

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD  
Court 2**

IA/130(AHM)2021 in CP(IB) 197/NCLT/AHM/2018

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL  
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL  
COMPANY LAW TRIBUNAL ON 26.04.2021**

Name of the Company: Vikram Sanghvi.  
V/s  
Bank of Baroda & Ors.

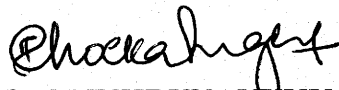
60(5) of the Insolvency and Bankruptcy Code r.w Rule 11 of NCLT  
rules,2016.

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

**ORDER**

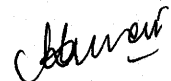
Mr. Raheel Patel, Advocate appeared on behalf of Applicant.

The order is pronounced in the open court vide separate sheet.



**CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL**

Dated this the 26th day of April, 2021



**MANORAMA KUMARI  
MEMBER JUDICIAL**

**BEFORE THE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH  
AHMEDABAD**

**I.A. No. 130 of 2021  
&  
I.A. No. 143 of 2021  
In  
CP(IB) No. 197 of 2018**

I.A. No. 130 of 2021

**In the matter of:**

Vikram Sanghvi ... Applicant

**Versus**

Bank of Baroda ... Respondent

I.A. No. 143 of 2021

**In the matter of:**

Mr. Parthiv Parikh  
Resolution Professional of  
Sanghvi Forging and  
Engineering Limited ... Applicant

**Versus**

Jayantilal Babulal Sanghavi & Ors. ... Respondent

**Order delivered on 26<sup>th</sup> April, 2021**

**Coram:**

**Hon'ble Ms. Manorama Kumari, Member (J)**

*Shachin*

*Manorama*

**Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

**Appearance:**

Applicant: Mr. Saurabh Soparkar, Senior Advocate along with Mr. Tarak Damani and Mr. Rahil Patel, Advocates.

Respondent: Mr. Mihir Thakore, Senior Advocate along with Mr. Salil Thakore for Successful Resolution Applicant. Mr. Navin Pahwa, Senior Advocate along Mr. Jaimin Dave, Advocate for RP and Mr. Rashesh Sanjanwala, Senior Advocate along with Mr. Mahav Kanoria and Mr. Parth Shah, Advocates for CoC.

Applicant: Mr. Navin Pahwa, Senior Advocate along Mr. Jaimin Dave, Advocate for RP.

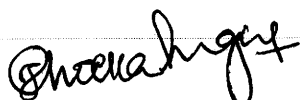
Respondent: Mr. Saurabh Soparkar, Senior Advocate along with Mr. Tarak Damani and Mr. Rahil Patel, Advocates. Mr. Mihir Thakore, Senior Advocate along with Mr. Salil Thakore for Successful Resolution Applicant. and Mr. Rashesh Sanjanwala, Senior Advocate along with Mr. Mahav Kanoria and Mr. Parth Shah, Advocates for CoC.

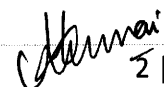
**COMMON ORDER**

**[Per se: Ms. Manorama Kumari, Member (J)]**

I.A. No. 143 of 2021

1. The instant application is filed by the Applicant, the Resolution Professional of Sanghvi Forging and Engineering Limited (hereinafter referred to as "Corporate Debtor") under Section 30(6) and 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IB Code") with a prayer for approval of



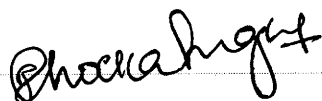
  
2 | Page

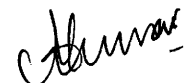
Resolution Plan along with addendum dated 18.01.2021 and 29.01.2021.

2. The facts of the case is/are herein under:

2.1 CP(IB) No. 197 of 2018 was filed by Financial Creditor viz. Bank of Baroda, under section 7 of the IB Code, seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") against the Corporate Debtor which was admitted on 30.08.2019 by this Adjudicating Authority and Mr. Chandra Prakash Jain was appointed as Interim Resolution Professional (hereinafter referred as "IRP").

