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

IA(IBC)/624(CHE)/2022 in TP/2(CHE)/2021

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

IN THE MATTER OF:

Mudappalur Varieth Gangadharan
Resolution Professional of
M/s. Neptune Inflatables Limited
No.341, 6th Floor, Khaleel Shirazi Estate, (Fountain Plaza)
Pantheon Road, Egmore,
Chennai – 600 008

... Applicant

Present:

For RP	:	*A.G. Sathyanarayana, Advocate*
For Resolution Applicant	:	*Rohan Rajasekaran, Advocate*
For Operational Creditor	:	*G. Anatharangan, Advocate*

CORAM:

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

Order Pronounced on ***27th June 2022***

ORDER

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

IA(IBC)/624(CHE)/2022 is an Application which is moved by the Resolution Professional of the Corporate Debtor viz., **M/s. Neptune Inflatables 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., *Mirra Cobalt Packaging*

2. The Learned Counsel for the Applicant submitted that a Financial Creditor viz. TIDCI Limited has a Winding up Petition under Section 433(e) and (f) of the Companies Act, 1956 before the Hon'ble Madras High Court against the Corporate Debtor viz. M/s. Neptune Inflatables Limited and the Hon'ble High Court of Madras vide its order dated 13.03.1998 ordered for winding up of the Corporate Debtor. Pursuant thereto, it was submitted that nothing effective had happened and hence a Company Application No. 90 of 2021 was moved by one of the Operational Creditor seeking transfer of the proceedings in CP/201/1996 to this Tribunal and accordingly, the Hon'ble High Court of Madras vide its order dated 13.08.2021 transferred the said Company Petition to this Tribunal.

3. This Tribunal vide its order dated 01.02.2022 initiated Corporate Insolvency Resolution Process as against the Corporate Debtor and the Applicant herein was appointed as the Interim Resolution Professional. It was submitted that the IRP has caused public announcement about initiation of the CIRP and the claims was published on 04.02.2022 in 'Trinity Mirror' and 'Makkal Kural'. Pursuant thereto, it was submitted that the stakeholder has filed

their claim with the IRP and thereafter the IRP has constituted the CoC based upon the claims received and voting rights were assigned accordingly in the 1st CoC meeting held on 02.03.2022. Further, in the said meeting, it was submitted that the CoC has unanimously resolved to appoint the Applicant herein as the Resolution Professional of the Corporate Debtor.

4. It was submitted that the Applicant in order to carry out his duties, has requested the Official Liquidator to handover the Books and Accounts and requested for other important documents and keys to the premises of the Corporate Debtor through his letter dated 16.02.20220, however the OL has send a reply stating that they does not have anything that has been requested and hence the Applicant filed an Application under Section 19(2) of IBC, 2016 and the same is pending adjudication before this Tribunal.

5. It was submitted that the Applicant has placed the draft Information Memorandum, EoI, Evaluation Matrix, Draft Form – G and RFRP to the CoC for their perusal and approval in the 2nd CoC meeting held on 26.04.2022 and the same was taken on record and approved by the CoC. It was submitted that the CoC has approved to issue the EoI for invitation of prospective Resolution Applicants and the same was approved by the CoC members .

6. It was submitted that upon approval of the same, the Applicant has issued Form – G inviting prospective Resolution Applicants on 27.04.2020 in two newspapers viz. Trinity Mirror and Makkal Kural. In pursuance of the same, it was submitted that Mirra Cobalt Packaging has filed their Expression of Interest on 02.05.2022. It was submitted that the Applicant had acknowledged the EoI and communicated the eligibility criteria vide email dated 07.05.2022 viz.

(i) Net worth of PRA to be above Rs.6 crores;

(ii) PRA to carry on activity in manufacturing sector.

