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

IA/600/CHE/2021 in IBA/873/2019

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

IN THE MATTER OF:

Balakrishnan Venkatachalam,
Resolution Professional of
M/s. ABT (Madras) Private Limited
GF02 Itinia Padma – I Apartments,
5th Main, Ramamurthy Nagar,
Bengaluru – 560 016

... Applicant

Present:

For RP : Ashwin Shanbhag, Advocate
Sella Visalakshi, Advocate

CORAM :

R. SUCHARITHA, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

Order Pronounced on 3rd September 2021

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

IA/600/CHE/2021 is an Application which is moved by the Resolution Professional of the Corporate Debtor viz., **M/s. ABT (Madras) Private 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) *Baashyaam Infrastructure Private Limited*, (ii) *Mr. Abinеш Yuvarajan* and (iii) *Mr. R. Yuvaraajan*.

2. In an Application filed under Section 7 of IBC, 2016 by a Financial Creditor viz. M/s. Asset Reconstruction Company (India) Limited, this Adjudicating Authority vide order dated 04.12.2019 passed in IBA/873/2019 initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor viz. M/s. ABT (Madras) Private Limited and the Applicant herein was appointed as the Interim Resolution Professional (IRP). Thereafter, the IRP had caused public announcement on 06.12.2019 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 30.12.2019 wherein the Applicant herein was recommended by the CoC to be appointed as the Resolution Professional (RP) in relation to the Corporate Debtor.

3. It is seen from the averments made in the Application that the Applicant 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 Applicant has conducted a total of 33 CoC meetings in relation to the Corporate Debtor and that the Fair Value and the Liquidation value is arrived at Rs.296,06,58,307/- and Rs.238,25,38,307/- respectively.

4. The Learned Counsel for the Applicant submitted that the CoC in its 13th meeting held on 13.08.2020 has approved the proposal of the Applicant to seek Expression of Interest (EoI) and the necessary Form G was published by the Applicant on 17.08.2020 in two newspapers viz. Trinity Mirror and Makkal Kural and the last date was fixed as 31.08.2020. Since the Applicant has received multiple number of EoI, the RP in consultation with the CoC members decided to extend the last date for submission of EoI and the same was extended upto 21.09.2020.

5. Further, it was also submitted by the Learned Counsel for the Applicant that as per Regulation 35A of the IBBI (Insolvency Resolution process for Corporate Persons) Regulations, 2016, the Applicant has formed an opinion and made a determination that the Corporate Debtor has not been subjected to any Preferential, undervalued, fraudulent and extortionate transactions. It was also submitted that some of the activities of the Corporate Debtor was

severely hampered due to the advent of Covid-19 and the consequent lockdowns imposed by the Central / State Governments and hence the Applicant has moved an IA seeking exclusion of period from 25.03.2020 to 31.10.2020 and also sought further extension of 90 days period of CIRP in relation to the Corporate Debtor. Accordingly, this Tribunal vide its order dated 22.12.2020, granted the prayer as sought for by the Applicant and as such the CIRP period in relation to the Corporate Debtor was about to end on 06.04.2021.

6. The Learned Counsel for the Applicant submitted that the Resolution Professional has received Expression of Interest from 20 prospective Resolution Applicants and the provisional list of the same was issued to the CoC on 22.10.2020 and the Request for Resolution Plan (RFRP) along with the Information Memorandum, Evaluation Matrix was issued to the prospective Resolution Applicants on 26.10.2020. Thereafter, it was submitted that the Applicant has received the Resolution Plan from the consortium of Baashyaam Infrastructure Private Limited and Mr. Abinash Yuvarajan and Mr. R. Yuvarajan, Resolution Applicant (with Baashyaam Infrastructure Private Limited as Lead Member) on 10.12.2020 and the Applicant having satisfied himself that the



same is *prima facie* in compliance with the provisions of IBC, 2016 placed it before the CoC for its consideration.

