IN THE NATIONAL COMPANY LAW TRIBUNAL

ALLAHABAD BENCH, PRAYAGRAJ

(Through web-based video conferencing platform/physical hearing)

IA No.30/2022 IN CP (IB) No.349/ALD/2018

U/s 60(5) of the Insolvency and Bankruptcy Code, 2016

In the matter of:

Manesh Agarwal

Shareholder & Suspended Director of

BB Foods Pvt. Ltd. (Corporate Debtor under CIR Process)

Having its registered office at:

A-200, Kamla Nagar,

Agra-282005 ……..*Applicant*

Versus

Pramod Kumar Sharma & Ors.

Resolution Professional

(for BB Foods Pvt. Ltd) …….*Respondent*

AND

IN THE MATTER OF:

Bank of India ….Financial Creditor

Vs.

B.B Foods Private Limited ….Corporate Debtor

Coram:

Shri Praveen Gupta : Member (Judicial)

Shri Ashish Verma : Member (Technical)

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Appearances (through video conference):

For Applicant being Shareholder & Suspended Director of M/s BB Foods Pvt. Ltd. (Corporate Debtor under CIR Process)	:	Sh. Kumar Anurag Singh, Adv. Sh. Shwetank Singh, Adv. Sh. Zain A. Khan, Adv
For Respondent No.1	:	Ms. Babita Jain, Adv. Sh. Mohd. Nazim Khan, PCS.
For Respondent No.2/CoC	:	Sh. Nilotpal Shyam, Adv.
For SRA	:	Sh. Abhishek Kumar, Adv.

Order pronounced on 29.03.2023

ORDER

1. This Order of ours will decide and dispose of IA No.30/2022.
2. The present IA has been filed inter-alia seeking relief that the Resolution Plan submitted by the Respondent No.3 (Sirius Foods Pvt. Ltd - Successful Resolution Applicant) be rejected as the same is in violation of the provisions of the Insolvency and Bankruptcy Code.
3. It is pleaded in the IA that the CoC has approved the Resolution Plan submitted by the Respondent No.3 which was in contravention to Sec 29A of the Code. The applicant in the present IA is a shareholder and Suspended Director of the Corporate Debtor. It is stated in the IA that the CIRP Process has commenced as a result of the filing of an application under Section 7 of the Code which was admitted on 22nd October, 2019. As a result of the admission, the moratorium was commenced and CoC was constituted wherein the sole Financial Creditor was the Bank of India. The Resolution Plans were invited and ultimately the Resolution Plan of the Respondent No.3 was approved by the CoC in its 9th meeting held on 22nd December, 2021 wherein the Resolution Plan was approved with a majority of 100% voting. After the approval of the Resolution Plan by the CoC, a separate application, IA No.03/2022 has been filed by the Resolution Professional for approval of the Resolution Plan which is being decided separately.

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4. The grounds for challenge of the Resolution Plan as taken up by the applicant/Suspended Director in the present IA are as under:-

   (i) Mr. Rahoul Subberwal is an undischarged insolvent in a jurisdiction outside India, which is a disqualification under Section 29A (a) read with Section 29A(i) of the Code, 2016.

   (ii) Mr. Rahoul Subberwal who is the Director of Successful Resolution Applicant is a connected person of the Respondent No.3 and he is also disqualified to submit Resolution Plan under Section 29A(j). Therefore the respondent no. 3 would be disqualified from submitting a Resolution Plan because of the legal impediment of Section 29A(a) and 29A(i) read with section 29A(j)

   (iii) The Resolution Plan value is below the liquidation value

   (iv) The Resolution Plan has been approved by the COC after the timeline specified in Regulation 39(4) and is also unviable.

   (v) The objections of the Applicant regarding the Resolution plan were not considered.

5. As regards Ground No.1, that Mr. Rahoul Subberwal is an undischarged insolvent in a jurisdiction outside India, it was submitted by the Ld. Counsel representing the Applicant that Mr. Rahoul Subberwal was also the Director in Companies in London, namely, M/s Scalar Engineering, M/s Falcon Foods Limited, M/s Spice Trail Limited and M/s Cascade Marine Foods Ltd. It was submitted that two companies, namely, M/s Scalar Engineering Limited and M/s Falcon Foods Ltd. were wound up because of default of payment of the statutory dues. The details of these two companies have been produced hereunder:

Name of Company	**Type of Winding Up**	**Reasons of Winding Up**
M/s Scalar engineering Ltd.	Court order to compulsory winding up	The Company was dissolved because of default in payment of the

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		Statutory dues of the Commissioners of Customs and Excise department
M/s Falcon Foods Limited	Creditors Voluntary winding up	The Company was dissolved because of default in payment of the Instalment of the Inland Revenue Department of UK Government.

6. As regards the second ground, it is submitted by Ld. Counsel representing the applicant that Rahoul Subberwal is also a connected person of the Respondent No.3 since he is a Director of Respondent No.3 and he is disqualified to submit a Resolution Plan under Section 29A(j). Therefore, the Respondent No.3 would be disqualified from submitting a Resolution Plan because of the legal impediment of Section 29A(a) and 29A(i) read with Section 29A(j).

7. To support his claim that the Resolution Applicant is ineligible under section 29A, the Applicant has relied upon the judgement of **Hon'ble NCLT, Amravati Bench** in **Venkata Rattiah Medisetty, Resolution Applicant for M/s Siva Ram Yarns Pvt. Ltd. v. Mr Dommeti Surya Rama Krishan saibaba RP for M/s Siva Ram Yarns Pvt. Ltd.**, wherein the director of a Company who was undischarged insolvent was considered ineligible to submit a resolution plan as under.

> *"From a reading of Section 29A of IBC, it is clear that if a person or any other person acting jointly or in concert with such person is an undischarged insolvent, he shall not be eligible to submit a Resolution Plan. The fact that the Applicant is a director in M/s. Spads Textiles Private Limited which is under Liquidation is not disputed…*

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... So the related party which falls under the definition of connected person includes a Private Company in which a director, partner or manager of the Corporate Debtor is a director and holds along with his relative more than two per cent of its share capital. There is no denial of the holding of the Applicant in M/s. Spads Textiles Pvt. Ltd. which is undisputedly taken under liquidation

10. The Counsel for the Respondent relies on the judgment of Supreme Court in Swiss Ribbons Pvt. Ltd. vs. Union of India MANU/SC/0079/2019: 2019 4 SCC 17 which has discussed the term related party and held that persons who act jointly or in concert with others are connected with the business activity of the Resolution Applicant. It is also held all categories in Section 29A (a) (j) of IBC deal with persons natural as well as artificial, who are connected with the business activity of the Resolution Applicant. ***It is said that the expression "related party" therefore and "relative" contained in the definition sections must be read Noscitur a sociis with the categories of persons mentioned in Explanation-1 and so read would include only persons who are connected with the business activity of the Resolution Applicant.***

8. The judgment of the ***Supreme Court in Aran Kumar Jagatramka vs. Jindal Steel and Power Ltd., MANU/SC/0182/2021: (2021) 125 taxman.com 244 (SC),*** is also relied upon wherein it was held :

"Section 29A of IBC is a part of the resolution mechanism, the object and purpose of which is to prevent a back-door entry to the promoter who should not be allowed to have the advantage of their own wrong. The ineligibility under Section 29A, which forms a part of Chapter II of the IBC, is only during the Resolution Process. The rationale for imposing an ineligibility under Section 29A in the

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Resolution Process is that the SRA under Section 31 of IBC obtained the Company on a clean slate…"

Similarly in **Renaissance Steel India Pvt. Ltd & Ors. vs Electrosteels Steel India Ltd. & Ors. CA (AT) (Ins.) No. 175 of 2018**, it has been observed that:

"38. The substantive provision of Section 29A of the 'I&B Code' suggests that not only a person is ineligible to submit a 'Resolution Plan', but also a person with any other person acting jointly or in concert with such person, attracts any one or other ineligibility clause mentioned in clauses (a) to (i) is ineligible. In terms of clause (j) of Section 29A, if the 'connected person' is not eligible under clauses (a) to (i), then also the person who submits the 'Resolution Plan' is not eligible."

