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

IA(IBC)/417(CHE)/2022 in IBA/1423/2019
(Filed under Sec. 30(6) & 31 of the Insolvency & Bankruptcy Code, 2016)

Along with

IA(IBC)/373(CHE)/2022 in IBA/1423/2019
(Filed under Sec. 60(5) of the Insolvency & Bankruptcy Code, 2016)

IN THE MATTER OF:

C. Sanjeevis
Resolution Professional of
M/s. Landmark Housing Projects Chennai Private Limited
Door No.7/43-114, Shiradi Avenue,
Near CRI Pumps, Keeranatham Post,
Coimbatore – 641 035

... Applicant

Present:

For RP	:	*Karthick Seshadri, Advocate*
For Objector	:	*Pawan Jhabakh, Advocate*

CORAM :

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

Order Pronounced on ***27th June 2022***

ORDER

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

IA(IBC)/417(CHE)/2022 is an application which is moved by the Resolution Professional of the Corporate Debtor viz., **M/s. Landmark Housing Projects Chennai Private 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, who are the promoters of the Corporate Debtor. It was submitted that the Corporate Debtor is an MSME.

2. In an Application filed under Section 9 of IBC, 2016 by a Operational Creditor, this Adjudicating Authority vide order dated 29.04.2021 passed in IBA/1423/2019 initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor viz. M/s. Landmark Housing Projects Chennai Private Limited and the Applicant herein was appointed as Interim Resolution Professional (IRP).

3. It was submitted that the Applicant upon appointment, had effected the public announcement on 04.05.2021 about the commencement of the CIRP as against the Corporate Debtor and called for claims. Thereafter, the Applicant upon due verification of claims received had constituted the Committee of Creditors (CoC) with HDFC limited as secured Financial Creditor along with one K.S. Sreenivasan as Financial Creditor and in pursuance of which, 5 CoC meetings were conducted during the CIRP period. It was submitted that these CoC meetings were convened by the Resolution Professional wherein significant issues on Information

Memorandum, Request for Resolution Plan (RFRP), Evaluation Matrix, appointment of Registered Valuers, Publication of expression of interest, presentation of resolution plans by resolution applicants, discussion and negotiation of resolution plans and approval of resolution plan, and relevant observations were discussed and decided.

4. However, it was submitted that vide order of this Tribunal on 23.02.2022 in IA/670/2021, the financial creditor namely Mr. K.S. Sreenivasan was removed from the CoC after due perusal of the audit report of Ms. Sripriya Kumar, Independent Chartered Accountant in pursuance of the ad interim order dated 07.01.2022 which was obtained to determine the actual assets and liabilities of the Corporate Debtor.

5. It was submitted that meanwhile, during the period of CIR Process, the Resolution Professional made public announcement in Form G in two newspapers on 12.07.2021 inviting Expression of Interest (EoI) from Prospective Resolution Applicants (PRAs). The Resolution Professional received EoIs from ten Resolution Applicants (RA) and all of them have not sent further details for their eligibility to be selected as proposed resolution applicant. It was submitted that in spite of RP having sent three reminders to all the prospective RA there is no further response from these prospective RA. Further,

it was submitted that pursuant to the third COC meeting held on 12.10.2021, RP has published form G on 01.11.2021 inviting EOIs in leading newspapers in all editions. Four persons had expressed their interest by email for EOI. However, only one Resolution Applicant had given resolution plan. The said plan was placed in the COC meeting held on 10.1.2022 and the same was rejected by the COC.

6. The Learned counsel for the Applicant had further submitted that in the COC meeting held on 10.01.2022, for 3rd time Form G was published in newspaper dated 25.1.2022 and in response to the same four People had expressed their willingness and given their consent as proposed resolution applicants. However, only one person namely M/s Bommidala Enterprises Pvt Ltd had submitted Resolution plan along with DD amounting to Rs.2 crore as EMD. Parallelly, it was submitted the Corporate Debtor had also submitted its Resolution Plan dated 01.03.2022 for placing it in the ensuing COC meeting.

7. It was submitted that on the next COC meeting i.e. on 24.03.2022, the resolution plan submitted by M/s Bommidala Enterprises Pvt Ltd and the Resolution Plan of the Corporate Debtor were placed for COC's consideration and both the plans were thoroughly discussed among members of COC. It was mentioned

that the COC members except M/s. Hemant Metha and 8 others have accepted the Resolution Plan of the Corporate Debtor.

