



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

**IA/1239(CHE)/2022  
in  
IBA/578/2019**

*(Filed under Sec. 30(6) of the Insolvency & Bankruptcy Code, 2016 r/w  
Regulations 38 & 39 of IBBI (Insolvency Resolution Process of Corporate  
Persons) Regulations, 2016)*

**In the matter of:**

Mrs.J.Karthiga,  
Resolution Professional,  
Leo Primecomp Private Limited,  
CIN:U36999TN1996PTC036241,

*... Applicant*

**In the matter of:**

State Bank of India

*... Financial Creditor*

-Vs-

LEO Primecomp Private Limited

*... Corporate Debtor*

Order Pronounced on **12<sup>th</sup> January 2023**

**CORAM:**

**Dr.DEEPTI MUKESH, MEMBER (JUDICIAL)**

**SAMEER KAKAR, MEMBER (TECHNICAL)**



## **Memo of Parties**

Mrs.J.Karthiga,  
Resolution Professional,  
Leo Primecomp Private Limited,  
CIN:U36999TN1996PTC036241,  
Sri Nivas, No.1, Old No.1052,  
41<sup>st</sup> Street, Korattur,  
Chennai – 600 080.

... Applicant

### **Present:**

*For Applicant: Mr.E.Om Prakash , Senior Advocate  
for Mr.T.Ravichandran, Advocate  
Mr.Ravi RajaGopal, Advocate  
For Financial Creditor: Mr.M.L.Ganesh, Advocate*

## **ORDER**

The above-captioned application IA(IBC)/1239(CHE)/2022 is filed by the Resolution Professional of the Corporate Debtor viz., Leo Primecomp Private Limited under Section 30(6) of the Insolvency & Bankruptcy Code, 2016 (for brevity 'IBC, 2016') r/w Regulations 38 & 39 of IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 (for brevity 'CIRP Regulations') seeking approval of the Resolution Plan duly approved by Committee of Creditors 100% voting ('Plan' for brevity) submitted by the Successful Resolution Applicant ('SRA' for brevity) M/s.B.Athithyan and V.Karthikeyan.

### **2. BRIEF FACTS OF THE CASE:**

2.1. CIRP in respect of the Corporate Debtor was initiated by this Adjudicating Authority vide order dated 24.07.2019 in IBA/578/2019 filed by the Financial Creditor under Section 7 of



IBC, 2016 and Mr.Mathur Sabhapathy Viswanathan, was appointed as Interim Resolution Professional (IRP), later he was confirmed as the Resolution Professional (RP) at the 1<sup>st</sup> meeting of the Committee of Creditors (CoC) held on 26.08.2019.

2.2. As per Regulation 6 of CIRP Regulation the IRP made a public announcement on 29.07.2019, in 'Deccan Chronicle' (English) Chennai edition and 'Daily Thandi' (Tamil) Chennai edition and invited claims from the creditors till 10.08.2019.

2.3. The CoC was constituted on 19.08.2019 with the sole member viz., State Bank of India.

2.4. **Expression of Interest (EoI)**: In terms of Section 25(2)(h) of the IBC, 2016 and Regulation 36A(1) of CIRP Regulations, for inviting EoI, Form-G was published on 07.10.2019, 06.12.2019 and again on 30.11.2020. As no EoIs were received and in view of the outbreak of the Covid-19 pandemic, the CoC in its 15<sup>th</sup> meeting held on 04.08.2021 instructed the RP to issue fresh Form-G.

2.5. The existing promoters of the Corporate Debtor M/s.B.Athithyan and V.Karthikeyan submitted their EoI, and thereafter submitted the Resolution Plan on 29.11.2021 and based on further negotiations submitted the revised Plan on 23.12.2021. It was submitted that this original resolution plan dated 22.12.2021 has the payment of Rs.60 Crore as the Plan amount.



2.6. However, in the 22<sup>nd</sup> meeting of the CoC held on 03.02.2022, the sole member CoC rejected the Resolution Plan dated 22.12.2021. Subsequently, in the 23<sup>rd</sup> meeting of the CoC held on 08.02.2022 it was resolved to liquidate the Corporate Debtor and to appoint the RP herein as Liquidator.

2.7. Accordingly, the RP filed IA/196/2022, wherein this Adjudicating Authority vide order dated 06.06.2022 ordered liquidation of the Corporate Debtor. J.Karthiga was appointed as Liquidator.