7. It was submitted that the Resolution Applicant had duly furnished the various documents to satisfy the eligibility criteria vide E-mail dated 09.05.2022. Accordingly, vide E-mail dated 14.05.2022, the Applicant had forwarded the Information Memorandum to the Resolution Applicant after verifying and being satisfied that the Resolution Applicant is eligible to propose a Plan for the Corporate Debtor, the Applicant vide E-mail dated 23.05.2022, has issued the Request For Resolution Plan and pursuant to the same the Resolution Plan of M/s.Mirra Cobalt Packaging was submitted to the Applicant on 23.05.2022.

8. It was submitted that the Applicant/RP has duly verified the plan and found the Resolution Plan submitted by M/s. Mirra Cobalt Packaging meets the conditions as laid down in the Sec. 30(2) of the Code read with IBBI (CIRP) Regulations, 2016. Further, it was submitted that a demand draft for the entire amounts covered under the Resolution Plan has been tendered along with the Resolution Plan.

9. It was submitted that the envisaged Resolution Plan is to ensure the revival and continuity of business along with most effective use of the Corporate Debtor business. It was submitted that with a view of maintaining the spirit of the Code, the Resolution Applicant wished to take over to revive and manage the Corporate Debtors entity as same as a "Going Concern" thereby keeping the brand value intact. It was submitted that the Resolution Applicant will pay 100% of the total claim as received by the RP along with 100% of CIRP costs and by keeping a contingent fund.

10. It was further submitted that the Resolution Professional placed the resolution plan as submitted by the Resolution Applicants to the Committee of Creditors in accordance with section 30(3) of the code r/w Regulation 39(2) of the CIRP Regulations 2016 for consideration /approval of the CoC in its 3rd CoC meeting held on

31.05.2022 and the same was adjourned to 06.06.2022 only for voting on the plan. The committee had detailed discussion on the resolution plan submitted to the CoC. The summary of the Resolution Plan is as follows;

Sl. No.s	Category of Stakeholder*	Amount Admitted	Amount Proposed under the Plan	% Of Realisation
1	CIRP Costs	20,62,943	20,62,943	100
2	Financial Creditors	Nil	Nil	Nil
3	Operational Creditor	3,20,000	3,20,000	100
4	Statutory Dues– ESIC	2,20,876	2,20,876	100
5	Contingent Liability	-	50,000	
6	Implementation of the Plan	-	1,50,000	
	Total	26,03,819	28,03,819	100

11. It was submitted that the CoC on 06.06.2022 has unanimously approved the Resolution Plan of the Corporate Debtor and the Resolution Professional has also filed Form – H in accordance with the Regulation 39(4) of the CIRP Regulations.

12. From the averments made in the Application as well as in Form-H as filed by the Resolution Professional in relation to the procedural aspects, the same seems to have been duly complied with for which the Resolution Professional has issued a Certificate and it is not necessary for this Authority to go into the same.

However, this Authority is duty bound to examine the Resolution Plan within the contours of Section 30(2) of the IBC, 2016. A comparison with the Mandatory compliance under the IBC *vis-à-vis* the Compliance made under the Resolution Plan is captured hereunder;

Mandatory Compliance Under IBC Code and Regulations	**Compliance under Resolution Plan**
S. 30(1) - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	Clause 3 of the Resolution Plan states that the Resolution Applicant does not suffer from any ineligibility under Section 29A of IBC, 2016.
S. 30(2)(a) - Payment of Insolvency and Resolution cost in the manner specified by the Board	Clause 6(ii) of the Resolution Plan provides payment of the CIRP costs in priority.
S. 30(2)(b) - Payment of debts of Operational Creditors in such manner as may be specified by the Board, which shall not be less that the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under Sec. 53	Clause 6(iv) of the Resolution Plan deals with the payment of money to the Operational Creditors.
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	Clause 10.1 of the Resolution Plan deals with the Source of Funds and also deals with the Treatment of the CIRP costs.
Reg. 38(1A) - Resolution Plan shall include a statement as to how it has	Clause 10.1 of the Resolution Plan and sub clauses thereunder enumerates how

