

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

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IA 664 of 2019 in C.P.(I.B) No. 299/NCLT/AHM/2018

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 01.01.2020

Name of the Company: Bhavi Shreyans Shah RP For V S Texmills
Pvt Ltd
V/s
Canara Bank & Ors

Section of the Companies Act: Section 30(6) r.w. 31 of the Insolvency and
Bankruptcy Code

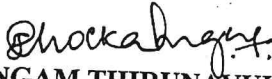
S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Umesh K. Cor	Advocate	Res. No. 1	Umesh K. Cor
2.	Atul Sharma	ADN	Applicant	
3.	Bhavi Shah	RP	Applicant	

ORDER

The parties are represented through learned counsels.


The Order is pronounced in the open court vide separate sheet.




CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 1st day of January, 2020

SA


MANORAMA KUMARI
MEMBER JUDICIAL

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

I.A. No. 664 of 2019
in
CP(IB) No. 299 of 2018

In the matter of:

1. Smt. Bhavi Shreyansh Shah,
Resolution Professional,
V S Texmills Private Limited,
Having office at:
9B, Vardan Tower,
Near Vimal House,
Lakjudi Circle,
Ahmedabad 380 014

.....Applicant

Versus

1. Canara Bank
Having Office at:
Asset Recovery Management Branch,
4th Floor, Neelkanth Avenue - 1,
C U Shah College Street,
Income Tax Cross Road,
Ashram Road,
Ahmedabad 380 014
2. Reliance Commercial Finance Limited.,
Committee of Creditors,
Having its registered office at:
Reliance Centre, 6th Floor,
South Wing, Off Western Express Highway,
Santacruz (East)
Mumbai
Maharashtra 400 055
3. Religare Finance Limited,
Having its registered office at:
2nd Floor, Rajkot Building,
24, Nehru Place,
New Delhi 110 019
4. Indusind Bank Limited,
Having its corporate office, Tower I,
11th Floor, 841, Senapati Bapat Marg,
Elephonstone Road (W)
Mumbai - 400 013

....Respondents

AND



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In the matter of:

Chamaria Fashions Private Limited
Plot No. 177-B,
Shahwadinr Shahwadi Octroi Naka,
Saijpur Road,
Narol,
Ahmedabad 382 405

.....Resolution Applicant

Order delivered on 1st January, 2020

Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance: Mr. Aman Shankar and Mr. Atul Sharma, Advocates for the RP.
Mr. Urvesh K Gor, Advocate for the Respondent No. 1

ORDER

[Per se: Ms. Manorama Kumari, Member (Judicial)]

1. The instant application (IA) No. 664 of 2019 in CP(IB)No. 299/2018, is filed by the applicant, the Resolution Professional of M/s. V S Texmills Private Limited (hereinafter referred to as Corporate Debtor) under Section 30(6) read with 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as IB Code) for seeking approval of Resolution Plan dated 20th June, 2019 along with its final addendum dated 11th September, 2019 submitted by **Chamaria Fashions Private Limited** for insolvency resolution of the Corporate Debtor as a going concern.
 - 1.1 The Applicant has also submitted affidavits dated 12th December, 2019 and affidavit dated 31st December, 2019 and rectified the clerical mistakes made in their petition and the submission of the Resolution Plan.
2. For the sake of convenience, it is mentioned herein that:
 - 2.1 CP(IB)No. 299/2018 was filed by Financial Creditor viz. Reliance Commercial Finance Limited, the Respondent No. 2 under section 7 of



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the IB Code seeking initiation of Corporate Insolvency Resolution Process against V S Texmills Private Limited, the Corporate Debtor, having registered office at 342, Govindpura Nadiad Mehmdabad Road, VillKamla, Taluka Nadian, Dist. Kheda, Gujarat 387320.

