

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

I.A. No. 3205 of 2022

IN

C.P. No. 848 of 2020

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

In the matter of

M/s. Polaris Healthcare

... Financial Creditor

V/s.

M/s. Empirical Solutions Private Limited

... Corporate Debtor

I.A. No. 3205/2022

Mr. Prawin Charan Prafulcharan Dwary

...Applicant/Resolution Professional

Order Reserved on: 30.11.2022

Order Pronounced on: 16.12.2022

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance (through video conferencing):

For the Applicant: Mr. Amey Hadwale, Advocate

Per: Smt. Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. This is an Application filed under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the **“Code”**) filed by the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant M/s. Vision Surgicals, Ms. Anupama Aashwiin Pardeshi (Proprietor), which was approved by 100% voting share of the members of the Committee of Creditors (hereinafter referred to as **‘COC’**).
2. The facts leading to the Application are as under:
 - a. Corporate Insolvency Resolution Process (**CIRP**) of the Corporate Debtor was initiated by this Bench by an order dated 20.04.2022 under Section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as **‘the Code’**) (**Admission Order**) and Mr. Prawin Charan Prafulcharan Dwary, was appointed as Interim Resolution Professional. The IRP, constituted the Committee of Creditors. The COC in its 1st meeting held on 27.05.2022 appointed (**the present Applicant**) as the Resolution Professional (**RP**). The IRP published a public announcement as per Section 13 & 15 of the Code, inviting claims from the creditors of the Corporate Debtor.
 - b. The Applicant published a Public Announcement in Form A in accordance with Section 15 of the Code, on 29.04.2022, in English Newspaper Financial Express and one in Marathi Newspaper Loksata, inviting claims from the creditors of the Corporate Debtor.
 - c. The Applicant submits the claims received and admitted by Interim Resolution Professional as under:

Summary of Claims (Amount in Rs.)			
Sr. No.	Class of Creditor	Amount Claimed	Amount Admitted
1	Financial Creditors		
A	NKGSB Co-Op. Bank Ltd. (Secured Loan)	13,26,89,115	13,26,89,115
B	Polaris Healthcare (Unsecured Loan)	9,34,786	9,34,786
	Total	13,36,23,901	13,36,23,901

3. As aforesaid, NKGSB Co-Op. Bank Ltd. had total claim of Rs. 13,26,89,115, consisting **Principal** of Rs. 5,22,67,364 and **Interest** of Rs. 8,04,21,750/- & Polaris Healthcare had advanced a loan of Rs. 7,00,000/- to which the outstanding payment (**including interest**) is Rs. 9,34,786/-. Petition under Section 7 of the IBC was filed by M/s Polaris Healthcare.
4. The Applicant states that in the 2nd COC meeting, dated 25.06.2022, the COC approved with minimum eligibility criteria, Request for Resolution Plan (**RFRP**) and Form G for inviting Expression of Interest (**EOI**) from Prospective Resolution Applicants as per section 25(2)(h) of the Code. Accordingly, Public announcement for inviting EOI was issued. Form G inviting EOI was published on 04.07.2022. The last date for submission of Expression Of Interest from Prospective Resolution Applicants was 19.07.2022 and last date of submission of Resolution Plan was 02.09.2022.
5. The CoC decided to appoint Valuers. The Resolution Professional accordingly appointed two registered valuers for Plant & Machinery to determine the fair value and liquidation value of the Plant & Machinery, as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016. These valuers had submitted their reports. The Liquidation and fair value of the Plant & Machinery is as follows:

Name of Registered Valuer	Fair Value (Amount in Rupees)	Liquidation Value (Amount in Rupees)
Mr. Hiten Prajapati	16,68,500/-	11,67,950/-
Mr. Bhavin Patel	14,32,000/-	10,02,000/-

6. The Applicant further states that in furtherance of the Form-G issued by Applicant, he received EOI from one Prospective Resolution Applicants (PRAs) within the stipulated time period. Below is the names of the prospective resolution applicant:

a. **M/s. Vision Surgicals**

7. The Applicant submits that, during the 3rd Meeting of COC held on 07.09.2022, the proposed Resolution Plans was evaluated and after considering the Resolution Plan, the Applicant explored the possibility of enhancement on the plan value submitted by the Resolution Applicant. After discussion and negotiation, the Resolution Applicant had agreed to increase the bid amount only by Rs. 50,000/- to make aggregate financial offer to Rs. 17,13,739/- which consist of enhancement of distribution to the secured lender i.e. to NKGSB Co-Op Bank Limited, from Rs. 8,50,000/- to Rs. 9,00,000/-.

