

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

IA(IBC)/69(CHE)/2022 in IBA/709/2019
(Filed under Sec. 31 of the Insolvency & Bankruptcy Code, 2016)

IN THE MATTER OF:

Chitra Perinkulam Ragavan
Resolution Professional of
M/s. SIP Industries Limited
Anurag, No. 7, Appadurai Street,
Seethammal Colony, Teynampet,
Chennai – 18

... Applicant

Present:

For Resolution Professional : Avinash Krishnan Ravi,
Jerin Asher Sojan,
Vikram Veeraswamy, Advocates

CORAM:-

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

Order Pronounced on 25th April 2022

ORDER

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

IA(IBC)/69(CHE)/2022 is an Application which is moved by the Resolution Professional of the Corporate Debtor viz., **M/s. SIP Industries Limited** under Section 31 of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC, 2016') read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short, 'Regulation') seeking approval of the Resolution Plan submitted by the successful Resolution Applicant viz., *Mr. Arularasan.*

2. In an Application filed under Section 7 of IBC, 2016 by a Financial Creditor viz. M/s. Alchemist Asset Reconstruction Company Limited, this Adjudicating Authority vide order dated 30.08.2019 passed in IBA/709/2019 initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor viz. M/s. SIP Industries Limited and one Mr. Porselvam Govindasamy was appointed as Interim Resolution Professional (IRP). Thereafter, the IRP had caused public announcement on 07.09.2019 in 'Business Standard' and 'Malai Sudar' in response of the said notice, the IRP had received only one claim from an Operational Creditor, NSDL and based on the same, the IRP had constituted the Committee of Creditors (CoC) and the 1st CoC meeting was convened on 03.10.2019, wherein, the IRP was confirmed as the Resolution Professional.

3. In the 2nd CoC meeting held on 09.12.2019, the sole CoC member had opined to liquidate the Corporate Debtor as the erstwhile Resolution Professional was not able to make progress in the CIRP as he was also finding difficulty in taking possession of the records of the Corporate Debtor. In the meantime, the erstwhile Resolution Professional had started receiving enquiries on the EoI issued. Owing to the same, an application for extension of CIRP was filed before this Adjudicating Authority seeking extension of 90 days beyond the specified period of 180 days, the same was ordered vide order dated 23.02.2021 in IA/483/IB/2020. ✓

4. During the said course, the erstwhile Resolution Professional having expressed his inability to continue as the Resolution Professional for the Corporate Debtor owing to his ill health, an application for change of Resolution Professional was filed before this Adjudicating Authority. Thereafter, an order appointing the applicant herein as the Resolution Professional was passed and uploaded on 20.05.2021 subsequent to the death of the erstwhile Resolution Professional. In the wake of the same, the applicant herein was knuckling down the CIR Process but was not able to move along as a consequence to the Covid19 Lockdown. The applicant herein, as a result of the same, had obtained an order of exclusion of 60 days from the CIRP period vide order dated 15.11.2021 in IA/1031(Che)/2021.

5. The Learned Counsel for the Applicant submitted that as there exists no asset, contract or running business in the Corporate Debtor no valuation was carried out as per the IBBI (Insolvency Resolution process for Corporate Persons) Regulations, 2016. From Form - H filed along with the Application, it is evident that the erstwhile RP / Applicant had conducted a total of 7 CoC meetings in relation to the Corporate Debtor.

6. The Learned Counsel for the Applicant submitted that the only valuable item in the Corporate Debtor is the BSE Listing, which is in nature of permission, is incapable of evolution. Further,

as the Corporate Debtor was inactive over the period of the last two years there were only a few transactions in the accounts of the Corporate Debtor. For the said reason there occurred no necessity for filling an application for avoidance transaction. Pursuant to the above mentioned exclusion order Expression of Interest in Form –G was issued on 25.11.2021 in two newspapers viz. 'Trinity Mirror' (English) and 'Makkal Kural' (Tamil) in response to the said EoI the applicant herein has received interest from three Prospective Resolution Applicants viz., (i) Mr. Arularasan, (ii) Mr. K. Ravi, (iii) M/s. Kundan Care Products Limited.

7. The Learned Counsel for the Applicant submitted that having found that the EoIs received were in order and in compliance with section 29A of the Code had issued the Information Memorandum to the above mentioned three prospective applicants, despite which, the applicant herein had received the Resolution Plan from only two prospective applicants viz., (i) Mr. Arularasan, (ii) M/s. Kundan Care Products Limited.