2.2 That on 20.09.2019, Hon'ble NCLAT granted stay over the CIRP for the purpose of brevity, due to which the entire process came to a standstill. Thereafter, vide order dated 02.12.2019 Hon'ble NCLAT vacated the stay from 04.01.2020, if suspended management fails to act upon the one-time settlement proposal by 31.12.2019. Thereafter, IRP made fresh paper publication on 13.01.2020 as earlier paper publication was made 5 months ago.





2.3 That the Committee of Creditors (hereinafter referred as "CoC") was formed and in its 3<sup>rd</sup> Meeting held on 17.02.2020, CoC decided for continuation of IRP as RP (Resolution Professional). The period from 20.09.2019 to 04.01.2020 was excluded by this Adjudicating Authority vide its order dated 13.03.2020. Thereafter, there was nationwide lockdown from 25.03.2020 due to spread to Covid-19, which was extended time to time by the Government. It is pertinent to mention herein that due the nationwide lockdown, all the activities across the country including that of the Applicant's, CoC as well as erstwhile IRP came to a complete halt from 25.03.2020 till 08.06.2020.

2.4 That one application came to be filed by the Bank of Baroda for change of the RP and appointing Applicant as the new RP, which was allowed by this Adjudicating Authority vide its order dated 26.05.2020. Further, Applicant submits that the registered office and both the manufacturing plants of the Corporate Debtor are located in Waghodia, Vadodara which was in containment zone.

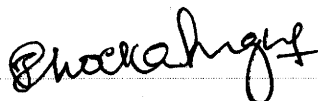


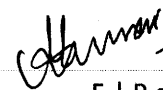


2.5 That in response of Form-G, Applicant received five Expression of Interest (hereinafter referred as "EoI") and last date for submission of Resolution Plan was fixed as 17.11.2020. Since, evaluation of the Resolution Plans, so submitted by the prospective Resolution Applicant, might take some time and CIRP was ending on 23.11.2020, CoC resolved for further extension of time seeking exclusion for the lockdown period in Waghodia, Vadodara till 31.08.2020. Accordingly, Applicant filed an application seeking exclusion of period of 60 days which was allowed by this Adjudicating Authority vide its order dated 01.12.2020. Thereafter, the time for submitting Resolution Plan was also extended to 15.12.2020.

2.6 That in the 10<sup>th</sup> CoC meeting held on 29.12.2020, Applicant apprised the CoC that four Resolution Plans have been received viz:

- i. Bharat Forge Limited
- ii. Rimjhim Ispat Limited
- iii. Shree Yash Stainless Steel Pvt. Limited
- iv. Rajputana Stainless Limited





All the above Resolution Plans were put before the CoC for evaluation and examination and consequently, the prospective Resolution Applicants were required to submit addendums by the next CoC meeting. Accordingly, addendums were received from the all the prospective Resolution Applications, except from M/s. Rimjhim Ispat Limited as the Resolution Plan submitted by it shall be treated as final. In pursuance to the further queries by CoC, Resolution Applicants were required to submit second addendum by 28.01.2021.

2.7 That in the 12<sup>th</sup> CoC meeting held on 30.01.2021, CoC discussed and deliberated on the second addendums submitted by the Resolution Applicants and then subsequently, in the 13<sup>th</sup> CoC meeting Resolution Plans were put for e-voting and the plan submitted by Bharat Forge Limited was approved by the CoC with 100% majority voting share.

2.8 The Applicant filed Compliance Certificate in 'Form H' as reflected at page no. 259-265 of the application. Applicant has also submitted the Liquidation values and fair values

*Chakrabarti*

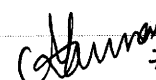
*Chakrabarti*

from two valuers as reflected from page no. 259 of the application

3. Heard the parties, the present application has been filed for approval of the Resolution Plan under Section 30(6) of the IB Code (as amended upto date) submitted by RP in respect of the Corporate Debtor. The Applicant/ the Resolution Professional, deliberating the sequence of events right from calling of EoI up to approval of the Resolution Plan by the CoC in its 13<sup>th</sup> meeting submitted the Resolution Plan duly approved by the CoC by 100% voting share in favour of the Resolution Plan, so submitted by Resolution Applicant as the Resolution Plan complies with the requirements as envisaged under Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 as well as Section 30 of the Code, and sought for approval of the Resolution Plan by this Adjudicating Authority.

