



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT – IV

ITEM No.102

IA/1699/ND/2021 IN IB/1342/ND/2018

IN THE MATTER OF:

State Bank of India ... Applicant

Versus

Shree Ambica International Food Company Pvt Ltd ... Respondent

Order under Section 7 of IBC, 2016.

Order pronounced on 30.10.2023

CORAM:

**MR. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open Court vide separate sheets.

IA/1699/ND/2021 IN IB/1342/ND/2018 stands allowed.

Sd/-

Sd/-

**DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)**

**MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)**



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

IA-1699/2021

IN

Company Petition No. IB- 1342 (ND)/2018

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

IN THE MATTER OF:-

Mr. Mahesh Bansal
(Resolution Professional of
M/s. Shri Ambica International Food Company Private Limited)
..... Applicant

AND IN THE MATTER OF:

State Bank of India

... Financial Creditor

VERSUS

M/s. Shri Ambica International Food Company Private Limited

... Corporate Debtor

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on:30.10.2023



ORDER

PER: SH. MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

The present application has been filed under Section 30(6) read with Section 31(1) of the Insolvency & Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') on behalf of Mr. Mahesh Bansal, applicant herein and Resolution Professional (RP) of M/s. Shri Ambica International Food Company Private Limited ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by Ms. Minakshi and Mr. Kushal Goyal ('Successful Resolution Applicant') and approved by the Committee of Creditors ('CoC') in its 16th CoC Meeting with 100% voting in favor in terms of Section 30(4) of I&B Code, 2016.

2. Briefly stated, the facts as averred by the applicant in the application are as follows:

- a) The Corporate Insolvency Resolution Process against M/s. Shri Ambica International Food Company Private Limited ('Corporate Debtor') had been initiated by this Hon'ble Adjudicating Authority vide its order dated 16.10.2019 in C.P.(IB) No.1342/2018, an application under Section 7 of the Code, 2016 filed by State Bank of India ('Financial Creditor') and the applicant Mr. Mahesh Bansal was appointed as the Interim Resolution Professional of the Corporate Debtor and was later confirmed as the Resolution Professional of the Corporate Debtor.
- b) The Corporate Debtor is engaged in the business of manufacturing, marketing and sale of Rice, Basmati Rice, Long Grain, Basmati Rice and other related products.
- c) The Public Announcement in Form A as per Regulation 6(1) of CIRP Regulations, 2016 was made on 22.10.2019 in the newspaper Financial Express (English, Delhi Edition) and Jansatta (Hindi, Delhi Edition) wherein all the creditors were invited to submit their claim and the last date for submission of proof of claim was 04.11.2019. The Applicant pursuant to the receipt of the claims from the creditors had constituted a Committee of Creditors. The constitution of Committee of Creditors of the Corporate Debtor is represented below in tabular format:-



S.NO	NAME OF CREDITOR	CLAIM ADMITTED (RS.)	VOTING SHARES %
1.	State Bank of India	17,593.59	60.97
2.	Central Bank of India	4,296.94	14.89
3.	Canara Bank	6,965.51	24.14
	TOTAL	28,856.04	100%

(Amounts shown in Lakhs)

- d) The details of the claims received from the Creditors of the Corporate Debtor and the claim admitted after verification are extracted below:-

Particulars	Amount Claim	Claim Admitted
Financial Creditors (Secured)	28,856.04	28,856.04
Operational Creditors	52.76	52.76
Workmen & Employees	0.00	0.00
Total	28,908.80	28,908.80

(Amounts shown in Lakhs)