8. In the 6th CoC meeting held on 18.01.2022, discussions were held on the plans submitted by the Prospective Resolution Applicants by the sole CoC member. Subsequently, in the 7th CoC meeting held on 20.01.2022 the addendum submitted to the Resolution Plans based on the feedback given by the CoC along with the Original Resolution Plans were put to vote upon

deliberation. It is further averred that after discussing the revised terms of the Resolution Plans voting by way of ballot paper was carried out. Wherein, the Resolution Plan Submitted by Mr. Arunachalam was approved with 100% thumping majority of the CoC; consequently rejecting the Resolution Plan submitted by Kundan Care Products Limited.

9. The Learned Counsel for the Applicant submitted that after due verification of the eligibility of the Resolution Applicant in terms of Section 29A of IBC, 2016 and after satisfying himself that the Resolution Plan is in conformity with Section 30(2), the Applicant has placed the same for consideration before the CoC. It is also seen from the minutes of the 7th CoC meeting which was held on 20.01.2022 that the CoC with 100% voting has approved the Resolution Plan proposed by the Resolution Applicant.

10. The total dues of the Corporate Debtor are as follows;

S. No.	NAME OF CREDITORS	CLAIM ADMITTED BY RP(INR)
1	Unsecured Financial Creditor	32,00,000
3	Operational Creditor (including dues to statutory authorities)	33,026
	TOTAL	32,33,026

11. The Resolution Applicant proposes to pay 100% of the admitted claim amount i.e., to the tune of **Rs. 32,33,026/-** in the following manner;

- (i) Rs. 32,00,000/- towards payments of Unsecured Financial Creditors on pro-rata basis.
- (ii) Rs. 33,026/- towards full and final settlement of all dues to the Operational Creditor.

12. From Clause 3.3.4 of the Resolution Plan submitted it is evident that a Sum of Rs. 32,00,000/- shall be paid to the Financial Creditor within one week from the date of Approval of the Resolution Plan Submitted.

13. From the averments made in the Application as well as from Form-H as filed by the Resolution Professional in relation to the procedural aspects, the same seems to have been duly complied with for which the Resolution Professional has issued a Certificate and it is not necessary for this Authority to go into the same. However, this Authority is duty bound to examine the Resolution Plan within the contours of Section 30(2) of the IBC, 2016. A comparison with the Mandatory compliance under the IBC *vis-à-vis* the Compliance made under the Resolution Plan is captured hereunder;

MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS	COMPLIANCE UNDER RESOLUTION PLAN
S. 30(1) - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	Clause 14 of the Resolution Plan states that the Resolution Applicant does not suffer from any ineligibility under Section 29A of IBC, 2016. Affidavit submitted by the Resolution Applicants to this effect is also appended as Annexure 'F'.
S. 30(2)(a) - Payment of Insolvency and Resolution cost in the manner specified by the Board	Clause 3.3.2 of the Resolution Plan provides payment of the CIRP costs in priority.



<p>S. 30(2)(b) - Payment of debts of Operational Creditors in such manner as may be specified by the Board, which shall not be less than that the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under Sec. 53</p>	<p>Clause 3.3.3 of the Resolution Plan deals with the payment of monies to the Operational Creditors in priority as admitted.</p>
<p>Reg. 38(1) - Resolution Plan identifies specific source of funds that will be used to pay the (a) Insolvency Resolution Process cost? (b) Liquidation value due to Operational Creditors? (c) Liquidation value due to dissenting financial creditors</p>	<p>Clause 5 of the Resolution Plan deals with the Source of Funds. A memo of Taxable Income of the Resolution Applicant to this effect is also appended as Annexure 'C'</p>
<p>Reg. 38(1A) - Resolution Plan shall include a statement as to how it has dealt with the interest of all the stakeholders, including financial creditors and operational creditors of the Corporate Debtor</p>	<p>Clause 13 of the Resolution Plan enumerates how the interest of all the stakeholders including operational and financial creditors has been dealt with under the Resolution Plan. To this effect the applicant has also appended Annexure 'D' to the Resolution Plan submitted.</p>
<p>S. 30(2)(c) - Management of the affairs of the Corporate Debtor after approval of the Resolution Plan</p>	<p>Clause 6 of the Resolution Plan deals with the Management, Control and Implementation of Terms in relation to the Resolution Plan.</p>
<p>S. 30(2)(d) - Implementation and Supervision of the Resolution Plan</p> <p style="text-align: center;">and</p> <p>Reg. 38(2) - Resolution Plan shall provide: a) term of plan and its implementation schedule b) management and control of the business of the Corporate Debtor during its term; c) it has provisions for effective implementation d) it has provisions for approval required and the timeline for the same; and e) the Resolution applicant has the capability to implement the Resolution Plan.</p>	<p>Clause 3.2 and 6 of the Resolution Plan deals with the Implementation and supervision of the Resolution Plan and it shall comprise of (i) the Resolution Professional (ii) one representative of the Resolution Applicant (iii) one person from Unsecured Financial Creditor.</p>

