



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT-III**

Item No.01

IA-4585/2021
In
IB-571(ND)/2020

IN THE MATTER OF IB-571(ND)/2020:

M/s. SREI INFRASTRUCTURE FINANCE LIMITED

..... **Financial Creditor**

VERSUS

M/s. GUJARAT HYDROCARBONS AND POWER SEZ LIMITED

..... **Corporate Debtor**

AND IN THE MATTER OF IA-4585/2021:

Under Section 30(6) r/w Section 31 of IBC, 2016 r/w Regulation 39(4) of IBBI (CIRP Regulations), 2016

Mr. RAKESH KUMAR AGARWAL

Resolution Professional of M/s. Gujarat Hydrocarbons and Power SEZ Limited

..... **Applicant/Resolution Professional**

Pronounced On: 19.09.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant/RP : Mr. P. Nagesh, Sr. Adv., Mr. Akshay Sharma,
Mr. Abhinav Agrawal, Mr. Kartik Sharma,
Advs.

For the SRA : Mr. Tirth N., Adv.

ORDER

Order pronounced in open court vide separate sheets. **IA-4585/2021** which is for approval of the Resolution Plan is **allowed**

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-III, NEW DELHI**

IA-4585/2021

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M/s. SREI INFRASTRUCTURE FINANCE LIMITED

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VERSUS

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..... Corporate Debtor

AND IN THE MATTER OF IA-4585/2021:

Under Section 30(6) r/w Section 31 of IBC, 2016 r/w Regulation 39(4) of IBBI (CIRP Regulations), 2016

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For the SRA : Mr. Tirth N., Adv.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. Brief Background of the Case

1.1. The present application has been filed by Mr. Rakesh Kumar Agarwal, Resolution Professional ("RP") of M/s. Gujarat Hydrocarbons

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and Power SEZ Limited (“Corporate Debtor”) on 11.09.2021 under the provisions of Sections 30(6) read with Section 31 of the Insolvency & Bankruptcy Code, 2016 (“the Code” or “IBC”) read with Regulation 39(4) of the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”) for approval of the Resolution Plan in respect of M/s. Gujarat Hydrocarbons and Power SEZ Limited (“Corporate Debtor”) submitted by Respondent/Successful Resolution Applicant (“SRA”) namely M/s. Zaveri & Co. Pvt. Ltd.

1.2. **Background of the Corporate Debtor:**

The Corporate Debtor was incorporated on 17.08.2007, as a Company Limited by Shares (Non-govt. Company) having CIN: U70109DL2007PLC167079, under the Companies Act, 1956 with the Registrar of Companies, NCT of Delhi and Haryana. The Authorised Share Capital of the Corporate Debtor was Rs. 20,00,00,000/- and the Paid-up Share Capital of the Corporate Debtor was Rs. 9,80,39,210/-. The Registered Office Address of the Corporate Debtor was at 22, Community Centre, Basant Lok, Vasant Vihar, New Delhi-110057. The Corporate Debtor was incorporated for the purpose of the development, operation and maintenance of a sector specific SEZ for providing product and product-related services for the Oil & Gas, Energy and Petrochemical Sector over an area of 450.0 Hectares in Vilayat Industrial Estate in Vagra Taluka of Bharuch District in the State of Gujarat. The Corporate Debtor received in principle approval vide letter no FI/152/2007-SEZ dated 4th February, 2008 from the Ministry of Commerce and Industry, Department of Commerce (SEZ Section). Government of India. The letter of approval granted the status of Developer to the Corporate Debtor as defined under the SEZ Act.

1.3. An application under section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Financial Creditor i.e., M/s. SREI Infrastructure Finance Limited against the Corporate Debtor i.e., M/s. Gujarat Hydrocarbons and Power SEZ Limited and the said

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application was admitted by this Adjudicating Authority, Bench III vide order dated 18.11.2020 and we declared moratorium and Mr. Rakesh Kumar Agarwal was appointed as an Interim Resolution Professional (IRP).

