

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI, BENCH-V**

I.A. No. 1150 of 2021

IN

C.P. No. 2995 of 2019

In the matter of an Application under
Section 30(6) and Section 31 of the
Insolvency and Bankruptcy Code, 2016.

Mr. Gajesh Labhchand Jain

**(Resolution professional of E & G Global
Estates Limited)**

...Applicant/Resolution Professional

In the matter of

**Small Industrial Development Bank of
India**

... Financial Creditor

V/s.

E & G Global Estates Limited

... Corporate Debtor

Order Dated : 11.08.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)
Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance:

For the Applicant: PCA Ayush Rajani a/w Khushboo Shah i/b AKR
Advisors

Per: Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. The above captioned Application was filed under Section 30(6) and Section 31, of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the **“Code”**) by the Resolution Professional (hereinafter referred as the **“Applicant”**), seeking approval of the Resolution Plan, submitted by the Resolution Applicant - Mrs. Asha Shivaji Sanap, which was approved by 79.60% voting shares of the members of the Committee of Creditors (hereinafter referred to as **‘COC’**).
2. The facts leading to the Application are as under:
 - a. Corporate Insolvency Resolution Process (**CIRP**) of the Corporate Debtor was initiated, vide an order dated 24.06.2020, under Section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as **‘the Code’**) and Mr. Gajesh Labhchand Jain, was appointed as Interim Resolution Professional. The IRP, constituted the Committee of Creditors. The COC in its 2nd meeting held on 01.09.2020 appointed **the present Applicant** as the Resolution Professional. The IRP published a public announcement as per Section 15 of the Code, inviting claims from the creditors of the Corporate Debtor.
 - b. The Applicant published a Public Announcement in Form A in accordance with Section 15 of the Code, on 26.06.2020, in English Newspaper the Indian Express and one in Marathi Newspaper Lok Satta, inviting claims from the creditors of the Corporate Debtor.
 - c. The claims **received** and **accepted** by Interim Resolution Professional are as under:

I. Claims of Financial Creditors:*(Amount in Rs.)*

Sr. No	Financial Creditor	Amount Claimed	Amount Admitted	Voting %
1	Small Industries Development Bank of India (Financial Institution)	4,07,13,665	4,07,13,665	20.40%
2	Class of creditors (Home Buyers)	17,32,39,104	15,88,64,164	79.60%
	GRAND TOTAL	21,39,52,769	19,95,77,829	100%

II. Claims of Operational Creditors, Government Dues and Employees and Workmen:*(Amount in Rs.)*

Sr. No.	Category of creditor	Claims received		Claims admitted		Amount of claims not admitted
		No.	Amount	No.	Amount	
1	Operational creditors (Employees) *	15	1,22,73,516	7	53,83,841	68,89,675
2	Operational creditors (Government Dues)	3	91,726	3	91,726	-
3	Operational creditors (other than Workmen and Employees and Government Dues)	47	4,65,83,138	19	2,71,24,611	-
Total		65	5,89,48,380	29	3,26,00,178	68,89,675

** there are no claims received from any workmen.*

3. After receiving the claims, the Committee of Creditors was constituted. The constitution of COC is as under:

Sr. No	Financial Creditor	Amount Claimed	Amount Admitted	Voting %
1	Small Industries Development Bank of India (Financial Institution)	4,07,13,665	4,07,13,665	20.40%
2	Class of creditors (Home Buyers)	17,32,39,104	15,88,64,164	79.60%
	GRAND TOTAL	21,39,52,769	19,95,77,829	100%

4. The CoC decided to appoint valuers. The Resolution Professional accordingly appointed two Registered Valuers, for Plant & Machinery, Land & Building and Financial Assets to determine its fair value and liquidation value, as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016. The details of the Registered Valuers are as follows:

- Adroit Appraisers & Valuers Research Private Limited (**Valuer 1 for Land & Building, Plant & Machinery and Financial Assets**) Professional M. No. IBBI/RV-E/01/2020/121
- Mr. Bhavesh Jagdish Chandra Patel (**Valuer 2 Land & Building**) Professional M. No. IBBI/RV/07/2019/12505
- Mr. Manish Kumar Khanduja (**Valuer 2 for Plant & Machinery**) Professional M.No. IBBI/RV/02/2019/12299
- Mr. Rahul Parasrampurua (**Valuer 2 for Financial Assets**) Professional M.No. IBBI/RV/06/2019/11639

5. These Registered Valuers submitted their reports. **The Liquidation and fair value** is stated as under:

(Amount in Rs.)