9. As regards to Ground No.3, that the Resolution Plan value is below the liquidation value, it was submitted that the liquidation value of the Corporate Debtor is Rs.17,87,20,423/-. However, the Resolution Plan submitted by Respondent No.3 and approved by the Respondent No.2 i.e. Committee of Creditors through its sole creditor Bank of India is for Rs.17,25,00,000/- crores which is thus below the liquidation value of the Corporate Debtor. The admitted claim of the bank was for Rs.65,47,71,000/- and the amount provided for under the plan to the bank is only Rs.16,25,00,000/- and Rs.1,00,00,000/- is towards the CIRP costs, therefore, it is alleged by Ld. Counsel representing the applicant that there is a haircut of about 75%.

10. It is also further submitted by the Ld. Counsel representing the applicant that the Resolution Plan has been approved beyond the maximum period for completion of CIRP. It is alleged by the Ld. Counsel representing the applicant that the Resolution Plan which has been approved is much beyond the CIRP timeline. The application under Section 7 in the instant case was admitted on 22.10.2019, hence, 180 days lapsed on 19.04.2020. Following this, the NCLT allowed an application for a 90-day extension, starting from April 19, 2020, as per an order

dated June 3, 2020. The RP then filed an application to exclude 409 days spent in litigation before the NCLAT and the Hon'ble Supreme Court, which was allowed by this Adjudicating Authority after due consideration vide an order dated September 20, 2021. However, no further extension of time was allowed as there is no provision for such an extension. The revised Resolution Plan was approved by the CoC/Sole Financial Creditor in the 9th CoC meeting held on 22.12.2021, allegedly much beyond the prescribed time line.

11. The Applicant has relied upon **J.M. Financial Asset Reconstruction Company Ltd. V. Dr. Anil Kumar Tandon and Others.** [**2021 SCC OnLine NCLAT 1475],** the Hon'ble NCLAT dismissed the appeal and rejected the prayer of Appellant to set aside the liquidation order since period prescribed under Sec 12 had elapsed. The relevant extract is reproduced hereunder:-

> *"31. Impugned Order shows that Section 7 of IBC Application in the matter was admitted on 14.09.2017. The Liquidation Order has been passed on 20th September, 2019. Clearly much more period than what Section 12 of IBC prescribes was consumed.* ***The prayer of the Appellant to set aside the Liquidation Order for reasons stated against the Resolution Professional/Liquidator cannot be granted as in the set of facts Liquidation is the necessary consequence if in the time prescribed under Section 12 of IBC Resolution Plan has not become possible.*** *As regards, averments made against the Resolution Professional/Liquidator, as IBBI which is the regulatory authority for Resolution Professionals has already been ceased of the matter we need not deliberate over those issues and leave them for IBBI. We thus find no reason to allow the Company Appeal (AT) (Ins.) No. 1176 of 2019 as filed by the Appellant-Abba Consultants Pvt. Ltd."*

12. In a similar vein, in ***Committee of Creditors of Meenakshi Energy Ltd. Vs Consortium of Prudent ARC Limited & Vizag Minerals and Logistics P Ltd, the Hon'ble NCLAT*** has made some insightful observations which emphasize

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the need for adhering to timelines prescribes under the Code. The relevant extract has been produced hereunder:

*"**Observance of Time Frame***

103. Indeed, all the concerned Authorities are necessarily required to adhere to the timeline enunciated in Regulation 40A of the IBBI (Corporate Insolvency Resolution Process for Corporate Persons) Regulations, 2016. No wonder, the I&B Code, 2016 provides for the consequences of the period mentioned in Section 12 coming to an end in the event that the said period is over without the receipt of a 'Resolution Plan' or after rejection of a 'Resolution Plan' in terms of Section 31.

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105. A Tribunal/ Appellate Tribunal is to follow the requirement and discipline of 'I&B' Code, 2016, enacted by the Parliament, to streamline the Resolution of Corporate Insolvencies, of course bearing in mind of the fact that the relevant provisions of the Code are well thought of in 'public interest' and to ensure good Corporate Governance. The repercussions in not following the timeline prescribed in IBC are that (i) maximisation of the value assets of the Corporate Debtor will weaken the realisation potential prospect of the Creditors; (ii) The promoters of the Company will remain undischarged from their obligation/liability. The individual who is to proceed against the Company, is suspended from exercising his right for moratorium remains in force till the CIRP period is continuing.

106. According to the amended Regulation 37 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a Resolution Plan shall provide for the measures as may be necessary for Insolvency

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Resolution of 'Corporate Debtor' for maximisation of his assets including but not limited to the matters mentioned in this Regulation.

107. As per Regulation 40 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Committee may instruct the Resolution Professional to make an application to the 'Adjudicating Authority' under this Section (12) to extend the Insolvency Resolution Process period. Upon receiving an instruction from the Committee under this 'Regulation', the 'Resolution Professional' shall make an application to the 'Adjudicating Authority' for such an extension.

108. It is to be pointed out that the Tribunal/ Appellate Tribunal are showered with restricted jurisdiction mentioned in the 'I&B' Code, 2016 and they cannot function as 'Courts of Equities' or exercise plenary powers. In short, they are scrupulously bound by the 'discipline of statutory provisions' and they cannot traverse beyond the parameters of law."

13. **In *T. Johnson vs. St. John Freight Systems Limited and Ors. (04.03.2020-NCLAT) : MANU/NL/0184/2020*, it has been observed :**

"29. It cannot be lost sight of that where no 'Resolution Plan', is approved by the 'Committee of Creditors', an Adjudicating Authority is bound to order 'Liquidation' of a Company. If the time prescribed under Sec. 12 of the I & B Code had lapsed, an 'Adjudicating Authority' will pass an 'Order of Liquidation' against 'Corporate Debtor' regardless of whether the management of Corporate Debtor or the Resolution Applicant had enough opportunity to come up with viable/suitable Plan, as the case may be. Notwithstanding the fact that 'Resolution of Corporate Insolvency' is meant for survival of a Company as a Going Concern, it cannot be ignored that 'Timely Liquidation' is a palatable/desirable one too over an 'Indefinite

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Resolution Proceedings'. To put it precisely, when a 'Resolution Plan' was negatived by the 'Committee of Creditors' and the time enunciated under Sec. 12 of the Code had come to an end, the time limit prescribed is to be followed in stricto sensu, failing which the aim of 'maximising' the 'value of Assets' of the Company will get defeated.

30. When the 'Committee of Creditors' is of the view that no useful purpose will be served in continuing/elongating the Insolvency Resolution Process because of the fact that there was no 'Resolution Plan' to the satisfaction of the 'Committee of Creditors', then an 'Adjudicating Authority' is undoubtedly to pass necessary orders as per Sec. 33(1)(a) and Sec. 34(1) of the I & B Code for announcement of 'Liquidation' in respect of a 'Corporate Debtor'.