8. **The COC, in its 4th meeting held on 28.09.2022, approved Resolution Plan submitted by M/s. Vision Surgicals with a voting share of 100%. Thereafter, the Applicant issued compliance certificate in Form "H" was issued by the Resolution professional.**

9. **The Salient Features of the Resolution Plan are as under:**

A. Brief Background of the Company / Corporate debtor

- i. Empirical Medi Solutions Private Limited ("EMSPL") is a private company incorporated under Companies Act, 1956 on 15.12.2010. The company commenced to acquire, establish,

set up, maintain hospital/ hospitals, diagnostic clinics, dispensaries, medical centers for the reception and treatment of persons suffering from illness, persons requiring medical attention or rehabilitation, private and public healthcare and also to provide support services and facilities related to medical tourism, medical advice and consultation, diagnostics, preventive health checks, telemedicine help, pharmacy, clinical testing and trials and for that purpose to carry out basic and applied medical research in all systems and discipline of medical, surgical and health sciences by establishing medical research institutions in India or abroad. The operations of the company were managed by the suspended board of management.

- ii. Cause of Default: Polaris Healthcare, one of the Financial Creditors, had advanced a loan of an aggregate amount of Rs. 7,00,000/- to the Corporate Debtor in December, 2016. The loan was renewed for another 1 year i.e. till December, 2017. Thereafter, the Corporate Debtor faced financial distress due to which the outstanding payment (including interest) of Rs. 9,34,787/- could not be made. Polaris Healthcare eventually resorted to the remedy available under the Insolvency and Bankruptcy Code, 2016 (“the Code”) and hence the process of Corporate Insolvency Resolution Process (“CIRP”) commenced for EMSPL on 20.04.2022.
- iii. The Resolution Professional had called for the Expression of Interest (“EoI”) for Resolution Plan in the present case and this Resolution Plan is being submitted in pursuance thereto.

B. Background of the Resolution Applicant

Brief about the Resolution Applicant:

The Resolution Plan is being submitted by Vision Surgicals (hereinafter referred as “the Resolution Applicant” on terms

and conditions mentioned in the Resolution Plan. Pursuant to the Public Advertisement for invitation of resolution plan, Resolution Applicant wish to submit the EOI along with the resolution plan along with the demand draft of Rs. 85,687/- (5 percent of total offer price/-)

Resolution Applicant & his details:

Name	M/s Vision Surgicals, Ms. Anupama Aashwiin Pardeshi (Proprietor)
Address	A-102, Survey No. 43/4A, 944 Ganga Sampatti, Jambulkar Chowk Wanowarie, Pune – 411 040.
Email Id.	visionsurgicals pune@gmail.com
Contact No.	+91 91759 97691

C. Terms of the Resolution Plan and its implementation schedule

- i. Resolution Plan provides for payment of Rs. 17,13,739/-, against the entire assets and liabilities and share holding of the Corporate Debtor.
- ii. The resolution plan provides for payment of Rs. 7,67,000/- CIRP cost at actual as priority payment as per section 30(2).
- iii. The entire payment under resolution plan is to be made within period of 90 days from the date of receipt of certified copy of the order of the Hon'ble NCLT, Mumbai Bench.
- iv. The Resolution Applicant has submitted an amount of Rs. 83,187/- as performance bank guarantee and/ or deposit, which shall be adjusted with the upfront amount or returned to the resolution applicant within 24 Hours.
- v. As soon as the Resolution Plan is approved by the Hon'ble NCLT, the resolution process costs shall be paid in full within 15 days of approval of the Resolution Plan from the amount already paid as EMD and any shortfall after adjustment of EMD amount shall be brought by the Resolution Applicants.