- e) The Invitation for Expression of Interest in Form -G was published on Four Occasions i.e., (i) 28.12.2019, (ii) 07.03.2020, (iii) 20.06.2020 and (iv) 25.08.2020. The invitation of Fourth Expression of Interest in Form-G dated 25.08.2020 as approved was published in Financial Express (English Edition) and Jansatta (Hindi Edition), wherein the last date for receipt of the EoI was 31.08.2020 and last date of submission of Resolution Plan was 25.09.2020 which was further extended to 23.11.2020. The Applicant in the 8th CoC Meeting dated 29.09.2020 had apprised the CoC that pursuant to publication of Form-G dated 25.08.2020, expression of interest was received from Eight (8) Prospective Resolution Applicants and the Resolution Plan was received from Two (2) Prospective Resolution Applicants. The Resolution Plan submitted by the two Prospective Resolution Applicants were opened and presented to the CoC and the Prospective Resolution Applicants were called to present their respective plans.
- f) The CoC in its 13th CoC Meeting held on 22.12.2020, were apprised that both the Prospective Resolution Applicants have submitted the amended Resolution Plan(s)



pursuant to the discussion and deliberations with the CoC. The CoC in the 16th CoC Meeting dated 19.03.2021 after discussions and deliberations assessing the viability and feasibility of the Proposed Resolution Plans had approved the Resolution Plan submitted by Ms. Meenakshi and Mr. Kushall Goyal (‘ Successful Resolution Applicant’) with 100% voting in favor.

- g) The CIRP period of 180 days of the Corporate Debtor had ended on 12.04.2020. This Adjudicating Authority vide order dated 01.10.2020 in I.A. No. 2495/2020 had granted (i) extension of 90 days in CIRP period of the Corporate Debtor from 12.04.2020 and (ii) exclusion of the lock down period from 25.03.2020 to 15.04.2020. Further, this Adjudicating Authority vide order dated 05.07.2021 in I.A./594/2021 had further granted 30 days extension from the 330 days CIRP Period of the Corporate Debtor.
- h) The Applicant had issued a Letter of Intent dated 21.03.2021 to the Successful Resolution Applicant and the Successful Resolution Applicant had conveyed his unconditional acceptance on the very same day and further furnished the Performance Bank Guarantee on 31.03.2021.

- 3. We have heard the submissions made by the Ld. Counsel for the Applicant and have meticulously gone through the documents produced on record. The copy of the Resolution Plan dated 09.12.2020 by the Successful Resolution Applicant and approved by the CoC with 100% voting is annexed as Annexure A-27 (pg nos. 414 to 485) with the present application.
- 4. From the records, it is observed that this Adjudicating Authority vide order dated 12.07.2021 had directed the Applicant to serve notice of the present Application to the Suspended Directors. The suspended Directors i.e., Respondent No.2 to 4 and Respondent No. 5 to 6 (Guarantor of the Corporate Debtor) had raised certain objections to the Approval of the Resolution Plan.
- 5. During the hearing dated 04.09.2023, while hearing the present application seeking approval of the Resolution Plan, it was recorded that, “Mr. Shaurya Shyam, Learned Counsel has appeared on behalf of the suspended Board of Directors and submitted that though they have filed certain objections against the approval of the Resolution Plan, he is under instructions to withdraw the same.” Accordingly, the objections raised by the Respondent No.2 to 6 against the approval of the Resolution Plans stand withdrawn.