8. It was submitted by the Learned Counsel for the Applicant that the said M/s. Hemant Metha and 8 others conditionally accepted the Resolution Plan subject to their claim being accepted by the Corporate Debtor to be settled as a goodwill gesture as per the minutes of the CoC. However, it was submitted that the Corporate Debtor expressed the willingness to accept claims as approved by the Adjudicating Authority in accordance with law. Based on the voting share and the approval of the revival plan by the CoC, the Resolution Professional has placed this application for accepting the CoC approved Resolution Plan.

9. It was submitted that the total claims admitted from 27 creditors aggregates upto Rs.176,28,76,960/- and the details of the creditors and the claims accepted by the RP are as mentioned below;

FINANCIAL CREDITORS

NAME OF CREDITORS	CLAIM RECEIVED (IN RS)	ADMITTED CLAIM (IN RS)
Housing Development Finance Corporation Limited (HDFC) (Secured Creditor)	58,64,07,589/-	28,03,62,075/-
Mr. K.S.Sreenivasan	74,92,60,603/-	Nil
M/S Jai Jinendra Enterprises	5,15,73,817/-	5,15,73,817/-
M/S Sandhya & Co	3,56,00,162/-	3,56,00,162/-
M/S Vijayalakshmi Enterprises	3,80,67,697/-	3,80,67,697/-

M/S V.S. Enterprises	5,00,36,008/-	5,00,36,008/-
M/S Vipul Investment	2,34,94,303/-	2,34,94,303/-
M/S Hemant & Co	2,37,42,806/-	2,37,42,806/-
M/S Sandhya Mehta	12,32,70,800/-	12,32,70,800/-
M/S Vipul Mehta	19,21,32,500/-	19,21,32,500/-
Dr. Ramakrishnan & Dr. Kalpanaraj	52,05,707/-	Nil
A.G. Dhamodharan & Mrs. Dr. D. Kalpanaraj	1,60,47,000/-	Nil
M/s. JM Financial Credit Solutions Limited	26,61,32,111/-	14,84,88,276/-
Mr. Suresh Mehta	31,47,670/-	31,47,670/-
M/s.Ceequence Technologies Private Limited	3,20,27,977/-	3,20,27,877/-
M/s. Swiftmail Communication Limited	14,94,30,000/-	4,92,21,917/-
Total	**234,55,76,750/-**	**105,11,66,008/-**

Operational Creditors

Name of Creditors	Claim Received (In Rs)	Admitted Claim (In Rs)
Nkv Home Depot, Chennai	21,80,480	21,80,480/-
Mr. K.S. Sreenivasan, Chennai	15,20,93,110	15,00,44,313/-
M/S Jindal Steels	45,45,991	Nil
Relcon Intra Projects Limited, Mumbai	32,55,115	32,55,115/-
John Lifts Private Limited	13,26,092	13,26,092/-
Ars Steels & Alloys Private Limited	65,49,965	65,49,965/-
Geotrix Building Envelop	4,09,19,539	3,39,32,014/-
Ram Ratna Infrastructure Private Limited	66,52,310	66,52,310/-
Empacc Solutions	9,79,170	9,79,170/-
Hil Limited	70,47,504	70,47,504/-
Commercial Tax Department	23,78,393	23,78,393/-
Income Tax, Chennai	35,59,05,296	35,59,05,296/-
GST – Triplicate Division, Chennai	13,96,46,988	13,96,46,988/-
Total	**72,37,74,318**	**70,98,97,640**

OTHER CREDITORS

NAME OF CREDITORS	CLAIM RECEIVED (IN RS)	ADMITTED CLAIM (IN RS)
Employees Provident Fund Organisation	17,89,080/-	17,89,080/-
Employees State Insurance	24,232/	24,232/
Total	**18,13,312/-**	**18,13,312/-**

10. It was submitted that the primary reason for the in-debtedness for the Corporate Debtor is due to slow performing Real estate market cash flow from the projects or delayed surplus from the interest and financial criticalness, financial crunch, delay in the execution of projects, cost over runs, etc. Further, it was submitted that the resource available for the Corporate Debtor for revival is that the Corporate Debtor is presently having running projects namely Geethanjali and Ayna, the Project Geethanjali at Annanagar west is developed with project finance from secured financial creditor viz. HDFC Limited. The Project at Ayna is developed with project finance from as secured financial creditor, JM financial. This project requires a sum of Rs. 6,00,00,000/- towards its completion and handing over to buyer/prospective buyer. By completing this project spending Rs.6 crore, it was submitted that the Corporate Debtor will be able to generate a sale consideration of Rs.16,91,00,000/- from the buyer/prospective buyer. Further, it was submitted that the Corporate Debtor on completion of project

Grange is entitled to refundable deposit of Rs.10,00,00,000/- from the landowners.

