(12)

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

IA(IBC)/1032(CHE)/2021 in IBA/622/2019

(Filed under Sec. 30(6) & 31 of the Insolvency & Bankruptcy Code, 2016)

IN THE MATTER OF:

ArunavaSikdar,
Resolution Professional of
M/s. The National Sewing Thread Company Limited
C-10, Lower Ground Floor,
Lajpat Nagar – III, New Delhi – 110 024

... *Applicant*

Present:

For RP : *Arun Karthik Mohan, Advocate*

CORAM :

Justice (Retd.) S. RAMATHILAGAM,MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

Order Pronounced on 6th December 2021

ORDER

***Per:* Justice (Retd.) S. RAMATHILAGAM,MEMBER (JUDICIAL)**

IA(IBC)/1032(CHE)/2021 is an Application which is moved by the Resolution Professional of the Corporate Debtor viz., **M/s. The National Sewing Thread Company Limited** under Section 30(6) & 31 of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC, 2016') read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short, 'Regulation') seeking approval of the Resolution Plan submitted by the successful Resolution Applicant viz., *(i)Mr. B. Venkatesan and(ii) Mr. B. Ramachandran*

2. In an Application filed under Section 7 of IBC, 2016 by a Financial Creditor viz. M/s. Alchemist Asset Reconstruction Company Limited, this Adjudicating Authority vide order dated 29.08.2019 passed in IBA/622/2019 initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor viz. M/s. The National Sewing Thread Company Limited and one Mr. V. Duraisamy was appointed as Interim Resolution Professional (IRP).Thereafter, the IRP had caused public announcement on 01.09.2019 in 'Indian Express' and 'Dinamani' and based on the claims received from the stakeholders, the IRP constituted the Committee of Creditors (CoC) and the 1st CoC meeting was convened on 27.09.2019.

3. In the 2nd CoC meeting held on 09.10.2019, the CoC has resolved to continue with Mr. V. Duraisamy as the Resolution Professional of the Corporate Debtor

4. The Learned Counsel for the Applicant submitted that as per Regulation 27 of the IBBI (Insolvency Resolution process for Corporate Persons) Regulations, 2016 has appointed two IBBI

Registered valuers for valuation of the Plant & Machinery and land & Building and the valuers have submitted their report before the Applicant. From Form – H filed along with the Application, it is evident that the erstwhile RP / Applicant has conducted a total of 19 CoC meetings in relation to the Corporate Debtor and that the Fair Value and the Liquidation value is arrived at Rs.26.60 Crore and Rs.22.04 Crore respectively.

5. The Learned Counsel for the Applicant submitted that the CoC in its 5th meeting held on 07.01.2020 has discussed and deliberated over various aspects and subsequently agreed upon the eligibility criteria of the Prospective Resolution Applicant (PRA). In pursuance of the same, the Resolution Professional issued Expression of Interest (EoI) and the necessary Form G was published by the RP on 10.02.2020 in two newspapers viz. 'Business Standard' (English)and 'Dinamani' (Tamil) and the last date was fixed as 25.02.2020. In the meantime, since the 180 day period of CIRP in relation to the Corporate Debtor was about to end, the Resolution Professional has filed an Application before this Adjudicating Authority under Section 12(2) of IBC, 2016 and this Adjudicating Authority vide its order dated 20.02.2020 has allowed for an extension of 90 days.

6. However, due to the Covid – 19 pandemic coupled with attendant lockdowns imposed by the Central / State Government, it was submitted by the Learned Counsel for the Applicant that the Prospective Resolution Applicants could not submit the Resolution Plan. Taking into consideration all these factors, the CoC authorized the RP to issue a fresh EoI and accordingly the RP issued a fresh EoI on 08.07.2020. Thereafter, considering the outbreak of the Covid – 19 pandemic and the CoC has revised the minimum networth of the Resolution Applicant and also reduced the EMD and Performance Guarantee. Further, the last date for the submission of EoI by the prospective Resolution Applicants was fixed as 05.09.2020.

7. In the 9th CoC meeting held on 27.07.2020, the RP circulated the list of Prospective Resolution Applicants among the CoC members and also apprised the CoC of the timelines lost by the RP due to the outbreak of the pandemic. Accordingly, the RP has filed IA/1088/IB/2020 before this Adjudicating Authority for exclusion of lockdown period and the same came to be allowed by this Adjudicating Authority vide its order dated 14.09.2021.