32. As per Regulation 39(1) of IBBI (Insolvency Resolution Process) for Corporate Persons) Regulations, 2016, a 'Resolution Plan' is to be submitted to the Resolution Professional 30 days before the expiry of maximum period of 180 days. Where no Resolution Plan was submitted, period of 180 days is not to be extended. An order of Liquidation is to be passed for the Liquidation of a 'Corporate Debtor' and the Resolution Professional will act as a 'Liquidator.

14. The legal due diligence report of Respondent 3 reflected that the credit score of the director of Respondent no.3 is not good and the company is also a loss-making and unviable company. So, accepting the resolution plan of Respondent no.3 also contravenes the provisions of IBC.
15. It is alleged by Applicant that respondent no.1 had not allowed the Applicant to raise objections in the CoC meetings and had also declined Applicant's request of video-recording of the 8th CoC meeting.
16. Per contra, all the three respondents made submissions separately putting up their arguments showing that the objections raised by the applicant in this IA

against the resolution plan submitted by the RP in IA no.03/2022, are not valid. These submissions of all the three respondents are discuss combinedly in succeeding paragraphs.

17. It is submitted by the Respondent No. 1 that the allegation of the Applicant that Mr. Rahoul Subberwal is an undischarged insolvent has no merit since he is currently acting as a director of M/s Spice Trail Limited based in UK whereas according to Section 11 of the Company Directors Disqualification Act, 1986 of UK, an undischarged insolvent cannot act as Director of a company. Section 11 is reproduced hereunder:

*"**11. Undischarged bankrupts.***

(1)It is an offence for a person to act as director of a company or directly or indirectly to take part in or be concerned in the promotion, formation or management of a company, without the leave of the court, at a time when any of the circumstances mentioned in subsection (2) apply to the person.

(2)The circumstances are—

(a)the person is an undischarged bankrupt—

(i)in England and Wales or Scotland, or

(ii)in Northern Ireland,

(b)a bankruptcy restrictions order or undertaking is in force in respect of the person under—

(i)the Bankruptcy (Scotland) Act 1985 [or 2016] or the Insolvency Act 1986, or

(ii)the Insolvency (Northern Ireland) Order 1989,

(c)a debt relief restrictions order or undertaking is in force in respect of the person under—

(i)the Insolvency Act 1986, or

(ii)the Insolvency (Northern Ireland) Order 1989,

(d)a moratorium period under a debt relief order applies in relation to the person under—

(i)the Insolvency Act 1986, or

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(ii)the Insolvency (Northern Ireland) Order 1989.

(2A)In subsection (1) "the court" means—

(a)for the purposes of subsection (2)(a)(i)—

(i)the court by which the bankruptcy order was made or (if the order was not made by a court) the court to which a debtor may appeal against a refusal to make a bankruptcy order, or]

(ii)in Scotland, the court by which sequestration of the person's estate was awarded or, if awarded other than by the court, the court which would have jurisdiction in respect of sequestration of the person's estate,

(b)for the purposes of subsection (2)(b)(i)—

(i)the court which made the order,

(ii)in Scotland, if the order has been made other than by the court, the court to which the person may appeal against the order, or

(iii)the court to which the person may make an application for annulment of the undertaking,

(c)for the purposes of subsection (2)(c)(i)—

(i)the court which made the order, or

(ii)the court to which the person may make an application for annulment of the undertaking,

(d)for the purposes of subsection (2)(d)(i), the court to which the person would make an application under section 251M(1) of the Insolvency Act 1986 (if the person were dissatisfied as mentioned there),

(e)for the purposes of paragraphs (a)(ii), (b)(ii), (c)(ii) and (d)(ii) of subsection (2), the High Court of Northern Ireland.

(3)In England and Wales, the leave of the court shall not be given unless notice of intention to apply for it has been served on the official receiver; and it is the latter's duty, if he is of opinion that it is contrary to the public interest that the application should be granted, to attend on the hearing of the application and oppose it.

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(4)In this section "company" includes a company incorporated outside Great Britain that has an established place of business in Great Britain."

18. Also, the term "undischarged insolvent" is not defined under the Code. However, the term bankrupt under section 79 of IB code includes persons adjudged as "undischarged insolvent or a debtor who has been adjudged as bankrupt by a bankruptcy order under section 126. Additionally the IB code does not further define undischarged insolvent. A person can be declared "undischarged insolvent" only by a declaration or order by a court of competent jurisdiction.

19. It is also stated by the Respondent No.1 that separate legal existence and limited liability of directors vis-à-vis the company is a legal principal which is fundamental to Company Law. Therefore, it cannot be assumed that Mr Subberwal has become "undischarged bankrupt" only due to the fact that a company wherein he was the director has been wound up for non-payment of dues. The UK Company Director Disqualification Act, 1986 provides for lifting of corporate veil, i.e., circumstances under which a bankruptcy of a company shall act as disqualification for its directors which is provided under section 6 and 7 of the Act. It is to be mentioned that such disqualifications only apply when an application for disqualification of such director is filed by the secretary of state under Section 6 wherein a court adjudicating such application makes or passes and order in this regard under Section 6 of the act. Section 6 and 7 of the aforesaid act are as under:

"6. Duty of court to disqualify unfit directors

(1)The court shall make a disqualification order against a person in any case where, on an application under this section

a)the court is satisfied—

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(i)that the person is or has been a director of a company which has at any time become insolvent (whether while the person was a director or subsequently), or

(ii)that the person has been a director of a company which has at any time been dissolved without becoming insolvent (whether while the person was a director or subsequently), and

(b)the court is satisfied that the person's conduct as a director of that company (either taken alone or taken together with the person's conduct as a director of one or more other companies or overseas companies) makes the person unfit to be concerned in the management of a company.

(1A)In this section references to a person's conduct as a director of any company or overseas company include, where that company or overseas company has become insolvent, references to that person's conduct in relation to any matter connected with or arising out of the insolvency.

(2)For the purposes of this section, a company becomes insolvent if—

(a)the company goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up,

(b)the company enters administration,

(c)an administrative receiver of the company is appointed;

(2A)For the purposes of this section, an overseas company becomes insolvent if the company enters into insolvency proceedings of any description (including interim proceedings) in any jurisdiction.

(3)In this section and section 7(2), "the court" means—

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(a)where the company in question is being or has been wound up by the court, that court,

(b)where the company in question is being or has been wound up voluntarily, any court which has or (as the case may be) had jurisdiction to wind it up,

(c)where neither paragraph (a) nor (b) applies but an administrator or administrative receiver has at any time been appointed in respect of the company in question, any court which has jurisdiction to wind it up,

(d)where the company in question has been dissolved without becoming insolvent, a court which at the time it was dissolved had jurisdiction to wind it up.

(3A)Sections 117 and 120 of the M1Insolvency Act 1986 (jurisdiction) shall apply for the purposes of subsection (3) as if the references in the definitions of "registered office" to the presentation of the petition for winding up were references—

(a)in a case within paragraph (b) of that subsection, to the passing of the resolution for voluntary winding up,

(b)in a case within paragraph (c) of that subsection, to the appointment of the administrator or (as the case may be) administrative receiver.