7. It was submitted by the Learned Counsel for the Applicant that the Resolution Professional has received the final Resolution Plan from the Resolution Applicant after making necessary modification to the plan on 12.01.2021 and pursuant to the final rounds of negotiations and discussions, the Resolution Applicant submitted the signed Resolution Plan on 28.06.2021. In the meanwhile, it is also seen that the Applicant has also filed another Application seeking exclusion of time from December 2020 till 31.03.2021 on account of Covid – 19 and this Tribunal vide its order dated 06.08.2021 excluded the CIRP period and hence the CIRP in relation to the Corporate Debtor was about to expire on 31.10.2021

8. 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 33rd CoC meeting that was



held on 28.06.2021 that the CoC with 100% voting has approved the Resolution Plan proposed by the Resolution Applicant.

9. It is seen from the Resolution Plan, that the Resolution Applicant has proposed to make settlement of the Amount to the Creditors in the following manner;

PERIOD OF SETTLEMENT	PAYMENT	ADMITTED AMOUNT (₹)	PROPOSED SETTLEMENT AMOUNTS (₹)	TOTAL (₹)
Upfront cash recovery (i.e. settlement within 45 days (if not completed within 30 days) of the NCLT Approval Date	CIRP Cost	Estimated at 1,85,20,879	The Resolution Applicant shall bear the CIRP costs at actuals. If the actual CIRP costs are lower than the estimated CIRP costs, the difference will be transferred to the Financial Creditor. In case the actual CIRP Costs exceeded the estimated CIRP costs, the same shall be borne by the Resolution Applicant.	At actuals
	Operational Creditors	3,58,720	3,58,720	314,53,58,720
	Financial Creditors	548,40,03,820	314,50,00,000	
	Workman and Employees	NIL	NIL	

	Statutory Authorities	NIL	NIL	
	Related Party Creditors	NIL	NIL	
	Shareholders	NIL	NIL	

10. Further, it is also seen from Clause 4.2 of the Resolution Plan which deals with source of funds, which states as follows;

- (a) The Resolution Applicant is a wholly owned subsidiary of BCPL, that is generating steady cash flow / internal accruals from its operations.
- (b) Given the above, the Resolution Applicant intends to meet the commitment towards proposed Upfront Cash Recovery from the following sources;
 - (i) Cash and Cash equivalents of BCPL available as on 10 December 2020 to the extent of INR 170.03 Crores which is only expected to increase in the coming days given that few of projects are nearing completion – a certificate from a Chartered Accountant on the cash and cash equivalents positions is enclosed as Annexure V. BCPL has also provided an undertaking that the funds to the extent of INR 150,00,00,000 (Rupees Hundred and Fifty Crore only) are exclusively earmarked for the purpose of meeting the commitment of the Resolution Applicant under this Resolution Plan. With the intent to give comfort to the financial creditors, the Resolution Applicant undertakes that the Resolution Applicant shall procure BCPL to provide a guarantee for the payment of the FC Settlement Liability ("Corporate Guarantee") which shall be furnished along with this Resolution Plan. The agreed format of this Corporate Guarantee shall be stipulated by

the FC and provided by BCPL along with this Resolution Plan.

- (ii) Available credit line from PHL Fininvest Private Limited ("Lender") (part of Piramal group) to the extent of INR 175 Crore (subject to acceptance of this Resolution Plan) exclusively in connection with the proposed commercial project in the Guindy land parcel owned by the Corporate Debtor. The term sheet from the Lender is enclosed for your reference as Annexure V. The Resolution Applicant agrees and undertakes that no charge on the assets of the Corporate Debtor will be created in favour of the Lender prior to the Appointed Date.
- (c) A Certificate from a Chartered Accountant certifying the Resolution Applicant's ability to meet the commitment towards the proposed Upfront Cash Recovery is also attached as Annexure V.
- (d) Further, it is pertaining to note that the Baashyam Group possesses sound goodwill and flawless credit history that allows the Resolution Applicant to secure debt funding / financial assistance as may be required to effectively implement this Resolution Plan.