- 1.4. The Resolution Plan (a revised/Final Resolution Plan dated 5th April 2021 as well as 23rd August 2021) was submitted by the Successful Resolution Applicant namely M/s. Zaveri & Co. Pvt. Ltd. which was approved by the CoC in its 11th meeting dated 30.08.2021 under Section 30(4) of the IBC by 100% voting share in respect of the CIRP of the Corporate Debtor after considering its feasibility and viability.

2. Collation of claims by RP

- 2.1. In terms of Section 13 and Section 15 of the Code, the Applicant/RP has submitted that the public announcement was published in newspapers i.e., Financial Express (English Edition) and Hindustan Times (Hindi Edition) Delhi Edition on 21.11.2020 to invite the stakeholders for submission of their claims.
- 2.2. In response to the public announcement (publication of Form-A) made, the Applicant constituted the Committee of Creditors ("CoC") on 18.12.2020 under Section 21(1) of the Code read with Regulation 13 & 17 of CIRP Regulations. The 1st CoC Meeting was convened on 18.12.2020 wherein the IRP was confirmed as the Resolution Professional (RP) by 100% votes.

3. Evaluation and voting

- 3.1. The 2nd CoC Meeting was convened on 14.01.2021 wherein the CoC approved the issuance of the Invitation for Expression of Interest ("EoI") in Form-G along with the Eligibility Criteria for inviting Prospective Resolution Applicants ("PRAs"). The RP published the Form-G in terms of Section 25(2)(h) of the Code read with Regulation 36A(4)(a) of the CIRP Regulations in newspapers on 19.01.2021 and the last date for accepting the Resolution Plan was fixed on 15.03.2021.



- 3.2. The 3rd CoC Meeting was convened on 16.03.2021 wherein it was informed that the RP received 9(nine) EoI out of which 8(eight) satisfied the eligibility criteria as approved by the CoC. Further, RP received requests from M/s. Gandhi Realty (India) Pvt. Ltd., M/s. Zaveri & Co. Pvt. Ltd., M/s. Shah Developers and from Vision India Fund for extension of the last date of submissions of the Resolution Plan. Therefore, RP proposed for extension of last date of submission of Resolution Plan and the CoC member approved the extension for submission of the Resolution Plan from 15.03.2021 to 05.04.2021.
- 3.3. The 4th CoC Meeting was convened on 07.04.2021 wherein it was informed that two Resolution Plans have been received from M/s. Zaveri & Co. Pvt. Ltd. and from M/s. Shah Developers. The only valid Resolution Plan was received from M/s. Zaveri & Co. Pvt. Ltd. However, a collective view was taken by the CoC and the CoC approved the extension for submission of the Resolution Plan from 05.04.2021 to 20.04.2021. Further, the CoC resolved to extend the CIRP by a period of 90 days (ending on 17.05.2021). Accordingly, the Resolution was proposed which was approved by the CoC. Thereafter, the RP filed the Application for seeking an extension for a period of 90 days of the CIRP. This Adjudicating Authority allowed the extension application.
- 3.4. The 5th CoC Meeting was convened on 21.04.2021 wherein the RP proposed for extension of submission of last date of Resolution Plan and the CoC approved the extension for submission of the Resolution Plan from 20.04.2021 to 06.05.2021.
- 3.5. The 6th CoC Meeting was convened on 07.05.2021. The 7th CoC Meeting was convened on 11.05.2021 wherein it was informed to the CoC that three Resolution Plans has been received from M/s. Zaveri & Co. Pvt. Ltd., M/s. Shah Developers and SMAIT (SREI Multiple Asset Investment Trust) and the same was placed before the CoC. All the Resolution Plans were handed over to M/s. Sumedha Management Solutions Pvt. Ltd., to check the eligibility of each of the Prospective Resolution Applicants with respect to the qualification



u/s 29A and confirm the conditions referred to in section 30(2) of IBC. The 8th CoC Meeting was convened on 03.08.2021.