4. On perusal of the records, it is found that the Resolution Applicant has taken account the interest of all stakeholders of the Corporate



 7 | Page

Debtor to the extent possible, as envisaged in this Resolution Plan for insolvency resolution of "Sanghvi Forging and Engineering Limited".

5. The tabular summary of the payments to the creditors contemplated to be made under the approved Resolution Plan is as under:

<b>Sr. No.</b>	<b>Name of the Stake Holders</b>	<b>Payment</b>
1.	IRP costs	NIL, as it would be fully paid out of the cash flows and revenues of the Corporate Debtor and since no payments are due as per the information provided by the Resolution Professional. Any IRP Costs that are not able to be paid out of the

*Shoekahgt*

		revenues and cash and cash equivalent lying to the account of the Corporate Debtor up to the date of approval of the Plan by NCLT due to insufficiency of cash balances in the Corporate Debtor, shall be paid by the resolution applicant.
2.	Workmen and Employee Dues	100% subject to a cap of INR 6,54,511 (i.e. the verified amounts under the list of creditors provided by the Resolution Professional)
3.	Secured Financial Creditors:  1. State bank of India -	INR 75 crores (as more particularly mentioned in paragraphs 4.1.1 of Part II Financial

*Phoenahgze*

	INR 46.72 cr 2. Bank of Baroda- INR 28.28 cr  Total 75.00 cr	Proposal of the Resolution Applicant)
4.	Dissenting Secured Financial Creditors	As per applicable law and out of the INR 75 crores payable to the Secured Financial Creditors
5.	Unsecured Financial Creditors	NIL
6.	Dissenting Unsecured Creditors	NIL
7.	Governmental Authorities	NIL
8.	Other Operational Creditors	INR 2 Crore
9.	Shareholders	NIL

Shankar

Chakraborty

6. The implementation schedule proposed by the Resolution Applicant is reproduced herein below:

<b>S. No.</b>	<b>Action</b>	<b>Timeline</b>
1.	Establishment/ acquisition and capitalisation of Acquisition SPV	NCLT Order date ("T") + 30
2.	Delisting of Corporate Debtor	T + 45
3.	Opting of Concessional Tax Regime	T + 30
4.	Increase in authorised share capital of Corporate Debtor	T + 47
5.	Initial Primary Infusion into Corporate Debtor	T + 48
6.	Selective reduction of capital of Corporate Debtor	T + 50
7.	Infusion of funds into Corporate Debtor	T + 57
8.	Priority Payments	T + 60
9.	Debt Acquisition	T + 60

*Shreea Singh*

*Shreea Singh* 11 | Page

7. On perusal of the record, it is found that the Resolution Applicant has also filed Form H under regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 at page no. 259 of the application, which is self explanatory.
8. In view of above Section 30(2) and 30(4) is applicable in the instant case. For sake of the convenience the amended provision is reproduced herein below-

**“30. Submission of Resolution Plan**

*(1) A resolution applicant may submit a resolution plan [along with an affidavit stating that he is eligible under section 29A] to the resolution professional prepared on the basis of the information memorandum.*

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

*(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the [payment] of other debts of the corporate debtor;*

*Shankar Singh*

*Shankar Singh*  
-12 | Page

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

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

*(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,*

*whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.*

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

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

*Shoekahguz*

*Chatterman*, 13 | Page

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

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

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

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

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

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

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

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

*Shankar Singh*

*Shankar Singh* 14 | Page

**FINDINGS:**

9. Looking to the entire facts of the case, it is found that the CoC has approved the plan with 100% voting share in favour of the approval of the plan filed by Bharat Forge Limited. Moreso, the Resolution Applicant fulfils the mandatory contents of the Resolution Plan as provided under Regulation 38 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. Regulation 38 is reproduced herein under-