(3B)Nothing in subsection (3) invalidates any proceedings by reason of their being taken in the wrong court; and proceedings—

(a)for or in connection with a disqualification order under this section, or

(b)in connection with a disqualification undertaking accepted under section 7,may be retained in the court in which the proceedings were

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commenced, although it may not be the court in which they ought to have been commenced.

(3C)In this section and section 7, "director" includes a shadow director]

(4)Under this section the minimum period of disqualification is 2 years, and the maximum period is 15 years.

7. Disqualification orders under section 6: applications and acceptance of undertakings:

(1)If it appears to the Secretary of State that it is expedient in the public interest that a disqualification order under section 6 should be made against any person, an application for the making of such an order against that person may be made—

(a)by the Secretary of State, or

(b)if the Secretary of State so directs in the case of a person who is or has been a director of a company which is being [or has been] wound up by the court in England and Wales, by the official receiver.

(2)Except with the leave of the court, an application for the making under that section of a disqualification order against any person shall not be made after the end of the period of [years] beginning with

(a)in a case where the person is or has been a director of a company which has become insolvent, the day on which the company became insolvent, or

(b)in a case where the person has been a director of a company which has been dissolved without becoming insolvent, the day on which the company was dissolved.

(2A)If it appears to the Secretary of State that the conditions mentioned in section 6(1) are satisfied as respects any person who has

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offered to give him a disqualification undertaking, he may accept the undertaking if it appears to him that it is expedient in the public interest that he should do so (instead of applying, or proceeding with an application, for a disqualification order).

(3). . . . . .

(4)The Secretary of State or the official receiver may require [any person] —

(a) to furnish him with such information with respect to [that person's or another person's conduct as a director of a company which has at any time become insolvent [or been dissolved without becoming insolvent] (whether while the person was a director or subsequently), and]

(b) to produce and permit inspection of such books, papers and other records as are considered by the Secretary of State or (as the case may be) the official receiver to be relevant to that person's or another person's conduct as such a director],as the Secretary of State or the official receiver may reasonably require for the purpose of determining whether to exercise, or of exercising, any function of his under this section.

(5)Subsections (1A) and (2) of section 6 apply for the purposes of this section as they apply for the purposes of that section."

20. It was also submitted by the Respondent No.1 that the resolution plan has been approved by 100% approval and no provision of the IBC is contravened even if the Resolution Plan value is below the liquidation value. The respondents have relied on the ***Hon'ble Supreme Court's decision in Maharashtra Seamless Ltd. V. Padmanabhan Venkatsh and Ors. (2020) 11 SCC 467*** wherein it was held that :

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"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"*

21. It was further submitted by the Respondent No.1 that total resolution amount under approved Resolution Plan by COC is Rs.27.27 crores, which is even above the fair value of the Corporate Debtor which amounts to Rs.25,03,08,305.50 crores. It is only the payout to the sole member of the CoC which is less than the liquidation value. The working of the Resolution Plan is as under :-

S1. No.	Types of debts	Resolution Amount
1.	CIRP Cost	1,00,00,000/- or as per actuals, if CIRP Cost exceeds 1 Crore.
2.	Operational Creditors (other than employee and workmen)	NIL
3.	Employees and Workmen claims	NIL
4.	Employees & Workmen Union (unclaimed)	NIL
5.	Unsecured Financial Creditors	NIL
6.	Secured Financial Creditors	16,25,00,000/- (Further provisioning of Rs.2 Lakhs towards Interest on deferred payment)
7.	Capex and Working Capital	10,00,00,000/-
Total		**27,25,00,000/-**

22. With regard to the objection of Applicant that Resolution Plan was submitted after CIRP period ended, it was submitted by the Ld. Counsel of RP i.e. Respondent No.1 that the application was filed on 02.01.2022 which was 4 days

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prior to the culmination of CIRP. A doubt was raised by the Ld. Counsel of the Applicant as to how the exemption of 128 days because of lockdown was taken without permission from the Adjudicating Authority. In reply to this, the Counsel of respondent No.1 explained that exemption of lockdown period w.e.f. 25.03.2020 as per the notification of Central Government for a further period of 128 days is taken till 31.07.2020 in view of the Ministry of Home affairs order dated 29.06.2020 whereby the lockdown in containment zone was extended upto 31.07.2020.

The relevant time period from the CIRP timeline has been produced hereunder:

Particulars	**Date**	**Reference**
Exemption of lockdown period w.e.f. 25.03.2020 as per the notification issued by the Central Government for further period of 128 days taken till 31.07.2020.	23-11-2020 (T + 270 with exclusion of 128 days)	Order dated 03.06.2020 in IA 126/2020 at Page-88-89 of IA 3/2022. Further, the end date up to 31.07.2020 has been taken in view of Ministry of Home Affairs order dated 29.06.2020 whereby the lockdown in the containment zone was extended up to 31.07.2020.

Also, the issue of exclusion falls under Section 12 of IBC, 2016 wherein the Suspended Director has no locus to raise objection qua extension/exclusion of the CIRP.

23. It is also submitted by the Respondent No.1 that the feasibility and viability of the Resolution Plan is a decision to be taken by CoC and there can be no judicial review on the commercial wisdom of CoC as deliberated upon in the case of **K. Shashidhar v. Indian Overseas Bank and others [(2019) 12 SCC 150]:**

"The commercial wisdom of CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors as fully informed about the viability of the corporate debtor and 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. The opinion on the subject-matter expressed by them after due deliberations in CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable."

In the report of the Bankruptcy Law Reforms Committee of November 2015, primacy has been given to CoC to evaluate the various possibilities and make a decision."

24. The respondent no.1 has stated that the objections of the Applicant were duly considered in the 8th CoC meeting dated 02.11.2021 but were rejected since they were not valid and maintainable. It is also alleged that Applicant raised new objections vide email dated 04.11.2021 and 05.11.2021 which were considered in the 9th CoC meeting on 22.12.2022 wherein the Applicant was present and made a categorical statement that he has nothing more to say with regard to the Resolution Plan being approved. The relevant minutes of the 9th CoC meeting are produced hereinunder:

"The Chairman further asked Mr. Manesh Agarwal to give his views/observations on the both resolution Plans. In response, Mr. Manesh Agarwal made a categorical statement that He has nothing to say on these Resolution Plans other than what has already been communicated by him through various letters/emails to the COC as well as to the Resolution Plan.

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The COC duly considered the objections/observations made by Mr. Manesh Agarwal vide his various emails as well as letters both the Resolution Plans along with reply received from the Resolution Applicants on said objections.

The COC thereafter evaluated both the Resolution Plans as per evaluation matrix wherein the Resolution Plan submitted by M/s Sirius foods Pvt. Ltd. got the highest point in accordance with the evaluation matrix"

25. The Respondents Nos. 2 & 3 submit that with respect to the objection of Applicant that Respondent 3 is ineligible to submit Resolution Plan as its director Mr. Rahoul Subberwal is an undischarged insolvent in a jurisdiction outside India which is a disqualification under Section 29A (a) (i) of the Code, 2016 and is also disqualified as per Section 29A (j) of the Code being a connected person of the Respondent No.3, the Respondents submitted that this objection contravenes one of the fundamental principle of company law i.e. company is a separate legal entity. Thus, the objection raised by the Applicant has no merit on this count alone.