- vi. As there is no asset except the certain old and scrap equipments relating to ENT doctor, we presume liquidation value is not sufficient to pay out the secured financial creditors, hence, liquidation value due to operational creditors is considered as NIL.
- vii. Further as per the Information Memorandum, there are no bank balance.
- viii. As per the Information Memorandum, the suspended management informed that there were no premises of the corporate debtor and also had no employees, thus no claims were received from the Employees/Workmen.

D. Broad Contours of the Resolution Plan:

Subject to the above, the Resolution Plan is as under:

- i. Payment of Corporate Insolvency Resolution Process Cost:
Resolution Applicants propose to pay Rs. 7,67,000/- as a Corporate Insolvency Resolution Process cost as priority payment subject to the actual CIRP cost which may be provided by the Resolution Professional.

CIRP Cost shall be first appropriated from the EMD paid by the Resolution Applicant. In case any shortfall in CIRP cost over and above Rs. 7,67,000/-, such shortfall shall be paid additionally by the Resolution Applicant. In case CIRP cost is less than Rs. 7,67,000/-, RA shall pay such less amount towards CIRP Cost.
- ii. Payment to Financial Creditor: As per the information available, the corporate debtor has Two Financial Creditors for a claim amount and admitted amount of Rs. 13,36,23,901/-.

<i>Sr. No.</i>	<i>Name of the Financial Creditor</i>	<i>Amount Admitted</i>	<i>Proposed Amount</i>	<i>Details of Security Interest</i>
1	<i>NKGSB Co-Op. Bank Ltd</i>	<i>13,26,89,115</i>	<i>9,00,000</i>	<i>Secured Financial Creditor</i>
2	<i>Polaris Healthcare</i>	<i>9,34,786</i>	<i>46,739, i.e. 5% of Amount Admitted</i>	<i>Unsecured Financial Creditor.</i>

After payment of the CIRP Cost, the Resolution applicant will pay a sum of Rs. 9,46,739/- to the financial creditors in the following manner:

- Entire payment shall be made within period of 90 days from the date of Order of Hon'ble NCLT.
- Claim of the secured financial creditor against the Corporate Debtor shall stand extinguished on approval of resolution plan after payment of amount as envisage under this resolution plan.
- Secured Financial Creditors can recover any pending dues from the personal guarantors whose property is mortgaged with the Secured Financial Creditors under any other law time being in force.
- Secured Creditor shall not have any right to initiate any suite/degree/legal proceedings against the Corporate Debtor on approval of resolution plan after payment of amount as envisage under this resolution plan.
- Any amount payable to the financial creditors dissenting the resolution plan shall be made in priority over the creditors assenting the resolution plan

- iii. Payment to Operational Creditors: As per Information Memorandum provided to us there is no claim submitted by the operational creditor. Thus, the operational creditor who have not submitted the claims to the Resolution Professional shall stand extinguished.
- iv. Statutory Dues: As per the Information Memorandum there are no pending dues of any statutory authorities pending against the corporate debtor
- v. Dues to Workmen & Employees: As per Information Memorandum provided to us there is no any workmen/ employee deployed at the factory of the corporate debtor.
- vi. Contingent Liabilities:
 - a. As per updated Information Memorandum, no litigation is pending against the corporate debtor at different Courts, Tribunals, Government Authorities/ Boards/ Forum, MSME authorities.
 - b. All the contingent liabilities including but not limited to any demand from the Income Tax Department and / or any other revenue / tax authorities subsequently based on assessments, which may or may not have been confirmed in past, during or before the CIRP or even may be confirmed in the time to come are proposed to be waived off fully immediately upon sanction of Resolution Plan subject to para 6(b) above.
 - c. Similarly, any other known or disclosed or unknown or hidden or undisclosed liability of whatsoever and howsoever nature (whether recorded or not recorded in books) shall stand waived off immediately upon sanction

of the Scheme by NCLT. Such authorities / parties will have no right to claim anything further from C D and / or R A

vii. Any other Dues from any other parties:

No other dues than stated above are pending against the corporate debtor, as per the Information Memorandum provided by the Resolution Professional

viii. Cessation of Directors:

Mr. Ambarish Balkrishna Darak & Ms. Aparna Ambarish Darak upon approval of the Resolution Plan shall cease to be Director of Corporate Debtor without any further action and Corporate Debtor shall complete the necessary formalities of filing the Form DIR-12 with the office of Registrar of Companies and Ms. Anupama Aashwiin Pardeshi, shall complete the legal formalities required to be completed by him in this regards.

ix. Other Liabilities:

All other Dues/claims/ Demands, if any (other than specifically mentioned).

It is proposed that other than the Creditors mentioned in this Resolution Plan, Operational Creditors of the Company (within India or elsewhere) including the Creditors who have not submitted their claims in the Corporate Insolvency Resolution Process to the Resolution Professional or whose claim has not been admitted by Resolution Professional, shall be deemed to have been settled or waived off as per the terms of the Resolution Plan.

x. Assets of the Corporate Debtor:

All the assets of the Corporate Debtors, including Tangible assets, Non-current Investments, Loans and Advances, deferred tax assets cash & bank balances, trade receivables, shall stand transferred to the Resolution Applicant on “as is where is basis” without any right of any financial or operational creditor of the CD. If any assets of the corporate debtor are having lien marked by any financial creditor, on full and final payment of amount envisage under the Resolution plan, such lien shall be removed by the financial creditor and the assets shall be released from all encumbrances/lien.

xi. Treatment of Claims in respect of which IA pending for Adjudication / Acceptance:

It is proposed that if any party’s claims are admitted by NCLT at any time either before or after sanction of Resolution Plan, the same would be added to the total value claimed by that class of Creditors as provided in this plan and all the parties will be given prorata within overall ceiling allocation offered to that class of creditor as provided in this plan. Resolution Applicant, Corporate Debtor or the assets of Corporate Debtor in no way will be liable for any amount over and above ceiling amount offered to that class of creditor as provided in this plan.

xii. Treatment of the claims, in respect of which IA may be filed during the course of CIRP:

It is proposed that if any party’s claims are admitted by NCLT at any time either before or after sanction of Resolution Plan, the same would be added to the total value claimed by that class of Creditors as provided in this plan and all the parties

will be given prorata within overall ceiling allocation offered to that class of creditor as provided in this plan. Resolution Applicant, Corporate Debtor or the assets of Corporate Debtor in no way will be liable for any amount over and above ceiling amount offered to that class of creditor as provided in this plan.

- xiii. Treatment of the claims, which may be filed and admitted before finalization of the Resolution Plan (including those claims which are under verification / rejected):

It is proposed that if any parties claims are admitted by NCLT at any time either before or after sanction of Resolution Plan, the same would be added to the total value claimed by that class of Creditors as provided in this plan and all the parties will be given prorata within overall ceiling allocation offered to that class of creditor as provided in this plan. Resolution Applicant, Corporate Debtor or the assets of Corporate Debtor in no way will be liable for any amount over and above ceiling amount offered to that class of creditor as provided in this plan.

E. Source of Funds:

- *Application:*

<i>Particulars</i>	<i>Amount Admitted (Rs.)</i>	<i>Amount Proposed (Rs.)</i>
<i>CIRP Cost</i>	<i>7,67,000</i>	<i>7,67,000</i>
<i>Financial Creditors</i>	<i>13,36,23,901</i>	<i>9,46,739</i>
<i>Operational Creditors & Statutory Dues</i>	<i>NA</i>	<i>NA</i>
<i>Contingent Liabilities</i>	<i>NA</i>	<i>NA</i>
<i>Total</i>		<i>17,13,739</i>

- *Source:*

The Resolution Applicants shall bring the entire consideration from its internal savings and existing business proceeds.