<p>Reg. 38(3) - Resolution Plan shall demonstrate that:</p> <p>a) it address the cause of default b) it is feasible and viable c) it has provisions for effective implementation d) it has provisions for approval required and the timeline for the same e) the resolution applicant has the capability to implement the resolution plan</p>	<p>Clause 1.2 of the Resolution Plan addresses the cause of default. Clause 9 the Resolution Plan deals with the feasibility and its viability. Clause 6 and 7 of the Resolution Plan deals with the effective implementation. Clause 8 of the Resolution Plan deals with the provisions for approvals required and the timelines for the same. Form H annexed with the plan shows that the Resolution Applicant is capable for implementation.</p>
<p>S. 30(2)(e) - Does not contravene any of the provisions of the law for the time being in force</p>	<p>Clause 12 of the Resolution Plan, the Resolution Applicant declares that the Resolution Plan does not contravene any provisions of the law for the time being in force. The Resolution Professional in Form-H has confirmed that the Resolution Plan is not in contravention with the provisions of any Applicable Law.</p>
<p>S. 30(4) - Committee of Creditors approve the Resolution Plan by not less than 66% of voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by the Board</p>	<p>The CoC, in its 7th meeting held on 20.01.2022 with 100% voting share has approved the Resolution Plan.</p>

14. The Resolution Applicant in Part – VII of the Resolution Plan has sought for a total of 11 Relief and concessions from this Adjudicating Authority so as to implement the Resolution Plan. These are ordered as follows;

SL. No.	RELIEF / CONCESSIONS SOUGHT FOR	ORDERS THEREON
1	All Governmental authorities including FEMA, FERA, RBI, AML, ROC, Income Tax and other statutory authorities shall waive the non-compliances of the corporate debtor prior to the approval date. The relevant governmental authorities shall also not initiate any investigations, actions or proceedings in relation to any non-compliance with applicable law by the corporate debtor during the period prior to the approval date. Neither shall be resolution applicant, nor the corporate debtor, nor their respective directors, officers and employees appointed on and as of the approval	This is for the concerned Governmental authorities to consider, keeping in view the objects of IBC, 2016 and a fresh start of the Corporate Debtor. Further, Section 31(4) of IBC,

	<p>date be liable for any violations, liabilities, penalties or fines with respect to or pursuant to the corporate debtor not having in place the requisite licenses and approvals required to undertake its business as per applicable law, or any non-compliances of applicable law by the corporate debtor. Further, wherever necessary, the relevant governmental authorities will provide a reasonable period of time after the approval date, for the resolution applicant to assess the status of any non-compliances under the applicable law and to procure that the company regularizes such non-compliances under the applicable law existing prior to the approval date.</p>	<p>2016 provides a one-year window from the date of approval of the resolution plan to obtain necessary approvals under any law. The successful resolution applicant is expected to keep these timelines in mind.</p>
2	<p>Certain Business permits (including but not limited to permission for supply of water, electricity, operation of lifts) of the corporate debtor which would be required for the corporate debtor to operate as a going concern have lapsed, expired, suspended, cancelled, revoked or terminated or the corporate debtor has non-compliances in relation thereto. Accordingly, all governmental authorities to provide reasonable time period after the Approval Date to the Corporate Debtor/ Resolution Applicant to renew the business permits, licenses, sanctions and approvals and to ensure that the corporate debtor is compliant with the terms of such business permits and applicable law without initiating any investigations, penalty, actions or proceedings in relation to such non-compliances;</p>	<p>Liberty granted to the successful Resolution Applicant to approach the appropriate authorities.</p>
3	<p>The Central Board of Direct Taxes to consider the corporate debtor as a closely held company for the purposes of section 79 read with section 2 (18) of the Income Tax Act, 1961 and the change in shareholding of the corporate debtor pursuant to the plan to not lead to lapse of brought forward losses of the corporate debtor.</p>	<p>It is for the Appropriate Authorities to consider.</p>
4	<p>The Corporate Debtor, Resolution Applicant and its nominees shall not be liable for any taxes on account of the allotment of shares in their favor under the Resolution Plan, more particularly on the basis of any "deemed profit" having been made by the Resolution Applicant under the tenets of section 56 of the Income Tax Act, 1961.</p>	<p>Granted, subject to the provisions of IBC, 2016 and other Applicable laws.</p>
5	<p>Under section 115JB of the Income Tax Act, 1961, assessee company for which a rehabilitation scheme was approved or reference was made under the provisions of the</p>	<p>This is for the appropriate authorities to</p>