REMOVAL OF CHARGE FROM SIX LAND PARCELS

6. Further, on the perusal of the minutes of CoC Meetings and the Resolution Plan, we observe that the Successful Resolution Applicant had proposed total Plan Value of Rs. 24.00 crores out of which Rs. 17.00 crores have been proposed towards all assets of the Corporate Debtor and Rs.7 crores towards six critical parcels of land in the name of promoters/guarantors ('Critical Aspect of the Property') which were identified and mortgaged with the Banks. The CoC in its 15th CoC Meeting held on 25.02.2021 had noted that the said six parcels of the land are in the individual names of the directors/guarantors of the Corporate Debtor and without these six properties being a part of the resolution plan, the Resolution Applicant would be unable to enter/use the property of the Corporate Debtor. The CoC in its 13th CoC Meeting held on 22.12.2020 had after deliberation and discussion decided that an affidavit from Promoters/guarantors is required stating their no objection to transfer the land in favour of the Successful Resolution Applicant and also affidavits from the respective banks who are holding the mortgage rights over such critical parcels of land stating that they shall cease their charge over such assets.
7. The promoters/ suspended directors/ guarantors of the Corporate Debtor have submitted their affidavits providing their consent and no objection to transfer these six critical parcels of land in favour of the Successful Resolution Applicant as approved by the Committee of Creditors. Further, since one of the promoters/guarantors Mrs. Darshana Devi expired on 16.02.2021, therefore an affidavit for transfer of land individually owned by Late Mrs. Darshana Devi was duly submitted by the legal heirs of Mrs. Darshana Devi. The copy of the Affidavits received from the promoters/ suspended directors/ all guarantors of the Corporate Debtor and the legal heir of Mrs. Darshana Devi are annexed as Annexure-A-33 (Colly) at pg no. 536 – 550 of the present application and the same is taken on record.

SALIENT FEATURES OF RESOLUTION PLAN



8. The salient features of the Resolution Plan dated 09.12.2020 as submitted by Ms. Meenakshi and Mr. Kushal Goyal ('Successful Resolution Applicant') and approved by the CoC in its 16th CoC Meeting held on 19.03.2021 with 100% voting in favor are reproduced herein below:

I. BACKGROUND OF THE RESOLUTION APPLICANT:

This Resolution Plan is being submitted jointly by Ms. Meenakshi and Mr. Kushal Goyal. Both the applicants are not ineligible u/s 29 A of the IB Code 2016 to submit a resolution plan for revival and rehabilitation of the CD. The resolution plan shall be implemented through a separate entity (SPV) to be created by Resolution Applicant(s).

The Successful Resolution Applicant jointly carry with them experience of procurement of raw materials, technical knowledge of manufacturing process and skill in developing market for the same in domestic market with corporates into multinational famous brands Based on the experience in the line of rice Industry and other ventures, applicants are quite confident and capable to work out a model most suitable for expeditious and effective revival of the Corporate Debtor.

The Successful Resolution Applicant has a strong business skill in procurement and supplies of raw materials which will serve a strong support to bring about optimum utilization of the plant capacity, productivity improvement and cost efficiency

II.OFFER FOR FULL AND FINAL SETTLEMENT

The proposed Financial Offer and its distribution in the Resolution Plan is extracted below:-

		(Rs. in lakhs)		
A	Amount Offered for Settlement for CD's Asset	1700.00		
i	Cash funds by Resolution Applicant(s)	1700.00		
ii	Amount Offered for Critical Assets	700.00		
iii	Total	2400.00		

B	Distribution of Cash Settlement of CD's Assets	₹ in lakhs	% of claim	₹ in lakhs
	Particulars	Value of Claims		Distribution
a	CIRP Cost	100.00	100.00	100.00
b	Workmen	0.00	0.00	0.00
c	Employees	0.00	0.00	0.00
d	Operational Creditors Other than workmen & employees	52.76	10.00	5.28
g	Secured Financial Creditors-State Bank of India	17593.19	5.52	971.81
h	Secured Financial Creditors-Central Bank of India	4296.94	5.52	237.72
i	Secured Financial Creditors-Canara Bank, Taraori	6965.51	5.52	385.19
j	Unsecured Financial Creditors	0.00	0.00	0.00
Total:		29008.39	0.00	1700.00



DISTRIBUTION OF THE AMOUNT RECEIVED FROM CRITICAL PERSONAL ASSET OF THE GUARANTOR/DIRECTOR AND PROMOTER

Note: - As decided by the COC members vide their 13th COC meeting held on 13/12/2020 it was decided that that Resolution Amount for the Assets of CD shall be distributed in the claims admitted Ratio and Resolution Amount for the Critical Personal Assets of Guarantors/Directors/Promoters shall be distributed on the basis of priority of Security Interest held by each member Bank in Claim ratio on the basis of exclusive charge/Pari Pasu charge (Detail of which is given below)."