2.8. A Company Appeal (AT)(CH)(Ins) No.245/2022 against the said order was filed. Hon'ble Appellate Authority on 30.06.2022 stayed the order of liquidation. Meanwhile, the Resolution Applicants/the promoters proposed changes to the original resolution plan by revising the plan amount as Rs.72 crore through an improved resolution plan dated 30.08.2022, which was deliberated and accepted by the sole Financial creditor vide letter dated 27.09.2022.

2.9. Thereafter, on 13.10.2022, the Appellate Authority had set aside the above liquidation order by taking note of the improved resolution plan dated 30.08.2022 submitted by the Promoters /Resolution Applicant for a sum of Rs.72 Crore, that amount was remitted in full, by them on 27.09.2022 and was accepted by the



sole CoC member. Further, the Appellate Authority issued the following directions,

*"directs the 'Adjudicating Authority' (National Company Law Tribunal, Special Bench – II, Chennai), to take on 'Record' the 'Improved Resolution Plan' dated 30.08.2022, which was submitted by the 'Appellant' to the 2nd Respondent / State Bank of India (Sole Member of the Committee of Creditor) and to proceed further, as per the 'ingredients of the Insolvency & Bankruptcy Code, 2016 and as per the 'Rules and Regulations' that are in force.*

*7. Added further, the 3rd Respondent / Liquidator, is to be continued as the 'Resolution Professional' for carrying out the Committee of Creditor's Proceedings, in view of the fact, that he is 'currently' / 'presently' in-charge of the 'Operations of the Corporate Debtor'."*

*8. As regards the 'Exclusion of a Time', prayed for, by the 'Appellant', i.e., from 07.03.2022 till 8.09.2022 (205 Days), being the 'Time Spent' before the 'Adjudicating Authority' (National Company Law Tribunal, Special Bench – II, Chennai) and the 'Period Spent' from 06.06.2022, till 'this Date (13.10.2022), shall be 'Excluded', for the purpose of computing the 'Completion of Corporate Insolvency Resolution Process' period, by the 'Adjudicating Authority' (National Company Law Tribunal, Special Bench – II, Chennai).*

2.10. Thereafter, the Applicant convened the 24<sup>th</sup> meeting of the CoC on 15.10.2022, wherein the Sole CoC member viz., State



Bank of India with 100% voting approved the improved resolution plan dated 30.08.2022, for a sum of Rs.72 Crore.

2.11. Under the said circumstances, the RP has moved the present application seeking approval of the resolution plan.

2.12. **Applications regarding extension and exclusion of CIRP period:** It was submitted that 180 days of CIRP expired on 20.01.2020. Thereafter, with the consent of the CoC, the RP had moved several applications wherein this Adjudicating Authority extended/excluded the CIRP period as follows:

Case No.	Order Date	Order
MA/114/2020	19.02.2020	CIRP extended for 90 days
IA/895/2021	24.09.2021	551 days of the Covid-19 period excluded in the CIRP period
IA/1177/2021	21.12.2021	Excluded 8 days and extended 30 days of the CIRP period
IA/19/2022	15.03.2022	Excluded a further 39 days in the
IA/141/2022	15.03.2022	The CIRP period extended further 10 days
IA/1162/2022	19.12.2022	The CIRP period extended further 20 days

Read in conjunction with the above orders of this Adjudicating Authority, this instant application is considered to be filed before the expiry of 330 days of the CIRP period.



2.13. On 07.09.2019 the RP appointed Registered Valuers. As earlier resolved by the CoC the 4<sup>th</sup> EoI was issued on 30.09.2021, further, the CoC extended the time for submission of the Resolution Plan till 23.12.2021.

### **3. SALIENT FEATURES OF THE RESOLUTION PLAN:**

#### **3.1. Eligibility:**

3.1.1. It is seen from the MSME Udhayam Registration Certificate bearing No.UDYAM-TN-02-0002826, dated 07.08.2020 attached in Annexure-1 of Synopsis filed by the Applicant on 16.12.2022, that the Corporate Debtor was registered as MSME on 05.08.1996 and had commenced its business on the same date.

3.1.2. Since, the Corporate Debtor is a Registered MSME its promoters M/s.B.Athithyan and V.Karthikeyan, who were Resolution Applicants herein are eligible to submit the Resolution Plan by virtue of Section 240A of IBC, 2016. An undertaking with respect to the eligibility of the Resolution Applicant is also placed on record.