11. A perusal of the Resolution Plan manifest the fact that the Plan proposed by the Resolution Applicant is by way of a Scheme of Merger in an by which the Corporate Debtor (Transferor) is merged with Baashyaam Infrastructure Private Limited (Transferee), subject to the payment obligations of the Resolution Applicant and such other terms and conditions of this Resolution Plan. At this juncture, this Tribunal deems it fit to refer to Regulation 37 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, is as follows;

37. Resolution plan.

A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets, including but not limited to the following: -

(a) transfer of all or part of the assets of the corporate debtor to one or more persons;

(b) sale of all or part of the assets whether subject to any security interest or not;

(ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;

(c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;

(ca) cancellation or delisting of any shares of the corporate debtor, if applicable;

(d) satisfaction or modification of any security interest;

(e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;

(f) reduction in the amount payable to the creditors;

(g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;

(h) amendment of the constitutional documents of the corporate debtor;

(i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;

(j) change in portfolio of goods or services produced or rendered by the corporate debtor;

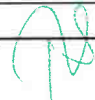
(k) change in technology used by the corporate debtor; and

(l) obtaining necessary approvals from the Central and State Governments and other authorities.

12. It is seen by way of Notification No. IBBI/2019-20/GN/REG052, dated 27th November, 2019 with effect from 28.11.2019, clause (ba) of Regulation 37 was inserted so as to imply that a Resolution Plan may also provide for merger, amalgamation and demerger. Thus, the Resolution Plan provided by the Resolution Applicant involves a merger of the Corporate Debtor with the Resolution Applicant subject to the payment obligations of the Resolution Applicant and such other terms and conditions of this Resolution Plan.

13. 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 *vis-à-vis* with the Mandatory compliance under the IBC and 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 8.5 of the Resolution Plan states that the Resolution Applicant does not suffer from any ineligibility under Section 29A of IBC, 2016.



<p>S. 30(2)(a) - Payment of Insolvency and Resolution cost in the manner specified by the Board</p>	<p>Clause 4.3 of the Resolution Plan provides payment of the CIRP costs in priority.</p>
<p>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 than the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under Sec. 53</p>	<p>Clause 4.4 of the Resolution Plan states that as per the IM, there is only one Operational Creditor and the same is being settled at 100% and the same is being paid in priority over the dues of the Financial Creditor</p>
<p>Reg. 38(1) - Resolution Plan identifies 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</p>	<p>Clause 4.2 of the Resolution Plan deals with the Source of Funds and Clause 4.3 of the Resolution Plan deals with the Treatment of the CIRP costs.</p>
<p>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</p>	<p>Clause 4 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.</p>
<p>S. 30(2)(c) - Management of the affairs of the Corporate Debtor after approval of the Resolution Plan</p>	<p>Clause 5 of the Resolution Plan deals with the Management and Control and Implementation of Terms in relation to the Resolution Plan.</p>
<p>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</p>	<p>Clause 5 of the Resolution Plan deals with the Implementation and supervision of the Resolution Plan and it shall comprise of (i) one nominee of the Resolution Applicant (ii) one nominee of the Financial Creditor (iii) the Resolution Professional.</p>

required and the timeline for the same; and e) the Resolution applicant has the 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 1 of the Resolution Plan address the capability of the Resolution Applicant to implement the Resolution Plan and Clause 5 of the Resolution Plan deals with the provisions for effective implementation.
S. 30(2)(e) - Does not contravene any of the 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 33 rd meeting held on 28.06.2021 with a 100% voting share has approved the Resolution Plan.

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

15. 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).

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.”

16. 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).

17. 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)

18. 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)

19. 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 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 expounded by this Court.

20. 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.

21. The Resolution Applicant has sought for various Reliefs, Concessions in Clause 10 of the Resolution Plan, which are as follows;



10.1. That the Hon'ble NCLT be pleased to give or issue necessary directions, instructions to the Central Board of Direct Taxation, Central Board of Indirect Taxes, Customs, Value Added Tax authorities, State Governments Tax authorities to grant the reliefs / exemptions / waivers under / from applicability of Section 170 & 281 of the Income Tax Act for the purposes of implementation of this Resolution Plan;

