THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI

C.A. 931(PB)/2019

IN

Company Petition No. (IB)- 563(PB)/2018

In the matter of:

Mr. Prabhakar Nandiraju

...Applicant/Resolution Professional

AND

In the matter of:

Kalptaru Steel Rolling Mills Limited

...Corporate Debtor

Submission of Resolution Plan under Section 30(6)

for approval under Section 31 of the Insolvency and

Bankruptcy Code, 2016

Judgment pronounced on: 14.02.2020

Coram:
Mr. B.S.V. PRAKASH KUMAR
HON'BLE ACTG. PRESIDENT

S. K. MOHAPATRA
HON'BLE MEMBER (TECHNICAL)

For the RP: Mr. Anoop Prakash Awasthi, Advocate
Mr. N. P. Gaur, Advocate.

ORDER

S.K. Mohapatra, Member

1. This is an application filed by the Resolution Professional under Section 30 (6) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") seeking approval of the Resolution Plan under Section 31 of the Code read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in respect of the corporate debtor M/s Kalptaru Steel Rolling Mills Limited.

2. The facts in brief necessary for disposal of the present application are that Andhra Bank one of the Financial Creditors had preferred an application under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process against M/s Kalptaru Steel Rolling Mills Limited ("Corporate Debtor"). The Company Petition (IB) 563 (PB) / 2018 was admitted on 14.08.2018 imposing moratorium under Section 14 of the Code and therein appointed the applicant Mr. Prabhakar Nandiraju as Interim Resolution Professional in respect of the Corporate Debtor.

3. Thereafter, in pursuance of Section 15 of the Code the Interim Resolution Professional made public announcement on 18.08.2018 inviting claims and on receipt of claims from various financial creditors and operational creditors, the Interim Resolution Professional constituted the Committee of Creditors in terms of Section 18 read with Section 21 of the Code.

4. Subsequently, in the 1st meeting of the Committee of Creditors held on 11.09.2018, the Interim Resolution Professional was confirmed to act as Resolution Professional as per the provisions of the Code. The Resolution Professional has convened 10 meetings of the Committee of Creditors up to 07.05.2019.

5. The Resolution Professional has further disclosed that in compliance of Regulation 27 read with Regulation 35 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, he appointed two registered valuers namely – GBR Associates and Sreeram Associates to ascertain the fair value and liquidation value of the Corporate Debtor.

6. The applicant states that an Information Memorandum was prepared in accordance with Section 29 of the Code read with Regulation 36 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Resolution Professional made publication for calling of Expression of Interest (EoI) in Form-G on 16.10.2018 as prescribed under Section 25 of the Code read with Regulation 36A (5) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations,2016. After not getting a satisfactory response Resolution Professional with approval of CoC again published Form-G on 13.11.2018 inviting expression of interest. In response to the publication five resolution applicants submitted their expression of interest (EoI). Out of the five provisional resolution applicants, one applicant M/s Shiva Ferric Private Limited has submitted the Resolution Plan.

7. Thereafter the resolution plan of the above-mentioned resolution applicant was deliberated upon by the CoC in its meetings dated 06.03.2019, 16.03.2019 and 18.04.2019. The CoC keeping in mind the commercial viability insisted upon the resolution applicant to further revise its resolution

plan and in accordance with the same M/s. Shiva Ferric Private Ltd. submitted a revised resolution plan on 02.05.2019.

8. In the 10th meeting of the CoC held on 07.05.2019 the Final Resolution Plan as submitted by the resolution plan applicant- M/s. Shiva Ferric Private Ltd. was put to vote and the plan garnered 66.13% of the votes which is at par with the threshold of 66% as prescribed under the Code.

9. The Resolution Professional has submitted in the application that the approval of the resolution by the financial creditor is in conformity with the Regulation 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It has also been submitted that the Resolution Applicant has confirmed on affidavit of its eligibility under Section-29A to submit the resolution plan and that it does not fall foul of the provisions of Section-29A. The Resolution Professional also has filed a compliance certificate in FORM – H as per Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 along with the application.

10. The resolution plan submitted by M/s Shiva Ferric Private Ltd. and approved by the requisite majority of CoC has been placed before us seeking our acceptance and approval of the resolution plan in terms of the Code and Regulations framed there under.