***“38. Mandatory contents of the resolution plan.***

*(1) A resolution plan shall identify specific sources of funds that will be used to pay the –*

*(a) insolvency resolution process costs and provide that the insolvency resolution process costs will be paid in priority to any other creditor;*

*(b) liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the Adjudicating Authority; and*

*(c) liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are*

*Shoekah*

*Channer*

*made by the financial creditors who voted in favour of the resolution plan.*

*["(1A) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor."]*

*(2) A resolution plan shall provide:*

*(a) the term of the plan and its implementation schedule;*

*(b) the management and control of the business of the corporate debtor during its term; and*

*(c) adequate means for supervising its implementation."*

10. Further, from the object of the IBC, it is amply clear that the **"Resolution is Rule and the Liquidation is an Exception"**.

*Liquidation brings the life of a corporate to an end. It destroys organizational capital and renders resources idle till reallocation to alternate uses. Further, it is inequitable as it considers the claims of a set of stakeholders only, if there is any surplus after satisfying the claims of a prior set of stakeholders fully. The IB Code', therefore, does not allow liquidation of a corporate debtor' directly. It allows liquidation only on failure of corporate insolvency*

*Chackragat*

resolution process'. It rather facilitates and encourages resolution in several ways.

The said objective of the Resolution Plan is affirmed in the decision in the matter of **K. Sashidhar Vs. Indian Overseas Bank & Ors.**

The Supreme Court has observed that National Company Law Tribunal has no jurisdiction and authority to analyze or evaluate the commercial decision of the Committee of Creditors (CoC) to enquire into the justness of the rejection of the Resolution Plan by the dissenting Financial Creditors.

Keeping in view such object behind the enactment of the Code, intention of the Legislature, that the priority is to be given to the resolution than liquidation in the larger interests of the public, workmen, stakeholders and the other employees of the corporate debtors in the interest of justice and in order to achieve the object of the Code and liquidation of a company can be only as a last resort, wherein, all efforts for brining Resolution Plan were failed or it cannot be found workable in the larger public interest. Hence, now the approval of Resolution Plan by this Adjudicating Authority is rule as per the apex court's decision in the matter of **K. Sashidhar Vs. Indian Overseas Bank & Ors** as discussed above.

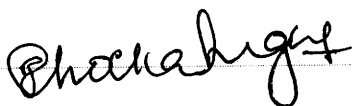




The Hon'ble Supreme Court further held that "the legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority".

In the recent judgment of **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors** delivered by the Hon'ble Supreme Court, it was strongly opined by the Hon'ble Apex Court that the Adjudicating Authority can exercise only a limited judicial review in respect of any COC decision. NCLT/NCLAT does not have jurisdiction under the provisions of the Code to interfere in the merits of a business decision taken by the majority of COC.

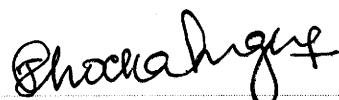
The Hon'ble Supreme Court held that the ultimate discretion of what to pay and how much to pay each class or subclass of creditors is with the CoC and that the CoC is the final authority in this regard. The Hon'ble Supreme Court restricted the role of NCLT to only adjudicate whether the CoC has complied with the objects of the Code i.e. the corporate debtor needs to keep going as a going concern during CIRP, it needs to maximize the value of the assets of the corporate debtor, and interests of all stakeholders have to be taken care of.





*The Court referred to its judgment in K Sashidhar's matter wherein it was provided that there is no provision under the Code which empowers the Adjudicating Authority to oversee the justness of the reason or the commercial decision taken by the financial creditors in approving or rejecting the proposed resolution plan. The apex court upheld the autonomy of the CoC regarding the commercial matters and decisions that cannot be questioned by the AA.*

11. With regard to the **Extinguishment of claim, Concession and Relief** in Resolution Plan, it is to be mention herein that since all the Financial Creditors, Operational Creditors and other Stakeholders have already lodged their claims during the CIRP and the same has been already considered by CoC and accordingly, Resolution Plan has been approved by CoC with majority. The claims of any Stakeholder and others, if remained unaddressed or not considered by CoC, shall not claim upon Corporate Debtor after the approval of Resolution Plan. Furthermore, if there is any proceeding pending before any competent authority(s), Resolution Applicant may approach the said authority for appropriate order.





