IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I

M.A. 329 of 2020
And
I.A. 1875 of 2022
In
C.P. (IB) 3884/MB/C-I/2018

Under Section 31(1) of the Insolvency and Bankruptcy Code, 2016 ("code") r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for seeking approval of the resolution plan under the provisions of Section 31(1) of the code.

In MA 329 of 2020

Mr. CA Ashish Avinash Saoji,

Resolution Professional of "Aarti Infra-Projects Private Limited"

...Applicant/Resolution Professional

Vs.

Aarti Infra-Projects Private Limited

...Respondent No. 1/Corporate Debtor

Aarti Infra-Projects Private Limited

Through its shareholder and suspended director Mr. Vinod Mandhana

...Respondent No. 2/Resolution Applicant

In IA 1875 of 2022

Bank of Baroda, Rosarb Branch Nagpur

...Applicant

1. **Mr. CA Ashish Avinash Saoji, Resolution Professional of Aarti Infra-Projects Private Limited**
2. **Union Bank of India**

3. **India Infoline Finance Limited**
4. **Mr. Vinod Mandhana, Suspended Director and Resolution Applicant for Aarti Infra-Projects Private Limited**

...Respondents

In the matter of

Aarti Infra-Projects Private Limited

... Corporate Applicant

Order Delivered on : 03.02.2023

***Coram*:**

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Applicant in MA 329 of 2020
And Respondent in IA 1875 of 2022 : Mr. Rohit Gupta, Advocate
For the Applicant in IA 1875 of 2022 : Mr. M S Bhardwaj, Advocate

ORDER

Per Coram:

1. The present application is moved by Resolution Professional **Mr. CA Ashish Avinash Saoji** (hereinafter called as "the Applicant") under section 30(6) of the Insolvency and Bankruptcy Code, 2016 ("code") r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for seeking approval of the resolution plan under the provisions of Section 31(1) of the Code, for

Aarti Infra-Projects Private Limited (hereinafter called as the "**Corporate Debtor**") and for passing order/appropriate direction that this Tribunal may deem fit in the present matter.

2. The CIRP was initiated against the Corporate debtor vide Order dated 01.05.2019. The Interim Resolution Professional (hereinafter referred to as the IRP) made a public announcement in Form A on 04.05.2019. The IRP constituted the Committee of Creditors (hereinafter referred to as the CoC) on 22.05.2019. Subsequently, the second meeting meeting took place on 02.07.2019, wherein the CoC resolved that the IRP be replaced and Mr. Ashish Avinash Saoji be appointed as the Resolution Professional and the same was approved with 97.52% CoC voting.

3. In accordance with the above resolution, the CoC filed M.A. 2492 of 2019 under Section 22 of the Code on 05.07.2019 in order to replace the IRP and the same was allowed by this Tribunal on 17.07.2019. On 22.07.2019, the IRP conducted a CoC meeting wherein the IRP handed over the charge to the Resolution Professional.

4. In the 5th meeting of the CoC conducted on 26.07.2019 by the Resolution Professional, it was decided to ratify the delay in publishing Form G for inviting expression of interest which was due to be published on 15.07.2019 and the delay being on account of reasons

beyond the control of Resolution Professional, as he was not in charge during the said period.

5. The e-voting for condoning the delay in publishing Form G, was held on 26.07.2019 and the resolution was passed by CoC with a vote of 97.52%.

6. The advertisement in Form G for inviting the Expression of Interest (**"EOI"**) was published in the newspapers viz. Hitavada (English), Indian Express (English) and Loksatta (Marathi).

7. Three EOIs were received till the last date for submission of the expression of interest viz.15.08.2019.

8. As per the published Form G, the last date for submission of resolution plans was fixed as 29.09.2019. However, pursuant to request made by of the resolution applicant, the extension was provided for 15 days and the effective last date of submission of Resolution Plan was 14.10.2019.

9. By 14.10.2019, the Resolution Professional received two Resolution Plans from the following two resolution applicants:

   i. M/s. Khalatkar Construction

   ii. Aarti Infra-Projects Private Limited

10. The 180 days period since the CIRP admission came to an end on 28.10.2019. Thus, pursuant to a resolution passed during the meeting of CoC with a vote share of 97.52%, the Resolution Professional applied

to this Tribunal for extension of the CIRP period by 90 days. Accordingly, the CIRP stood extended upto 26.01.2020. This Tribunal passed order granting extension of 90 days in CIRP vide an order dated 24.10.2019.

11. During the 8th meeting of the CoC, held on 22.10.2019, the Applicant informed the CoC about the two Resolution Plans received and the sealed envelopes of the Resolution Plans were opened in the presence of all CoC members.

12. The Resolution Professional conducted 9th meeting of CoC on 18.12.2019 wherein both the Resolution Applicants were invited to explain their respective plans and for conducting further negotiations with the CoC. The representatives of the Applicant i.e. Aarti Infra-Projects Private Limited being the suspended directors were present of the Corporate Debtor were present in the meeting, however, other resolution applicant namely Khalatkar Constructions did not attend the meeting and informed the Resolution Professional that their amount is final and they are not open to further negotiation. Negotiation were held between the CoC and the Corporate Debtor/Resolution Applicant and a revised plan was called for.

13. The Resolution Applicant i.e. Aarti Infra-Projects Private Limited submitted the revised Resolution Plan on 30.12.2019. The Resolution

Professional conducted the 10th meeting of the CoC on 02.01.2020 wherein Resolution Professional presented the revised plan along with the analysis of the revised plan and Compliance Report. Re-negotiations were held and resolution applicant was asked to submit further revised plan with changed in certain other conditions of plan suggested by CoC and the meeting was adjourned on the next day. In the adjourned meeting, re-negotiation was done and by the end re-negotiation, the Resolution Applicant/Corporate Debtor viz. Aarti Infra-Projects Private Limited was declared as H1 bidder. The Resolution Applicant was asked to submit the revised and final resolution plan with Resolution Professional on 04.01.2020. It was decided to put up the plan submitted by Aarti Infra-Projects Private Limited for approval through e-voting.

14. The e-voting was conducted on 06.01.2020 to 14.01.2020. However, due to technical/software issue on part of Union Bank of India it could not vote and hence fresh e-voting was conducted on 15.01.2020 on the request of Union Bank of India, with the consent of the CoC. During the e-voting conducted on 15.01.2020, the resolution plan submitted by Aarti Infra-Projects Private Limited was approved and they were declared as 'Successful Resolution Applicant' by a voting of 93.95% in favor of the resolution.

15. A Letter of Intent was issued to the Successful Resolution Applicant on 16.01.2020 and an acceptance letter from Successful Resolution Applicant along with Affidavit for submission of Performance Bank Guarantee within seven days.

16. The details of the plan as are follows:

    a. The Highest Total consideration of Rs.1360 Lakh

    b. Payment of the entire CIRP cost, present and future.

    c. Payment of consideration to all the Financial Creditors i.e. secured/unsecured.

    d. Payment of consideration to all Operational Creditors including Government dues and Employees.

17. The plan is approved by 93.95% of CoC members which exceeds the minimum threshold of 66% for approval of Resolution Plan as per Section 30(4).

<u>Section 30(2) of the Code</u>

18. In compliance of Section 30(2) of IBC, 2016, the Resolution Professional has examined the Resolution plan of the Successful Resolution and confirms that this Resolution Plan:

    a) Provides for payment of Insolvency Resolution Process cost in a manner specified by the Board in the priority to the payment of other debts of the corporate debtor;

b) Provides for payment of debts of operational creditor 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 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 in the event of liquidation of the corporate debtor, whichever is higher.

c) Provides for management of the affairs of the Corporate Debtor after approval of Resolution Plan;

d) The implementation and supervision of Resolution Plan;

e) Does not prima facie contravene any of the provisions of the law for time being in force,

f) Conforms to such other requirements as may be specified by the Board.

g) As per the Affidavit received and the further documents submitted, the Resolution applicants are covered under 29A. Therefore, the disabilities under Sections 29A (c) and (h) are not applicable to the Resolution Applicant pursuant to Section 240A (1) of the Code.

19. In compliance of Regulation 38 of CIRP Regulations, the Resolution Professional confirms that the Resolution plan provides that:

a) The amount due to the Operational Creditors under resolution plan shall be given priority in payment over Financial Creditors.

b) It has dealt with the interest of all Stakeholders including Financial Creditors and Operational Creditors of the Corporate Debtor.

c) A statement that neither the Resolution Applicants nor any related parties have failed to implement nor have contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority in the past.

d) The terms of the plan and its implementation schedule.

e) The management and control of the business of the Corporate Debtor during its term.

f) Adequate means of Supervising its implementation.

g) The Resolution Plan Demonstrate that it addresses

i. The cause of the Default

ii. It is feasible and viable

iii. Provision for effective implementation

iv. Provisions for approvals required and the time lines for the same.

v. Capability to Implement the Resolution Plan

20. The Resolution Professional has annexed a certificate at Page 594-598 of the Application under Regulation 39(4) in FORM H of the CIRP Regulations to certify that the resolution plan as approved by the CoC meets all the requirements of the IBC and its Regulations.

FORM H

COMPLIANCE CERTIFICATE

(Under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

I, Ashish Avinash Saoji, an insolvency professional enrolled with Indian Institute of Insolvency Professionals of ICAI and registered with the Board with registration number IBBI/IPA-001/IP-P01268/2018-19/12150, am the resolution professional for the corporate insolvency resolution process (CIRP) of Aarti Infra-Projects Private Limited.

2. The details of the CIRP are as under:

Sr. No.	Particulars	Description
1	Name of the CD	Aarti Infra-Projects Private Limited
2	Date of Initiation of CIRP	01.05.2019
3	Date of Appointment of IRP	01.05.2019
4	Date of Publication of Public Announcement	03.05.2019
5	Date of Constitution of CoC	22.05.2019
6	Date of First Meeting of CoC	29.05.2019

7	Date of Appointment of RP	17.07.2019
8	Date of Appointment of Registered Valuers	02.07.2019
9	Date of Issue of Invitation for EoI	31.07.2019
10	Date of Final List of Eligible Prospective Resolution Applicants	09.09.2019
11	Date of Invitation of Resolution Plan	30.08.2019
12	Last Date of Submission of Resolution Plan	14.10.2019
13	Date of Approval of Resolution Plan by CoC	15.01.2020
14	Date of Filing of Resolution Plan with Adjudicating Authority	Proposed to be filed on 23.01.2020
15	Date of Expiry of 180 days of CIRP	28.10.2019
16	Date of Order extending the period of CIRP	24.10.2019
17	Date of Expiry of Extended Period of CIRP	26.01.2020
18	Fair Value	8,16,92,000.00
19	Liquidation value	2,82,08,000.00
20	Number of Meetings of CoC held	10

3. I have examined the Resolution Plan received from Resolution Applicant (Aarti Infra-Projects Private Limited- [MSME Unit]) and approved by Committee of Creditors (CoC) of Aarti Infra-Projects Private Limited.

4. I hereby certify that-
(i) the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.
(ii) the Resolution Applicant (Aarti Infra-Projects Private Limited) has submitted an affidavit pursuant to section30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.

(iii) the said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code andthe CIRP Regulations made thereunder. The Resolution Plan has been approved by 93.95 % of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

(iv) ~~The voting was held in the meeting of the CoC on _________ where all the members of theCoC were present.~~

~~or~~

I sought vote of members of the CoC by electronic voting system which was kept open at least for 222 hours (from 06.01.2020 to 15.01.2020) as per the regulation 26. (The e-voting was conducted from 06-01-2020 to 14-01-2020 to consider the resolution plan however Union Bank of India could not vote due to technical/software issue. Union Bank of India over mail requested the RP to restart the e-voting on 15-01-2020 which was forwarded to other CoC members and on confirmation from all the CoC members fresh e-voting was conducted on 15-01-2020)

5. The list of financial creditors of the Corporate Debtor- Aarti Infra-Projects Private Limited being members of the CoC and distribution of voting share among them is as under:

Sr. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	Union Bank of India	93.95	Voted for
2	Bank of Baroda	3.48	Dissented
3	India Infoline Finance Limited	2.57	Dissented

6. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made thereunder.

7. The amounts provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rs. lakh)

Sr. No.	Category of Stakeholder*	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)

1	Secured Financial Creditors	4264.64	4264.64	1329.00	31.16%
2	Unsecured Financial Creditors	112.55	112.55	1.00	0.89%
3	Operational Creditors (Including Government Dues)	13897.63	13192.10	20.20	0.15%
	Workmen&Employees	37.05	9.58	9.58	100%
	Other operational creditor	53.11	53.11	0.22	0.41%
4	Other Debts and Dues	0.00	0.00	0.00	0.00%
Total		**18369.29**	**17631.98**	**1360.00**	

8. The interests of existing shareholders have not been altered by the Resolution plan as under:

Sr. No	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity	1970000	-	100%	1970000
2	Preference	NIL	NIL	NIL	NIL

9. The compliance of the Resolution Plan is as under:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	No specific criteria stipulated by CoC	N.A.
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Page 5 (Clause 1) Page 27 (Clause- XIII)	Yes
Section	Whether the Resolution	Yes	Yes

30(1)	Applicant has submitted an affidavit stating that it is eligible?		
Section 30(2)	Whether the Resolution Plan: (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment of the debts of operational creditors? (c) provides for the management of the affairs of the Corporate debtor? (d) provides for the implementation and supervision of the resolution plan? (e) contravenes any of the provisions of the law for the time being in force?	Page 20- Clause V Page 21- Clause VI Page 19& 20- Clause III & IV Page 6- Clause 6	Yes Yes Yes Yes No
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	Page 26 – Clause X	Yes Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Page 26 – Clause XI	Yes
Regulation 35A	Where the resolution profesional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66,before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	--	Yes. The transaction auditor has submitted report which is circulated to CoC members.

Regulation 38 (1)	Whether the Resolution Plan identifies specific sources of funds that will be used to pay the - (a) insolvency resolution process costs? (b) liquidation value due to operational creditors? (c) liquidation value due to dissenting financial creditors?	Page 20- clause III(b)	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Page 6- Clause 6	Yes
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	Page 15,16,17- Clause I Page 19,20- Clause III, IV Page 25- Clause V(9)	Yes Yes Yes
38(3)	Whether the resolution plan demonstrates that – (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	Page 13,14 Page 25- Clause V(9)	Yes Yes Yes Yes Yes
39(2)	Whether the RP has filed	--	Yes, The

	applications in respect of transactions observed, found or determined by him? pufe transaction		transaction auditor has submitted report which is circulated to CoC members.

10. The CIRP has been conducted as per the timeline indicated as under:

Section of the Code / Regulation No.	Description of Activity	Latest Timeline under regulation 40A	Actual Date
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	01.05.2019
Regulation 6(1)	Publication of Public Announcement	T+3	03.05.2019
Section 15(1)(c) /Regulation 12 (1)	Submission of Claims	T+14	Complied
Regulation 13(1)	Verification of Claims	T+21	Complied
Section 26(6A) / Regulation 15A	Application for Appointment of Authorised Representative, if necessary	T+23	Not Required in the matter
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	T+23	22.05.2019
Section 22(1) and regulation 17(2)	First Meeting of the CoC	T+30	29.05.2019
Regulation 35A	Determination of fraudulent and other transactions	T+115	Report circulated with CoC
Regulation 27	Appointment of two Registered Valuers	T+47	02.07.2019

Regulation 36 (1)	Submission of Information Memorandum to CoC	T+57	30.08.2019
Regulation 36A	Invitation of EoI	T+75	31.07.2019
	Publication of Form G	T+75	31.07.2019
	Provisional List of Resolution Applicants	T+100	25.08.2019
	Final List of Resolution Applicants	T+115	09.09.2019
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	T+105	30.08.2019
Section 30(6) / Regulation 39(4)	Submission of CoC approved Resolution Plan	T+165	Proposed to be filed on 23.01.2020
Section 31(1)	Approval of Resolution Plan	T=180	

11. The time frame proposed for obtaining relevant approvals is as under:

Sr. No.	Nature of Approval	Name of applicable Law	Name of Authority who will grant Approval	When to be obtained
1				
2				
3				

12. The Resolution Plan is not subject to any contingency.
or
The Resolution Plan is subject to the following contingencies (Elaborate the contingencies):
i… …………………………………………………………
ii…………………………………………………………...

13. Following are the non-compliances of the provisions of the Insolvency and Bankruptcy Code, 2016, regulations made or circulars issued thereunder (If any deviation/ non-compliances were observed, please state the details and reasons for the same):

Sr. No.	Deviation/Non-compliance observed	Section of the Code / Regulation No. / Circular No.	Reasons	Whether rectified or not
1	Resolution Plan is to be submitted considering the asset position of the Corporate Debtor. However the applicant has submitted the plan considering all the assets which covers the immovable property offered as collateral security (including that on the individual name).	- Release of following guarantees: Personal Guarantee - Kanhaiyalal Mandhana - Benigopal Mandhana - Kirshna Mandhana - Vinod Mandhana - Vikas Mandhana - Savita Mandhana - Suman Mandhana - Lilavati Mandhana Corporate Guarantee: - Mandhana Engineers Pvt. Ltd - Aarti Infra-Projects Pvt. Ltd (for BOB)	Mentioned in detail on page no. 13 & 14 of the Resolution Plan	The said request has been approved by the Committee of Creditors by voting of 93.95% in favor of said request.
2	Resolution Plan has also requested for release of personal guarantee and corporate guarantee of various related persons/entity.			

14. The Resolution Plan is being filed **2** days before the expiry of the period of CIRP provided in section 12 of the Code.

15. Provide details of section 66 or avoidance application filed / pending.

Sr. No.	Type of Transaction	Date of Filing with	Date of Order of the	Brief of the Order

		Adjudicating Authority	Adjudicating Authority	
1	Preferential transactions under section 43	-	-	-
2	Undervalued transactions under section 45	-	-	-
3	Extortionate credit transactions under section 50	-	-	-
4	Fraudulent transactions under section 66	-	-	-

16. I Ashish Avinash Saoji hereby certify that the contents of this certificate are true and correct to the best of my knowledge and belief, and nothing material has been concealed therefrom.
(Signature)
Name of the Resolution Professional: Ashish Avinash Saoji
IP Registration No: IBBI/IPA-001/IP-P01268/2018-19/12150
Address as registered with the Board: 107, Kanchanganga Estate, Narendra Nagar, Nagpur-440015
Email id as registered with the Board: ashishsaoji@gmail.com

Date: 22.01.2020
Place: Nagpur

21. The Interim Resolution Professional in terms of Regulation 27 of the CIRP Regulations, appointed 2 Independent valuers registered with IBBI for each class of asset to ascertain the Liquidation value and Fair market value of the Corporate Debtor. As per the valuation reports, the average liquidation value of the Corporate Debtor is stated to be Rs 282.08 Lacs and the average Fair Market value is stated to be Rs 816.92

Lacs against whereas the Successful Resolution applicant has proposed a consideration of Rs 1360 Lacs to be paid to all the Creditors.

22. The Financial Offer under the Approved Resolution Plan is Total disbursement of Rs 1360.00 Lacs is as follows:

Sr. No.	Particulars of Claim	Amount
1.	CIRP Costs	At actual
2.	Financial Creditors	13,30,00,000
3.	Operational Creditors (incl. statutory dues)	20,20,000
4.	Employees and Workmen	9,58,000
5.	Other Creditors	22,000
Total		13,60,00,000

23. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:

a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.

b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.

c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of the Code.

d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.

24. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations.

25. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal the same is found to be in order. The Resolution Plan has been approved by the CoC during the e-voting conducted on 15.01.2020, pursuant to the 10th meeting held on 02.01.2020 with 93.95% (Ninety-Three point Nine Five Percent).

26. In ***K Sashidhar v. Indian Overseas Bank & Others*** (in Civil Appeal No.10673/2018 decided on 05.02.2019) the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to

scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

27. In ***CoC of Essar Steel*** (Civil Appeal No. 8766-67 of 2019 decided on 15.11.2019) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

"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)."*

28. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. The Resolution Plan is in compliance with the provisions of Section 29A of

the Code and is in accordance with law. The same needs to be approved. Hence ordered.

<u>IA 1875 of 2022</u>

29. IA 1875 of 2022 has been filed by Bank of Baroda, Rosarb Branch (**"Applicant"**), being one of the Financial Creditors of the Corporate Debtor praying for the following reliefs:

    a) To reject the Resolution Plan as proposed by the Respondent No. 4, which would be prejudicial to the interest of the Applicant or to direct Respondent No. 4 to modify the said Resolution Plan to the extent that the release of the security in question is not sought.
    b) To direct the Respondent No. 4 and/or Successful Resolution Applicant to furnish additional security for the cash credit facility availed by Aarti Enterprises.

30. The Applicant in the captioned IA submits that it had granted Cash Credit Facility of Rs. 1 Cr to the Aarti Enterprise, a Proprietor Firm on 07.05.2012. Corporate Debtor had guaranteed the said Cash Credit Facility vide Corporate Guarantee dated 08.05.2013 executed in favour of the Applicant. In accordance of the same, Corporate Debtor mortgaged its Land situated at Wathoda, Nagpur in favor of the Applicant.

31. Aarti Enterprise had defaulted the dues payable to the Applicant. Hence, the Applicant has taken possession of the Plot and initiated necessary proceedings under SARFAESI, 2002 against the proprietary concern and the Corporate Guarantor viz, Corporate Debtor.

32. Corporate Debtor filed Company Petition 3884 of 2018 under section 10 of the Code for initiation of CIRP against itself and the same was admitted by this Tribunal vide its order dated 01.05.2019.

33. Respondent No. 4 being the suspended director of the Corporate Debtor proposed a Resolution Plan which has been approved only by Respondent No. 2 with a vote share of 93.95%.

34. Respondent No. 2 shall get a meagre sum of Rs. 12.23 Cr against its claim of Rs. 41.12 Cr and has taken a haircut of more than 70%. Hence, this application.

35. Applicant in I.A 1875 of 2022 has voting share of 3.48%. At this juncture, the plan is for approval and the same has been approved by the CoC with voting share of 93.95%. Therefore, in the backdrop of the above and considering the provisions of the Code, we do not find substance in the said application at the juncture of plan approval. Hence, the I.A. 1875 of 2022 is rejected.

36. The Application M.A. No. 329 of 2020 in CP 3884 of 2018 be and the same is allowed. The Resolution Plan annexed to the Application is

hereby approved. It shall become effective from this date and shall form part of this order.

i. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

ii. Further in terms of the Judgment of Hon'ble Supreme Court in the matter of ***Ghanshyam Mishra and Sons Private Limited v/s Edelweiss Asset Reconstruction Company Limited***, on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the Resolution Plan.

iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Mumbai, Maharashtra for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.

iv. The moratorium under Section 14 of the Code shall cease to have effect from this date.

v. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.

vi. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.

vii. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

Sd/-
SHYAM BABU GAUTAM
Member (Technical)

Sd/-
JUSTICE P. N. DESHMUKH
Member (Judicial)

03.02.2023
SAM