11. The break-up of the voting pattern of the Financial Creditors/Members of the Committee of Creditors in approving the Resolution Plan was as under:

Sr. No.	**Financial Creditors**	**Voting Share (%)**	**Voted**
1.	Andhra Bank	**66.13**	**For**
2.	APSFC	33.87	Against
	Total	**100**	

12. That brief contours of the Resolution Plan submitted by M/s Shiva Ferric Private Ltd. as approved by the CoC along with the amounts provided for the stakeholders under the Resolution Plan is detailed herein below: -

Category of Stakeholder	Amount Claimed	Amount Admitted	Amount provided under the Plan	Amount provided to the amount claimed
Dissenting secured Financial creditor M/s. Andhra Pradesh State Financial Corporation (APSFC)	4626	4626	867	18.74%
Other Secured Financial Creditors – Andhra Bank	9033	9033	1693	18.74%
Dissenting unsecured financial creditors –	NIL			
Other unsecured financial creditors –	NIL			
Operational creditors	NIL		1	
Government	NIL		1	
Workmen	NIL		1	
Employees	NIL		1	
Other Debts and Dues	NIL			
Total			2619	

13. Resolution Professional has submitted that the Resolution Applicant provides an amount of Rs. 26.19 Crores as Resolution plan amount, out of which an amount of Rs. 26.15 Crores, subject to deduction of actual Insolvency process cost, will be paid to secured financial creditors against the admitted claim of Rs.136.59 crores. Out of the

remaining amount of Rs. 4.00 lakhs, Rs. 1.00 lakh will be paid to operational creditors, Rs.1.00 lakhs will be paid to Statutory liabilities, Rs. 1.00 lakhs will be paid to Employees dues and liabilities and Rs. 1.00 lakh will be paid to Workmen liabilities.

14. In terms of Section 30 (6) of the Code read with Regulation 39 of the CIRP Regulations, 2016 the resolution professional has submitted the Resolution Plan submitted by M/s Shiva Ferric Private Ltd. seeking an order under Section 31(1) of the Code for approval of the resolution plan passed by the committee of creditors under sub-section (4) of Section 30 with 66.13% voting share.

15. Section 31 of the Insolvency and Bankruptcy Code, deals with the approval or rejection of a resolution plan by the Adjudicating Authority. Approval of the resolution Plan is accorded under the provisions of Section 31(1) of the Code.

16. Section 31 of the Insolvency and Bankruptcy Code, 2016 is reproduced below for ready reference.

"Approval of Resolution Plan-

31. *(1) <u>If the Adjudicating Authority is satisfied that the resolution plan as approved by the</u>*

<u>committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan</u> which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

<u>Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.</u>

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1),—

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), 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) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002 (12 of 2003), the *resolution applicant shall obtain the approval of the Competition Commission of India under the Act prior to the approval of such resolution plan by the Committee of Creditors." (Emphasis given)*

17. Therefore, before approving the Resolution Plan, the Code mandates the Adjudicating Authority to ensure that,

(1) the Resolution Plan meets the requirements of Section 30(2) of the Code and

(2) the resolution plan has provisions for its effective implementation.

18. In respect of compliance of condition (1) above, it is necessary to refer to sub-section (2) of Section 30 of the Code which reads as follows:

"30. **Submission of resolution plan.** *-(1) ....*

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan –

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the

payment of other debts of the corporate debtor;

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

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

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53

in the event of a liquidation of the corporate debtor.

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

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

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

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

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

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) The implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force

(f) confirms to such other requirements as may be specified by the Board.

Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be *a contravention of that Act or law.*

(3) ...."

19. Sub-section 2 of Section 30 casts a duty on the Resolution Professional to examine the Resolution Plan received by him to confirm that such Resolution Plan provides for the payment of insolvency resolution process costs, provides for the payment of the debts of the operational creditors and financial creditors in such manner as specified, provides for the management of the affairs of the corporate debtor after approval of the Resolution Plan; the implementation and supervision of the Resolution Plan, that the Resolution Plan does not contravene any of the provisions of the law, and that the Resolution Plan conforms to such other requirements as may be specified by the Board.