Particulars	FAIR VALUE			LIQUIDATION VALUE		
	Valuer 1	Valuer 2	Average	Valuer 1	Valuer 2	Average
Land & Buildings	14,44,68,166	15,41,30,519	14,92,99,343	11,55,74,533	12,45,21,000	12,00,47,767
Plant & Machinery	54,90,800	58,38,977	56,64,889	43,92,640	46,71,182	45,31,911
Investment	0	11935	5968	0	0	0
Long-term loans & advances	0	6000	3000	0	3000	1500
Inventory (being real estate project valued under land and buildings)	0	0	0	0	0	0
Trade Receivables	0	0	0	0	0	0
Cash & Bank Balance	303,679	303,679	303,679	303,679	303,679	303,679
Software	7,996	0	3,998	3,998	0	1999
TOTAL	15,02,70,641	16,02,91,110	15,52,80,877	12,02,74,850	12,94,98,861	12,48,86,856

6. The Applicant submits that for inviting Expression of Interest (“**EOI**”) from Prospective Resolution Applicants as per section 25(2)(h) of the Code, Form G was published in English newspaper Free Press Journal and one in vernacular language Navshakti Mumbai on 20.11.2020. **The last date for submission of Expression of Interest (EOI) from Prospective Resolution Applicants was 12.12.2020 and last date of submission of Resolution Plan was 27.01.2021.**
7. The Applicant Submits that in the 4th COC meeting dated 11.11.2020 and 5th meeting dated 17.12.2020, the COC approved with minimum eligibility criteria, Request for Resolution Plan (**RFRP**) and evaluation matrix. The Applicant further states that in furtherance of the Form-G issued, he received EOI from the three Prospective Resolution Applicant (PRA). Below are the names of the prospective resolution applicants:
 - a) M/s G.S. Construction (Proprietor Mr. Sushil Uttarwar, Suspended Director E&G Global Estates Limited) - claimed eligibility in view of section 240A r.w.s. 29A of the Code.
 - b) Mrs. Archana Sanap
 - c) Mrs. Asha Sanap
8. **The COC, in its 8th meeting held on 20.04.2021, approved Resolution Plan submitted by Mrs. Asha Shivaji Sanap with a voting share of 79.60%. Thereafter, the Applicant has issued compliance certificate in Form “H”.**
9. **The Salient Features of the Resolution Plan are as under:**
 - A. Brief Background of the Corporate debtor**
 - i. E&G GLOBAL ESTATES LIMITED (“**E&G**” or “**the Corporate Debtor**”) (CIN: U45400MH2008PLC182480) is an unlisted public company, limited by shares, incorporated on May 21,

2008 having its registered office 6, New Shiv Sagar Society, Gangapur College Link Road, Thatte Nagar, Nashik, Maharashtra- 422005.

- ii. The company is engaged in the business of Construction and Development of Land & Building.
- iii. The Corporate Insolvency Resolution Process (“**CIRP**”) of E&G has been initiated as per the provisions of the Insolvency and Bankruptcy Code (“**IBC**”) under Section 7. The application was moved before the Hon’ble National Company Law Tribunal, Mumbai Bench (“**NCLT**”) and was admitted vide its order dated June 24, 2020 (“**CIRP Order**”). Pursuant to such order, Mr. Gajesh Labhchand Jain, (having IP Registration no. IBBI/IPA-001/IP-P-01697/2019-2020/12588), Insolvency Professional, was appointed as the Interim Resolution Professional (**IRP**).

B. Background of the Resolution Applicant

- i. Mrs. Asha Shivaji Sanap, Wife of Mr Shivaji Tatyaba Sanap, age 65, residing at Aikya Bunglow, Plot No 27, Ashvin Cooperative Housing Society, Jay Bhavani Road, Nasik Road, Nasik – 422101 is the resolution applicant in her individual capacity. Her PAN ACZPS0534L and Aadhar No. is 2087 5385 2911.
- ii. Mrs. Asha Shivaji Sanap is engaged into the business of farming with polyhouses, sandalwood farming, running Fisheries, goat farming, duck farming and quail farming. she is a director and promoter of livestock exporters in India with exclusive tie up with Multinational Retail companies. Mrs.