F. Statement as required under Regulation 38(1A) of IBBI (IRPCP) Regulations, 2016:

The Resolution Plan has been prepared in the manner to ensure that interest of various stakeholders, including Financial Creditors and Operational Creditors of the Corporate Debtor is protected. The Financial Creditors are paid Rs. 9,46,739/-. The Liquidation Value due to all other stakeholders is presumed to be NIL. As there are no claims received from the operational creditor. There are no statutory liabilities in the books of accounts of the Company. There are no contingent liabilities towards the corporate debtor. Thus the contingent liabilities shall stand extinguished.

G. Tentative time line for implementing the Resolution Plan:

The resolution applicant proposes to pay entire consideration within period of 90 days from the date of approval of resolution plan by Hon'ble NCLT.

H. Management and control of the business of corporate debtor during its term:

Supervision of the Management of affairs of Empirical Medi Solutions Pvt. Ltd. will be done by Ms. Anupama Aashwiin Pardeshi who shall ensure that the corporate debtor shall remain as going concern and revenue is generated from the business.

I. Adequate means for supervising its implementation:

The supervision and implementation of the Resolution Plan will be done by any person appointed by the CoC. In case no person is appointed by COC, then the supervision shall be done by Ms. Anupama Aashwiin Pardeshi as per the approved Resolution Plan by the Adjudicating Authority.

J. Other terms:

- The Resolution plan does not contravene(s) any of the provisions of law for the time being in force.
- The Resolution Applicant(s) undertake(s) and agree that they shall in addition to complying with the provisions of law while implementing the Resolution Plan submitted herein would take such other steps and actions and comply with such directions/requirements which are required by the Committee of Creditors or Adjudicating Authority or Insolvency and Bankruptcy Board of India while approving the Resolution Plan.
- Any of the proceedings against the Company by any Operational Creditor in any court of law / forum / panel of arbitrators or any other adjudicating authority in India or elsewhere shall stand dismissed and no fresh / further proceedings can be commenced against the Company for any cause of action occurring on or before the date of approval of the Resolution Plan. Any award / order / judgment / decree in any court of law / forum / panel of arbitrators or any other adjudicating authority in India as well as outside India against the Company shall stand discharged. No execution proceedings for any such award / order / judgment / decree shall remain

pending or can be given effect to or allowed against the Company in India or elsewhere.

10. The Resolution Applicant is eligible to submit resolution plan. The successful Resolution Applicant has given an Affidavit satisfying the eligibility criteria as per the provisions under section 29A of the Insolvency & Bankruptcy Code, 2016.

11. Observations and Findings:

- i. As per IBC Code 30(2)(a) – A Resolution Plan provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor.
- ii. As per Section 30(2)(b), the Respondent has agreed to pay Operational Creditors an amount which shall not be less than liquidation value or the amount that would have been paid to such creditors if the amount to be distributed under the Resolution Plan is distributed in accordance with priority under Section 53(1), whichever is higher.
- iii. The Resolution Applicant has agreed to meet the cost of project from existing resources including infusion of equity/debt through the parent company, from sale of unsold inventories and if required from raising finance through external sources.
- iv. The Resolution Applicant has also agreed that dissenting financial creditors shall be paid in priority and not less than the value they would have been paid in the event of liquidation of the Corporate Debtor. The Respondent has proposed to liquidation value to unsecured financial creditors who dissent from the plan.
- v. Provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan. Section 30(2)(c).

- vi. Provides for a term of the plan, implementation schedule and supervision of the Resolution Plan under Section 30 (2) (d)& Regulation 38(2)(c).
- vii. The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor.
- viii. The Resolution Plan does not contravene any of the provisions of the law for the time being in force - please include a statement to this effect in the Resolution Plan as per Section 30(2) (e)
- ix. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force as per Section 30(2)(f).
- x. As per IBBI Guidelines 38(1)(b) - The amount payable under a Resolution Plan -to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the Resolution Plan, shall be paid in priority over financial creditors who voted in favour of the plan.
- xi. The resolution applicant or any of its related parties has not failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.
- xii. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:
 - a. The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors. Regulation 38(1).
 - b. The Resolution Plan has all the adequate means of supervising of the implementation of the Plan as required under Regulation 38(2) (c), of the IBBI, Insolvency resolution process for corporate persons, Regulation 2016.