3.6. The 9th CoC Meeting was convened on 10.08.2021 wherein it was informed to the RP that the Resolution Plan submitted by all the Prospective Resolution Applicants (PRAs) contains certain conditionality and the RP was directed to communicate the same to the PRAs with a request to submit revised Resolution Plan without any condition and present the Resolution Plan before the CoC by 13.08.2021. The 10th CoC Meeting was convened on 17.08.2021 wherein it was stated by the RP that M/s. Zaveri & Co. Pvt. Ltd. and M/s. Shah Developers requested further time to provide their final Resolution Plan, the CoC member approved the extension for submission of the Resolution Plan. The 11th CoC Meeting was convened on 30.08.2021 wherein the RP presented all Plans to discuss and to evaluate as per evaluation matrix, to deliberate on the feasibility and viability and the manner of distribution proposed in each plan and other matters regarding payments, etc. The Resolution Plans were vetted on various parameters and the Resolution Plan of M/s. Zaveri & Co. Pvt. Ltd. was approved with 100% voting shares.

4. The RP submits that a total of 11 (Eleven) CoC meetings have been held during the CIRP period which are as follows:

S. No.	Sequence of Meeting of CoC	Date of Meeting	CoC Members Present
1.	First Meeting of CoC	18.12.2020	Yes
2.	Second Meeting of CoC	14.01.2021	Yes
3.	Third Meeting of CoC	16.03.2021	Yes
4.	Fourth Meeting of CoC	07.04.2021	Yes
5.	Fifth Meeting of CoC	21.04.2021	Yes
6.	Sixth Meeting of CoC	07.05.2021	Yes
7.	Seventh Meeting of CoC	11.05.2021	Yes
8.	Eighth Meeting of CoC	03.08.2021	Yes
9.	Ninth Meeting of CoC	10.08.2021	Yes



10.	Tenth Meeting of CoC	17.08.2021	Yes
11.	Eleventh Meeting of CoC	30.08.2021	Yes

The List of the Financial Creditors of the Corporate Debtor being members of the CoC and distribution of voting share is as under:

S. No.	Name of Creditor	Voting Share (%)	Voted For/ Abstained/ Dissented
1.	M/s. SREI Infrastructure Finance Limited	100	Voted for

5. Valuation of the Corporate Debtor

In terms of Regulation 27 of CIRP Regulations, the Applicant appointed registered valuers who were entitled to determine the fair and liquidation value of the Corporate Debtor, which are as follows:

Name	IBBI Regn No	Category of Valuer	Fees
Resolute Valuers and Consultants Pvt Ltd	IBBI/RV-E/01/2019/111	Land and Building Financial Asset	Rs 1,91,000+GST
Anuj Kumar	IBBI/RV/02/2019/10759	Land and Building	Rs 1,40,000/-+GST
Kapil Maheshwari	IBBI/RV/05/2019/11264	Financial Asset	Rs 45,000/-+GST

As per the Form-H, the fair and liquidation value of the assets of the Corporate Debtor are as follows:

The Fair Value of the Corporate Debtor is Rs. 306,53,40,150/- and the Liquidation Value of the Corporate Debtor is Rs. 206,68,02,500/-.

6. Details of Resolution Plan/Payment Schedule

The Resolution Applicant has to the extent possible, taken into account the interests of all stakeholders of the Corporate Debtor in the following manner:

6.1 Payment of CIRP Cost

The CIRP Cost is being paid out of balances/internal accruals with
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the Corporate Debtor. In such case, the Resolution Applicant do not propose any amount to be paid towards CIRP Cost as the same are funded internally and no additional obligation has been created on the Corporate Debtor.

In case the actual CIRP Costs exceeds after adjustment as proposed under and such additional CIRP Cost, if any funded by CoC, then such additional cost/funds shall be known as "CIRP Funds" and Resolution Applicant proposes to provide Rs. 50,00,000/- (Rupees Fifty Lakhs Only) towards such additional CIRP Cost which is incurred over and above.

The Resolution Applicant confirms that all such CIRP Costs over and above the cost incurred through the balances of Corporate Debtor will be paid in full and in priority to the repayment of all the other stakeholders.