11. It was submitted that the Corporate Debtor's SPV M/s. Landmark Housing Projects India Pvt Ltd has entered into joint venture agreement with Beauty Etoile Pvt Ltd and under the said joint venture the Corporate Debtor is entitled to receive 12% of the sale proceeds as recovery of its investment of this project. Further, it was submitted that the Corporate Debtor will also be entitled 14% of the sale process and this amount will be adjusted again the security deposit given by M/s. Beauty Etoile Pvt ltd. It was submitted that the amount receivable is percentage of sale process received by M/s. Beauty Etoile Pvt ltd out of the project. In all, it was submitted that a sum of Rs.96,91,00,000/- will be available with the Corporate Debtor for distribution to the secured financial creditor, financial creditors and operational creditor over period of 18 months.

OBJECTION TO THE RESOLUTION PLAN IA(IBC)/373(CHE)2022

12. The following Financial Creditors have raised objection to the Resolution Plan.

SL. No.	NAME OF CREDITORS
1	M/s. Jai Jinendra Enterprises
2	M/s. Sandhya & Co
3	M/s. Vijayalakshmi Enterprises
4	M/s. V.S. Enterprises

5	M/s. Vipul Investment
6	M/s. Hemant & Co
7	M/s. Sandhya Mehta
8	M/s. Vipul Mehta

13. The Learned Counsel for the Applicant submitted that post initiation of the Corporate Insolvency Resolution Process, the Applicants lodged their claims by filing their respective Form C claims with the 1st Respondent thereby resulting in the Applicants having been included as Financial Creditors in the 2nd meeting of the Committee of Creditors. The Learned Counsel for the Applicants state that 5 meetings of the Committee of Creditors have been held so far and that the Applicants are constrained to approach this Tribunal as there has been gross violation of their rights having been committed blatantly by the 1st Respondent in the proceedings at the 5th meeting of the Committee of Creditors which was held on 24.03.2022.

14. It was submitted that in the 5th meeting of the Committee of Creditors which was held on 24.03.2022, the 1st Respondent has illegally and unlawfully put to vote a revival resolution plan presented by the 2ndRespondent completely discounting and disregarding the voting share of the Applicants in the Committee of Creditors.

15. It was submitted that by very perusal of the minutes of the 5th meeting of the Committee of Creditors, it is evident that the Revival Plan has been approved only with a voting percentage of 48.53% wherein the provisions of section 30 (4) of the Insolvency & Bankruptcy Code 2016, requires the Committee of Creditors to approve a resolution plan, by vote of not less than sixty six percent of the voting share of the Financial Creditors.

16. It was submitted that the said minutes of the 5th meeting of the Committee of Creditors expressly records that right of the Applicant as a Financial Creditor and its voting rights to the extent of 51.47% on one hand and on the other hand approves a Revival Plan which fails to meet the basic thresholds as specified and laid down under the Insolvency & Bankruptcy Code 2016. Thus, it was submitted on these grounds alone, the entire resolution passed by the Committee of Creditors and the Revival Plan itself ought to be struck down as the 1st Respondent, the Committee of Creditors and the 2nd Respondent has misinterpreted and misunderstood the basics of the provisions of the Insolvency & Bankruptcy Code 2016.

17. In reply the RP has filed his counter and has stated that the objections raised by these Applicants are frivolous. It was submitted that the IRP in accordance with Section 18(c) of IBC, 2016 is required to duty bound constitute the CoC and the IRP on being

receipt of the claims has constituted and reconstituted the CoC from time to time.

18. It was submitted that the erstwhile management, the directors and promoters of the Corporate Debtor were not providing the necessary cooperation as mandated under Section 19(1) of IBC, 2016 and the RP / IRP could not take over the management of the affairs as mandated under Section 17 and complete his duties to the fullest capacity as mandated under Section 18 of IBC, 2016. It was submitted that the claims were only conditionally admitted and the said admission was subject to verification of records and books of the Corporate Debtor.

19. It was submitted that the RP was able to complete the verification of claims and determine the amount of claim as mandated under Regulation 13 and 14 only on presentation of the financial information including the books of accounts of the Corporate Debtor. Therefore, it was submitted that at this stage, the RP in accordance with Regulation 14(2) revised the amount of the claim as soon as it became "practicable" and "when the came across additional information wanting such revision".

20. It was submitted that to this effect, in the notice to the 5th meeting of the CoC and in the agenda the RP had included the item

under the head "Reconstitution of CoC". It was submitted that based on the information originally available with the RP, the voting percentage was shared prior to the 5th CoC meeting on verification of claims and determination of amounts as mandated under Regulation 14(2), the admitted claims were accordingly revised and subsequently the vote share in the reconstituted CoC was altered. Therefore, it was submitted that in effect the vote share of multiple Financial Creditors changed and consequently, the total vote share under Mr. Hemanth Mehta reduced from 51% to 9% as filed in the Report. Thus, it was submitted that the Resolution Plan is approved by a majority of 91% voting share.

21. It was further submitted that the Resolution Plan was, agreed in principle by Mr. Hemanth Mehta group as well and the only objection that came from them was that he sought their entire claim to be admitted as in the claim for pre-verification with the records available.

22. In relation to the objections raised by the Learned Counsel for the Financial Creditor of Mr. Hemanth Mehta group, we find it apt to refer to the Regulation 13 and 14 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which is as follows;

13. Verification of claims.

(1) The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.

(2) The list of creditors shall be –

(a) available for inspection by the persons who submitted proofs of claim;

(b) available for inspection by members, partners, directors and guarantors of the corporate debtor 36[or their authorised representatives];

(c) displayed on the website, if any, of the corporate debtor;

(ca) filed on the electronic platform of the Board for dissemination on its website: Provided that this clause shall apply to every corporate insolvency resolution process ongoing and commencing on or after the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020;

(d) filed with the Adjudicating Authority; and

(e) presented at the first meeting of the committee.

14. Determination of amount of claim.

(1) Where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him.

(2) The interim resolution professional or the resolution professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of claims made under subregulation (1),as soon as may be practicable, when he comes across additional information warranting such revision.

23. In the present case, it is seen that Mr. Hemanth Mehtha groups claim amounting to Rs.53,79,18,093/- was admitted subject to verification of accounts by the RP. Subsequently, the RP has requested them to provide proof and books of accounts to substantiate the claims and even after repeated requested the said Mr. Hemanth Mehta group has failed to provide any material fact to substantiate their claim. It could be seen that the RP after verifying the books of accounts of the Corporate Debtor, it was found that Rs.6,98,11,899/- was due and payable by the Corporate Debtor to the said Mr. Hemanth Mehta group and since they have failed to provide any proof to substantiate their claim, the RP was constrained to reduce the voting right in favour of Mr. Hemanth Mehta group to 9% in terms of Regulation 14(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

24. The aforesaid fact is also captured in the 5th CoC meeting and the same is extracted hereunder;

> The RP has admitted claims of the creditors to the satisfaction of supporting papers submitted by them subject to cross verification of books of accounts of corporate debtor. The admitted claims of HDFC LIMITED will be verified with books of accounts of Corporate Debtor and payment to be made based on actual amount as per books of account and also accepted by Corporate by reconciliation of both accounts. Regarding Hemant Mehta and 8 others, the accounts are under reconciliation with both books of accounts and payment will be made on the basis of actual due by corporate debtor. For other creditors if necessary due reconciliation will be done. RP has also given

voting rights to these financial creditors based on their voting share subject to final verification of their claims.

25. Thus, it could be seen that the Resolution Plan has passed the muster of 66% and hence the objections raised by the Financial Creditors in this regard is not sustainable. Accordingly, IA(IBC)/373(CHE)/2022 stands **dismissed.**

26. 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.

27. As to the Relief and Concessions sought in the Resolution Plan, taking into consideration the Judgments of the Hon'ble NCLAT, and more particularly the decision of the Hon'ble Supreme Court of India in the matter of **Embassy Property Developments Pvt. Ltd. –Vs- State of Karnataka & Ors.** in *Civil Appeal No. 9170 of 2019*, we direct the Resolution Applicant to file necessary application before the necessary forum / authority in order to avail the necessary Relief and Concessions, if it is in accordance with law.

28. 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).
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> 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."

29. 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).

30. 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)

31. 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)

32. 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.
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> 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.
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> 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 exposited by this Court.

33. 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.

34. 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.

35. 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.

36. 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. Accordingly, IA(IBC)/417(CHE)/2022 stands **allowed.**

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ANIL KUMAR B
MEMBER (TECHNICAL)

-SD-

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