20. The Resolution Professional has filed compliance certificate in Form H and *inter alia* has confirmed that he has examined and verified the Resolution Plan approved by the Committee of Creditors of M/s. Kalptaru Steel Rolling Mills Limited, in the light of the requirements of the Code and Regulations and that it is compliant to the relevant provisions of the Code and Regulations.

21. In terms of Section 31(1) of the Code, Adjudicating Authority has also to examine whether the requirements of sub-section (2) of Section 30 have been complied with or not.

22. It has been submitted in the application and in Form H duly certified by RP that the final Resolution Plan approved by 66.13% vote share of the members of the Committee of Creditors meets the requirements as laid down in various clauses of Section 30 (2) of the Code.

23. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in the resolution plan at clause-7 at page no. 13-15 which provides for payment of CIRP costs in priority over payments to any other creditors. It has been *inter alia* confirmed during hearing that *the CIRP cost upto the date of approval of resolution plan would be considered on an actual basis.* Besides the Resolution Professional has also confirmed in the compliance certificate given in Form H that the Resolution Plan provides for the payment of Insolvency Resolution Process costs. *Be that as it may it is made clear that Insolvency Resolution Process cost shall be paid in its entirety by the resolution applicant in*

priority to other debts of the corporate debtor in terms of Section 30(2)(a) of the Code.

24. As regards compliance of clause (b) of Section 30 (2) of the Code, the Resolution Professional has certified that Clause 7 Sl. No. 3 of the resolution plan provides for the payment of the 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 Section 53. During hearing, it was placed before us that there are no operational creditors and there are no claims by way of statutory dues. Similarly, it is placed that there are no pending claims by workmen or employees. Nevertheless, resolution plan provides for one lakh each towards each class of Operational creditor, Government dues, workmen and employees. Be that as it may, on behalf of resolution applicant, it was confirmed during the hearing that workmen's dues for the period of 24 months preceding the insolvency commencement date, if any, shall be paid in its entirety in terms of water fall provisions of Section 53 of the Code. It is also submitted that there shall be no lay off of

workman, employee of the corporate debtor and also no change in employment terms and conditions.

25. There appears to be no discrimination in the resolution plan in respective class of creditors, as same treatment is provided to similarly situated each class of creditors. So long as the provisions of the Code and the Regulations have been met, it is the commercial wisdom of the requisite majority of the Committee of Creditors which is to negotiate and accept a resolution plan, which may involve differential payment to different classes of creditors. Needless to say, that the ultimate discretion of what to pay and how much to pay to each class or subclass of creditors is with the domain of the Committee of Creditors. Equitable treatment has been accorded to each creditor depending upon the class to which it belongs.

26. Besides the resolution plan provides for the payment of the 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 Section 53. In terms of Regulation 38(1) the amount due to operational

creditors under a resolution plan shall be given priority in payment over financial creditors.

27. As a sequel to the aforesaid discussion, it is seen that clause (b) of sub-section (2) of Section 30 of the Code stands satisfied.

28. In terms of Section 30(2)(c), the Resolution Plan provides for management of affairs of the corporate debtor after approval of the Resolution Plan. The management of the affairs and control of the business of the corporate debtor after approval of the Resolution Plan has been provided at Clause 7.4 of the Resolution plan which *inter alia* provides that the Company shall continue as a going concern and operate in its normal course of business upon implementation of the Resolution Plan. The Resolution Professional has confirmed in the compliance certificate given in Form H that Clause7 of the Resolution Plan provides for the management and control of the business of the corporate debtor.

29. The fourth requirement envisaged by Section 32(2)(d) is that it must provide for the implementation and supervision of the resolution plan. The Resolution Professional has

confirmed in the compliance certificate given in Form H that Clauses 12 & 13 of the Resolution Plan provides for adequate means for supervising its implementation. However, in the interest of justice, we direct that the Monitoring Committee be comprised of three members constituting the resolution professional as insolvency professional and two representatives of the resolution applicant, to be chaired by the IP.