3.1.3. It is seen from the letter dated 27.09.2022, the sole CoC member viz., State Bank of India has accepted the proposal of an improved Resolution Plan as follows:



സ്റ്റാറ്റ് ബാങ്കിംഗ് കമ്പനി ലിമിറ്റഡ്  
भारतीय स्टेट बैंक  
State Bank of India

WITHOUT PREJUDICE

To  
Shri B.Athithyan  
S/o A Balakumar  
No.161/A, VGP Layout  
Palavakkam  
Chennai - 600 041

To  
Shri V.Karthikeyan  
S/o A Vasudevan  
No.161/A, VGP Layout  
Palavakkam  
Chennai - 600 041

SAMBICHECLO-I-612


Date: 27.09.2022

NAME: M/s LEO PRIME COMPUNT LTD

We acknowledge receipt of Rs. 17.51 Cr as Uplifted amount on 30.08.2022 and first amount of Rs. 54.49 Cr on 27.09.2022 totaling Rs. 72 Cr by us as per the improved resolution plan submitted by you in the captioned account. The said amount is deposited in our "No Lien" account. Subject to approval of improved resolution plan by NCLT/NCAT, it will be processed further.

2. Kindly note that this letter is being issued at the request of the Resolution applicants.

Yours Faithfully,

  
Assistant General Manager & CLO-I

The above letter acknowledges that the entire amount of Rs.72 Crore has been deposited in the 'No Lien' account with the State Bank of India.

3.1.4. In the minutes of the 24<sup>th</sup> meeting of the CoC held on 17.10.2022 it was resolved and recorded as follows:

*"RESOLVED THAT, after considering the feasibility and viability of the Final Improved Resolution Plan along with Clarifications & Addendum and such other requirements as specified in the appropriate sections of the Insolvency and Bankruptcy Code, 2016 read with the relevant Regulations as specified under the Insolvency and Bankruptcy Board of India*

(Insolvency Resolution Process for Corporate Persons) Regulations, 2016 including amendments, if any, by the Board, the Committee of Creditors, in pursuance to Sec 30 of the Insolvency and Bankruptcy Code, 2016 and subject to the approval of the Hon'ble National Company Law Tribunal, Chennai Bench, **hereby approves the Final Improved Resolution Plan**, submitted by Mr. B. ATHITHYAN & Mr. V. KARTHIKAYAN"

**3.2. DISTRIBUTION:**

The total Resolution Plan amount offered by the Successful Resolution Applicant is Rs.72 Crore. The proposed distribution of the same is reproduced below,

Annexure - 5

	Filed	Admitted	Being Paid under the Resolution Plan
SBI	1,40,05,73,429.95	1,40,05,73,429.95	70,00,00,000
Employees & Workmen	0	0	0
Trade Creditors	2,60,67,946.89	2,26,48,573.25	40,00,000
GST & Excise	1,09,76,299	1,09,76,299	
Excise - nandanam	1,20,465	0	
Sales Tax - Commercial Tax	47,06,335	47,06,335	
Asst Commnr of Customs	35,62,07,300	0	
EPFO	2,58,12,834	1,17,94,496	1,18,00,000
ESI	64,67,704	37,25,896	37,00,000
Fmr Employee Claim rejected	3,32,506	0	
Total claims	1,83,12,64,819.84	1,45,44,25,029.20	71,95,00,000
Provision for CIRP Costs			5,00,000
Total			72,00,00,000



### **3.3. Time Line & Source of Funds.**

The total amount of the Resolution Plan Rs.72 Crore was deposited in the 'No lien' account and it will be distributed as per the above distribution table when the Resolution Plan is approved.

### **3.4. Implementation and Monitoring Committee:**

Regarding the implementation of the Plan, the Resolution Plan provides as follows,

*"With effect from the Approval Date, the Monitoring Committee shall be responsible for the implementation of the Plan.*

*The monitoring committee shall comprise of the Resolution Applicants, one representative of the Financial Creditor, the Resolution Professional."*

*The Resolution Applicants shall have the freedom to take such decisions as may be necessary to manage the business of the CD, which shall be strictly within the overall parameters of the approved Resolution Plan.*

*The Monitoring Committee shall have the following objectives:*

*a. To monitor and supervise the implementation of the Plan and shall be required and entitled to do all such acts, deeds, matters and things as may be necessary in order to implement and give effect to this Plan*

*b. To coordinate amongst all stakeholders for smooth implementation of the Plan;*



c. To communicate the Feedback on the progress of the implementation of the Resolution Plan to the Adjudication Authority.