6.2 Payment to Financial Creditors

- a) **Secured Financial Creditor** will be paid a total amount of Rs. 125,00,00,000/- (Rupees One Hundred Twenty Five Crores Only) as their full and final settlement against their total verified and admitted claim(s) of Rs. 1885,08,56,919/- (Rupees Eighteen Hundred Eighty Five Crores Eight Lakhs Fifty Six Thousand Nine Hundred and Nineteen Only). Out of the amount of Rs. 125,00,00,000/- as proposed to Secured Financial Creditor, an amount of Rs. 40,00,00,000/- (as adjusted by Excess CIRP cost, if any) shall be paid within 90 days from Appointed Date and remaining amount of Rs. 85,00,00,000/- shall be paid within the total period of 15 months from the Appointed Date. The deferred amount paid after 90 days from the Appointed date shall carry an interest rate of 8.00% p.a. on outstanding balance and the interest amount shall be paid at the end of every calendar month starting from the 91st day after the Appointed date and every calendar month thereafter till the full and final payment is done.

Details of Payment Schedule to Secured Financial Creditor

Sr. No	Amount in Rupees	Timelines	Cumulative Total Payment Amount (In Rupees)	Remarks
1.	40,00,00,000/- (Forty Crores)*	Within 90 days from the Appointed Date	40,00,00,000/- (Forty Crores)*	Upfront Amount shall have no interest
2.	5,00,00,000/- (Five Crores)	Within 6 months from the Appointed Date	45,00,00,000/- (Forty Five Crores)	Deferred Payment Amount shall carry an interest of 8.00% p.a. on outstanding balance and interest amount on the same shall be paid monthly on the first calendar month end after the 90 th day from the Appointed date and every calendar month thereafter till full and final amount is paid.
3.	10,00,00,000/- (Ten Crores)	Within 9 months from the Appointed Date	55,00,00,000/- (Fifty Five Crores)	
4.	15,00,00,000/- (Fifteen Crores)	Within 12 months from the Appointed Date	70,00,00,000/- (Seventy Crores)	
5.	55,00,00,000/- (Fifty Five Crores)	Within 15 months from the Appointed Date	1,25,00,00,000/- (One Hundred and Twenty Five Crores)	

- b) The Resolution Applicant proposes to pay 0.00/- (Nil) to the claims of **Unsecured Financial Creditors** (being Related party/Holding company of the Corporate Debtor) as the liquidation value of the Corporate Debtor is much lower than the total claim amount of the Secured Financial Creditors.

Details of Financial Creditors

Name of the Financial Creditor	Secured/ Unsecured	Total Claims	Verified Claims	Full & Final Settlement Amount*
SREI Infrastructure Finance Ltd.	Secured	18,85,09,38,233	18,85,08,56,919	1,25,00,00,000
Assam Company India Ltd.	Unsecured (Related Party)	2,89,35,11,060	2,89,35,11,060	0
Total		21,74,44,49,293	21,74,43,67,979	1,25,00,00,000

* Subject to adjustment of surplus CIRP cost as per clause 5.1.1.3 plus interest at the rate of 8.00% p.a. on outstanding balance for deferred payment amounts

6.3 Payment to Employees & Workmen

As per IM, there does not exist any claim(s) from Employee or Workmen, hence Resolution Applicant does not propose any treatment or amount to be paid to Employee or Workmen.

6.4 Payment to Operational Creditors

- a) As per IM, Operational Creditors' claims, aggregating to Rs. 191,27,00,831/- (Rupees One Hundred Ninety One Crores Twenty Seven Lakhs Eight Hundred and Thirty One Only) have

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been submitted for the purposes of CIRP to the Resolution Professional, out of which claims aggregating to Rs. 189,10,56,841/- (Rupees One Hundred Eighty Nine Crores Ten Lakhs Fifty Six Thousand Eight Hundred Forty One Only) have been verified and admitted by the Resolution Professional till the date of Submission of this Resolution Plan. As the IM does not specify the liquidation value due to the Operational Creditors and it is quite evident that liquidation value may be much lower than the verified and admitted claim(s) of the Secured Financial Creditor, hence the liquidation value to the operational creditor as per IBC Code is Nil.