26. It is also averred by the Respondent No.2 & 3 that the term "undischarged insolvent" under Section 29A (a) has specific legal connotation in terms of the insolvency laws. A person can only be adjudged an "undischarged insolvent" only in terms of the provision of the laws. To support this statement, the respondent relied upon the judgment of ***State Bank of India Vs. Bhushan Energy, CP (IB) 530(PB)/2017, wherein the Hon'ble National Company Law Tribunal (NCLT), New Delhi Principal Bench observed as under:-***

"48. *... unless a declaration is given by an Insolvency Court with regard to the insolvency no disqualification would be attracted to the Applicant."*

A similar observation is made in the case of ***In Thampanoor Ravi Vs. Charupara Ravi (1999) 8 SCC 74.***

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27. It is further submitted that the term "undischarged insolvent" is applicable only to individuals and partnership firms. This has been reiterated in ***SREI Multiple Assent Investment Trust Vs. IDBI Bank Ltd, Company Appeal (AT) (Ins) No. 593 of 2020.***

28. It is also clarified by the Respondent No.3 that it is pertinent to note that though M/s Scalar Engineering or Falcon Foods are dissolved on 17.03.2009 and 02.07.2008 respectively pursuant to winding up but winding up or insolvency cannot be equated to being an "undischarged insolvent". Further, there is no adjudication with respect to the erstwhile director of these companies i.e. Mr. Rahoul Subberwal.

29. It was further stated by the Respondent No.3 that Mr. Subberwal is not disqualified under Section 6 or 7 of the Company Directors Disqualification Act, 1986 of UK, since there exist no disqualification order against him. He is also acting as the director of M/s Spice Trail Limited which is a company incorporated in UK. He would be ineligible to act in such a capacity had he been disqualified under Section 11 of the UK Act.

30. It is also mentioned that on a clarification sought by Respondent no.2, Respondent 3 also produced a balance confirmation certificate dated 27.10.2021 from HDFC Bank, Dubai which shows that promoter of Respondent 3 holds investments in deposits and equity linked investment in excess of USD 3.5 million.

31. As explained by the Respondent No.2 & 3, it is noteworthy that the resolution amount is 27.27 Crores which is more than the liquidation value of 17.87 Crores (Approx). Further, it is to be considered that the present financial proposal is made during a Corporate Insolvency Resolution Process and therefore, the working capital of the company must be accounted as a resolution amount.

32. Even by any stretch of imagination, if this objection of Applicant is entertained that the Resolution Plan is accepted below liquidation value, it is reiterated by the Respondent No.2 & 3 that there is no provision under the Code which mandates that Resolution Plan should be above liquidation value. Reliance has

been placed on ***Maharastra Seamless Ltd. Vs. Padmanabhan Venkatsh and Ors. Civil Appeal No. 4242 of 2019 judgment dated 22.01.2020 (Supra).***

33. The Respondent No.1 has already dealt with the objection regarding the Resolution Plan not being submitted within the timeline as specified in Regulation 39 (4), yet it is reiterated by the Respondent No.2 & 3 that the timeline provided under Regulation 39 (4) is merely directory and the phrase "shall endeavour to" is used in the Regulation. Thus, even if the Plan is approved after the stipulated period, it does not invalidate the approval of the plan.

34. With regard to the viability and feasibility of the Resolution Plan, Respondent No.2 & 3 emphasised that it cannot be questioned because it was approved by 100% voting in the 9th COC meeting dated 22.12.2021. The relevant extract of the aforementioned meeting is produced herein under:

> *"Further, the COC further deliberated upon the feasibility and viability of both the Resolutions Plans and made following observations on the feasibility and viability of both the Resolution Plans.*
>
> *A. With regard to Resolution Plan submitted by M/s Sirius Foods Private Ltd, the COC inter alia observed as under qua feasibility and viability:-*
>
> *1. The Resolution Applicant namely Sirius Foods Pvt Ltd will be paying resolution debt amount of Rs. 16.75 Cr as upfront payment within 30 days approval of Resolution Plan by Hon'ble NCLT and Rs. 0.50 lakhs in 180 days with 8% simple interest on deferred payment. The CIRP cost shall be paid as per as per actuals.*
> *2. The said Resolution Applicant appears to be in the similar lines of business.*
> *3. The said Resolution Applicant is supported by cash rich Promoter who has specifically undertaken to earmark funds for infusion in the Resolution Applicant for successful implementation of the Resolution Plan.*

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4. *The terms of the Resolution Plan is aimed towards business growth and sustainability of the Corporate Debtor.*
5. *The Resolution Plan has made adequate provisions for working capital requirements which shall be infused to sustain the business of the Corporate Debtor.*
6. *The Resolution Plan submitted by the said Resolution Applicant is feasible and viable.*

…"

35. Also, as per the Respondent No.2 & 3, there can be no judicial review on the commercial wisdom of CoC as deliberated upon in the case of **Sreeram E. Techno School (P) Ltd. V. Beans and More Hospitality (P) Ltd., NCLAT, (2020) 121 taxmann.com 375**

" 5. *Next, it was contended that the 'Corporate Debtor' is not a going concern. However, a 'resolution plan' cannot be rejected on such ground if the resolution applicant can show the feasibility to run company in further. The question of viability, feasibility and other conditions as prescribed by the 'Insolvency and Bankruptcy Board of India (for short, 'the Board) of a 'Corporate Debtor' can be looked into by the 'Committee of Creditors' which has expert in the financial field. Such issue of viability, feasibility and other conditions of the 'Corporate Debtor' cannot be looked into by the Adjudicating Authority or by this Appellate Tribunal. The 'Committee of Creditors' having gone through the financial aspects, including the viability, feasibility and other conditions of the 'Resolution Plan' and having approved the plan with 74.19% of voting share, this Appellate Tribunal is not inclined to decide such issue.***"**

36. With regard to the contention of the Applicant that its objections have not been considered, it is stated by the Respondent No.2 that the Applicant's objection were duly received and rejected after due consideration of contesting pleas in the

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8th CoC meeting dated 02nd November, 2021. The relevant minutes of the meeting have been produced hereunder:

> *"Thereafter, Chairman informed the sole CoC member that certain objections were raised by Mr. Manesh Agarwal, one of the Promoters cum Suspended Director of the Corporate Debtor, on the Resolution Plans of Sirius Foods Private Limited & consortium of Prabhat Warehouse and Cold Storage Limited and Mr. Ajay Gupta vide email dated 18.10.2021 and 24.10.2021 respectively and the said emails were immediately forwarded to the respective Prospective Resolution Applicants for their comments and the sole COC member for its information and the said emails were also presented before the COC member for their further comments.*
>
> *Now, the COC were asked to discuss and deliberate on the Objections raised by the Suspended Director and reply thereof received in this regard by the Respective Resolution Applicants. The Chairman, the sole COC member and legal advisor to COC member considered and deliberate on each objection and observed that none of the objections are valid and maintainable and all these objections are baseless and have no merit."*

Further, despite being present in the 9th COC meeting, the Applicant chose not to raise any objection. The relevant Minutes of the Meeting have been already reproduced above.

37. We have considered the submissions made before us by rival parties and the arguments put up by their Ld. Counsels and also perused the contents of the application as well as replies filed by the respondents, which are also summarised in foregoing paragraphs. On perusal and examination of the rival submissions as described herein above, we are unable to accept this application which deserves to be dismissed. The contention of the Applicant that Mr. Rahoul Subberwal, who is the Director of Successful Resolution Applicant is ineligible to submit Resolution Plan since he is an undischarged insolvent is unfounded since the term "undischarged insolvent" is not defined under the Code. However, the term

bankrupt under section 79 of IB Code includes persons adjudged as "undischarged insolvent or a debtor who has been adjudged as bankrupt by a bankruptcy order under section 126. Thus, unless declared by a court, a person cannot be adjudged as an undischarged insolvent.