- 2.2 The said CP(IB) No. 299/2018 was admitted on 09.01.2019 by this Adjudicating Authority and appointed Smt. Bhavi Shreyans Shah, as an Interim Resolution Professional (hereinafter referred to as "IRP").
- 2.3 The IRP, so appointed, made public announcement on 12.01.2019 as per the provisions of section 15 of the Code calling upon the claims from the creditors in view of the order dated 09.01.2019 of this Adjudicating Authority. Consequent upon public announcement, IRP received claims from different creditors till 23.01.2019 and constituted the Committee of Creditors (hereinafter referred to as "CoC") on 31.01.2019.
3. It is stated that IRP called the first meeting of CoC on 06.02.2019 and in the aforesaid meeting of CoC, the resolution was passed to appoint the IRP as Resolution Professional (hereinafter referred to as RP).
4. It is stated that third meeting of CoC was convened on 14.03.2019 to initiate the Expression of Interest (In short EoI) process and accordingly, the Applicant made the public announcement in newspapers inviting EoI in Form G on 29.03.2019.
5. It is stated that in pursuant to the invitation inviting EoI, the Applicant received two EoIs one from Chamaria Fashions Private Limited and the other from Vikash Enterprises. Thereafter, Vikash Enterprises withdrew their resolution plan and thus, Chamaria Fashions Private Limited was the only resolution applicant. The resolution plan dated 23.05.2019 submitted by Chamaria Fashions Private Limited (hereinafter referred to as "RA") was discussed in the 4th meeting of CoC on 17.06.2019.
- 5.1 It is stated that the said Resolution Plan was revised and the RA submitted the revised resolution plan dated 20.06.2019 and the said revised resolution plan dated 20.06.2019 was discussed by the CoC in its 5th meeting held on 06.07.2019, wherein the CoC was of the opinion



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regarding improvement of resolution plan and accordingly RA was given a chance to rectify the resolution plan.

- 5.2 It is further stated by the RP that in the 5th meeting of CoC, it was resolved by the CoC to extend the CIRP and accordingly, an Interlocutory Application was preferred by the Applicant and this Adjudicating Authority vide its order dated 12.07.2019 in IA 403 of 2019 in CP(IB) 299 of 2018 extended the CIRP for further 90 days beyond 180 days.
- 5.3 The 6th meeting of CoC was convened on 10.07.2019, wherein, CoC granted further time to RA to submit a revised resolution plan. Further, in the 7th meeting of CoC held on 19.07.2019, interest to submit resolution plan shown by the Director of the Suspended Management of the Corporate Debtor was rejected by the CoC and the RA was given a chance to submit resolution plan by 25.07.2019 with certain changes.
- 5.4. The Applicant vide his affidavit dated 12th December, 2019 submits that RA, in all, submitted four (4) Addendums dated 25th July, 2019, 25th July, 2019, 5th September, 2019 and 11th September, 2019 and the members of CoC voted and approved the Resolution Plan dated 20th June, 2019 along with the final addendum dated 11th September, 2019. The said Resolution Plan dated 20th June, 2019 and the Addendum dated 11th September, 2019 was placed before the CoC for e-voting in the ninth meeting of CoC which was convened on 3rd October, 2019 and thereafter e-voting was conducted from 4th October, 2019 to 5th October, 2019. The CoC approved the said Resolution Plan dated 20th June, 2019 with Addendum dated 11th September, 2019 with majority voting share of 92.44%.
6. The RP vide Compliance Certificate in the form of Form H has submitted Liquidation Value of the Corporate Debtor as Rs. 4,63,89,800/-
7. Pursuant to the approval of the Resolution Plan by the CoC under Section 30(4) of the Code (as amended on June 06, 2018) as the successful Resolution Plan, the Resolution Professional filed the instant application being IA No. 664 of 2019 under Section 30(6) of the Code



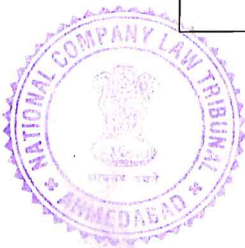
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seeking its approval for the same in terms of Section 31(1) of the Code and regulation 39(4) of the CIR Regulations.