**4. MANDATORY COMPLIANCE UNDER IBC, 2016 AND CIRP REGULATIONS:**

As submitted and as well as in Form-H filed by the Resolution Professional in relation to the procedural aspects, the same seems to have been duly complied with for which the Resolution Professional has issued a Certificate and it is not necessary for this Authority to go into the same. However, this Authority is duty-bound to examine 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;

<b>MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS</b>	<b>COMPLIANCE UNDER RESOLUTION PLAN</b>
<b>S. 30(1)</b> - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	Resolution Applicant filed Undertaking at page 203-206 of the application
<b>S. 30(2)(a)</b> - Payment of Insolvency and Resolution cost in the manner specified by the Board	Clause 4 of the improved resolution plan dated 30.08.2022 and Section 5 Clause 1 of the Original resolution plan dated 22.12.2021 provides for CIRP cost to be paid in full in priority over all other claims.
<b>S. 30(2)(b)</b> - Payment of 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	Clause 4 of the improved resolution plan and Section 5 Clause 2 of the original resolution plan.

*Handwritten initials/signature*



of a liquidation of the Corporate Debtor under Sec. 53	
<b>Req. 38(1)</b> - Resolution Plan identifies a specific source of funds that will be used to pay the (a) Insolvency Resolution Process cost? (b) Liquidation value due to Operational Creditors? (c) Liquidation value due to dissenting financial creditors	Clause 4 of the improved resolution plan and Section 5 & Section 11 Clause 6 of the original resolution plan.
<b>Req. 38(1A)</b> - Resolution Plan shall include a statement as to how it has dealt with the interest of all the stakeholders, including financial creditors and operational creditors of the Corporate Debtor.	Described in Section 5 of the original resolution plan.
<b>S. 30(2)(c)</b> - Management of the affairs of the Corporate Debtor after approval of the Resolution Plan	The Resolution Applicants shall be in charge of the management of the business of the CD. The details are given in Section 7.
<b>S. 30(2)(d)</b> - Implementation and Supervision of the Resolution Plan  <b>and</b> <b>Req. 38(2)</b> - Resolution Plan shall provide: a) term of the plan and its implementation schedule  b) management and control of the business of the Corporate Debtor during its term;  c) it has provisions for effective implementation  d) it has provisions for approval required and the timeline for the same; and  e) the Resolution applicant has the capability to implement the Resolution Plan.	Section 6 of the original resolution plan provides for the implementation of the Resolution Plan.  Section 5 at page 14 of the original resolution plan.  Section 7 at pages 16-17 of the original resolution plan.  Section -6 - at page 15 of the original resolution plan.  The total Plan amount of Rs.72 Crore has been deposited in full to the No lien account.



<p><b>Reg. 38(3)</b> - Resolution Plan shall demonstrate:</p> <p>a) it address the cause of default</p> <p>b) it is feasible and viable</p> <p>c) it has provisions for effective implementation</p> <p>d) it has provisions for approval required and the timeline for the same</p> <p>e) the resolution applicant has the capability to implement the resolution plan</p>	<p>Section 3 at page 6 of the original Resolution plan</p> <p>Section 14 of the Original Resolution Plan and Clause 1-6 of the improved resolution plan.</p> <p>Section 6,7 &amp; 9 of the Original Resolution Plan.</p> <p>Not required</p> <p>Section 2 of the original Resolution Plan.</p>												
<p><b>S. 30(2)(e)</b> - Does not contravene any of the provisions of the law for the time being in force</p>	<p>The Resolution Professional in Form H has confirmed that the Resolution Plan is not in contravention with the provisions of any Applicable Law.</p>												
<p><b>S. 30(4)</b> - Committee of Creditors approve the Resolution Plan by not less than 66% of the voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by the Board</p>	<p>The CoC, in its 24<sup>th</sup> meeting, has unanimously approved the Resolution Plan voting is given below;</p> <table border="1" data-bbox="821 1209 1332 1373"> <thead> <tr> <th>S.No</th> <th>Name of Creditor</th> <th>Assent (%)</th> <th>Dissent (%)</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>State Bank of India</td> <td>100%</td> <td>-</td> </tr> <tr> <td></td> <td><b>TOTAL</b></td> <td><b>100%</b></td> <td><b>-</b></td> </tr> </tbody> </table>	S.No	Name of Creditor	Assent (%)	Dissent (%)	1.	State Bank of India	100%	-		<b>TOTAL</b>	<b>100%</b>	<b>-</b>
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1.	State Bank of India	100%	-										
	<b>TOTAL</b>	<b>100%</b>	<b>-</b>										

**5. RELIEFS / CONCESSIONS:**

The Resolution Applicant has sought the following Reliefs and concessions from this Adjudicating Authority so as to implement the CoC approved Resolution Plan. These are ordered as follows;