38. Additionally, as Mr. Rahul Subberwal being resident of United Kingdom (UK), is covered by the specific legislation for his determination to be an "undischarged insolvent" under the UK Laws, his status has also been examined under UK Laws. In this regard, reference has been made to Section 6, Section 7 and section 11 of the Company Directors Disqualification Act, 1986 of UK, which specifically provides that a person cannot act as a director of a company if the said person is an undischarged bankrupt, doing so is an offence under the said act. These provisions are already reproduced in paragraph 17 and 20 of the order while discussing the reply of the respondents. From the details produced before us, it is evident that Mr. Subberwal has not been disqualified under Sections 6 or 7 of the UK's Company Directors Disqualification Act of 1986 because there is no order for disqualification against him under Section 11 of the UK Act. Additionally, he currently serves as a director for M/s Spice Trail Limited, a UK-based company. If he had been disqualified under of the UK Act being undischarged insolvent, he would not be eligible to serve in this capacity and doing so would have been an offence u/s 11 of the UK Act. No such order under UK Act, has been produced before US disqualifying Mr. Subberwal to work as Director of a Company.

39. Since Mr. Subberwal suffers from no disqualification, his connection to the Successful Resolution Applicant also, doesn't bar him under Section 29A (j). It is to be noted that the two companies wherein Mr. Subberwal was the Director, namely, M/s Scalar Engineering and Falcon Foods were dissolved on 17.03.2009 and 02.07.2008 respectively pursuant to winding up but winding up or insolvency of a company cannot be equated to its director being an "undischarged insolvent". Also, at that time, Mr. Subberwal wasn't "connected" or had any interest in the Successful Resolution Applicant. Thus, the dispute

relating to the eligibility of the Successful Resolution Applicant under Section 29A is not tenable and hence, rejected.

40. With regard to the controversy that the resolution plan as approved by the COC is below liquidation value, has not been found to be factually correct. Average fair market value and liquidation value of the corporate debtor i.e. M/s BB foods Private Limited as determined in valuation made during CIR process, is given in a table below

Average Fair Market Value	Rs. 250,308,305.50
Liquidation value	Rs. 178,720,423.00

As against the above valuation, the total resolution amount under approved Resolution Plan by COC is Rs. 27.27 crore, which is even above the average fair marked value of the Corporate Debtor. It is only the pay out to the sole member of the COC which is less than the liquidation value as discussed in para 22 of this order.

41. Even by taking the payout amount of resolution plan only, which is below the liquidation value, we find that there is no provision in IBC which prohibits acceptance of a resolution plan below liquidation value, as already held in the case of ***Maharashtra Seamless Ltd. V. Padmanabhan Venkatsh and Ors (supra)***. For a ready reference, the relevant part of this decision is produced hereunder:-

> "26. *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 Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)*

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Regulations, 2016. This point has been dealt with in the case of Essar Steel (supra). We have quoted above the relevant passages from this judgment.

27. It appears to us that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Once, a resolution plan is approved by the CoC, the statutory mandate on the Adjudicating Authority under Section 31(1) of the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof. We, per se, do not find any breach of the said provisions in the order of the Adjudicating Authority in approving the resolution plan.

28. The Appellate Authority has, in our opinion, proceeded on equitable perception rather than commercial wisdom. On the face of it, release of assets at a value 20% below its liquidation value arrived at by the valuers seems inequitable. Here, we feel the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis. Such is the scheme of the Code. Section 31(1) of the Code lays down in clear terms that for final approval of a resolution plan, the Adjudicating Authority has to be satisfied that the requirement of sub-section (2) of Section 30 of the Code has been complied with. The proviso to Section 31(1) of the Code stipulates the other point on which an Adjudicating Authority has to be satisfied. That factor is that the resolution plan has provisions for its implementation. The scope of interference by the Adjudicating Authority in limited judicial review has been laid down in the case of Essar Steel (supra), the relevant passage (para 54) of which we have reproduced in earlier part of this judgment. The case of MSL in their appeal is that they want to run the company and infuse more funds. In such circumstances, we do not think the Appellate

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Authority ought to have interfered with the order of the Adjudicating Authority in directing the successful Resolution Applicant to enhance their fund inflow upfront."

42. The relevant extract of the decision of the Honorable Supreme Court in the case of **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta (Civil Appeal Nos. 8766-8767 of 2019) dt. 15.11.2019 SCC Online SC 1478** as referred by the Honorable Supreme Court in its decision in case of ***Maharashtra Seamless Ltd. V. Padmanabhan Venkatsh and Ors. (2020) 11 SCC 467*** , laying down the scope for examination by the adjudicating authority while taking decision on approving or otherwise, a resolution plan put up before it duly approved by a CoC is reproduced as under:

"53. However, as has been correctly argued on behalf of the operational creditors, the preamble of the Code does speak of maximization of the value of assets of corporate debtors and the balancing of the interests of all stakeholders. There is no doubt that a key objective of the Code is to ensure that the corporate debtor keeps operating as a going concern during the insolvency resolution process and must therefore make past and present payments to various operational creditors without which such operation as a going concern would become impossible. Sections 5(26), 14(2), 20(1), 20(2)(d) and (e) of the Code read with Regulations 37 and 38 of the 2016 Regulations all speak of the corporate debtor running as a going concern during the insolvency resolution process. Workmen need to be paid, electricity dues need to be paid, purchase of raw materials need to be made, etc. This is in fact reflected in this court's judgment in Swiss Ribbons (supra) as follows:- "26. The Preamble of the Code states as follows: "An Act to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximization of value of assets of such persons, to

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promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto." 27. As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganization and insolvency resolution of corporate debtors. Unless such reorganization is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximization of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme— workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximize their investment. Timely resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development of credit markets. Since more investment can be made with funds that have come back into the economy, business then eases up, which leads, overall, to higher economic growth and development of the Indian economy. What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator

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can sell the business of the corporate debtor as a going concern. (See Arcelor Mittal [Arcelor Mittal (India) (P) Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1] at para 83, fn 3).

54. This is the reason why Regulation 38(1A) speaks of a resolution plan including a statement as to how it has dealt with the interests of all stakeholders, including operational creditors of the corporate debtor. Regulation 38(1) also states that the amount due to operational creditors under a resolution plan shall be given priority in payment over financial creditors. If nothing is to be paid to operational creditors, the minimum, being liquidation value - which in most cases would amount to nil after secured creditors have been paid - would certainly not balance the interest of all stakeholders or maximize the value of assets of a corporate debtor if it becomes impossible to continue running its business as a going concern. Thus, it is clear that when the Committee of Creditors exercises its commercial wisdom to arrive at a business decision to revive the corporate debtor, it must necessarily take into account these key features of the Code before it arrives at a commercial decision to pay off the dues of financial and operational creditors. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or subclass of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximizing 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***

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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 maximize 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. 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. "

(emphasis supplied)

43. Keeping in view the decisions of the Honourable Supreme Court and the facts of the case as discussed in Paras 40, 41 and 42 above, we have examined the Resolution Plan submitted before us in IA No.03/2022 of the same CP as per the provisions of section 31(1) and found that it meets all the requirements as referred to in sub section (2) of Section 30 as it is discussed in detail in the order dated 29.03.2022 passed by us in respect of IA No.03/2022.Therefore, this objection of the applicant regarding approved resolution plan being below the liquidation value, is rejected.