	erstwhile SICA was not subject to minimum alternate tax until the net worth becomes positive. Similar benefit to be extended to a resolution plan approved in accordance with the code and CIRP regulations since the code supersedes all other applicable law and deals with the same subject matter as the erstwhile SICA. In light of this, the Central Board of direct Taxes to not subject income or gain or profits, if any, arising as a result of giving effect to the plan to tax including minimum alternate tax in the hands of Corporate debtor;	consider
6	All Governmental authorities to grant any relief, concession or dispensation as may be required for implementation of the transactions contemplated under the plan in accordance with its terms and conditions;	This is for the appropriate authorities to consider
7	All assets (including properties, whether freehold, leasehold or licenso basis) of the corporate debtor to be vested in the restructured corporate debtor free and clear of all encumbrances.	Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i> 2021 SCC Online SC 313
8	The Resolution Applicant shall be allowed to terminate / renegotiate material contracts including but not limited to agency agreements entered by the corporate debtor before the insolvency commencement date without any penalty or interest at its own discretion.	Orders cannot be passed as it is neither a relief nor a concession.
9	The CBDT shall grant exemption/waiver from: (a) treating any transaction contemplated in this plan as being void or non-compliant with any provisions of the Income-tax Act, 1961; and (b) all Tax Liabilities (including interest and penalty) and tax proceedings arising in respect of periods up to the Approval Date, including such liabilities/proceedings for periods up to the Approval Date in respect of on-going or potential income tax litigations at all levels.	This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016
10	All designated authorized dealer category I Banks/RBI to approve or dispense such actions as may be required for actions contemplated under the plan in accordance with its terms and conditions.	Granted in Terms of IBC, 2016

11	All creditors of the corporate debtor to withdraw all legal proceedings commenced against the corporate debtor in relation to claims, including without limitation all criminal proceedings, proceedings under section 138 of the Negotiable Instruments Act, 1881 and proceedings under SARFAESI and RDDBFI, within 60 (sixty) days of the approval date and undertake to not take any action which precipitates the proceedings against the corporate debtor,	This is for the appropriate authorities to consider
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15. In so far as the approval of the Resolution Plan is concerned, this Authority is not sitting on an appeal against the decision of the Committee of Creditors and this Authority is duty bound to follow the much-celebrated Judgment of the Supreme Court in the matter of **K. Sashidhar –Vs– Indian Overseas Bank (2019) 12 SCC 150**, wherein in para 19 and 62 it is held as follows;

“19.....In the present case, however, our focus must be on the dispensation governing the process of approval or rejection of resolution plan by the CoC. The CoC is called upon to consider the resolution plan under Section 30(4) of the I&B Code after it is verified and vetted by the resolution professional as being compliant with all the statutory requirements specified in Section 30(2).

62.In the present case, however, we are concerned with the provisions of I&B Code dealing with the resolution process. The dispensation provided in the I&B Code is entirely different. In terms of Section 30 of the I&B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC and they express their opinion on the proposed resolution plan in the form of votes, as per their voting share. In the meeting of the CoC, the proposed resolution plan is placed for discussion and after full interaction in the presence of all concerned and the Resolution Professional, the constituents of the CoC finally proceed to exercise their option (business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, non-recording of reasons would not per-se vitiate the collective decision of the financial creditors. The legislature has not envisaged challenge to the “commercial/business decision” of the financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count.”

16. Further, the Hon'ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steels -Vs- Satish Kumar Gupta &Ors. in Civil Appeal No. 8766 - 67 of 2019** at para 42 has held as follows;

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

17. Further the Supreme Court in the matter of **K. Sashidhar v. Indian Overseas Bank and Ors. (2019) 12 SCC 150** has lucidly delineated the scope and interference of the Adjudicating Authority in the process of approval of the Resolution Plan and held as follows;

"55. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite per cent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides: (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at

the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.

58. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with Section 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters "other than" enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers."