10.2. That the Hon'ble NCLT be pleased to give or issue necessary directions, instructions to the CBDT, Central Board of Indirect Taxes, Customs and Value added Tax authorities to exempt income / gain / profits, if any, arising as a result of giving effect to the Resolution Plan and from being subjected to Income Tax in the hands of the Transferee / Resolution Applicant under the provisions of the value added tax, customs, octroi, excise duty, service tax, goods & services tax, Income tax Act and waive all liabilities whether crystallized or not in respect of Taxes (including interest and penalty) arising in respect of periods up to the NCLT Approval Date;

10.3. That the Hon'ble NCLT be pleased to give or issue necessary directions, instructions to all relevant Governmental Authorities to grant relief / concessions from payment of fees, charges, stamp duty, registration fees (including fees payable to the jurisdiction ROC) in connection with various actions contemplated under this Resolution Plan viz. increase of authorized share capital of the Transferee pursuant to combining the authorized share capital of the Transferor, transfer of assets and properties, assignment of debt in terms of clause 4.8 of the Resolution Plan and any other action taken to implement the Resolution Plan;

10.4. That the Hon'ble NCLT be pleased to declare that the order of Hon'ble NCLT approving this Resolution Plan shall be deemed to be an order of Hon'ble NCLT sanctioning a Scheme of arrangement with creditors under the Companies Act including for the purpose of payment of stamp duty on such order and accordingly stamp duty payable shall be the amount payable for an order of NCLT sanctioning a Scheme under Section 230 to 232 of the Companies Act as may be determined in accordance with the provisions of the Indian Stamp Act, 1899 (as applicable in the State of Tamil Nadu) and G.O. Ms. No. 47 dated 19 February 2020 issued by the Commercial Taxes and Registration Department, Tamil Nadu;

10.5. That the Corporate Debtor and / or BIPL shall not be required to make any separate applications before the Hon'ble NCLT under the provisions of the Code or under the Companies Act and that the approval of the Resolution Plan by the Hon'ble NCLT shall be treated as if the necessary approvals is required to have been obtained under the Companies Act, including consent of shareholders or creditors of the Corporate Debtor and applications to / consents or approvals from any other appropriate authority as required under the Companies Act, together with the process laid down under the Companies Act, have been made, obtained and duly complied with;

10.6. That the compliance with the provisions of the Resolution Plan (also comprising of the scheme of arrangement) shall be deemed to be in accordance with an constitute compliance with any and all provisions of law that would have otherwise applied to a similar scheme of arrangement under the Companies Act, Income Tax Act and or under rules/circular / regulations issued thereunder; and

10.7. Such other reliefs and concessions as permitted under the Code or any other Applicable Law and as the Hon'ble NCLT deems appropriate in connection with effective implementation of this Resolution Plan and to afford all benefits and protections to the Resolution Applicant as envisaged pursuant to this Resolution Plan.

22. In so far as the reliefs as claimed by the Resolution Applicant in Clause 10.1 and 10.2. is concerned, this Tribunal by taking into consideration the decision of the Hon'ble Supreme Court of India in the matter of **Embassy Property Developments Pvt. Ltd. -Vs- State of Karnataka & Ors. (2020) 13 SCC 308**, we direct the Resolution Applicant to file necessary application before the necessary forum / authority in order to avail the necessary Relief and Concessions, if it is in accordance with law.



23. In so far as the relief as claimed in Clause 10.3, 10.4, 10.5 and 10.6, we hereby hold that this order approving the Resolution Plan shall be deemed to be an order of sanctioning a Scheme of arrangement with creditors under the provisions of Section 230 to 232 of the Companies Act, 2013. While approving the Resolution Plan as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law. Further, we make it clear that the Resolution Applicant shall make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the after setting off the fees already paid by the Corporate Debtor.

24. 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. 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 Miscellaneous Application, if required, in connection with implementation of this Resolution Plan. That in respect of stepping by the New Promoters/Resolution Applicant into the shoes of the erstwhile Company and taking over the business, the provisions of Companies Act, 2013 shall be applicable and because of this reason a copy of this Order is to be submitted in the Office of the Registrar of Companies, Chennai.

25. 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. Accordingly, the Application stands **allowed.**

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond