

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

IA(IBC)/605(CHE)/2022 in IBA/138/2019
(Filed under Sec. 30(6) & 31 of the Insolvency & Bankruptcy Code, 2016)

IN THE MATTER OF:

S. Rajendran
Resolution Professional of
M/s. L&T Halol Shamlaji Tollway Limited
No.71/1, McNichols Road, Hari Krupa,
2nd Floor, Chetpet, Chennai – 600 031

... Applicant

Present:

For RP : S. Eshwar, Advocate
S. Rajendran, RP

CORAM:

Justice RAMALINGAM SUDHAKAR, PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)

Order Pronounced on 26th August 2022

ORDER

Per: Justice RAMALINGAM SUDHAKAR, PRESIDENT

IA(IBC)/605(CHE)/2022 is an Application which is moved by the Resolution Professional of the Corporate Debtor viz., **M/s. L&T Halol Shamlaji Tollway Limited** under Section 30(6) & 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., *Kalyan Toll Infrastructure Limited*

2. The Learned Counsel for the Applicant submitted that the Corporate Debtor viz. L&T Halol Shamlaji Tollway Limited is a special purpose vehicle incorporated by L&T Infrastructure Development Projects Limited (a subsidiary of Larsen & Toubro Limited) for implementation of the project of widening of existing two-lane road of 173.06 kms road stretch covering Halol Godhra - Shamlaji on State Highway (SH-5) in the State of Gujarat to make it as four lane divided carriageway facility on a build-operate-toll and transfer basis under the Concession Agreement dated 17.09.2008 with Gujarat State Road Development Corporation Limited (GSRDCL').

3. It was submitted that pursuant to the Concession Agreement, GSRDCL has granted to the Corporate Debtor an exclusive right, license and authority during the subsistence of the Concession Agreement to construct, operate and maintain the Project for a period of 20 years subject to and in accordance with the terms and conditions set forth in the Concession Agreement. It was submitted that the construction of the project was completed by the Corporate Debtor on 04.04.2012.



4. The Learned Counsel for the Applicant submitted that the CIRP in respect of the Corporate Debtor was initiated by this Tribunal vide its order dated 17.07.2019 based upon an Application filed by a Financial Creditor viz. Oriental Bank of Commerce under Section 7 of IBC, 2016 and one Mr. Anil Kumar Birla was appointed as the Interim Resolution Professional (IRP).

5. Thereafter, it was submitted that the public announcement was made on 24.07.2019 calling for submission of the claims from the creditors and in the meantime an Appeal was preferred by the erstwhile Director of the Corporate Debtor before Hon'ble NCLAT, which came to be dismissed vide order dated 28.08.2019.

6. It was submitted that in the 2nd CoC meeting held on 05.09.2019, a resolution was passed appointing the Applicant herein as the Resolution Professional replacing the IRP and the said resolution was passed with 100% voting. Pursuant to which CoC filed application under Section 22(3) of the Code, 2016 before this Tribunal in MA/999/2019 and the same was allowed on 25.09.2019 and the applicant herein took charge as the Resolution Professional of the Corporate Debtor.



7. Subsequently, it is submitted that a Civil Appeal was filed on 24.09.2019 before the Hon'ble Supreme Court by Dr. Esther Malini, Director of the Corporate Debtor against 28.08.2019 order of NCLAT confirming commencement of CIRP against the Company. In the said Civil Appeal, the CIRP of the Corporate Debtor was stayed by orders of the Supreme Court dated 18.10.2019.

8. It was submitted that the Resolution Professional filed an interlocutory application seeking clarification on the order passed by the Supreme Court on 18.10.2019 and necessary clarification was issued by the Supreme Court on 25.10.2019 stating that the RP shall continue to run the Corporate Debtor as a going concern by operating the Escrow Account.

9. It was submitted that surplus funds generated during this period were periodically kept in fixed deposits with Indian Bank (lead bank). In the meantime, it was submitted that the CoC in its 5th meeting dated 24.12.2019 unanimously resolved to seek an extension of CIRP timelines by 90 days with effect from 12.01.2020 (180th day of CIRP). Pursuant to the decision taken by CoC, Resolution Professional filed an application before this Tribunal seeking extension of CIRP timelines by 90 days. Taking note of the orders passed by Supreme Court, this Tribunal was



pleased to allow the said application on 20.01.2020, whereby CIRP period was extended by 90 days with effect from 13.01.2020. However, it was submitted that the extension of CIRP became infructuous as the Hon'ble Supreme Court later excluded the entire stay period from CIRP.

10. It was submitted that the Civil Appeal No. 7985/2019 attained finality on 21.10.2021 whereby Hon'ble Supreme Court was pleased to vacate the stay and thus, by virtue of the said order, the CIRP proceedings were revived with effect from 21.10.2021 (94th day of CIRP). It was submitted that in the 12th CoC meeting held on 02.11.2021, the CoC approved to issue the Expression of Interest (EoI) in Form G and authorized the RP to publish the same in the newspaper as required under the provisions of IBC, 2016. Further, it was submitted that the CoC took note of the RP's opinion that no transactions could be categorized as avoidance transactions attracting the provisions of Section 43, 45, 50 and 66 of IBC, 2016 based on the forensics audit Report given by Ravi Ranjan & Co., LLP.


11. It was submitted that pursuant to the decision taken in the 12th CoC meeting, an Invitation for submission of Expression of Interest in Form 'G' was published on 15.11.2021 in Economic



Times (English), Gujarat Samachar (Gujarat) and Dinamani (Tamil). The last date for submission of Eol by the interested resolution applicants was 04.12.2021. In pursuance of the same, it was submitted that six bidders ("Prospective Resolution Applicants" / "PRAS") expressed their interest to submit a resolution plan. In the 13th CoC meeting held on 13.12.2021, CoC members took note of the list of Eol Applicants. Further, the CoC approved issuing information memorandum, evaluation matrix and request for resolution plan to the PRAS. After scrutiny. RP issued the final list of prospective resolution applicants and the following were the shortlisted Resolution Applicants:

S. No.	Name of the Prospective Resolution Applicants (PRAs)
1.	Kalyan Toll Infrastructure Limited, Indore
2.	Consortium of (i) Mr. Syed Fahad; (ii) Mr. S.M. Kamal Pasha; and (iii) Greenergy Solar Enterprise Private Limited, Bangalore
3.	Capri Global Holdings Private Limited, Mumbai
4.	PNC Infratech Limited, Agra
5.	RKC Infrabuilt Private Limited, Ahmedabad
6.	International Asset Reconstruction Company Private Limited, Mumbai

12. It was submitted that the Information Memorandum ("IM"), Request for Resolution Plan ("RFRP") were shared with the shortlisted resolution applicants on 23.12.2021 after obtaining confidentiality undertaking. As per the terms of the RFRP, the last date for submission of resolution plan was 24.01.2022. However, it



was submitted that at the request of a few of the prospective resolution applicants, viz., Kalyan Toll Infrastructure Limited, Capri Global Holdings Private Limited and RKC Intrabuilt Private Limited, the last date for submission of resolution plan was extended to 07.02.2022.

13. It was submitted that in the 13th meeting, the CoC authorized RP to file an application before this Tribunal under Sec. 12 of the Code to extend CIRP period by 90 days with effect from 15.01.2022 (180th day of CIRP). An application seeking extension of CIRP timelines by 90 days was filed on 11.01.2022 vide IA(IBC)/49(CHE)/2022. On 08.02.2022 this Tribunal allowed the said application extending CIRP timeline by a period of 90 days with effect from 15.01.2022. Accordingly, the CIRP period got extended until 15.04.2022.

14. It was submitted that on the last date for submission of resolution plan i.e., 07.02.2022, out of the six prospective resolution applicants only one resolution applicant viz., Kalyan Toll Infrastructure Limited, Indore, ("KTIL"/"Resolution Applicant") submitted a resolution plan. Further, it was submitted that on 11.02.2022, 14th meeting of the CoC was called for and the resolution plan submitted by KTIL on 07.02.2022 in a password



protected file in portable document format ("pdf") format and sealed cover were opened and discussed in detail with the CoC members. The Resolution Applicant submitted their bid security deposit of Rs.4 Crore along with the resolution plan. It was submitted that the Resolution Applicant presented the resolution Plan and interacted with the CoC members and they expressed their willingness to negotiate the proposal submitted. The summary of the Resolution Plan submitted on 07.02.2022 is as follows;

(Rs. in Crores)

Particulars	Total Amount offered	Remarks
From funds infused by RA into the Corporate Debtor	215.00	RA proposed payment within 30 days of NCLT approval
Estimated funds in bank balances of Corporate Debtor on 31 st March 2022	195.71	
Total Amount to be paid to the creditors	410.71	

15. It was submitted that in order to maximize the value of Corporate Debtor, the CoC members continued to discuss/negotiate with the Resolution Applicant for further improving the resolution plan amount and other terms. This process continued during 15th to 17th CoC meetings. Finally, KTIL submitted their revised and final resolution plan on 11.04.2022.



16. It was submitted that in the 17th meeting held on 21.03.2022, the CoC members unanimously authorized the RP to file application before this Tribunal for further extension of CIRP timelines by 60 days with effect from 15.04.2022 (270th day of CIRP). Accordingly, RP filed an application vide IA/449/2022 under Section 12 of the Code seeking extension of CIRP period by 60 days beyond 270 days as the Resolution Plan was under active consideration by CoC. The said application came to be disposed of by this Tribunal vide its order dated 31.05.2022.


17. It was submitted that in the 18th CoC meeting held on 11.04.2022, the final resolution plan submitted by the Resolution Applicant was deliberated in detail and the CoC decided to put to vote the resolution plan after the applicant herein confirmed that the resolution plan is compliant with Section 30(2)(b) of the Code and Regulation 38 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and that the resolution applicant was not ineligible as per Section 29A of the Code.

18. It was submitted that the e-voting process commenced on 14.04.2022 at 10 AM and ended on 05.05.2022 at 5 PM. The e-voting results were announced by the RP after the closure of the e-

voting window. The e-voting results on the resolution plan are summarized below:

S. No.	CoC members	Voting Share (%)	Voted for the Resolution Plan
1	Indian Bank (including Allahabad Bank)	24.60	24.60
2	India Infrastructure Finance Company Limited	21.71	21.71
3	UCO Bank	14.72	14.72
4	PNB (e-Oriental Bank of Commerce)	13.36	13.36
5	Canara Bank (e-Syndicate Bank)	11.50	11.50
6	IndusInd Bank	8.09	8.09
7	HDFC Bank Ltd.	6.02	6.02
	TOTAL	100.00	100.00

19. It was submitted that Kalyan Toll Infrastructure Limited, Indore, emerged as the Successful Resolution Applicant whose resolution plan was **unanimously approved** by the CoC on 05.05.2022. Result of the e-voting was shared with the CoC members on the same day. A Letter of Intent ("LoI") was issued by the RP to the Successful Resolution Applicant on 06.05.2022. The LoI was accepted by Kalyan Toll Infrastructure Limited on 07.05.2022. Performance Bank Guarantee dated 09.05.2022 from State Bank of India for a sum of Rs. 30 Crores valid until 06.05.2023 was submitted to the RP within the stipulated period.



20. It was submitted that the Resolution Professional as required under Regulation 39(4), has filed the Compliance Certificate in Form H and the same is placed as Annexure A-22 to the typed set filed along with the Application.

21. **DETAILS OF THE RESOLUTION PLAN:**

21.1. Kalyan Toll Infrastructure Limited ("RA") is a company incorporated in the year 2002. It is the flagship company of Kalyan Group based out of Indore, Madhya Pradesh. The group is engaged in infrastructure construction, significantly roads, pipelines and buildings on Engineering, Procurement and Construction (EPC) basis and also has operational toll road projects. KTIL is promoted by Mr. Tikamchand Garg, Mr. Rajesh Kumar Garg and Mr. Amit Garg. The group has implemented a wide variety of infrastructure projects especially road & bridge segments and has a track record of having executed projects of present value of more than Rs. 4000 crores till date. The details of the amount claimed, admitted and the amount proposed to be paid under the Resolution Plan are as follows;





(Rs. in Crores)

Particulars	Amount Claimed	Amount Admitted	Resolution Plan amount	% on amount admitted
CIRP Cost*	-	-	-	-
Unrelated Financial Creditors	1116.16	597.13	508.98	85.24
Related Financial Creditors	8.08	8.08	NIL	NIL
Operational Creditors	115.02	69.74	6.97	10.00
TOTAL	1239.26	674.95	515.95	95.24

* CIRP costs being paid out of revenue generated during CIRP period. In case of shortfall, the same will be paid by RA.

PAYMENT OF CIRP COSTS

21.2. It was submitted that the CIRP costs as approved by the CoC upto the date of receipt of the NCLT order approving the Resolution Plan shall be paid from the internal accruals of the Corporate Debtor. The approved CIRP costs shall be paid in priority to the other creditors and in case of any shortfall in availability of surplus from internal accruals for the payment towards CIRP costs, such additional amounts shall be infused by the Resolution Applicants to cover such shortfall.

PAYMENTS PROPOSED TO UNRELATED FINANCIAL CREDITORS:



21.3. The Resolution Applicant proposes to pay the unrelated financial creditors Rs. 308.03 Crores within 60 days of NCLT approval of the resolution plan. The entire balance of funds in Bank accounts of corporate debtor as on 31.03.2022 of Rs.200.95 Crores will also be paid to the financial creditors immediately after approval of the resolution plan. Summary of all payments proposed to be made to the unrelated financial creditors are:

(Rs. In Crores)

Name of Creditor	Amounts admitted	Amounts offered			
		From funds infused by RA	From bank balances with CD	Total	%
Indian Bank (including Allahabad Bank)	146.85	308.03	200.95	508.98	85.24%
India Infrastructure Finance Company Limited	129.63				
UCO Bank	87.91				
PNB (e-Oriental Bank of Commerce)	79.80				
Canara Bank (e-Syndicate Bank)	68.68				
IndusInd Bank	48.32				
HDFC Bank	35.94				
Total	597.13				

The breakup of the amount payable to the unrelated Financial Creditors are as follows;

(Rs. in Crores)

S. No.	Name of the Creditor	% of Pre-SDR debt balance o/s on 31.07.2016	Funds from bank balance with CD	Funds to be Infused by KTIL
1.	Indian Bank (including Allahabad Bank)	27.33	54.92	84.19
2.	India Infrastructure Finance Company Limited	11.49	23.09	35.39
3.	UCO Bank	16.47	33.10	50.73
4.	PNB (e-Oriental Bank of Commerce)	15.04	30.21	46.31
5.	Canara Bank (e-Syndicate Bank)	12.81	25.73	39.44
6.	IndusInd Bank	9.70	19.49	29.87
7.	HDFC Bank Limited	7.17	14.42	22.10
	TOTAL	100.00*	200.95	305.23

*Subject to rounding off.

PAYMENT PROPOSED TO THE RELATED PARTY FINANCIAL CREDITORS

21.4. As per the list of creditors, the admitted claims of related financial creditor is that of L&T Infrastructure Development Projects Limited (L&T IDPL') for a sum of Rs. 8,08,80,000/ (Rupees Eight Crores Eight Lakhs Eighty Thousand Only). The said claim is on account of bank guarantee issued by the claimant to GSRDCL as per the term of the concession agreement.

21.5. RA states that no payments shall be made to related financial creditors. However, RA proposes to provide new performance bank guarantee to GSRDCL within 180 days of the approval of resolution plan by NCLT in replacement of earlier bank guarantee.

21.6. Any amounts remaining unpaid or any outstanding liabilities of the related party FC shall be waived and sacrificed.

PAYMENT PROPOSED TO THE OPERATIONAL CREDITORS:

21.7. The following are the admitted claims of the Operational Creditors;

(Rs. in Crores)

Name of Creditor	Amount ₹ admitted	Amount offered in the Resolution Plan
Gujarat State Road Development Corporation Limited	69.38	6.94
Hindustan Colas Private Limited	0.36	0.04
Total	69.74	*6.97

* Subject to rounding off.

SOURCE OF FUND:



- a. RA states that they have undrawn sanction limits amounting to Rs. 319 Crores from Canara Bank, SBI and PNB.
- b. RA further states that they have already approved sanctioned limits undrawn from L&T Finance Limited.
- c. Other than the above, RA states that they shall consistently generate Rs. 60.00 Crores (approx.) of surplus cash accruals in every quarter going forward in FY 22.

MONITORING COMMITTEE:

a. Upon approval of the Resolution Plan by the Adjudicating Authority, a Monitoring committee shall be constituted which will overview the implementation of the resolution plan, consisting of the following members:

- i. Two (2) members from RA
- ii. Mr. S. Rajendran (Resolution Professional) or his successor or his assignee
- iii. Two (2) members representing the financial creditors

b. The monitoring committee shall be headed by RP. The fees of the RP shall be as decided mutually by the RP and RA.



- c. Monitoring committee shall oversee the implementation of the resolution plan including payments from the resolution applicant, distribution to various creditors, change of management, etc.
- d. The monitoring committee shall stand dissolved on the payment of the full amount due to the financial and operational creditors which is proposed to be paid within 60 days of the approval of resolution plan by NCLT.

22. From the averments made in the Application as well as in 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 A(1) of the Resolution Plan states that the Resolution Applicant does not suffer from any ineligibility under Section 29A of IBC, 2016.



<p>S. 30(2)(a) - Payment of Insolvency and Resolution cost in the manner specified by the Board</p>	<p>Clause E (4) of the Resolution Plan provides payment of the CIRP costs in priority.</p>
<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 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 E(4) of the Resolution Plan deals with the payment of money to the Operational Creditors as required by the provision of IBC</p>
<p>Req. 38(1) - Resolution Plan identifies specific source of funds that will be used to pay the</p> <p>(a) Insolvency Resolution Process cost?</p> <p>(b) Liquidation value due to Operational Creditors?</p> <p>(c) Liquidation value due to dissenting financial creditors</p>	<p>Clause E (4.2.3) of the Resolution Plan deals with the Source of Funds and also deals with the Treatment of the CIRP costs.</p> <p>(b) Yes as applicable.</p> <p>There is no dissenting financial creditor</p>
<p>Req. 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 L (1) of the Resolution Plan and sub clauses thereunder enumerates how the interest of all the stakeholders including operational and financial creditors has been dealt with under the Resolution Plan.</p>
<p>S. 30(2)(c) - Management of the affairs of the Corporate Debtor after approval of the Resolution Plan</p>	<p>Clause E (3.1.2.6) of the Resolution Plan deals with the Management and 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>Clause H of the Resolution Plan deals with the Implementation and supervision of the Resolution Plan.</p>



<p>Reg. 38(2) – Resolution Plan shall provide:</p> <p>a) term of plan and its implementation schedule</p> <p>b) management and control of the business of the Corporate Debtor during its term;</p> <p>c) it has provisions for effective implementation</p> <p>d) it has provisions for approval required and the timeline for the same; and</p> <p>e) the Resolution applicant has the capability to implement the Resolution Plan.</p>	<p>Yes it provides for implementation Schedule</p> <p>-yes-</p> <p>-yes-</p> <p>-yes-</p> <p>-yes-</p>
<p>Reg. 38(3) - Resolution Plan shall demonstrate:</p> <p>a) it address the cause of default</p> <p>b) it is feasible and viable</p> <p>c) it has provisions for effective implementation</p> <p>d) it has provisions for approval required and the timeline for the same</p> <p>e) the resolution applicant has the capability to implement the resolution plan</p>	<p>Clause D of the Resolution Plan address the cause of default.</p> <p>Clause D of the Resolution Plan deals with the feasibility and its viability.</p> <p>Clause H of the Resolution Plan deals with the effective implementation.</p> <p>Clause G of the Resolution Plan deals with the provisions for approvals required and the timelines for the same.</p> <p>Clause B and Clause F (6) of the Resolution Plan deals with the capability of the Resolution Applicant to implement the same.</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 I (c) 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 18th meeting and the e-voting resulted dated 05.05.2022 with a 100% voting share has approved the Resolution Plan.</p>
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23. The Resolution Applicant in Clause M of the Resolution Plan has sought for a total of 9 Relief and concessions and Waivers 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	The Central Board of Direct Taxes (CBDT) shall be required to treat that for the purposes of Section 79 of the Income Tax Act, 1961 any change in shareholding of the Corporate Debtor pursuant to the approval of this Resolution Plan does not lead to lapse of brought forward losses of the Corporate Debtor.	Granted, subject to the provisions of IBC, 2016 and other Applicable laws.
2	The CBDT shall provide relief to the Corporate Debtor from all past litigations (prior to the approval of resolution plan by NCLT) (including all proceedings and appeals) pending at different levels and provide waiver and extinguishment on all Tax dues (including those arising out of assessment claims) including interest and penalty on such litigations	Granted, subject to the provisions of IBC, 2016 and other Applicable laws.
3	The Central Board of Excise and Customs/respective value-added Tax / entry Tax authorities to provide relief to the Corporate Debtor from all past (prior to the approval of resolution plan by NCLT) litigations (including all proceedings and appeals) pending at different levels and provide waiver from Tax dues (prior to the approval of the resolution plan by NCLT)	Granted, subject to the provisions of IBC, 2016 and other Applicable laws.




	(including those arising out of assessment claims) including interest and penalty on such litigations and proceedings.	
4	On and from the approval of the Resolution Plan by Hon'ble NCLT, all costs, charges interest, damages and indemnities pursuant to any rights accruing to a third party under any contracts or agreements executed between the Corporate Debtor and such third party shall be deemed to be waived and extinguished as long as such costs, charges interest, damages and indemnities pursuant to any rights accruing to a third party has accrued prior to the date of approval of the resolution plan by the NCLT	Granted, subject to the provisions of IBC, 2016 and other Applicable laws.
5	All the litigations, proceedings, inquiries, investigations, etc. pending before any courts/quasi-judicial Governmental Authorities (including RBI. Enforcement directorate) shall be disposed of and all liabilities or obligations in relation thereto, whether or not set out in the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor or the List of Creditors, except for the liabilities proposed to be paid under Section E of this resolution plan, will be deemed to have been written off in full against a NIL value	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> <i>2021 SCC Online SC 313</i>
6	Each asset (including properties, whether freehold, leasehold or license basis) of the Company shall be vested in the Company free and clear of all Encumbrances from last payment to the Creditors under the Resolution Plan	Granted
7	All the assets of the Company including assets as mentioned in Section 36(3) of The Insolvency and Bankruptcy Code, 2016 shall continue to be absolutely owned, operated, possessed and under control of corporate debtor managed by the new management proposed by the Resolution Applicant	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> <i>2021 SCC Online SC 313</i>



8	All corporate guarantee provided by the company, for the company or for the subsidiary or for others shall be deemed to be cancelled/terminated.	Granted, subject to the provisions of IBC, 2016 and other Applicable laws.
9	All the existing directors on the board of Corporate Debtor shall be deemed to have resigned on approval of the Resolution plan by Hon'ble NCLT to enable the appointment of Nominees of KTIL, as new directors on the board of the Company	Granted

24. During the course of arguments, a question was put forth by this Tribunal to prove the source of funds, to which the Resolution Professional has filed additional typed set of documents from which it is seen that the Canara Bank, Punjab National Bank, State Bank of India and L&T Financial Services have issued sanctioned letters for term loan to be utilized by the group companies of the Resolution Applicant.

25. In terms of the Resolution Plan, this Tribunal hereby constitutes the Monitoring Committee comprising of (i) Two (2) members from Resolution Applicant, (ii) The Resolution Professional Mr. S. Rajendran, (iii) Two (2) members representing the Financial Creditor. The Monitoring Committee shall be headed by the Resolution Professional and shall oversee the implementation of the resolution plan including payments from the resolution applicant, distribution to various creditors, change of



management, etc. The Monitoring Committee shall strictly oversee the timelines for payment of the amount as per the Resolution Plan to the stakeholders.

26. It is seen from the Resolution Plan that there is a change in the Management of the Corporate Debtor and (i) Mr. Rajesh Kumar Garg, (ii) Mr. Amit Kumar Garg and (iii) Mr. Tikamchand Garg will be the new Directors of the Corporate Debtor. Further, it could be seen that the Resolution Applicant has proposed the following;

- (i) Issue of fresh equity shares of Rs.10 Crore of the Corporate Debtor to KTIL
- (ii) Extinguishment of present paid up share capital (Equity + Preference) held by its current shareholders via the same NCLT order which will approve the Resolution Plan.

27. In so far as the approval of the Resolution Plan is concerned, this Authority is convinced on the decision of the Committee of Creditors, following 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."

28. 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).



29. 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)

30. 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)

31. 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.

32. 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.

33. 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.

34. 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 concerned parties, 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.

35. 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.



36. IA(IBC)/605(CHE)/2022 stands **ordered** accordingly.

- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

- Sd -

Justice RAMALINGAM SUDHAKAR
PRESIDENT

Dipak