dealt with the interest of all the stakeholders, including financial creditors and operational creditors of the Corporate Debtor	the interest of all the stakeholders including operational and financial creditors has been dealt with under the Resolution Plan.
S. 30(2)(d) - Management of the affairs of the Corporate Debtor after approval of the Resolution Plan	Clause 6(ix)) of the Resolution Plan deals with the Management and Control and Implementation of Terms in relation to the Resolution Plan.
S. 30(2)(e) - Implementation and Supervision of the Resolution Plan **and** **Reg. 38(2)** – Resolution Plan shall provide: a) term of plan and its implementation schedule b) management and control of the business of the Corporate Debtor during its term; c) it has provisions for effective implementation d) it has provisions for approval required and the timeline for the same; and e) the Resolution applicant has the capability to implement the Resolution Plan.	Clause 6(xix) of the Resolution Plan deals with the Implementation and supervision of 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	Clause 4.1 of the Resolution Plan address the cause of default. Clause 10.3 of the Resolution Plan deals with the feasibility and its viability. Clause 6(xix) of the Resolution Plan deals with the 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 8.1 of the Resolution Plan deals with the provisions for approvals required and the timelines for the same. Clause 10.2 of the Resolution Plan deals with the capability of the Resolution Applicant to implement the same.
S. 30(2)(e) - Does not contravene any of the provisions of the law for the time being in force	Clause 6(xix) of the Resolution Plan, the Resolution Applicant declares that the Resolution Plan does not contravene any provisions of the law for the time being in force. The Resolution Professional in Form-H has confirmed that the Resolution Plan is not in contravention with the provisions of any Applicable Law.
S. 30(4) - Committee of Creditors approve the Resolution Plan by not less than 66% of voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by the Board	The CoC, in its 3rd meeting and the e-voting resulted dated 06.06.2022 with a 100% voting share has approved the Resolution Plan.

OBJECTIONS TO THE RESOLUTION PLAN

13. The Operational Creditor who is the member of the CoC and who has voted in favour of the Resolution Plan has filed its objections to the Resolution Plan.

14. It was submitted that upon perusal of the Resolution Plan it came to their knowledge that the Resolution Plan is not comprehensive and did not address majority concerns pertaining to the assets and liabilities of the Company in liquidation.

15. It was submitted that the Operational Creditor is in this line of business for quite a long time and they understand the dynamics of the industry in which we operate and in the larger interests of the Company, its stakeholders who have submitted their claims and those stakeholders who have not staked their claim so far, and hence placing on record the comments on the Resolution Plan.

16. It was submitted that the proposed Resolution Applicant claims that it is in the business of manufacturing and trading of TIN containers and other allied and related activities, that is far removed from the inflatables business of the Corporate Debtor. The proposed Resolution Applicant has not indicated anything about its expertise in running a Company dealing with patented technologies in inflatables which has higher end usage.

17. It was submitted that the Proposed Resolution Applicant also has not delineated its plan for the revival of the Company and its experience in turning around sick companies.

18. The Resolution Applicant in Para 2.3 has stated that the Resolution Applicant is interested in reviving the Corporate Debtor by taking over its assets and extinguishing its liabilities entirely. Further, the Resolution Applicant states that upon takeover of the

Corporate Debtor, the Resolution Applicant shall take a commercial decision on revival of the Corporate Debtor or utilization of the assets of the Corporate Debtor for its current business or for any other purpose as deemed fit which stands in contradistinction to point (ix) of the Terms of Resolution Plan. It appears that the Resolution Applicant in the garb of taking over the Corporate Debtor as a going concern is only interested in usurping the huge chunk of real estate and the patents that form part of the assets of the Corporate Debtor.