8. The Resolution Professional submitted a detailed Table showing the compliances of the Resolution Plan with the mandatory requirements under the Code and CIR Regulations to support his contention, which said Plan has also been approved by the CoC having 92.44 per cent of voting in favor of the Resolution Plan. The Table showing the compliances is given hereunder:

Sr. No.	Section/ Regulation	Requirement of the Code and CIR Regulations	Clause of the Resolution Plan	
1	Section 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 if the CD?	Demonstrated along with EoI submitted	Yes
2	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?	The Resolution Professional has received affidavit for stating and affirming that RA is eligible to submit the Resolution Plan u/s 29A of the IBC, 2016	Yes
3.	Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible	-do-	Yes
4.	Section 30(2)	Whether the Resolution Plan: (a) provides for the payment of insolvency	(a) Part B (b) Part D (c) Part M (e) Part N	(a) Yes (b) Yes (c) Yes (d) Yes



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		<p>resolution process costs?</p> <p>(b) provides for the payment of the debts of operational creditors?</p> <p>(c) provides for the management of the affairs of the Corporate Debtor?</p> <p>d) the implementation and supervision of the resolution plan;</p> <p>?</p> <p>(e) contravenes any of the provisions of the law for the time being in force;</p>	(e) NA	(e) No
5.	Section 30(4)	<p>Whether the Resolution Plan</p> <p>(a) is feasible and viable, according to the CoC?</p> <p>(b) has been approved by the CoC with 66% voting share?</p>		<p>(a) Yes</p> <p>(b) Yes</p>
6.	Section 31(1)	<p>Whether the Resolution Plan provisions for its effective implementation plan, according to the CoC?</p>		Yes
7.	Regulation 35A	<p>Where a 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</p>	<p>No transaction falling within times specified u/s 43,45,50 or 66</p>	Yes



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		66 before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?		
8.	Regulation 38(1)	Whether a resolution plan identifies specific source of funds that will be used to pay the – (a) insolvency resolution process costs? (b) Liquidation value due to operational creditors? (c) Liquidation value due to dissenting financial creditors?	Part L	Yes Yes Yes
9.	Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Minutes of 9 th meeting of the CoC and Part L	Yes
10.	Regulation 38(2)	Whether the Resolution Plan shall provide: (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; and c) adequate means for	(a) Part L (b) Part M (c) Part N	Yes Yes Yes



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		supervising its implementation?		
11.	Regulation 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?	(a) (b) (c) Part L (d) (e)	(a) Yes (b) Yes (c) Yes (d) Yes (e) Yes
12.	Regulation 39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	No transaction falling within times specified u/s 43,45,50 or 66	No
13.	Regulation 39)4)	Provide details of performance security received as referred to in sub-regulation (4A) of regulation 36(B)	Yet to receive	

9. The present application has been filed for approval of the Resolution Plan under section 30(6) read with section 31(1) of the Code (as amended) submitted by **Chamaria Fashions Private Limited**, in respect of the Corporate Debtor.



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- 9.1 The applicant/the Resolution Professional, deliberating the sequence of events right from calling EoI up to approval of the Resolution Plan by the CoC in its 9th meeting held on 03.10.2019 submitted the Resolution Plan duly approved by the CoC and affirming that he has verified the contents of the Resolution Plan and confirmed that it complies with the requirements envisaged under Regulation 38 of the CIR Regulations as well as Section 30 of the Code, and sought for approval of the Resolution Plan by this Adjudicating Authority.
- 9.2 The Resolution Applicant in pursuance to the Public Notice dated 29.03.2019 submitted the Plan relating to the insolvency resolution process of V S Texmills Private Limited (Company)/Corporate Debtor under the provisions of Insolvency and Bankruptcy Code, 2016 and the rules and regulations issued thereunder.

On perusal of the records it is found:

- that total outstanding Financial Debt of the Company/Corporate Debtor admitted by the Resolution Professional towards its financial creditors, both Secured as well as Unsecured, is Rs. 16,31,41,624/- (Rupees Sixteen Crores Thirty-One Lakhs Forty-One Thousand Six Hundred Twenty-Four) as set out in Part C of the Resolution Plan. The amount of Rs. 16,31,41,624/- includes interest amounting to Rs. 4,54,57,711/-.
- That, the total outstanding operational debt of the Company provisionally admitted by the Resolution professional towards its operational creditors is Rs. 1,37,73,192/- (Rupees One Crore Thirty-Seven Lakhs Seventy-Three Thousand One Hundred Ninety-Two) as set out in Part of the Resolution Plan, based on the Information Memorandum.
- That, as per the Information memorandum provided by the Resolution Professional, there is no amount outstanding due to worker or employee of the Corporate Debtor.