44. The next objection is regarding the Resolution Plan not being approved by COC within time line specified in Regulation 39(4). On examination, we found that the Resolution Plan has been submitted on 02.01.2022 as against the timeline of the CIR Process completing on 06.01.2022, which is well within the timeframe of the CIR Process. In the IA, the only objection raised by applicant is that as per Regulation 39(4), the Respondent No.1 was bound to submit the approved

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resolution plan to the Adjudicating Authority at least 15 days before the maximum period for completion of the CIR Process but the Respondent No.1 has submitted the approved resolution plan after the timeline specified in the Regulation 39(4). For a ready reference, Regulation 39(4) of the IBBI (Resolution Process For Corporate Persons) Regulation, 2016 is reproduced as under:

> *"The resolution professional shall endeavour to submit the resolution plan approved by the committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under section 12, along with a compliance certificate in 68[Form H of the Schedule and the evidence of receipt of performance security required under sub-regulation (4A) of regulation 36B."*

It is noteworthy that the said Regulation 39(4) requires the resolution professional to submit Resolution Plan using the phrase " shall endeavour to submit" and use of such phrase clearly indicates that this regulation is directory in nature and hence, a resolution plan submitted before the expiration of the time limit of the CIR Process, can be every well considered for the approval as being within the time line of CIR Process as envisaged in provisions of Section 30 and 31 of the IBC and hence, his objection is also rejected.

45. Despite the applicant agreeing in the IA that the CIR process culminated on 06.01.2022 and only objected to submission of resolution plan not being within the time line (at least 15 days before maximum period for completion of CIRP) specified in the Regulation 39(4) of IBBI (Resolution Process For Corporate Persons) Regulation, 2016, the Ld. Counsel of the applicant while arguing the case before us raised another issue that the resolution plan was approved by the COC after expiry of the stipulated period for Corporate Insolvency Resolution Process under Section 12 of IBC, 2016. As pointed by the Ld. Counsel, the revised resolution plan submitted by M/S Sirius Foods Private Ltd. was approved by COC/Sole Financial Creditor in the 9th COC meeting held on 22.12.2021 i.e.

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after expiry of 794 days since the date of admission of application u/s 7of IBC, 2016 on 22.10.2019. Earlier, vide order dated 20.09.2021 by this Tribunal, 409 days were ordered to be excluded to take care of the time spent in litigation before NCLAT and Hon'ble Supreme Court, and one extension of 90 days vide order dated 03.06.2020 of this Tribunal, was allowed in CIRP beyond 180 days as prescribed u/s 12(1). Thus, the Ld. Counsel tried to show that the time taken by COC to approve resolution plan on 22.12.2021, was 385 days, that comes to 115 days more than the maximum permissible time limit of 270 days in terms of section 12 after excluding 409 days spent in litigation before NCLAT and Hon'ble Supreme Court. In this connection, the Ld. Counsel argued that "as per the first proviso to Section 12, extension under said section can be granted only once. Second proviso to Section 12 provides that the entire CIRP has to be mandatorily completed within a period of 330 days from the insolvency commencement date, but such period shall not only be inclusive of extension granted under Section 12 but also time taken in legal proceedings in relation to such process. Where the grant of exclusive of time taken in legal proceedings is held to be discretionary, completion of the entire process of resolution within a period of 270 days (180+90 days) is mandatory, after exclusion of period spent in legal proceedings."

In order to consider the above objection of Ld. Counsel for the applicant, we examined the chronology of events and orders passed since the admission of application u/s 7 vide order dated 20.09.2019, as produced before us by the Counsel of Respondent No.1. The same is reproduced as under:-

Particulars	Date	Reference
Date of initiation of CIRP	22.10.2019	CIRP commencement order
Date of expiry of 180 days	19.04.2020 (T + 180)	-
Extension of further period of 90 days beyond 180 days of CIRP	18-07-2020 (T + 270 without any exclusion)	Order dated 03.06.2020 in IA 126/2020

Exemption of lockdown period w.e.f. 25.03.2020 as per the notification issued by the Central Government for further period of 128 days taken till 31.07.2020	23-11-2020 (T + 270 with exclusion of 128 days)	Order dated 03.06.2020 in IA 126/2020 As per the Ministry of Home Affairs order dated 29.06.2020, the lockdown in the containment zone was extended up to 31.07.2020.
Exclusion of 409 days (102 days with regard to stay in appeal before the Hon'ble NCLAT from **18.11.2019 TO 28.02.2020 (102 NOS OF DAYS** and 307 days with regard to status quo granted by Hon'ble Supreme Court from **14.10.2020 TO 17.08.2021.**	06-01-2022 (T + 270 with exclusion of 537 (128 + 409 days)	Order dated 20.09.2021 in IA No.277/2021
Resolution Plan approved by the COC in its 9th COC Meeting.	22.12.2021	Resolution Plan approved with a majority of 100%
Application under Section 30 of the IBC filed by the Resolution Professional for approval of the Resolution Plan.	02.01.2022	The application was filed 4 days prior to the last date of the CIRP.

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46. During further argument, the Ld. Counsel for the Applicant vehemently questioned the exclusion of 128 days on account of Covid lockdown without there being any specific order of the Adjudicating Authority in this regard. In this regard, he also made reference to Regulation 40C which provides for the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak being not counted for the purpose of the time line only when any activity that could not be completed due to such lockdown. However, as per him, all the activities of CIRP in respect of Corporate Debtor continued even during the Covid period. Therefore, he contended that no exclusion for the days covering the lockdown period of Covid 19 is permissible in this case.

47. In order to ascertain the veracity of exclusion of 128 days due to Covid Lockdown period, whether allowed for exclusion in CIRP period or not, we examined the earlier orders passed by this Tribunal in respect of granting of extension of period and exclusion of period lost in litigation. The first order dated 03.06.2020 was passed granting 90 days extension of CIRP which is not in dispute. The dispute is only with regard to order dated 20.09.2021 in I.A. No. 277/2021, whereby exclusion of 128 days alongwith 409 days are allowed or not. To verify this fact, we perused both the orders dated 03.06.2020 and order dated 20.09.2021 of this Tribunal. Both orders are reproduced as under

<u>"Order dated 03.06.2020 in IA No.126/2020 in CP No. (IB)349/ALD/2018</u>

> "*Heard Ms. Babita Jain, Advocate for the Applicant/RP through Video Conferencing.*
>
> *The present application being IA No.126/2020 in CP No.(IB) 349/ALD/2018 has been filed by the RP under the provisions of Section 12(2) of the IBC, 2016 read with regulation 40 of Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for extension of CIRP period for further period of 90 days beyond 180 days.*
>
> *It is argued by the Ld. Counsel for the Applicant/RP that the present Company Petition has been filed by the Financial Creditor (Applicant/Petitioner) U/s 7 of the IBC to initiate CIRP against M/s B.B. Food Pvt. Ltd. (Corporate Debtor). It is contended that pursuant to the order of this Tribunal dated 22.10.2019, the IRP took immediate*

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steps to cause the public announcement of the Corporate Insolvency Resolution Process and started performing all such duties in terms of Section 15, 17 & 18 of IBC. It is further contended that the IRP also issued notice for convening the First CoC meeting on 22.11.2019, but on that date an email was received by one Mr. Manesh Agarwal stating that the Hon'ble NCLAT had passed an interim order on 18.11.2019 in Company Appeal (AT) (Insolvency) No.1182 of 2019 in the matter of ***Manesh Agarwal v/s Bank of India & Others****, in pursuant to which, the CoC meeting was deferred. It is further contended that the Hon'ble NCLAT passed a final order on 22.02.2020 disposing off of the aforesaid Company Appeal, which order came in the knowledge of the applicant on 04.03.2020.*

It is further contended that in the First CoC meeting, the IRP informed the CoC about the legal provisions of the IBC in respect of the liquidation of the Corporate Debtor after the period of 180 days of CIRP, which will be complete on 19.04.2020 and therefore permissions be sought from this Hon'ble Court, pursuant to the provisions of Section 12(2) of the IBC read with regulation 40 of Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, keeping in view the spirit of the IBC, which stipulates for revival of the Corporate Debtor.