SL. No.	RELIEF / CONCESSIONS SOUGHT FOR	ORDERS THEREON
1	This Resolution Plan once approved by the COC and the NCLT shall be binding on the CD, its members, promoters, guarantors, creditors, central and all state Governments (including all Government Authorities), and other stakeholders, whether involved or not, in	<b>Granted as per provisions of IBC, 2016</b>

*[Handwritten signature]*



	this Resolution Plan and/or otherwise concerned or connected with the Company, in accordance with Section 31 of the Code.	
2	The Total Resolution Plan amount shall be Rs.72,00,00,000/- (Rupees Seventy- Two Crores only) which will satisfy the debts due from the Corporate Debtor and also discharge the Guarantors in full.	<b>Granted, subject to the outcome of proceedings before Supreme Court in Sanjay Singal &amp; Anr. Vs. Union of India &amp; Ors. [WP(C)/510/2022]</b>
3	The liability of the Resolution Applicants shall be limited to this sum of Rs.72 Crores as against all admitted claims, with the "not admitted" and "unfiled claims" being fully discharged without recourse to the Resolution Applicants and the Corporate Debtor.	<b>Granted</b>
4	The Resolution Professional shall be released of his duties and responsibilities and the CoC shall be dissolved with effect from the effective date. However, the present Resolution Professional is Proposed to be appointed as a member of the Monitoring Committee by the Resolution Applicant for taking over the custody of the assets of the CD and handing over the title deeds and possession of all the properties to the management of the company and for implementation and supervision of the Resolution Plan.	<b>Granted</b>
5	The Monitoring Committee shall cease to exist on completion of all the payment and obligations under this resolution plan.	<b>Granted</b>

6. In so far as the approval of the Resolution Plan is concerned, this Authority, along with considering the decision of the Committee of Creditors, is duty-bound to follow the precedents of the 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 follows;

*"19.....In the present case, however, our focus must be on the dispensation governing the process of approval or rejection of the 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."

Further, 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 follows;

"42. ....Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of Section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and Section 32 read with Section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in *K. Sashidhar (supra)*."

Further the 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 follows;

"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)*

Also, the 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 follows;

*"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)*



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

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

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

*77.1. Such limitations on judicial review have been duly underscored by this Court in the decisions above-referred, where it has been laid down in explicit terms that the powers of the Adjudicating Authority dealing with the resolution plan do not extend to examine the correctness or otherwise of the commercial wisdom exercised by the CoC. The limited judicial review available to Adjudicating Authority lies within the four corners of Section 30(2) of the Code, which would essentially be to examine that the resolution plan does not contravene any of the provisions of law for the time being in force, it conforms to such other requirements as may be specified by the Board, and it provides for: (a) payment of insolvency resolution process costs in priority; (b) payment of debts of operational creditors; (c) payment of debts of dissenting*

*P/*



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

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*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.”*

*(emphasis supplied)*

8. Thus, from the catena of judgments rendered by the Supreme Court on the scope of approval of the Resolution Plan, it is amply made clear that only limited judicial review is available for the Adjudicating Authority under Section 30(2) and Section 31 of IBC, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the Committee of Creditors.

**CONCLUSION:**

9. Thus, the Resolution Plan is hereby **approved** and is binding on the Corporate Debtor and other stakeholders, shareholders and all creditors involved so that the revival of the Debtor Company shall come into force with immediate effect and the "Moratorium" under section 14 of IBC, 2016 shall cease to have any effect henceforth. The Resolution Professional shall submit all the records, documents, belongings and assets of the Corporate Debtor processed during the commencement of the Proceedings and also return to the Resolution Applicant/Promoters. A certified copy of this Order be issued on demand to the concerned parties, upon due compliance. Liberty is hereby granted for moving any Interlocutory Application, if required, in connection with the implementation of



this Resolution Plan. That in respect of stepping in by the Resolution Applicant/Promoters into the shoes of the Corporate Debtor and taking over the business, the provisions of the Companies Act, 2013 shall be applicable. Copy of this Order is to be submitted to the Office of the Registrar of Companies, Chennai, for updating the master data of the Corporate Debtor and to the IBBI for records.

10. The Resolution Professional is further directed to hand over all records, premises/documents to Resolution Applicant to finalise the further line of action required for starting the operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access to all the records premises/documents through Resolution Professional to finalise the further line of action required for starting the operation. Accordingly, the Application stands **allowed** and **disposed of**.

- Sd -

**SAMEER KAKAR**  
MEMBER (TECHNICAL)

- Sd -

**DR. DEEPTI MUKESH**  
MEMBER(JUDICIAL)

*Gopishankar. D*