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A statement showing the amount of claim and amount proposed to be paid is given below:

Name of Claim	Amount of Claim admitted by IRP/RP	Amount Proposed by RA
IRP Cost	25,00,000	25,00,000
Financial Creditors	16,31,41,624	4,44,00,000
Workers	NIL	NIL
Employees	NIL	NIL
Operational Creditors	1,37,73,192	6,00,000
Statutory Dues	NIL	NIL
Shareholders	NA	NIL
Total:	17,94,14,816	4,75,00,000

A statement showing sources of funds and applicability of the funds is mentioned hereunder:

Application of Funds	Rs. in Lakhs	Sources of Funds	Rs. in Lakhs
Liabilities to be resolved/settled		Internal Sources/Retained earnings of Resolution Applicant and out of revenue generation from the Corporate Debtor	575.00
(a) Insolvency Resolution Process Cost	25.00		
(b) Financial Creditors (Secured & Unsecured)	444.00		
(c) Workmen/Employees			
Total:			
(d) Liquidation value due to operational creditors	NIL		
(e) Statutory Dues	NIL		
(f) Operational Creditors	6.00		575.00
(g) Equity Share	NIL		



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Capital			
Total Value of Resolution Plan	475.00		
Fresh fund based working capital	100.00		
Total:	575.00	Total:	575.00

Payment Schedule – Financial Creditors from the date of approval of the Resolution Plan by the Adjudicating Authority:

Particulars	Principal	Interest	Total	Balance
				444,00,000
EMD with EoI	15,00,000	-	15,00,000	4,29,00,000
EMD with Plan	30,71,000	-	30,71,000	3,98,29,000
Q-1	49,78,625	-	49,78,625	3,48,50,375
Q-2	49,78,625	-	49,78,625	2,98,71,750
Q-3	49,78,625	7,46,794	57,25,419	2,48,93,125
Q-4	49,78,625	6,22,328	56,00,953	1,99,14,500
Q-5	49,78,625	4,97,863	54,76,488	1,49,35,875
Q-6	49,78,625	3,73,397	53,52,022	99,57,250
Q-7	49,78,625	2,48,931	52,27,556	49,78,625
Q-8	49,78,625	1,24,466	51,03,091	-
Total	4,44,00,000	26,13,779	4,70,13,779	

10. Funds infused by the Resolution Applicant shall be distributed as per Section 53(1) which speaks as follows:

Section 53(1) Notwithstanding anything to the contrary contained in any law enacted by the parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely: -

- i. The insolvency resolution process costs and the liquidation costs paid in full;



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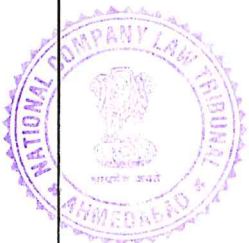
- ii. The following debts which shall rank equally between and among the following: -
- (i) Workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and
 - (ii) Debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;
- iii. Wages and any unpaid dues owned to employees other than workmen for the period of twelve months preceding the liquidation commencement date;
- iv. Financial debts owed to unsecured creditors;
- v. The following dues shall rank equally between and among the following: -
- (i) Any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
 - (ii) Debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
- vi. Any remaining debts and dues;
- vii. Preference shareholders, if any; and
- viii. Equity shareholders or partners, as the case may be.

(2) Any contractual arrangement between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipients shall be distributed after such deduction.

Explanation – For the purpose of this section –

(a) 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



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(b) 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).