8. The Learned Counsel for the Applicant submitted that in the 10th CoC meeting, the Financial Creditor of the Corporate Debtor

has proposed an agenda to replace Mr. V. Duraisamy with the Applicant herein and the said agenda was voted in favour with 99.57% and accordingly, the Applicant herein, based on an Application moved under Section 27 of IBC, 2016 was appointed as the Resolution Professional in respect of the Corporate Debtor by this Adjudicating Authority vide its order dated 01.04.2021. In the 11th CoC meeting convened on 18.09.2020, it was resolved to further extend the time period for the submission of the EoI, since no Resolution Plans were received till then. Thereafter, on 19.09.2020, the RP has published another fresh EoI in Form G in "Financial Express" (English) and "Dinamani" (Tamil) thereby inviting prospective Resolution Applicants to submit a Resolution Plan on or before 20.10.2020.

9. The Learned Counsel for the Applicant submitted that after he was appointed as the RP in respect of the Corporate Debtor, it was found that the CoC in its 6th meeting held on 06.02.2020 has appointed Mr. G. Ramesh Babu, Insolvency Resolution Professional as an Authorized Representative for a class of Creditors (Fixed Depositors), however no Application before this Tribunal was filed by the erstwhile RP and hence the Applicant herein has filed IA(IBC)/594(CHE)/2021 before this Adjudicating Authority seeking appointment of Authorized Representative for a class of Creditor

and this Adjudicating Authority vide its order dated 29.09.2021 has ordered accordingly. Thus, based upon the same, the Applicant re-constituted the CoC and accordingly filed a Report under Regulation 17 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

10. Thereafter, it is seen that the CoC, in its 13th meeting has extended the last date for the submission of the Resolution Plan till 31.05.2021 and that before the expiry of the extended period, it was submitted that two Resolution Plans were received in a sealed envelope. In the meantime, it was submitted that the Transaction Audit Report in respect of the Corporate Debtor was received by the Applicant on 14.07.2021.

11. The Resolution Plans submitted by the prospective Resolution Applicants were deliberated in the 15th CoC meeting held on 31.07.2021 and the CoC requested the prospective Resolution Applicants to improve their offer and accordingly modify the Resolution Plan. Thereafter, in the 16th CoC meeting held on 03.08.2021, again the Revised Resolution Plan was rejected by the CoC with a direction to improve and modify the same and the meeting was adjourned to 04.08.2021 and on the said date 3 days time was granted to the prospective Resolution Applicants to again

improve their offer. In the 17th CoC meeting convened on 18.08.2021, one of the prospective Resolution Applicants viz. M/s. Aruda Projects Private Limited has not submitted the Resolution Plan and the successful Resolution Applicants viz. (1) Mr. B. Venkatesan and (2) Mr. B. Ramachandran has submitted their improved and modified Resolution plan and the same was discussed and deliberated. Finally, the revised Resolution Plan submitted by the successful Resolution Applicants were put to vote in the 18th CoC meeting held on 13.09.2021 and the said plan was approved with a thumping majority of 100% by the CoC through e-voting which was concluded on 18.09.2021. In the meantime, it was submitted that based upon the Transaction Audit Report, the Applicant has filed Application under Section 43, 45 and 66 of IBC, 2016 and the same is pending adjudication before this Adjudicating Authority. Further, it was also submitted that the RP has filed an Application under Regulation 40C of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to exclude the second lockdown period and this Adjudicating Authority vide its order dated 03.12.2021 passed in IA(IBC)/987(CHE)/2021 has allowed the said Application.

12. The Learned Counsel for the Applicant submitted that after due verification of the eligibility of the Resolution Applicant in

terms of Section 29A of IBC, 2016 and after satisfying himself that the Resolution Plan is in conformity with Section 30(2), the Applicant has placed the same for consideration before the CoC. It is also seen from the minutes of the 18th CoC meeting which was held on 13.09.2021 that the CoC with 100% voting has approved the Resolution Plan proposed by the Resolution Applicant.

13. The total dues of the Corporate Debtor are as follows;

S. No.	NAME OF CREDITORS	CLAIM ADMITTED BY RP(RS. IN CRORE)
1	Secured Financial Creditor	125.42
2	Unsecured Financial Creditor	3.64
3	Operational Creditor	25.44
4	Other dues	1.50
	TOTAL	**156.02**

14. The Resolution Applicant proposes to pay a sum of **Rs. 22.02 Crore** as against the total due of Rs.156.02 Crore in the following manner;

(i) Rs.3.02 Crore by infusion of cash
(ii) Rs.3.00 Crore by way of recovery of loans and advances in the books of the Corporate Debtor
(iii) Rs.16 Crore through Sale of Non – Core assets and accruals from the operations of the Pondicherry Unit.