- c. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company (Regulation 38(1)(a)).
- d. Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
- e. The amount payable under a resolution plan to the Financial Creditors, who have right to vote under sub-section (2) of section 21 and did not vote in favor of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.
- f. The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.
- g. The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a resolution plan under Section 29A of the Code and other provisions of the Code and any other Applicable Law.
- h. Provides for the management and control of the business of the Corporate Debtor during its term.
- i. All the above factors demonstrate that the plan address the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.
- j. That the Resolution Applicant or any of its related parties has never failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past. This is in compliance of Regulation 38(1)(b) of the Regulations.

- k. The interests of all stakeholders (including Financial Creditors, Operational Creditors and other creditors, guarantors, members, employees and other stakeholders of the Company, keeping in view the objectives of the Code (Regulation 38(1A)).
12. The Resolution Plan has been approved in the 4th COC meeting held on 28.09.2022 with 100% voting in accordance with the provisions of the Code.
13. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150*** the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.
14. In ***India Resurgence Arc Private Limited vs. Amit Metaliks Limited and Ors. (2021)*** the Hon'ble Apex Court held that the process of consideration and approval of resolution plan is essentially within the commercial wisdom of Committee of Creditors (CoC).The scope of

judicial review remains limited under Section 30(2) of the Insolvency and Bankruptcy Code (IBC), 2016 by which the court would examine that the resolution plan does not contravene any statutory provisions and it conforms to such other requirements as may be specified by the Board. The court held that the process of judicial review cannot be stretched if all the above-mentioned requirements have been duly complied with and that dissenting financial creditor, expressing dissent over the value of security interest held by it, cannot seek to challenge an approved Resolution Plan. Lastly, it was held that Section 30 of the IBC, 2016 only amplified the considerations for the CoC while exercising its commercial wisdom so as to take an informed decision in regard to the viability and feasibility of resolution plan, with fairness of distribution amongst similarly situated creditors; and that the business decision taken in exercise of the commercial wisdom of CoC does not call for interference unless creditors belonging to a class being similarly situated are denied fair and equitable treatment.

15. The Hon'ble Apex Court at para 42 in ***Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC Online***, clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved.

*“Para 42- Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar** (supra).”*

16. In view of the above ruling of the Apex Court, the legislature has given paramount importance to the commercial wisdom of committee of creditors (CoC) and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent provided under section 31 of Code and of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code, is no more an untouched-matter.
17. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The Resolution Plan is feasible and viable. There are no workers claims. Resolution Applicant agreed to pay the full CIRP costs and also future costs if any as certified by the Resolution Professional and CoC. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.

ORDER

- a) The Interlocutory Application No. 3205 of 2022 is allowed. The Resolution Plan submitted by **M/S. VISION SURGICALS.**, is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force is due.
- b) The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. It is seen that the Resolution Applicant sought several dispensations, concessions and waivers. Any waiver sought in the Resolution plan

shall be subject to approval by the Authority concerned in the light of the Judgment of Supreme Court in **Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited**, the relevant para's of which are extracted herein below:

“on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in, respect to a claim, which is not part of the resolution plan.”

“95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will 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. On the date of approval of 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 claim, which is not part of the resolution plan;

(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;

(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”

c) We shall clarify here that any amount recovered under any avoidance applications relating to the Corporate Debtor being

allowed by the Adjudicating Authority would enure unto the benefit of the Resolution Applicant.

- d) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- e) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- f) The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.
- g) The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- h) The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- i) The Interlocutory Application No. 3205 of 2022 is accordingly allowed and disposed of.

Sd/-

**ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)**

Sd/-

**H. V. SUBBA RAO
MEMBER (JUDICIAL)**