11. Thus, Section 53 of the Code lists the priorities to be given to the beneficiaries, of liquidation value of the assets of the Corporate Debtor. The provisions of Section 53 make it amply clear that Operational Creditors are at the end of the list of beneficiaries as the Secured Financial Creditors have edge over the others.
12. It would also be pertinent to mention here that Operational Creditors have no locus standi as far as approval of the Resolution Plan by the CoC is concerned. As per Section 24(3)(C), they are not eligible to attend and vote at the meetings of CoC, if, they are holding less than 10% of the total debt.

Section 24(3) of the Code reads as under:

Section 24:

- (3) The Resolution Professional shall give notice of each meeting of the committee of creditors to –
 - (a) member of [Committee of creditors, including the authorized representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5)];
 - (b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;
 - (c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent of the debt.
13. To decide the issue, it will be pertinent to notice the very object of the ‘IB Code’, ‘Resolution’ and Role of CoC.

The objective of the ‘I&B Code’

“The objective of the Insolvency and Bankruptcy Code, 2016 is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in time bound manner for maximization of the value of assets of such persons, to promote entrepreneurship, availability of



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credit, and balance the interests of all stakeholders including alteration in the priority of the payments of the government dues, to establish an Insolvency and Bankruptcy Fund and matters connected therewith or incidental thereto.

Thus, the preamble of the I&B Code aims to promote resolution over liquidation.

The purpose of resolution is for maximization of value of assets of the 'Corporate Debtor' and thereby for all creditors. It is not maximization of value for a 'stakeholder' or 'assets of a stakeholder' such as creditors and to promote entrepreneurship, availability of credit and balance the interests. The first objective is 'resolution'. The second objective is 'maximization of the value of assets of the 'Corporate Debtor' and third objective is 'promoting entrepreneurship, availability of credit and balancing the interests'. This objective of the I&B Code is sacrosanct.

The said objective of the I&B Code is also affirmed by Hon'ble Supreme Court in Arcelor Mittal India Pvt. Ltd. Vs. Satish Kumar Gupta and Ors wherein the Hon'ble Supreme Court observed that "the Corporate Debtor consists of several employees and workmen whose daily bread is dependent on the outcome of the CIRP. If there is resolution applicant who can continue to run the corporate debtor as a going concern, every effort must be made to try and see that this is made possible.

Resolution Plan

The 'I&B Code' defines 'Resolution Plan' as a plan for insolvency resolution of the 'Corporate Debtor' as a going concern. It does not spell out the shape, color and texture of 'Resolution Plan', which is left to imagination of stakeholders. Read with long title of the 'I&B Code', functionally, the 'Resolution Plan' must resolve insolvency (rescue a failing, but viable business); should maximize the value of assets of the 'Corporate Debtor', and should promote entrepreneurship availability of credit and balance the interests of all the stakeholders.



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In the backdrop of the object of the IBC, it is amply clear that the **“Resolution is Rule and the Liquidation is an Exception”**. Liquidation brings the life of a corporate to an end. It destroys organizational capital and renders resources idle till reallocation to alternate uses. Further, it is inequitable as it considers the claims of a set of stakeholders only if there is any surplus after satisfying the claims of a prior set of stakeholders fully. ‘The IB Code’, therefore, does not allow liquidation of a corporate debtor’ directly. It allows liquidation only on failure of corporate insolvency resolution process’. It rather facilitates and encourages resolution in several ways.

The said objective of the Resolution Plan is affirmed in the decision in the matter of **K. Sashidhar Vs. Indian Overseas Bank & Ors** The Supreme Court has observed that National Company Law Tribunal has no jurisdiction and authority to analyze or evaluate the commercial decision of the Committee of Creditors (CoC) to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors.

Keeping in view such object behind the enactment of the Code, intention of the Legislature is, that the priority is to be given to the resolution than liquidation in the larger interests of the public, workmen, stakeholders and the other employees of the corporate debtors in the interest of justice and in order to achieve the object of the Code and liquidation of a company can be only as a last resort, wherein, all efforts for brining Resolution Plan were failed or it cannot be found workable in the larger public interest. Hence, now the approval of Resolution Plan by this Adjudicating Authority is rule as per the apex court’s decision in the matter of **K. Sashidhar Vs. Indian Overseas Bank & Ors** as discussed above.