15. The dues of the Corporate Debtor vis-à-vis the percentage of Settlement proposed under the Resolution Plan are as follows;

(Rs. in Crore)

S. No.	Name of Creditors	Claim Admitted by RP	Amount Settled under the Plan	% Percentage
I	**Secured Financial Creditor**			
	Alchemist ARC	125.42	20.00	15.95%
II	**Unsecured Financial Creditor**			
	Related Party	3.11	0	0%
	Depositors	0.53	0.08	15.00%
III	**Operational Creditor**			
	Government	7.74	0.07	1.00%
	Workmen / Employees	1.24	0.19	15.96%
	Other Operational Creditors	16.44	0.16	1.00%
IV	**CIRP Costs**	1.50	1.50	100%
	TOTAL	**156.02**	**22.02**	**14.11%**

16. The summary of the payments of Rs.22.02 Crore to be paid within the timelines stipulated as hereunder;

Particulars	Amount in Rs. Crore	Timeline from the effective date i.e. date of approval of Resolution Plan
CIRP Costs	1.50	60 Days
Payment to FC – Secured	20.00	90 Days to 1096 Days
Payment to FC – Unsecured Depositors	0.08	90 Days
Payment to Workmen and Employees	0.20	90 Days
Payment to OC	0.16	90 Days
Towards Statutory Dues	0.08	90 Days
Payment to Equity Shareholders	0.00	---
TOTAL	**22.02**	

17. From the averments made in the Application as well as in Form-H as 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 with the Mandatory compliance under the IBC *vis-à-vis* the Compliance made under the Resolution Plan is captured hereunder;

MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS	COMPLIANCE UNDER RESOLUTION PLAN
S. 30(1) - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	Clause 4.1.6 of the Resolution Plan states that the Resolution Applicant does not suffer from any ineligibility under Section 29A of IBC, 2016. Affidavit submitted by the Resolution Applicants to this effect is also appended as Annexure 'A-27'.
S. 30(2)(a) - Payment of Insolvency and Resolution cost in the manner specified by the Board	Clause 5.1 and 5.8 of the Resolution Plan provides payment of the CIRP costs in priority.
S. 30(2)(b) - Payment of debts of Operational Creditors in such manner as may be specified by the Board, which shall not be less that the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under Sec. 53	Clause 5.3, 5.4 and 5.5 of the Resolution Plan deals with the payment of money to the Operational Creditors and it has been stated that the liquidation value of the assets of the Corporate Debtor is inadequate and will not be sufficient enough to cover the dues of the Financial Creditor and hence the value of Operational Creditor is NIL. However, the plan envisages payment of 1% of the claim admitted amount to be paid to the Operational Creditors.
Reg. 38(1) - Resolution Plan identifies specific source of funds that will be used to pay the	Clause 5.1, 5.2 and 5.8 of the Resolution Plan deals with the Source of Funds and also deals with the Treatment of the CIRP

(a) Insolvency Resolution Process cost? (b)Liquidation value due to Operational Creditors? (c) Liquidation value due to dissenting financial creditors	costs.
Reg. 38(1A) - 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	Clause 4.1.14 of Part – IV of the Resolution Plan and sub clauses thereunder enumerates how the interest of all the stakeholders including operational and financial creditors has been dealt with under the Resolution Plan.
S. 30(2)(c) - Management of the affairs of the Corporate Debtor after approval of the Resolution Plan	Clause 6.1 of Part – IV of the Resolution Plan deals with the Management and Control and Implementation of Terms in relation to the Resolution Plan.
S. 30(2)(d) - Implementation and Supervision of the Resolution Plan **and** **Reg. 38(2)** – Resolution Plan shall provide: a) term of 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	Clause 6.1 of Part – IV of the Resolution Plan deals with the Implementation and supervision of the Resolution Plan and it shall comprise of (i) the Resolution Professional (ii) one representative of the Resolution Applicant (iii) one person from Secured Financial Creditor.