Asha Sanap also has experience in Real Estate activities having been associated as a partner, developer and/or builder in multiple real estate projects including plotting schemes, Large scale bungalow projects, Residential and commercial complexes in Nasik district covering Nasik City and other various places in Maharashtra.

iii. Mrs. Asha Shivaji Sanap is currently not a partner in any partnership firm. She is an agriculturist and running its agriculture business under her own name “Asha Shivaji Sanap”.

iv. The Resolution Applicant is eligible to act as a Resolution Applicant of the Corporate Debtor and is not ineligible under section 29A of Insolvency and Bankruptcy Code and also satisfies the eligibility criterion as mentioned in clause (h) of sub-section (2) of section 25 of the Code.

10. **Summary of Payments under the Resolution Plan**

Summary of Admitted Debts & Amount Offered in Resolution Plan	Admitted Claim	Amount Offered
CIRP Cost Estimated (Approximate for CIRP Period)	₹ 1,00,00,000	₹ 1,00,00,000
Financial Creditor - SIDBI	₹ 4,07,13,665	₹ 3,07,00,000
Financial Creditors in a Class (Home Buyers)	₹ 15,75,64,164	₹ 15,75,64,000
Financial creditors claim (Unsecured class of creditors)	₹ 0	₹ 0
Total Financial Creditor	₹ 19,82,77,829	₹ 18,82,64,000
Operational creditors claim (Other than Employees)	₹ 2,67,36,031	₹ 5,00,000
Operational creditors claim (Government Dues)	₹ 91,726	₹ 92,000
Operational creditors claim (Employees)	₹ 53,83,841	₹ 1,50,000
Total Operational Creditor	₹ 3,22,11,598	₹ 7,42,000
Grand Total	₹ 24,04,89,427	₹ 19,90,06,000

11. **Payments proposals of the various stakeholders under the Resolution Plan:**

A. Payment of Insolvency Resolution Process Cost

- i. The Resolution Applicant has estimated Insolvency Resolution Process Cost (till Cut-off period) approx. Rs. 100 Lakhs.
- ii. However, in the event, if the final Insolvency Resolution Process Cost, as on the Effective Date, exceeds Rs. 100 Lakhs (Rupees hundred Lakhs), then the amounts payable to the creditors including but not limited to operational creditor, financial creditors, employees and workmen under this Resolution Plan may be adjusted accordingly on pro rata basis.

B. Payment to Operational Creditors

- i. As per the Information Memorandum, the amount admitted against the claims of all operational creditors of the Corporate Debtor is Rs 322 (Rupees three hundred twenty-two lakhs)
- ii. The Resolution Applicant undertakes to pay Rs 7.42 (Rupees seven lakhs forty-two thousand only) as under:
 - a. Operational creditors claim (**Other than Employees**):
Rs 500000 (Rupees Five Lacs Only)
 - b. Operational creditors claim (**Government Dues**): Rs
92000 (Rupees Ninety-Two Thousand Only)
 - c. Operational creditors claim (**Employees**): Rs 150000
(Rupees One Lacs Fifty Thousand Only)

The Resolution Applicant, Mrs. Asha Shivaji Sanap, vide its Additional Affidavit dated 17.03.2022 has undertaken:

- i. to pay the Operational Creditor (Employees) Rs. 500,000/- instead of Rs. 1,50,000/- against the total admitted claim of Rs. 53,83,841/-.**

C. Payment to Financial Creditors

- i. As per the Information Memorandum, the amount admitted against the claims of all Financial creditors of the Corporate Debtor is Rs.19,82,77,829/- (Rupees Nineteen Crores Eighty Two Lacs Seventy Seven Thousand Eight Hundred Twenty Nine Only).
- ii. The Resolution Applicant undertakes to pay Rs. 18.83 crores (Rupees eighteen crores, eighty-three lakhs only) as under:
 - a. Financial Creditor - **SIDBI**: Rs 3,07,00,000 (Rupees Three Crores Seven Lacs Only)
 - b. Financial Creditors in a Class (**Home Buyers**): Rs 15,75,64,000 (Rupees Fifteen Crores Seventy-Five Lacs Sixty-Four Thousand Only)

The Resolution Applicant, Mrs. Asha Shivaji Sanap, vide its Additional Affidavit dated 17.03.2022 has undertaken:

- i. to pay the Financial Creditor (SIDBI) Rs. 4,07,00,000/- instead of Rs. 3,07,00,000/- against the total admitted claim of Rs. 4,07,13,665/- subject to**

withdrawal of the applications filed by the Financial Creditor objecting to the Resolution Plan.