The Hon’ble Supreme Court in its recent judgment in Civil Appeal No. 10673 of 2018 in **K. Sashidhar Vs. Indian Overseas Bank & Ors**. Comprising of Hon’ble Justice A.M. Khanwilkar and Hon’ble Justice Ajay Rastogi observed that Adjudicating Authority has no jurisdiction to interfere with the commercial wisdom of the CoC.



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14. On perusal of the records, it is found that the Resolution Plan confirms to the criteria as provided under clauses (a) to (f) in section 30(2) of the Code and the CoC approved the Resolution Plan by 92.44 per cent majority of voting share. The Resolution Plan also confirms to such other requirements as may be specified by the Board.

On perusal of the Resolution Plan, it is found that it meets the requirement of Section 31 r/w Section 30(2) of the Code. Therefore, the present application IA 664 of 2019 is allowed subject to certain observations.

To make the provisions clearer, Section 30 of the IBC is reproduced hereunder:

Section 30: Submission of resolution plan:

"30. (1) A resolution applicant may submit a resolution plan *1[along with an affidavit stating that he is eligible under section 29A]* to the resolution professional prepared on the basis of the information memorandum.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

- (a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the *2[payment]* of other debts of the corporate debtor;
- (b) provides for the *3[payment]* of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;
- (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) conforms to such other requirements as may be specified by the Board.

4[Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).



Shankar Singh

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5["(4) The committee of creditors may approve a resolution plan by a vote of not less than 6[sixty-six] per cent. of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of **section 12**, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section.".]

7[Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.]span>

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:

Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority."

15. However, **Clause No. e of Chapter IV: Assumptions and Limitations of Resolution Plan**, cannot be allowed as these are the subject matter of the various Competent Authorities having their own jurisdiction. The said Clause No. e is reproduced hereunder:

"...All business permits required by the Corporate Debtor to conduct its business and which have not been granted, cancelled, terminated, revoked, suspended or not renewed; having been granted or reinstated, as the case maybe, at no additional cost to the Resolution Applicant or Corporate Debtor..."



Shankar Singh

Chaturvedi

16. In this regard, we are of the view that approval of the Resolution Plan does not mean automatic waiver or abatement of legal proceedings, if any, which are pending by or against the Company/Corporate Debtor as those are the subject matter of the concerned Competent Authorities having their proper/own jurisdiction to pass any appropriate order as the case may be. The Resolution Applicant(s) on approval of the Plan may approach those Competent Authorities/Courts/Legal Forums/Offices – Govt. or Semi Govt. / State or Central Govt. for appropriate relief(s) sought for in **Clause No. e of Chapter IV of the Resolution Plan.**
17. Thus, not allowing the above said Clause No. e of Chapter IV of the Resolution Plan, is not going to make any hindrance for proper implementation of the Resolution Plan as those are the subject matter of the concerned/appropriate Competent Authorities. The Resolution Applicant(s) has/have liberty to approach Competent Authorities for any concession, relief or dispensation as the case may be.
18. It is further directed that:
- i. The approved Resolution Plan shall come into force with immediate effect.
 - ii. The Resolution Plan shall be subject to the various existing laws in force and shall also conform to such other requirements specified by the Board and other Statutory/Competent Authorities as the case may be.
 - iii. The Resolution Applicant(s) shall pursuant to the Resolution Plan approved under section 31(1) of the Code, obtain the necessary approvals required under any laws for the time being in force within a period of one year from the date of approval of the Resolution Plan by the Adjudicating Authority under section 31(1) or within such period as provided for in such law, whichever is later or as the case may be.
 - iv. The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.



Shri. A. H. G. J.

Chatterjee

19. We, the Adjudicating Authority, are of the considered opinion and also being satisfied that the Resolution Plan along with final Addendum dated 11th September, 2019 as approved by the Committee of Creditors (CoC) meets the requirements as referred to under section 30(2) of the Code, accordingly IA 664 of 2019 is allowed with the above said observations and directions.

Any other IA(s), if pending, also stand(s) infructuous and disposed of in view of the above order.

Chockalingam

Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)

Manorama

Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

LCT