capability to implement the Resolution Plan.	
Reg. 38(3) - Resolution Plan shall demonstrate: a) it address the cause of default b) it is feasible and viable c) it has provisions for effective implementation d) it has provisions for approval required and the timeline for the same e) the resolution applicant has the capability to implement the resolution plan	Clause 3.15 of Part – III of the Resolution Plan address the cause of default. Clause 4.1.10 of Part – IV of the Resolution Plan deals with the feasibility and its viability. Clause 4.1.11 of Part – IV of the Resolution Plan deals with the effective implementation. Part – VII of the Resolution Plan deals with the provisions for approvals required and the timelines for the same. Clause 3.2.2 of Part – III and Clause 4.1.13 of Part – IV of the Resolution Plan deals with the capability of the Resolution Applicant to implement the same.
S. 30(2)(e) - Does not contravene any of the provisions of the law for the time being in force	Clause 3.2.2(c) of Part – III and Clause 4.1.7 of Part – IV of the Resolution Plan, the Resolution Applicant declares that the Resolution Plan does not contravene any provisions of the law for the time being in force. The Resolution Professional in Form-H has confirmed that the Resolution Plan is not in contravention with the provisions of any Applicable Law.
S. 30(4) - Committee of Creditors approve the Resolution Plan by not less than 66% of voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by the Board	The CoC, in its 18th meeting held on 13.09.2021 with a 100% voting share has approved the Resolution Plan.

18. The Resolution Applicant in Part – VII of the Resolution Plan has sought for a total of 15 Relief and concessions from this

Adjudicating Authority so as to implement the Resolution Plan. These are ordered as follows;

SL. No.	RELIEF / CONCESSIONS SOUGHT FOR	ORDERS THEREON
1	Under the provisions of the Code namely Section 31(4), a Resolution Applicant pursuant to the Resolution Plan approved under sub-section (1) of Section 31 of the Code, is required to obtain the necessary approval required under any law 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 sub – section (1) of Section 31 of the Code or within such period as provided for in such law, whichever is later. Pursuant thereto, this Hon'ble Tribunal be pleased to direct all concerned Governmental Authorities to provide period of one year after the approval of the Resolution Plan to obtain all necessary approvals under the relevant Applicable Laws, required for the purpose of implementation of this Resolution Plan including continuing with the business of the Corporate Debtor.	**Section 31(4) of IBC, 2016 provides a one-year window from the date of approval of the resolution plan to obtain necessaryapprovals under any law. The successful resolution applicant is expected to keep these timelines in mind.**
2	The Hon'ble Adjudicating Authority be pleased to issue necessary directions to the local district administration of the respective states where the assets of the Corporate Debtor are situated to give assistance to the Resolution Applicant for the implementation of the Resolution Plan.	**Liberty granted to the successful Resolution Applicant to approach the appropriate authorities**
3	Upon approval of this Resolution Plan by the Adjudicating Authority, concerned governmental authority / instrumentality / the Directorate of Industries shall waive the requirement of obtaining an approval for change in ownership / constitution / management of the Company and shall continue to grant and allow other incentives.	**It is for the Appropriate Authorities to consider and to grant and allow other incentives.**
4	The Hon'ble Adjudicating Authority be pleased to issue necessary directions to the contractors, workers and union of workers of the Corporate Debtor not to hamper or interest in the operations	**Granted, subject to the provisions of IBC, 2016 and other Applicable**

	of the Corporate Debtor and to extend necessary co-operation for running the business of the Corporate Debtor.	**laws.**
5	Upon approval of the Resolution Plan by the Hon'ble Adjudicating Authority, Old outstanding or due amount for license renewal / consent fee / land & building tax including payment of penalty and damages, if any, payable by the CD to the respective (Tamil Nadu / Pondicherry) State Electricity Department / Pollution Control Board / respective Commune Panchayat / Municipality and any other concerned department for the period upto the effective date, shall be deemed to have been waived / written off / extinguished and no amount shall be payable to the said departments by the Corporate Debtor.	**Granted in terms of the judgment of the Hon'ble Supreme Court in *Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited*.** *2021 SCC Online SC 313*
6	To direct the concerned Registrar of Companies to associate the Directors Identification Numbers (DIN) of the Directors who would be taking charge collectively as Board of Directors of the Corporate Debtor pursuant to the approval of the Resolution Plan.	**Granted**
7	All claims, demands, levies, etc., pertaining to any principal, interest and penalty on delayed payment of Income Tax / Commercial Tax / GST / Service tax, tax deducted at source late filing of TDS returns, in respect of all dues (including interest and penalty) of the Corporate Debtor arising for periods upto the Effective Date (including such dues for periods prior to the Effective Date that may crystallize subsequently to the Effective Date) or arising on account of acquisition of control over the Corporate Debtor by the Resolution Applicant pursuant to this Resolution Plan will be deemed to be fully and permanently extinguished on the Effective Date and the Corporate Debtor or the Resolution Applicant shall neither be directly nor indirectly held liable for the same. Further, no transaction contemplated in this Resolution Plan shall be treated as void or non - compliant with any provisions of the Income Tax Act or GST, etc.	**Granted in terms of the judgment of the Hon'ble Supreme Court in *Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.*** *2021 SCC Online SC 313*
8	Issuance of necessary directions to Central Board of Direct Taxes (CBDT) or Central Board for Excise	**This is for the CBDTand other appropriate**