- iii. The Financial Creditor (**Home Buyers**) shall be relinquishing all their rights in the Corporate Debtor and the contractual obligation after making full refund (as per the individual requests) of the admitted claim as mentioned above.
- iv. The Financial Creditor (**Home Buyers**) who take option to continue to remain invested in their contractual obligation arising from the letter of allotment, lease deed agreement or similar contracts shall be provided the respective apartment as per the existing contracts of each home buyer. The Claims of Financial Creditor (Home Buyers) which is already admitted by the Resolution Professional, shall be provided the fully constructed possession of respective apartments as per the existing contracts entered with them. Apart from this contractual obligation limited to the respective agreements of the Home Buyer they shall not be holding any other security interest in the remaining saleable property as per the project approval document with RERA Registration No: P51600005708. Any security interest or claims other than what is admitted by the Resolution Professional, and provided for in this Resolution Plan stands waived off and extinguished and no longer be payable/recognisable.

12. Proceeds/Recovery under Section 43, 45, 50 and 66 of the Code

Recovery, if any, pursuant to the order passed by the NCLT under Sec 43 (preferential transactions), Sec 45 (undervalued transactions), Sec 50 (extortionate credit transactions) and Sec 66 (fraudulent

transactions) of the Code, **shall be exclusive right of the CoC of the Corporate Debtor.**

13. **IMPLEMENTATION AND SUPERVISION**

A. Change of Share Holding

(1) The existing equity shares shall be written off and a fresh equity shall be issued equivalent to Rs. 50 Lakhs of face value Rs.10/- i.e., 5,00,000 shares. The new share shall be held by the Resolution Applicant and other shareholders to be inducted by Resolution Applicant as under:

Sl. No	Name of Shareholder	Number of Shares of INR 10 each	Amount	%
1	Existing shareholder post reduction of capital and consideration	0	NIL	0
2	Asha Shivajirao Sanap	4,93,000	₹ 49,30,000	98.60%
3	Shivaji Tatyaba Sanap	1,000	₹ 10,000	0.20%
4	Hemant Shivaji Sanap	1,000	₹ 10,000	0.20%
5	Rajni Hemant Sanap	1,000	₹ 10,000	0.20%
6	Prashant Shivaji Sanap	1,000	₹ 10,000	0.20%
7	Poonam Prashant Sanap	1,000	₹ 10,000	0.20%
8	Santosh Narayan Mundhe	1,000	₹ 10,000	0.20%
9	Anil Narayan Mundhe	1,000	₹ 10,000	0.20%
	TOTAL	5,00,000	₹ 50,00,000	100%

B. Cost of Resolution Plan

Resolution Applicants determine the cost of implementing of the Resolution Plan at approx. Rs 15 Crore. This is subject to the assumptions that 7.5% of the Home Buyer's may request refund, Resolution Applicant is committed to higher pay-out if required if there is change in this assumption. According to the Resolution Plan, the entire cost of the Resolution Plan would be infused by the Resolution Applicant in the form of Equity Share, advances and inter-corporate deposits.

Details of the cost of Resolution Plan and funding arrangement are as under:

Sr. No	Nature of Payments	Rs Lacs
1	Payment against CIRP Cost (Approx.)	₹ 100
2	Payment to Financial Creditor	₹ 307
3	Payment to Home Buyer (Refund Approx 7.5%)	₹ 118
4	Payment to Operational Creditor	₹ 7
5	Provision for Construction and Working Capital	₹ 667
	Total Cost of Resolution Plan	₹ 1,200

C. Sources of Funds

The Resolution Applicant shall infuse in the Corporate Debtor in the form of equity and unsecured loans/inter-corporate deposits in the proportion specified below:

Sr. No	Sources of Funds	Rs Lacs
1	Equity Share Capital	₹ 50
2	REOI+EMD+PB	₹ 170
3	Loans & Advances	₹ 0
4	Receipt from Home Buyer (existing)	₹ 889
5	Sale of Apartments (New Sales/internal accruals)	₹ 91
	Total	₹ 1,200

14. Earnest Money Deposit

The Resolution Applicant undertakes to provide Earnest Money Deposit of Rs. 40,00,000 (Rupee forty Lakhs) an irrevocable and unconditional Bank Guarantee issued by any scheduled commercial bank in India ("Bank") in favour of the Beneficiary which shall be in accordance with Format VIII (Earnest Money Deposit Guarantee).

