental Authorities (including Tax Authorities) in connection with the implementation of the Resolution Plan including on account change in ownership / control of the Corporate Debtor shall be deemed to have been granted on the Plan Approval Date.	<b>This is for the appropriate authorities to consider, keeping in view of the clean slate principle envisaged under IBC, 2016.</b>
l)	The Corporate Debtor shall be provided uninterrupted supply of essential services and goods during this period by all relevant stakeholders till the Plan Approval Date.	<b>This is for the appropriate authorities to consider, keeping in view of the clean slate principle envisaged under IBC, 2016.</b>
m)	The submission of the Resolution Plan and acquisition of the Corporate Debtor by the Resolution Applicant shall not in any manner prejudice or affect the ability of the Resolution Applicant or its group companies to be a resolution applicant under the Code in respect of any other person or in respect of any other corporate insolvency resolution process conducted under the Code.	<b>The prayer sought is not in the form of Relief / concession</b>

26. 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.

27. In case of non-compliance with this order or withdrawal of the Resolution Plan by the Successful Resolution Applicant, the CoC shall forfeit



the Performance Security furnished by the Resolution Applicant in the form of Performance Bank Guarantees.

28. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters. The Resolution Professional is further directed to hand over all records, premises/factories/documents to the Resolution Applicant to finalize the further line of action required for starting the operation of the Corporate Debtor under the control of the Resolution Applicant.

29. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.

30. Liberty is hereby granted for moving any Application if required in connection with the implementation of this Resolution Plan.

31. A copy of this Order is to be submitted to the Office of the Registrar of Companies, concerned.

32. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.



33. **MA/37/CHE/2021** stands disposed of accordingly.

34. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsel for information and for taking necessary steps. File be consigned to the record.

**-Sd-**

**VENKATARAMAN SUBRAMANIAM**  
MEMBER (TECHNICAL)

*SriramAnanth.V*

**-Sd-**

**SANJIV JAIN**  
MEMBER (JUDICIAL)