	and Custom: a) For exemption / grant of relief to the Corporate Debtor from the provisions of Section 41(1), 45, 72(3), 43 – B, 56, 79, 80 read with 139, 115JB and 269-SS, 269-T and 281 and provisions of Chapter XVII of the Income Tax Act, 1961 effective from the date of approval of the Resolution Plan or on account of implementation of the Resolution Plan. b) For all the losses already lapsed / not lapsed as on the date of approval of the Resolution Plan shall be allowed to be carried forward for a period of eight (8) Assessment Years subsequent to Assessment Year in which Resolution Plan is approved. c) For the assessed loss of past assessment years shall be allowed to be carried forward for a further period of 2 years beyond the timelines prescribed under Section 79 of the Income Tax Act, 1961 d) For waiver of interest and penalty on delayed payment of income tax and tax deducted at source. e) For waiver of the penalty levied under the Income Tax Act and to waive all the pending penalty proceedings, appeals arising thereof and the pre-deposit requirements under the Income Tax Act. f) The CBDT shall consider that for the purpose of Section 79 of the Income Tax Act, 1961 any change in shareholding of the Corporate Debtor pursuant to the Plan does not lead to lapse of brought forward losses of the Corporate Debtor. Additionally, any write – offs should be allowed as a tax deduction in the year of such write – off. g) The CBDT to consider providing relief to the Corporate Debtor from all past	**authorities to consider keeping in view the object of IBC, 2016**

	litigations (including all proceedings and appeals) pending at different levels and provide waiver and extinguishment on all Tax dues (including those arising out of assessment claims) including interest and penalty on such litigation.	
9	To regularize any non – compliance under the Applicable law (including non – registration, inadequate / non stamping of documents as required under Applicable law) existing prior to the Effective Date.	**Granted**
10	The requirement of obtaining a non objection certificate under Section 281 of the Income Tax Act, 1961 and provisions of taking over its predecessor's tax liability under Section 170 of the Income Tax Act, 1961 shall not be applicable. Further, the transaction shall not be treated as void under Section 281 of the Income Tax Act, 1961 for any claims in respect to tax or any other sum payable by the Corporate Debtor. Similarly, any requirement to obtain waivers from any tax authorities including in terms of Section 79 and Section 115B of the Income Tax Act, 1961 is deemed to have been granted upon the approval of this Resolution Plan on the NCLT Approval Date.	**This is for the appropriate authorities to consider**
11	Any tax levies, fee, transfer charges, transfer premiums, and surcharges that arise on account of implementation of the Resolution Plan and consequent change in the ownership and control of the Corporate Debtor and / or implementation of the Resolution Plan shall be waived and granted exemption.	**This is for the appropriate authorities to consider**
12	During the implementation, no governmental authority (including regulatory, judicial and quasi – judicial authority) shall issue any orders, directions, decrees, judgments, etc., that will be in contravention and detrimental of the provisions of the Resolution Plan.	**Allowed, subject to the provisions of IBC, 2016**
13	The respective authorities to consider providing relief from applicability of and payment of Taxes including under the provisions of the Goods and Services Taxes Act, 2017 which may arise as a result of implementation of the Plan either on the Resolution Applicant or the Corporate Debtor or	**This is for the appropriate authorities to consider**

	any other person who is likely to be impacted due to implementation of the Plan.	
14	The approvals / waivers / dispensations, as the case may be, of the Governmental Authorities viz. Registrar of Companies, statutory authorities etc., statutory approvals as required under the Companies act, 2013 and regulations / rules made thereunder be granted in respect of the Corporate Debtor in accordance with the covenants contained in this Resolution Plan.	**Not Granted**
15	All Governmental Authorities and other stakeholders, if any, to grant any relief, concessions, waiver or dispensation including penalties, interest on delayed payments, charges, fee, levies, expenses etc., as may be required for implementation of the transactions contemplated under the Plan in accordance with its terms to achieve the business objectives and completion of the Projects.	**This is for the concerned Governmental authorities to consider, keeping in view the objects of IBC, 2016 and a fresh start of the Corporate Debtor.**

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 Authority is duty bound to follow the much-celebrated Judgment 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 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).
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> 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."