15. Performance Bank Guarantee

The Resolution Applicant undertakes to provide Performance Bank Guarantee as stipulated in "RFRP" for the successful resolution applicant within a period of 2 (two) Business Days of acceptance of the LOI (and in any case prior to the application to the Adjudicating Authority in case the application for approval of my Resolution Plan is

to be submitted to Adjudicating Authority earlier), provide an irrevocable and unconditional Performance Bank Guarantee issued by a scheduled commercial bank of an amount aggregating to the sum total of 10% (ten percent) of the Successful Resolution Applicant Contribution (“PBG Amount”) offered under the Resolution Plan.

16. Monitoring Committee

The Resolution Applicant in consultation with the CoC and the Resolution Professional, shall appoint appropriate as the “Monitoring Professional” to monitor and supervise the implementation of the Resolution Plan

17. Implementation Schedule of the Resolution Plan

The Resolution Applicant estimates the following schedule for the implementation of the actions as per the Resolution Plan:

Sl. No	Particulars	00 - 90 Days	91 - 180 Days	181 - 270 Days	271 - 365 Days	01 - 02 Years	Total
Payments for CIRP expenses and Creditors as per Resolution Plan (Rs Lakhs)							
1	CIRP Expenses	₹ 100					₹ 100
2	Financial Creditor	₹ 307					₹ 307
3	Home Buyers	₹ 118					₹ 118
4	Operational Creditor	₹ 7					₹ 7
5	Construction Cost	₹ 133	₹ 534	₹ 375	₹ 375	₹ 1,125	₹ 2,542
6	Collection from home buyer	₹ 0	₹ -889	₹ -500	₹ -500	₹ -1,500	₹ -3,389
	TOTAL	₹ 666	₹ -356	₹ -125	₹ -125	₹ -375	₹ -315

18. The compliance of the Resolution Plan is as under:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the	Yes	Yes

	CD?		
Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Yes	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	RA Submitted the Resolution Plan and addendum thereon prepared on the Basis of IM and RFRP.	Yes
Section 30 (2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment to the operational creditors? (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan? (d) provides for the management of the affairs of the corporate debtor? (e) provides for the implementation and supervision of the resolution plan? (f) contravenes any of the provisions of the law for the time being in force?	<p>Clause Reference is made to: Clause 5A at page 18; Clause 5B at page 19; Payment of Outstanding CIRP Cost</p> <p>Clause Reference is made to: Clause 5B at page 19; Payment of the debts of Operational Creditors in a manner that the amount received by the Operational Creditors is not less than the amount which would have been otherwise received by them in the event of liquidation of the Corporate Debtor. The statement of the Claims of employees and workmen up to date as has been considered, Claims under Review and not considered by the Resolution Professional has been provided as per the Information Disclosed.</p> <p>Clause Reference is made to: Clause 7 at page 32, Provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;</p> <p>Clause Reference is made to: Clause 8B at page 34 onwards, Provide for the management of the affairs of the Corporate Debtor after approval of the resolution plan;</p> <p>Clause Reference is made to: Page 16</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

		Declaration to the effect that the Resolution Plan is not in contravention of provisions of the law for the time being in force and is in strict compliance with the IB Code and the CIRP Regulations. Confirms to such other requirements as may be specified by the Board	Yes
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	Yes Yes, the same has been approved by 79.60% of the COC members (home buyers)	Yes Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Yes	Yes
Regulation 35A	Where the resolution profesional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	Yes	Yes
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Clause Reference is made to: Clause 5B at page 19; and Clause 5D at page 20 The amount due to the operational creditors under the Resolution Plan shall be given priority in payment over financial creditors.	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause Reference is made to Clause 5B at page 19;	Yes
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	Clause Reference is made to Clause 3D (4) at page 12	NO NA

Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	Clause reference is made to: Clause 8c at page 34 Clause 9A 2 (f) at page 37 Clause 6 at page 30; Clause 8a at page 33; & Clause 8b at page 34	Yes Yes Yes
38(3)	Whether the resolution plan demonstrates that - (a) it addresses the cause of default? (B) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) (e) the resolution applicant has the capability to implement the resolution plan?	Reference is made to: Clause 8A at page 33; & Clause 8B at page 34 page 18 of resolution plan and Page 5 and 6 to addendum of resolution plan Clause 6 at page 30; Clause 8A at page 33; & Clause 8B at page 34 Clause 11 at page 41 of resolution plan and Page 5 and 6 to addendum of resolution plan Clause 3D at page 11	Yes Yes Yes Yes Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Yes, the application was filed on 17 th January 2021	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	4th May 2021	Yes