- b)** The most of the claims of the Operational Creditors (whether filed or not, final or contingent, disputed or undisputed) pertains to the various government authorities and so, the Resolution Applicant proposes an ex-gratia payment of the total amount upto the maximum of Rs. 6,43,34,750/- (Rupees Six Crores Forty Three Lakhs Thirty Four Thousand Seven Hundred Fifty Only) as the full and final settlement amount towards the claim(s) and/or dues and/or charges or fees of the Operational Creditors including the Government Authorities under whatsoever name or whatever nature (whether provided in IM or not). The said amount shall be paid on Pro-rate basis to all verified and admitted claimants.

Details of Operational Creditors

Name Of The OC	Total Claims	Verified & admitted Claims	Amount Proposed as Full & Final Settlement*
Office of AC-IT, Kolkata *subject to clause 5.1.4.6	10,64,47,649/-	8,48,03,659/-	28,85,065/-
GIDC *subject to clause 5.1.4.6	1,80,62,53,182/-	1,80,62,53,182/-	6,14,49,685/-
Total			6,43,34,750/-



6.5 Terms of the Plan and infusion of fund and source of fund

- a)** The term of the Resolution Plan shall commence on the date of submission of the Resolution Plan to the Resolution Professional and shall remain valid subject to the approval of the Adjudicating Authority.
- b)** The Resolution Applicant through its SPV, SPE-Hold Co. and along-with its nominee proposes to infuse an amount of Rs. 2,00,00,000/- (Rupees Two Crores Only) in the form of 20,00,000 fully paid up equity shares of Rs. 10,00 each in the Corporate Debtor.
- c)** The Resolution Applicant proposes to infuse an amount upto Rs. 18,00,00,000/- (Rupees Eighteen Crores) in the form of Interest Free Unsecured Loans into the Corporate Debtor on Effective Date.
- d)** The Resolution Applicant further proposes to infuse the Interest bearing Unsecured Loan and/or Inter Corporate Deposit with flexible repayment schedule upto an amount of Rs. 115,00,00,000/- (Rupees One Hundred and Fifteen Crores Only) in Corporate Debtor on the Effective Date. Since, the funds are infused internally the much required flexibility in the terms and conditions can be built in to ensure the required support at the nascent stage for ensuring proper revival, feasibility and viability.
- e)** The further infusion towards Capex for infrastructure development amounting fo Rs. 110,00,00,000/- (Rupees One Hundred Ten Crores Only) would be done based as per the proposed business plan and the same will be funded by Inter Corporate Loans and/or internal accruals. If need be, the Resolution Applicant can further raise necessary funding through securitization of rental cash-flows and stable cash-flows from various operationalized renewable power projects having proven generations and realization history.

The Resolution Applicant has taken into account the interest of all the stakeholders of Corporate Debtor to the extent possible and accordingly has proposes the full and final settlement amount as mentioned below:

Particulars	Amount
Mandatory Payment	
1. Corporate Insolvency Resolution Process Cost (*As per provisions of clause 5.1.1 of the Resolution Plan)	50,00,000/-
2. Payment of the debts of operational creditors not less than amount to be paid in the event of liquidation of the Corporate Debtor under Section 53 of the IB Code; or the amount that would have been paid to operational creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in Section 53(1) of IBC, whichever is higher.	0.00
3. Payment of debts of financial creditor, who do not vote in favour of resolution plan not less than the amount to be paid to such creditors in accordance with Section 53(1) of the Code in the event of a liquidation of the corporate debtor.	NA#
Financial Creditor (*As per provisions of clause 5.1.1 & 5.1.2 of the Resolution Plan)	
a. Secured	1,25,00,00,000/-
b. Unsecured-Related	0.00/-
c. Unsecured-Unrelated	NA
Operational Creditors	
a. Related	NA
b. Unrelated Provision for Payment of Claim(s) filed or to be filed by Operational Creditor on any future date towards all the Claim(s) made by them against Corporate Debtor as per Clause 5.1.4	6,43,34,750/-
Others	
a. Employees – N.A.	0.00/-
b. Provision for Payment of Stamp Duty and Registration as per clause 5.1.6	3,06,65,250/-
c. Equity Shareholders	0.00/-
Total amount provided under the Plan for CIRP and Creditors	1,35,00,00,000/-
<i>Need Based CAPEX</i>	<i>1,10,00,00,000/-</i>