19. It was submitted that the Resolution Applicant proposes to pay a sum of Rs 28,03,819/- only being 100% of the admitted claims of all creditors of the Corporate Debtor towards full and final settlement along with 100% CIRP costs, implementation costs and contingency fund. immediately on approval of the Resolution plan. However, it was submitted that the Resolution plan is silent on the claims made by the financial creditors. It was submitted that the Resolution plan discloses that a winding up petition u/s 433e) and () of the Companies Act, 1956 against the Corporate Debtor claiming sum of Rs 29.30 lakhs was filed by M/s TDICICI Limited and the said petition was admitted by the Hon'ble High Court of Madras vide its order dated 13.03.1998 in CP.No.201 of 1996 which was set aside by the Division Bench of the High Court vide order dated 09.06 1998 in OSA

85 of 1998 and by an order dated 10.03.1999 the winding up of the Company was ordered and the Official Liquidator of the Madras High Court was appointed as provisional liquidator of the Corporate Debtor.

20. In this connection it was submitted that the Resolution Plan do not provide for any payment to the above financial creditor and is silent about its treatment. Further, it was submitted that the Resolution Plan also does not provide for any contingent liability and restricts any such continent liability to the extent of Rs 50,000/- only

21. Thus, it was submitted that the intention of the Resolution Applicant is not to take over the Corporate Debtor as a going concern and to revive it, but to usurp the assets of the Corporate Debtor and earn a huge profit and hence prayed for the rejection of the Resolution Plan.

22. We have gone through the written submissions filed by the Operational Creditor of the Corporate Debtor. We are appalled by the objections raised by the Operational Creditor in view of the fact that the Operational Creditor who has raised his objection is part of the CoC constituting 59.16% of voting share and in the 3rd CoC meeting held on 06.06.2022, the same Operational Creditor has voted in favour of the Resolution Plan. While this being the case, we

are unable to comprehend the motive behind the Operational Creditor in raising such an objection at this point of time. If these objections raised by the Operational Creditor are genuine, then the Operational Creditor ought not to have voted in favour of Resolution Plan. In the present case, the objecting Operational Creditor has been paid 100% of the admitted claim amount.

23. Further, in relation to the contention that the dues of the Financial Creditor has not been factored by the RP, it is required to be noted that the RP has made a Public announcement in respect of initiation of CIRP of the Corporate Debtor on 04.02.2022 in 'Trinity Mirror' and 'Makkal Kural' and as per the tenets of IBC, 2016 all the stakeholders are required to lodge their claim with the IRP. If any person fails to lodge his claim with the IRP, then it is required to be presumed that the said person is not interest to recover the claim from the Corporate Debtor. The Operational Creditor is also not aware of the fact that if the said Financial Creditor would have lodged his claim, the Operational Creditor would have been ousted from the CoC and a CoC was required to be reconstituted with the said Financial Creditor. Thus, a perusal of the objections raised by the Operational Creditor would show that the objections raised by the Operational Creditor are all made with an intention to thwart the Resolution Applicant. This type of a dual stand taken by the

Operational Creditor is viewed seriously by this Tribunal and it also entails imposition of heavy costs. However, considering the quatum of amount which is being recovered by way of the Resolution Plan to the Operational Creditor, this Tribunal refrains from imposing such costs upon the Operational Creditor. Thus, the Objections raised by the Operational Creditor are frivolous and are not required to be gone into by this Tribunal and accordingly stands rejected.

24. 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."

25. 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).

26. 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. <u>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.</u>

58. <u>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.</u> 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)

27. Also the Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited v. Satish Kumar**

Gupta and Ors. *(2020) 8 SCC 531* after referring to the decision in ***K. Sashidhar (supra)*** has held as follows;

> "73. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or sub-class of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. <u>The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal</u>."

(emphasis supplied)

28. 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 exposited by this Court.

29. 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.

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

31. The Resolution Professional shall submit the records collected during the commencement of the Proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance. Liberty is hereby granted for moving any Application, if required, in connection with implementation of this Resolution Plan. The RP shall stand discharged from his duties with effect from the

date of this Order. He shall, however, perform his duties in terms of the Resolution Plan as approved by this Adjudicating Authority.

32. 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.

33. IA(IBC)/624(CHE)/2022 stands **ordered** accordingly.

-SD- -SD-

ANIL KUMAR B
MEMBER (TECHNICAL)

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

Raymond