12. Further, it is to be specifically mention herein that no claim against the Resolution Applicant will lie on and from the date of approval of the Resolution Plan by this Adjudicating Authority. However, any extinguishment, waiver or concession, if claimed, by the Resolution Applicant from any competent authority of Government/ Semi Government/ Central or Local Authority, Resolution Applicant is required to approach them for such relief, claim and/or any waiver.
13. With regard to any pending proceeding before any competent authority(s), criminal and other penal proceedings, against the Corporate Debtor, Resolution Applicant may approach before the said competent authority for any relief as provided for Resolution Applicant in IB Code.
14. It is needless to mention herein that approval of the Resolution Plan does not mean automatic waiver or abetment of legal proceedings, if any, which are pending by or against the Company/Corporate Debtor as those are the subject matter of the concerned Competent Authorities having their proper/own jurisdiction to pass any appropriate order or as the case may be. The Resolution Applicant(s) on approval of the Plan may

*Shoekah*

approach those Competent Authorities/Courts/Legal Forums/Offices- Govt, or Semi Govt. / State or Central Govt, for appropriate relief(s) sought for in the Resolution Plan.

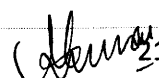
15. Thus, not allowing the above said relief and/or concession and/or waiver are not going to make any hindrance for proper implementation of the Resolution Plan as those are the subject matter of the concerned/appropriate Competent Authorities. The Resolution Applicant(s) has/have liberty to approach Competent Authorities for any concession, relief or dispensation, as the case may be as when required for proper and effective implementation of the Plan.

16. Apart from the above observations and directions, it is further directed/ observed that:

i. The approved Resolution Plan shall come into force with immediate effect.

ii. The Resolution Plan shall be subject to the various existing laws in force and shall also conform to such other requirements specified by the Board and other Statutory/Competent Authorities as the case may be.



 21 | Page

- iii. The Resolution Applicant(s) shall pursuant to the Resolution Plan approved under section 31(1) of the Code, obtain the necessary approvals required under any laws for the time being in force within a period of one year from the date of approval of the Resolution Plan by the Adjudicating Authority under section 31(1) or within such period as provided for in such law, whichever is later or as the case may be.
- iv. The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.
18. Under such facts and circumstances, we, the Adjudicating Authority, is of the considered opinion and also being satisfied that the Resolution Plan as approved by the Committee of Creditors (CoC) meets the requirements as referred to under section 30(2) of the Code.

*Shankar Singh*

*Sharma*

19. Accordingly, IA 143 of 2021 is allowed with the above said observations and directions and stands disposed of in view of the above order.

20. Any IA(s) reserved for order in relation to the instant Resolution Plan stands infructuous.

IA 130 of 2021

21. The instant application is filed by the Applicant being a shareholder and promoter of the Corporate Debtor with the prayer to direct Respondent No. 1 and 2, i.e. members of the CoC to implement the terms of the Settlement agreed upon from time to time and thereby withdraw the Application under Section 7 to conclude the CIRP initiated against the Corporate Debtor. In alternative, to direct closure of the CIRP and during the pendency of the present application, direct the CoC not to vote on any Resolution Plans from prospective Resolution Applicants placed by the RP before CoC.

*Shachin Singh*

*Chakraborty*

22. It is pertinent to note that the Resolution Plan is already approved by the CoC with 100% majority voting share in its 13<sup>th</sup> CoC meeting and accordingly, have been approved by this Adjudicating Authority in IA 143 of 2021 as stated above.

23. Thus, in the light of above facts and circumstances, the instant application becomes infructuous. Accordingly, IA 130 of 2021 is dismissed as Infructuous and stands disposed of.



**Chockalingam Thirunavukkarasu**  
**Adjudicating Authority**  
**Member(Technical)**



**Manorama Kumari**  
**Adjudicating Authority**  
**Member(Judicial)**

Shreya