7 Waivers, Reliefs, Concessions and Exemptions

The Resolution Applicant has prayed for the reliefs as enumerated under the Resolution Plan approved by the CoC. From the Resolution Plan approval date, all inquiries, investigations and proceedings, whether civil or criminal, suits, claims, disputes, interests and damages in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the plan approval date, or arising on account of implementation of this resolution plan shall stand withdrawn, satisfied and discharged. From the date of approval of the Resolution Plan, the Resolution Applicant shall be legally authorised to seek appropriate orders from respective authorities/courts/tribunals for renewal of licences/withdrawal/dismissal or abatement of the proceeding as the case may be.

The Resolution Plan also provides details of Reliefs and Concessions as already set out in Schedule 5 (Page No. 125-128 of the Resolution Plan).

8 Details on Management and Implementation as per the Resolution Plan

The Resolution Plan also provides details of the Implementation Schedule under Regulation 38(2)(a) of CIRP Regulations, management and control under Regulation 38(2)(b) of CIRP Regulations and under Section 30(2)(c) of IBC, and supervision under Regulation 38(2)(c) of CIRP Regulations and under Section 30(2)(d) of IBC under the Resolution Plan. The same is already set out in Section –A (4. Mandatory Provision under the Code, Page No. 63-65) of the Resolution Plan.

9 Details on Fraudulent and Avoidance transaction

In the 2nd CoC meeting, the CoC approved the appointment of AFN & Associates to conduct an audit of the Corporate Debtor to determine the value of preferential transactions under section 43 of IBC, undervalued transactions under section 45 of IBC, extortionate



transactions under section 50 of IBC and transactions with intent to defraud creditors or for any fraudulent purpose under section 66 of the IBC. In the 3rd CoC meeting, the CoC was informed that AFN & Associates observed some transactions under Section 66 of IBC. After some discussion, the CoC agreed to the content of the reports and directed the RP for filing necessary application before the Adjudicating Authority. The Applicant filed an avoidance application under Section 66(1) of the IBC before this Adjudicating Authority. The Application is still pending for adjudication and disposal before this Adjudicating Authority.

10 Analysis & Findings

10.1 Ld. Senior Counsel appearing for the Resolution Professional has submitted that the Resolution Plan has been approved by 100% votes by the CoC in its 11th meeting dated 30.08.2021 and no provision of the IBC is contravened even if the Resolution Plan value is below the liquidation value. The Ld. Senior Counsel has relied on the Hon'ble Supreme Court's decision in **Maharashtra Seamless Ltd. vs. Padmanabhan Venkatsh and Ors.** (2020) 11 SCC 467 wherein it was held that:

"28. No provision in the Code or Regulations has been brought to our notice under which the bid of any resolution applicant has to match liquidation value arrived at in the manner provided in Regulation 35 of the CIRP Regulations".

10.2 On hearing the submissions made by the Ld. Senior Counsel for the Resolution Professional and perusing the record, we find that the Resolution Plan submitted by the Successful Resolution Applicant namely M/s. Zaveri & Co. Pvt. Ltd. which was approved by the CoC in its 11th meeting dated 30.08.2021, the Plan meets the requirement of being a viable and feasible and for revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Bench.

10.3 The Hon'ble Supreme Court in the matter of **"Vallal RCK vs. M/s.**



Siva Industries and Holdings Limited and Others, Civil Appeal Nos. 1811-1812 of 2022”

whereby the Hon’ble Apex Court has answered the question as to whether **‘the adjudicating authority (NCLT) or the appellate authority (NCLAT) can sit in an appeal over the commercial wisdom of the Committee of Creditors (“CoC”) or not’**. We rely upon the following paragraphs:

“21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring the completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption that Financial Creditors are fully informed about the viability of the Corporate Debtor and the feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed Resolution Plan and assessment made by their team of experts.”