Detail of Assets	Status	Amount offered	SBI	Canara Bank	CBI
B-1, Subhash Chand 45K-08M	Exclusive	2.75	1.97	0.78	NIL
B-2, Darshana Devi, 20K-6M	Exclusive	1.15	0.82	0.33	NIL
B-3, Ishwar Chand 4K-16M	1 st Pari Pasu	0.30	0.18	0.07	0.05
C-1, Parveen Kumar 15K-4M	1 st Pari Pasu	0.90	0.55	0.22	0.13
C-2, Parveen Kumar 16K	1 st Pari Pasu	0.90	0.55	0.22	0.13
C-3, Darshana Devi 23 K	1 st Pari Pasu	1.00	0.61	0.24	0.15
Total		7.00	4.68	1.86	0.46

III. SETTLEMENT SCHEDULE

C	Cash Settlement Schedule				
	Event due date	Period from NCLT order approving the Resolution plan	₹ in lakhs	Cumulative ₹ in lakhs	%age
	Upfront cash within 7 days of effective date	1-7 days	300.00	300.00	12.50
	Within 30 days of effective date	1-30 days	360.00	660.00	27.50
	Within 31 to 90 days of effective date	31-90 days	420.00	1080.00	45.00
	Within 91 to 180 days of effective date	91-180 days	600.00	1680.00	70.00
	within 181 to 210 days of effective date	181-210 days	720.00	2400.00	100.00
	Total:		2400.00		0
<p>Grace period of two months will be given by the secured financial creditors in making full and final payment after expiry of the schedule period as mentioned above. Interest @MCLR shall be paid by the Resolution Applicant on the difference balancing payment, if any made during the grace period.</p> <p>#As per RFRP, following payments/ bank guarantees to be submitted by the Resolution Applicant shall be released on approval of the Resolution Plan by the NCLT.</p> <p>1)EMD-I of ₹50.00 lakhs submitted by the Resolution Applicant shall be adjusted towards upfront payment as per clause 1.8.6 of RFRP on approval of the Resolution Plan by the NCLT.</p> <p>2)PBG-Equivalent to 5% of the resolution amount to be submitted within 10 days of issuance of LOI by the COC as per clause 1.10 of RFRP, shall be released upon payment by the Resolution Applicant of an amount equivalent to 100% of Resolution plan amount.</p>					



IV. TIMELINE FOR THE IMPLEMENTATION OF THE RESOLUTION PLAN

The indicative implementation schedule for the Resolution Plan is as below:-

ACTIVITY	INDICATIVE TIMELINE
Effective Date/Date of Approval of the Plan by the Hon'ble NCLT	X
Appointment of Monitoring Agency#	X + 2
Payment of CIRP Cost, Upfront full and final payment to Financial Creditors (Banking Institutions), Upfront Full and Final to Operational Creditors (Statutory Authorities), Upfront payment to Operational Creditors (Other than Statutory Authorities)	X + 90
Implementation Date (Date of execution of definitive documents, Security Documentation/Charge Modification)	X + 91

All the decisions after the appointment of monitoring committee and till the issue of completion certificate shall be approved by the Monitoring Agency and prior consent of Monitoring Agency shall be sought.

It may be further noted that any subsequent refund/recoveries received by the Corporate Debtor on account of amounts outstanding under Short Term Loan and Advances as appearing in the balance sheet on implementation date shall be distributed to Operational Creditors (other than Statutory Dues) in the proportionate ratio appearing in the admitted claims.

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Nitin Kumar

The '**Operation Commencement Date**' means the 30th ('Thirtieth') day from the Effective Date or such other date as may be mutually agreed upon between the Resolution Applicant and the members of the CoC who consent to this resolution Plan when physical control of the Corporate Debtor shall be handed over to the Resolution Applicant



9. In view of Section 31 of the Code, the Adjudicating Authority, before approving the Resolution Plan, is required to examine WHETHER a Resolution Plan which is approved by the CoC under Section 30 (4) of the Code meets the requirements as referred under Section 30 (2) of the Code.