(emphasis supplied)

18. Also the Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Ors.** (2020) 8 SCC 531 after referring to the decision in **K. Sashidhar (supra)** has held as follows;

"73. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or sub-class of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of

all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. 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)

19. The Supreme Court in its recent decision in **Jaypee Kensington Boulevard Apartments Welfare Association &ors. v. NBCC (India) Ltd. &Ors** in *Civil Appeal no. 3395 of 2020* dated 24.03.2021 has held as follows;

76. The expositions aforesaid make it clear that the decision as to whether corporate debtor should continue as a going concern or should be liquidated is essentially a business decision; and in the scheme of IBC, this decision has been left to the Committee of Creditors, comprising of the financial creditors. Differently put, in regard to the insolvency resolution, the decision as to whether a particular resolution plan is to be accepted or not is ultimately in the hands of the Committee of Creditors; and even in such a decision making process, a resolution plan cannot be taken as approved if the same is not approved by votes of at least 66% of the voting share of financial creditors. Thus, broadly put, a resolution plan is approved only when the collective commercial wisdom of the financial creditors, having at least 2/3rd majority of voting share in the Committee of Creditors, stands in its favour.

77. In the scheme of IBC, where approval of resolution plan is exclusively in the domain of the commercial wisdom of CoC, the scope of judicial review is correspondingly circumscribed by the provisions contained in Section 31 as regards approval of the Adjudicating Authority and in Section 32 read with Section 61 as regards the scope of appeal against the order of approval.

77.1. Such limitations on judicial review have been duly underscored by this Court in the decisions above-referred, where it has been laid down in explicit terms that the powers of the Adjudicating Authority dealing with the resolution plan do not extend to examine the correctness or otherwise of the commercial wisdom exercised by the CoC. The limited judicial review available to Adjudicating Authority lies within the four corners of Section 30(2) of the Code, which would essentially be to examine that the resolution plan does not contravene any of the provisions of law for the time being in force, it conforms to such other requirements as may be specified by the Board, and it provides for: (a) payment of insolvency resolution process costs in priority; (b) payment of debts

of operational creditors; (c) payment of debts of dissenting financial creditors; (d) for management of affairs of corporate debtor after approval of the resolution plan; and (e) implementation and supervision of the resolution plan.

77.2. The limitations on the scope of judicial review are reinforced by the limited ground provided for an appeal against an order approving a resolution plan, namely, if the plan is in contravention of the provisions of any law for the time being in force; or there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period; or the debts owed to the operational creditors have not been provided for; or the insolvency resolution process costs have not been provided for repayment in priority; or the resolution plan does not comply with any other criteria specified by the Board

77.6.1. The assessment about maximisation of the value of assets, in the scheme of the Code, would always be subjective in nature and the question, as to whether a particular resolution plan and its propositions are leading to maximisation of value of assets or not, would be the matter of enquiry and assessment of the Committee of Creditors alone. When the Committee of Creditors takes the decision in its commercial wisdom and by the requisite majority; and there is no valid reason in law to question the decision so taken by the Committee of Creditors, the adjudicatory process, whether by the Adjudicating Authority or the Appellate Authority, cannot enter into any quantitative analysis to adjudge as to whether the prescription of the resolution plan results in maximisation of the value of assets or not. The generalised submissions and objections made in relation to this aspect of value maximisation do not, by themselves, make out a case of interference in the decision taken by the Committee of Creditors in its commercial wisdom

78. To put in a nutshell, the Adjudicating Authority has limited jurisdiction in the matter of approval of a resolution plan, which is well defined and circumscribed by Sections 30(2) and 31 of the Code read with the parameters delineated by this Court in the decisions above referred. The jurisdiction of the Appellate Authority is also circumscribed by the limited grounds of appeal provided in Section 61 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by the CoC. Within its limited jurisdiction, if the Adjudicating Authority or the Appellate Authority, as the case may be, would find any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by Code and exposted by this Court.

20. Thus, from the catena of judgments rendered by the Supreme Court on the scope of approval of the Resolution Plan, it is amply made clear that only limited judicial review is available for

the Adjudicating Authority under Section 30(2) and Section 31 of IBC, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the Committee of Creditors.

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

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

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

23. The Resolution Professional is further directed to handover all records, premises / documents to Resolution Applicant to finalise the further line of action required for starting of the operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access to all the records premises / documents through Resolution Professional to finalise the further line of action required for starting of the operation.

24. IA(IBC)/69(CHE)/2022 stands **Ordered** accordingly.

-Sd-
B. ANIL KUMAR
MEMBER (TECHNICAL)

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

Mohanapriya