20. 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).

21. 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.
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> 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)

22. 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. <u>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</u>."

(emphasis supplied)

23. 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.
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> 77. In the scheme of IBC, where approval of resolution plan is exclusively in the domain of the commercial wisdom of CoC, the scope of judicial review is correspondingly circumscribed by the provisions contained in Section 31 as regards approval of the Adjudicating Authority and in Section 32 read with Section 61 as regards the scope of appeal against the order of approval.
>
> 77.1. Such limitations on judicial review have been duly underscored by this Court in the decisions above-referred, where it has been laid down in explicit terms that the powers of the Adjudicating Authority dealing with the resolution plan do not extend to examine the correctness or otherwise of the commercial wisdom exercised by the CoC. The limited judicial review available to Adjudicating Authority lies within the four corners of Section 30(2) of the Code, which would essentially be to examine that the resolution plan does not contravene any of the provisions of law for the time being in force, it conforms to such other requirements as may be specified by the Board, and it provides for: (a) payment of insolvency resolution process costs in priority; (b) payment of debts of operational creditors; (c) payment of debts of dissenting financial creditors; (d) for management of affairs of corporate

debtor after approval of the resolution plan; and (e) implementation and supervision of the resolution plan.

77.2. The limitations on the scope of judicial review are reinforced by the limited ground provided for an appeal against an order approving a resolution plan, namely, if the plan is in contravention of the provisions of any law for the time being in force; or there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period; or the debts owed to the operational creditors have not been provided for; or the insolvency resolution process costs have not been provided for repayment in priority; or the resolution plan does not comply with any other criteria specified by the Board

77.6.1. The assessment about maximisation of the value of assets, in the scheme of the Code, would always be subjective in nature and the question, as to whether a particular resolution plan and its propositions are leading to maximisation of value of assets or not, would be the matter of enquiry and assessment of the Committee of Creditors alone. When the Committee of Creditors takes the decision in its commercial wisdom and by the requisite majority; and there is no valid reason in law to question the decision so taken by the Committee of Creditors, the adjudicatory process, whether by the Adjudicating Authority or the Appellate Authority, cannot enter into any quantitative analysis to adjudge as to whether the prescription of the resolution plan results in maximisation of the value of assets or not. The generalised submissions and objections made in relation to this aspect of value maximisation do not, by themselves, make out a case of interference in the decision taken by the Committee of Creditors in its commercial wisdom

78. To put in a nutshell, the Adjudicating Authority has limited jurisdiction in the matter of approval of a resolution plan, which is well defined and circumscribed by Sections 30(2) and 31 of the Code read with the parameters delineated by this Court in the decisions above referred. The jurisdiction of the Appellate Authority is also circumscribed by the limited grounds of appeal provided in Section 61 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by the CoC. Within its limited jurisdiction, if the Adjudicating Authority or the Appellate Authority, as the case may be, would find any shortcoming in the resolution plan vis-à-vis the specified parameters, it

> would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by Code and exposited by this Court.

24. 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.

25. On perusal of the documents on record, we are also satisfied that the Resolution Plan is in accordance with sections 30 and 31 of IBC, 2016. Thus, the Resolution Plan is hereby **approved** and is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect and the "Moratorium" imposed under section 14 of IBC, 2016 shall not have any effect henceforth. In case of non-compliance of this order or withdrawal of Resolution Plan, the performance guarantee amount already paid by the Resolution Applicant shall stand forfeited, in addition to the Resolution Applicant being liable for any other action as per law.

26. The Resolution Professional shall submit the records collected during the commencement of the Proceedings to the Insolvency &

Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance. Liberty is hereby granted for moving any Application, if required, in connection with implementation of this Resolution Plan. The RP shall stand discharged from his duties with effect from the date of this Order. He shall, however, perform his duties in terms of the Resolution Plan as approved by this Adjudicating Authority.

27. The Resolution Professional is further directed to handover all records, premises / documents to Resolution Applicant to finalise the further line of action required for starting of 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 of the operation.

28. IA(IBC)/1032(CHE)/2021 stands **ordered** accordingly.

-Sd-
B. ANIL KUMAR
MEMBER (TECHNICAL)

-Sd-
Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)

Raymond