Section 30 (2) is quoted below: -

“(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 payment of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the Resolution Plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) where a Resolution Plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a Resolution Plan;]

(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.

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.]”

10. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in clause 7.1 (Insolvency Resolution Process Cost (IRP Cost) Rs.100 Lakhs at pg no. 14 of the Resolution Plan which provides that the CIRP cost as estimated is Rs.100 Lakhs which is subject to increase or decrease depending on the duration in completion of CIRP. The IRP Cost, to the extent remaining unpaid as on the effective date shall be paid in priority over payments to other creditors. Further in the event the final CIRP cost exceeds the estimated Rs.100 Lakhs, the amount payable to Financial Creditors under this Resolution Plan shall get appropriated.
11. In respect of compliance of Section 30(2)(b) of the Code, it is seen that there is a provision in clause 7.2 (workmen priority dues), 7.3(a) (operational creditors, other than workmen, employees) and clause 7.3(b) (Remaining debts and dues to any person including outstanding Government dues and taxes) at pg nos. 15 to 17 of the Resolution Plan which provides that no claims due to the Workmen and Employees or due to statutory authorities are claimed as per the Information Memorandum. Further, the claim for the Operational Creditors other than Workmen and Employees as admitted by the Resolution Professional is Rs.52,75,814/-. The Resolution Applicant proposes the payment of Rs.5.28 Lakhs towards the full and final settlement.
12. In respect of compliance of Section 30(2)(c), it is seen that there is a provision in clause 7.4 (Secured Financial Creditors) at pg. 18 of the Resolution Plan, which provides that Dissenting Financial Creditor, shall receive an amount which shall be paid in priority over Assenting Financial Creditor. However, this clause shall not be applicable, since there is no Dissenting Financial Creditor in the present case.



13. In respect of compliance of Section 30(2)(d) and 30(2)(e) of the Code, it is seen that the manner of the management of the affairs and control of the business of the Corporate Debtor has been provided in detail in clause 21 (Mechanism for Management and Control of the Corporate Debtor post approval of Resolution Plan) to clause 25 (Implementation and Supervision of the Resolution Plan during term of the Resolution Plan) at pg nos. 31 -42 of the Resolution Plan. Further Clause 21.1.(ii) of the Resolution Plan, provides that the Monitoring Committee shall constitute of the Resolution Professional or his nominee, a nominee of CoC and the Resolution Applicant(s) or their nominee.
14. In respect of compliance of Section 30(2)(f) of the Code, on perusal of the information provided in the Resolution Plan and the supporting documents provided by the Successful Resolution Applicant, it seems that the Resolution Plan is in compliance with the applicable laws.
15. In respect of compliance regarding Regulation 38 (1A) of the CIRP Regulations, it is seen that clause 15 (Treatment and Interest of Stakeholders) at pg no. 25 of the Resolution Plan provides how it will deal with the interest of all the stakeholders including secured and unsecured financial creditors, operational creditors of the corporate debtor, statutory dues and interests of the employees and workmen, as per the requirement of Regulation 38(1A) of the CIRP Regulations.
16. In respect of compliance regarding Regulation 39(4) of the CIRP Regulations, the applicant has filed compliance certificate in Form-H certifying that the Resolution Plan submitted by the Successful Resolution Applicant meets the requirements as laid down in various sections of the Code and the CIRP Regulations and there are sufficient provisions in the Plan for its effective implementation as required under the Code. The copy of Form-H (Compliance Certificate) is annexed as Annexure- A-29 at page nos. 491-501 to the present application.