*A reference in this respect could be made to the judgments of this Court in the cases of **“K. Sashidhar v. Indian Overseas Bank and Others, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.***

*27. This Court has, time and again, emphasized the need or minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the case of **Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another:***

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“95. However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The Legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC”

10.4 In light of the above-quoted judgements, it is clear that the **“Commercial wisdom of CoC”** is given paramount status. This Adjudicating Authority is not endowed with the powers of jurisdiction or authority to analyse or evaluate the commercial decision of the CoC. The Resolution Plan submitted by the Successful Resolution Applicant namely M/s. Zaveri & Co. Pvt. Ltd. which was approved by the CoC in its 11th meeting dated 30.08.2021, this Adjudicating Authority cannot interfere in the same.

10.5 On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Sections 25(2)(h), 29A, 30(2), 30(4) and 31(1) of the IBC and also complies with Regulations 35A, 36B(4A), 37, 38(1), 38(1A), 38(1B), 38(2), 38(3), 39(1), 39(2) and 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Applicant/RP has filed a Compliance Certificate in the prescribed Form, i.e., **Form-H** as per the amended Resolution Plan in compliance with Regulation 39(4) of the CIRP Regulations. The Applicant/RP submits that the Successful Resolution Applicant is not disqualified under Section 29A of the Code to submit the Resolution Plan, as required by Regulation



39(1)(a) of the CIRP Regulations. A separate undertaking has also been submitted along with the EoI by the Successful Resolution Applicant, as mandated in terms of Regulation 39(1)(c) of the CIRP Regulations.

- 10.6** The reliefs, concessions and waivers sought by the Successful Resolution Applicant will be dealt with strictly as per law.
- 10.7** As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.
- 10.8** In case of non-compliance of this order or withdrawal of the Resolution Plan within the stipulated time, in addition to other consequences which follow under law, the CoC shall forfeit the EMD (Rs. 50,00,000/-, Rupees Fifty Lakh Only) already paid by the SRA as well as the PBG (Rs. 2,00,00,000/-, Rupees Two Crore Only).
- 10.9** The present application has been filed with bonafide means, in the interest of justice and to advance the objectives of the Code.

11 Orders

- 11.1** The **IA-4585/2021** which is for approval of the Resolution Plan is **allowed** and the Resolution Plan of Rs. 135,00,00,000/- (Rupees One Hundred Thirty Five Crore Only) is **approved. The Resolution Plan shall form part of this Order. “Effective Date”** means the date on which this Resolution Plan is approved by this Adjudicating Authority under Section 31 of the Code. The main Company Petition, i.e., **IB-571(ND)/2020** stands **dismissed** accordingly.
- 11.2** The Resolution Plan is 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 the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in



the Resolution Plan, so that the revival of the Corporate Debtor Company shall come into force with immediate effect.

- 11.3** The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
- 11.4** Further from the effective date and until the transfer date, a 3-member Monitoring Committee or Managing Committee is to be constituted. The Committee shall consist of one representative of the the Resolution Applicant, one representative of the CoC and the Resolution Professional.
- 11.5** The RP shall submit the records collected during the commencement of the proceedings to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.
- 11.6** Liberty is hereby granted for moving appropriate application(s), if required in connection with the implementation of this Resolution Plan.
- 11.7** A copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies, (RoC), NCT of Delhi & Haryana. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the RoC, 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.
- 11.8** 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. Further, the Resolution Professional shall supervise the implementation of the Resolution Plan and file the status of its implementation before this Authority from time to time, preferably every quarter.



11.9 Further, in terms of the Judgment of the Hon'ble Supreme Court in the matter of **Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited** Civil Appeal No. 8129 of 2019, wherein the Hon'ble Supreme Court held that on the date of the approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of the Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claims which are not a part of the Resolution Plan.

11.10The Resolution Professional is further directed to hand over all records, premises/factories/documents available with it to the Successful Resolution Applicant to finalise the further line of action required for starting the operation. The Successful Resolution Applicant shall have access to all the records and premises through the Resolution Professional to finalise the further course of action required for starting operations of the Corporate Debtor.

11.11The Registry is hereby directed to send copies of the order forthwith to the IBBI, all the parties and their Ld. Counsel for information and for taking necessary steps.

Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

File be consigned to the record.

No order as to costs.

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**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**