30. The fifth and sixth conditions in terms of clause (e) & (f) of sub-section (2) of Section 30 of the Code provide to ensure that the Resolution Plan does not contravene any of the provisions of the law and conforms to such other requirements as may be specified by the Board.

31. In this regard the resolution professional has certified that the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016, the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and does not contravene any of the provisions of the law for the time being in force. *Be that as it may in terms of clause (e) & (f) of sub-section (2) of Section 30 of the Code, we make it clear that*

the Resolution Applicant shall comply with all applicable laws under the proposed Resolution Plan, whether or not specifically provided therein.

32. It is pertinent to state here that Section 29A of the Code prescribes certain eligibility criteria and disqualifications for persons who submit a resolution plan. Resolution Applicant has given adequate declaration and undertaking on their eligibility to submit the Resolution Plan. At para 4. ii. of Form H Resolution Professional has also certified that *the Resolution Applicant has submitted an affidavit in this regard.* It has been confirmed that the Resolution Applicant is eligible to submit resolution plan and does not fall under any of the category as mentioned in Section 29A of the Code.

33. Regulation 36B(4A) of the CIRP Regulations requires that the Resolution Applicant shall provide a performance security. Resolution professional has certified that the Resolution Applicant has undertaken to submit Performance Guarantee once the plan is approved. *Accordingly, the Resolution Applicant is directed to submit Performance Guarantee for Rs.5,00,00,000/- (Rupees Five Crores only) in*

compliance of Regulation 36B(4A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a week from the date of receipt of this order.

34. As a sequel to aforesaid discussions we are satisfied that all the requirements of Section 30 (2) are fulfilled and no provision of the law for the time being in force appears to have been contravened.

35. The Resolution Professional has further certified that the Resolution Plan has been approved by 66.13 % of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the Code and CIRP Regulations.

36. Adjudicating Authority is not expected to substitute its view with the commercial wisdom of the CoC nor should it deal with the technical complexity and merits of Resolution Plan, unless it is found contrary to express provision of law and goes against the public interest. The object of the Code is to promote resolution and every effort must be made to try and see that resolution is made possible.

37. Accepting the Resolution Plan is advantageous to all the stake holders and amounts to maximisation of the assets of the Corporate Debtor and promotes entrepreneurship and to ensure that the Company continue to function as a going concern. The right of rejection or approval of a plan is with the CoC. In a particular case, what should be the percentage of claim amount payable to one or other 'Financial Creditor' or 'Operational Creditor' or 'Secured Creditor' or 'Unsecured Creditor' can be decided by the Committee of Creditors based on facts and circumstances of each case. What can be screened by this Bench is that whether the plan approved by Committee of Creditors meets the requirements as referred to in sub-section (2) of Section 30 of the Code.

38. In the present case the resolution plan has been approved with 66.13 % voting share well above the statutory requirement of 66 % in terms of Section 30 (4) of the Code and has the requisite statutory voting share. Besides the decision of Committee of Creditors is a reasoned and self-speaking one as required under proviso to Regulation 39(3) of the CIRP Regulations, 2016. Needless to state here that

the Resolution Plan cannot take care of total outstanding dues of the creditors in its entirety.

39. It is well settled proposition of law that commercial and business decisions of Committee of Creditors are not open to judicial review. Adjudicating Authority cannot enquire into the commercial wisdom of Committee of Creditors. The ground for rejection is limited to the matter specified under Section 30(2). It is however reiterated that the resolution plan in question meets the requirements specified in Section 30(2) of the Code and the commercial majority decision of the Committee of Creditors appears to be neither discriminatory nor perverse.

40. Before departing it is appropriate to consider the objections raised by the dissenting member of the Committee of Creditors namely Andhra Pradesh State Financial Corporation ("APSFC") having 33.87% voting share.

41. The main objection of M/s APSFC is that it had sanctioned loan to the corporate debtor which was secured by mortgage and Hypothecation of land, plant and machinery of the corporate debtor. It is contended that the property belongs to the APFSC under the State Financial

Corporation Act and could not have been included in the resolution plan as the property of the corporate debtor vest in the Andhra Pradesh State Financial Corporation. Further it is also averred that APSFC had taken the 'lawful possession' of the said properties long since 2013. It is also the case of APSFC that Section 14 of the Code is not applicable as APSFC took possession and had absolute rights over the property of the corporate debtor much before the Code come in to force and therefore the provisions of the Code cannot be made applicable retrospectively.