The CoC considered the matter and passed the resolution by 100% voting strength in favour of moving present application and thus the present application is being moved. It is further contended that the First Meeting of CoC was held on 17.03.2020, thereafter, the lockdown was declared on account of Pandemic Covid-19 and therefore, the application could not be moved, even thereafter, it is now being moved. It is further contended that the lockdown period should also be excluded and the application be allowed.

Considering the submission made by the Ld. Counsel for the Applicant, this Court is of the view that the cause shown is sufficient, accordingly, the application is hereby allowed. The extension of further period of 90 days beyond 180 days of CIRP is hereby extended along with exemption of lockdown period w.e.f. 25.03.2020 as per the notification issued by the Central Government.

Accordingly, the present application (IA No.126/2020) stands disposed off.

Sd/-

JUSTICE RAJESH DAYAL KHARE

(MEMBER JUDICIAL)"

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"Order dated 20.09.2021 in IA No.277/2021

Application filed by RP seeking exclusion of 409 days for the reason that there was order of stay on CIRP effective for 409 days, which was passed by Hon'ble NCLAT and thereafter by Hon'ble Apex Court.

Table showing the number of days for which stay on CIRP was effectively operative is annexed with the application.

Ld. PCS Sh. Nazim Khan stated that only the period during which the stay was operative on CIRP is sought to be excluded as in view of the stay by the higher courts, considering that the CIRP was not operative, hence, this application.

Considering the submission made and documents on record, we allow the exclusion of 409 days from CIRP.

Application is allowed and disposed of in terms of above orders.

Sd/- Sd/-

SUMITA PURKAYASTHA **DR. DEEPTI MUKESH**

MEMBER (TECHNICAL) **MEMBER (JUDICIAL)"**

48. As per the order dated 03.06.2020, it is very clearly ordered that the extension of further period of 90 days beyond 180 days of CIRP is granted alongwith exemption of lockdown period w.e.f. 25.03.2020 as per the notification issued by the Central Government. In order dated 03.06.2020, it is very clearly mentioned that the first meeting of the COC was held on 17.03.2020 and thereafter, the lockdown was declared on account of Pandemic Covid-19 and therefore, the application for extension of time could not even be moved as the RP, (Respondent No.1 in this IA) was not able to complete the work even for seeking extension and hence, prayer in IA No.126/2020 was made for exclusion of lockdown period and the same was duly allowed in the order keeping in view the notification issued by the Central Government.

Exclusion of Covid period of 128 days has been mentioned in the table provided at page no. 13 of the IA No.277/2021. The same is reproduced as under:

"Exemption of lockdown period w.e.f. 25.03.2020 as per the notification issued by the Central Government for further period of 128 days beyond 180 days of CIRP (From 25.03.2020 to 31.07.2020) ***(Please refer to Order dated 03.06.2020)"***

-Sd- -Sd-

Therefore, it is clear that exclusion of 128 days is covered by the order dated 03.06.2020. It is further confirmed in order dated 20.09.2021 by allowing IA No.277/2021 in which above averment was made. These orders have been found to be in the spirit of Regulation 40C also.

49. Keeping in view the above two orders passed by this Tribunal, the fact of the CIRP period to end on 06.01.2022 is further confirmed in the order dated 13.12.2021, passed by this Tribunal. This order is also reproduced as under:-

"Order dated 13.12.2021 in IA No.367/2021.

Ld. Counsel for the applicant present. Ld. Counsel for the CoC present. Ld. Counsel for the RP present. Ld. Senior Counsel for the other Resolution Applicant whose plan is also being considered by the CoC present.

This is an application filed by one of the Resolution Applicant seeking to amend the final Resolution Plan dated 22.10.2021 submitted by the applicant to make the following amendments:-

(a) To uncaps the CIRP costs on condition stated therein;

(b) To reduce term of the plan from 180 days to 90 days

At this point of time, we are conscious of the fact that the CIPR period will come to end on 06.01.2022 and a decision on the resolution plans will have to be taken first by the CoC and, thereafter by this Adjudicating Authority.

Therefore, the ends of justice will be met if we direct the applicant herein to place the affidavits at Page Nos. 290 to 298 alongwith the covering letter addressed to the sole member of the CoC for consideration. Since we do not wish to disturb level playing field, the other resolution applicants whose plans are also being considering will also be permitted to place any modification in their submitted resolution plan before the CoC for its consideration. Such modifications shall be communicated to the CoC, no later than 48 hours from now.

Accordingly, IA No.367/2021 is disposed of.

Sd/- Sd/-

Virendra Kumar Gupta **Rajasekhar V.K.**

Member (Technical) **Member (Judicial)"**

-Sd- -Sd-

50. After considering the above orders of this Tribunal, it is very clear that CIRP period was to culminate on 06.01.2022 as fairly admitted by the Applicant also in para no.4.13 of the IA No.30/2022 but just for litigating the matter and delaying the approval of resolution plan, it appears that such frivolous objection has been raised before us and it deserve to be summarily rejected.

51. The viability and feasibility of the Resolution Plan cannot be disputed, as the decision of the 9th COC meeting also reflects that the Resolution Plan has received unanimous approval through a 100% vote during the 9th COC meeting on December 22, 2021. Also as inferred in the cases of **K. Shashidhar v. Indian Overseas Bank and others** ***(supra)*** and **Sreeram E. Techno School (P) Ltd. V. Beans and More Hospitality (P) Ltd.,** ***(supra)***, the commercial wisdom of the COC cannot be disregarded.

52. The complaint of the Applicant of not being heard in the various COC meetings would have no merit as we have perused through the minutes of the 8th meeting dated 02.11.2022 and 9th CoC meeting on 22.12.2022 respectively and found that the Applicant's objections were heard and deliberated upon. Also, during the 9th COC meeting, the applicant was present and explicitly stated that he had nothing further to add regarding the approval of the Resolution Plan. The COC after hearing the objections, deemed fit to reject and we are unable to see any reasons to interfere with the decision of the CoC.

53. Consequently, IA No.30/2022 in CP (IB) No.349/ALD/2018 shall stand dismissed.

54. The Registry is directed to communicate a copy of this order immediately to the Counsels on record for the various parties by email.

55. Certified copy of the order be issued if applied for, upon compliance with all the requisite formalities.

-Sd-

Ashish Verma
Member (Technical)

-Sd-

Praveen Gupta
Member (Judicial)

Priya Agarwal
(Stenographer)