19. Observations and Findings:

- i. As per IBC Code 30(2)(a) – A Resolution Plan 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.
- ii. As per Section 30(2)(b), the Respondent has agreed to pay Operational Creditors an amount which shall not be less than liquidation value or the amount that would have been paid to such creditors if the amount to be distributed under the Resolution Plan is distributed in accordance with priority under Section 53(1), whichever is higher.
- iii. The Resolution Applicant has also agreed that dissenting financial creditors shall be paid not less than the value they would have been paid in the event of liquidation of the Corporate Debtor.
- iv. The plan provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan. Section 30(2)(c).
- v. The plan provides for a term of the plan, implementation schedule and supervision of the Resolution Plan under Section 30 (2) (d) & Regulation 38(2)(c).
- vi. The Resolution Plan does not contravene any of the provisions of the law for the time being in force - Resolution Plan provides for the implementation and supervision of the resolution plan as per Section 30(2) (e)
- vii. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force as per Section 30(2)(f).
- viii. The resolution applicant or any of its related parties has not failed to implement or contributed to the failure of

implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.

- ix. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:
- a. The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors. Regulation 38(1).
 - b. The Resolution Plan has all the adequate means of supervising of the implementation of the Plan as required under Regulation 38(2) (c), of the IBBI, Insolvency resolution process for corporate persons, Regulation 2016.
 - c. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company (Regulation 38(1)(a)).
 - d. Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
 - e. The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.
 - f. The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a resolution plan under Section 29A of the Code and other provisions of the Code and any other Applicable Law.
 - g. The plan provides for the management and control of the business of the Corporate Debtor during its term.
 - h. All the above factors demonstrate that the plan address as the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.

- i. That the Resolution Applicant or any of its related parties has never failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past. This is in compliance of Regulation 38(1)(b) of the Regulations.
 - j. The interests of all stakeholders (including Financial Creditors, Operational Creditors and other creditors, guarantors, members, employees and other stakeholders of the Company, keeping in view the objectives of the Code (Regulation 38(1A)).
20. The Resolution Plan has been approved in the 8th COC meeting held on 20.04.2021 with 79.60% voting in accordance with the provisions of the Code.
21. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150*** the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is 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.

22. In ***India Resurgence Arc Private Limited vs. Amit Metaliks Limited and Ors. (2021)*** the Hon'ble Apex Court held that the process of consideration and approval of resolution plan is essentially within the commercial wisdom of Committee of Creditors (CoC). The scope of judicial review remains limited under Section 30(2) of the Insolvency and Bankruptcy Code (IBC), 2016 by which the court would examine that the resolution plan does not contravene any statutory provisions and it conforms to such other requirements as may be specified by the Board. The court held that the process of judicial review cannot be stretched if all the above-mentioned requirements have been duly complied with and that dissenting financial creditor, expressing dissent over the value of security interest held by it, cannot seek to challenge an approved Resolution Plan. Lastly, it was held that Section 30 of the IBC, 2016 only amplified the considerations for the CoC while exercising its commercial wisdom so as to take an informed decision in regard to the viability and feasibility of resolution plan, with fairness of distribution amongst similarly situated creditors; and that the business decision taken in exercise of the commercial wisdom of CoC does not call for interference unless creditors belonging to a class being similarly situated are denied fair and equitable treatment.
23. The Hon'ble Apex Court at para 42 in ***Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC Online***, has clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved.

“Para 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).”*

24. In view of the above cited case law, the legislature has given paramount importance to the commercial wisdom of committee of creditors (CoC) and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent of scrutiny provided under section 31 of Code and the direction of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code.
25. In view of the discussions, this Bench is of the considered view that the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The Resolution Plan is feasible and viable. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.

ORDER

- a) The Interlocutory Application No. 1150 of 2021 is **allowed**. The Resolution Plan submitted by **Mrs. Asha Shivaji Sanap**, is hereby approved. **It shall become effective from this date and shall form part of this order.** It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force is due.

- b) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- c) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- d) The Applicant shall supervise the implementation of the Resolution Plan and shall file status of its implementation before this Authority from time to time, preferably every quarter.
- e) The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- f) The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- g) The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- h) The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.

- i) The Registry is directed to send copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- j) The Interlocutory Application **No. 1150 of 2021** is accordingly **allowed.**

SD/-

Anuradha Sanjay Bhatia
Member (Technical)

SD/-

Kuldip Kumar Kareer
Member (Judicial)