42. It is pertinent to mention here that Insolvency and Bankruptcy Code, 2016 is a later Central Act than the State Financial Corporation Act, 1955 and was published in the Gazette of India on 28.05.2016. It was framed as a complete code to consolidate and amend the laws relating to insolvency resolution of corporate entities, partnership firms, and individuals in a timebound manner, for maximisation of the value of the assets of such persons, and balance the interest of all the stakeholders.

43. One of the important objectives of the Code is to bring the insolvency Law in India under a single unified umbrella

with the object of speeding up of the insolvency process. The whole object is, if a particular management is not in a position to run a company, then instead of the company closing down under this management, a more liquid and a professional management must come to save the company.

44. Insolvency and Bankruptcy Code, 2016 is a complete Code in itself and is exhaustive of the matters dealt with therein. The Code is a comprehensive legislation including both the procedural as well as substantive law. In this regard Hon'ble Supreme Court in the case of M/s Innoventive Industries Limited vs. ICICI Bank has observed that "it is an exhaustive code on the subject matter of insolvency in relation to corporate entities and others. It is also true that IBC, 2016 is a single unified Umbrella Code, covering the entire gamut of the law relating to insolvency resolution of corporate persons and others in a time bound manner."

45. In the present case with the admission order, CIRP has commenced in respect of the corporate debtor and Moratorium as provided under Section 14 of the Code has been declared prohibiting the institution of suits, or continuation of pending suits or proceedings against the

corporate debtor, including execution of any judgment, decree, or order in any court of law, Tribunal, arbitration panel, or any other authority.

46. It is also pertinent to note that Section 238 of the Code gives an overriding effect to the provisions of the IBC over all other laws. Section 238 reads as follows: -

> *"238. Provisions of this Code to override other laws- The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."*

47. It is pertinent to refer here the case of M/s Innoventive Industries Ltd. V. ICICI Bank and Ors reported in AIR 2017 SC 4084 wherein Hon'ble Supreme Court has held at para 56 that:

> *"The non-obstante clause, in the widest terms possible, is contained in Section 238 of the Code, so that any right of the corporate debtor under any other law cannot come in the way of the Code".*

48. It is thus seen that Moratorium is intended to prohibit debt recovery actions against the assets of Corporate Debtor. During the continuance of moratorium period in respect of the corporate debtor, any type of recovery actions endangering, diminishing, dissipating or adversely impacting the assets of Corporate Debtor are clearly prohibited.

49. Therefore, once moratorium starts and after initiation of insolvency process under the Code assets of corporate debtor irrespective of whether mortgaged or not, will be dealt with under the resolution plan and on its approval under Section 31 of the Code shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders involved in the resolution plan.

50. Accordingly, the objections raised cannot sustain as the secured creditors shall be bound by the approved plan under Section 31 of the Code. Resolution Plan cannot take care of total outstanding dues of the creditors. In the present case both the secured creditors are equally allotted with 18.74% of their admitted dues. There has been equitable

treatment between both the similarly situated secured creditors. Besides it is seen that CoC with requisite majority (above 66%) has taken commercial decision in approving the plan. Under Section 30(4) of the Code, the Committee of Creditors may approve a resolution plan by a vote of not less than 66% of the voting share of the financial creditors.

51. Another objection taken by the dissenting creditor is that the corporate debtor is not a going concern and the intent of the resolution plan is not to revive it, which is absolutely contrary to the letter and spirit of the Insolvency Code.

52. In this regard the Resolution professional in its reply filed on 09.07.2019 contended that *'the resolution plan submitted by the resolution applicant is in compliance with Section 30 of the Code read with Regulation 37 and 38 of the CIRP Regulations and made all the efforts to preserve and revive the corporate debtor.'* It is further mentioned that *'the resolution plan contains the provisions for take over of the corporate debtor by the resolution applicant as going concern and amalgamation of the corporate debtor with the resolution*

applicant pursuant to the provisions of Section 230 of the Companies Act, 2013.