17. On perusal of Form-H annexed as Annexure-A-29 at page no.491-501 of the present application, we observe that the Average Fair Market Value of the Corporate Debtor as provided in Form- H is Rs.20,64,01,239.50/- and the Average Liquidation Value of the Corporate Debtor is Rs.15,38,92,592.15/-. It is further observed that an application under Section 43,45 and 66 of the Code, 2016 is pending before this Adjudicating Authority. The Clause 8 at pg no. 21 of the Resolution Plan provides that, "Amount, if any, realised /to be realised pursuant to Avoidance Application (PUFE Application) filed by the resolution Professional under Sec 43,44,45 and 66 of the IBC, 2016, the same shall belong /passed on to the Secured Financial Creditors subject to any kind of tax liability thereon. The Resolution applicant shall not incur any income tax or other liability or cost thereon."

18. As to the relief and concessions sought in the Resolution Plan more specifically set out in Schedule 13 (Reliefs, waivers and Exemptions) at pg. nos. 60-67 of the Resolution Plan, taking into consideration the decision of the Hon'ble Supreme Court in the matter of **Embassy Property Development Private Limited v. State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019**, this Adjudicating Authority directs the Successful Resolution Applicant to file necessary application before the necessary forum/ authority in order to avail the necessary relief and concessions, in accordance with respective laws. The relevant part of the judgement is reproduced herein below:-

39. Another important aspect is that under Section 25 (2) (b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:

"25. Duties of resolution professional –

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions:-

(a).....



(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings.”

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”

19. 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 Adjudicating Authority is duty bound to follow the judgement of the **Hon’ble Supreme Court in the matter of K.Sashidhar v. Indian Overseas Bank (2019) 12 CC 150,** wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as follow:-

35. 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 percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. 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.

20. Also the Hon'ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019, vid its judgement dated 15.11.2019** has observed as follows:

"38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants."

21. Thus, from the judgements cited supra, it is amply clear that only limited judicial review is available to the Adjudicating Authority under Section 30(2) read with Section 31 of the Code, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the committee of creditors. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan dated 09.12.2020.

22. Accordingly, subject to the aforesaid observations, we hereby **approve the revised Resolution Plan dated 09.12.2020 ('Approved Resolution Plan') submitted by Ms. Meenakshi and Mr. Kushal Goyal (Successful Resolution Applicant')**, which shall be binding on the Corporate Debtor and its employees, shareholders of corporate debtor, creditors including the Central Government, any State Government or any Local Authority to whom statutory dues are owed, guarantors, Successful Resolution Applicant and other stakeholders involved. Resultantly, **I.A.1699/ND/2021 stand allowed.**



23. It is declared that the moratorium order passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of pronouncement of this order.
24. We further reiterate that the Approved Resolution Plan shall not construe any waiver to any statutory obligations/liabilities arising out of the approved resolution plan and the same shall be dealt in accordance with the appropriate authorities concerned as per relevant laws. We are of the considered view that if any waiver is sought in the Approved Resolution Plan, the same shall be subject to approval by the concerned authorities. The same view has been held by the Hon'ble Supreme Court in **Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Embassy Property Development case (supra).**
25. Accordingly, MoA and AoA of the Corporate Debtor shall be amended and filed with the RoC for information and record as prescribed. While approving the Approved Resolution Plan as mentioned above, it is clarified that the Successful Resolution Applicant shall pursuant to the Resolution Plan approved under section 31(1) of the Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within a period of one year from the date of pronouncement of this order within the period as provided for in such law, whichever is later.
26. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the Corporate Debtor and the Approved Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code. The Resolution Professional is further directed to handover all the records, premises, properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.



27. The approved 'Resolution Plan' shall become effective from the date of passing of this order. The Approved Resolution Plan shall be part of this order, subject to our observations regarding concessions, reliefs and waivers sought therein.
28. The Supervisory Committee/Monitoring Committee is directed to file the monthly status report with regard to the implementation of the approved plan before this Adjudicating Authority.
29. In view of the above, the **I.A./1699/ND/2021 stands allowed in terms of aforesaid discussion.**

Let the copy of the order be served to the parties

Sd/-

**(DR.BINOD KUMAR SINHA)
MEMBER (T)**

Sd/-

**(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)**