53. The resolution plan thus contains the provision for takeover of the corporate debtor by the resolution applicant as going concern. Provision has also been made to ensure implementation of the plan through a monitoring committee. As regards proposal for subsequent amalgamation, there is no dispute that right to apply for Scheme of Amalgamation has been statutorily provided under Sections 230 to 234 of the Companies Act, 2013. Therefore, it is open for companies to avail the benefits extended by statutory provisions and the Rules. Be that as it may, it is clarified that in case of amalgamation of the corporate debtor, the statutory requirements of applicable provisions of the Companies Act, 2013 including the provisions of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 shall be adhered to.

54. The spirit of the Code encourages resolution. Resolution is the rule and the object of the Code is to promote resolution. Every effort must be made to try and see that resolution is made possible. Commercial collective decision of Committee

of Creditors with requisite majority has to be respected. The commercial or business decisions of the financial creditors are not open to any judicial review by the adjudicating authority or the appellate authority.

55. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the Committee of Creditors. Adjudicating Authority has no jurisdiction to question the actions of the Committee of Creditors. Tribunal cannot sit in appeal over the expert business decision of the 'Committee of Creditors'. After a resolution plan is approved by the requisite majority of the Committee of Creditors, the aforesaid plan must then pass muster of the Adjudicating Authority under Section 31(1) of the Code. The Adjudicating Authority's jurisdiction is circumscribed by Section 30(2) of the Code.

56. In the facts we are satisfied that the requirements as per the Code and regulations have been complied with. Moreover, the Resolution Plan has been approved by 66.13 % voting share of the members of Committee of Creditors and has been submitted in compliance of Section 30 of the Code

for approval. In view of the aforesaid discussions and as no infirmity have been brought out upon screening of the Resolution Plan; ***we hereby approve the Resolution Plan submitted by M/s Shiva Ferric Private Limited under sub-section (1) of Section 31 of the Code***.

57. The Resolution Applicant is directed to submit Performance Guarantee for Rs.5,00,00,000/- (Rupees Five Crores only) in compliance of Regulation 36B(4A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a week from the receipt of this order.

58. We further direct appointment of 'Monitoring Committee' comprised of three members constituting the resolution professional as insolvency professional and two representatives of the resolution applicant, to be chaired by the IP. Resolution Professional (IP) shall be a member thereof at least for three months to monitor and supervise the implementation of the Resolution Plan. We also grant Liberty to the monitoring Committee to apply to the Tribunal for any further direction in order to ensure effective implementation of the plan, if such a necessity arises.

59. In respect of reliefs and concession sought for in the Plan which are beyond the jurisdiction of this Tribunal, liberty is accorded to the Monitoring Committee to pursue such matter before the relevant authorities which shall be considered in accordance with law.

60. In terms of sub-section (4) of Section 31 of the Code the resolution applicant shall obtain the necessary approval required under any law for the time being in force within a period of one year from the date of this order or within such period as provided for in such law, whichever is later.

61. It is clarified that Section 30 (2) (f) of the Code mandates that the resolution plan should not be against any provisions of the existing law. The Resolution applicant therefore, shall adhere to all the applicable laws for the time being in force under the proposed Resolution Plan, whether or not specifically provided therein.

62. Approval of Resolution Plan shall confer change in the management and ownership of the corporate debtor and the control of the corporate debtor shall vest with the new management.

63. We hereby exclude the period spent under adjudication and it is declared that the moratorium order passed by this Bench under Section 14 of the Code shall cease to have effect from the date of this order.

64. The Resolution Professional shall forward all records relating to the CIR Process and the Resolution Plan to IBBI to be recorded at its data base in terms of Section-31(3)(b) of the Code.

65. The approved 'Resolution Plan' shall become effective from the date of passing of this order.

66. C.A. No. 931(PB)/2019 and CP No. (IB) 563 (PB)/ 2018 are disposed of accordingly.

Let the copy of the order be served to the parties.

Sd/-

(B.S.V. PRAKASH KUMAR)
ACTING PRESIDENT

Sd/-

(S.K. MOHAPATRA)
MEMBER (TECHNICAL)

Shammy