

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
04-03-2024 AT 10:30 AM**

CP(IB) No.747/7/HDB/2019

And

IA (IBC) (Plan) 4/2024 in CP(IB) No.747/7/HDB/2019

u/s. 7 of IBC, 2016

IN THE MATTER OF:

State Bank of India

...Financial Creditor

VS

Rajvir Industries Ltd

...Corporate Debtor

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)

SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

ORDER

IA (IBC) (Plan) 4/2024

Mr. K. Murali Krishna Prasad, Resolution Professional present physically.

Orders pronounced. In the result, **resolution plan approved** as per the terms mentioned in the order.

As regards the claim for payment of fee of the Advocates engaged by the previous Resolution Professional is concerned, the following order is passed:

In the event if the proposed payment towards advocates fee and expenses resulting in increase in the CIRP expenses then the same shall be shared by the Secured Financial Creditors.

We direct the Secured financial creditors to comply the same at the earliest, but not later than 10 days of approving the same and report compliance by 18.03.2024.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH-1**

IA (Plan) No. 4/ 2024
in
CP(IB)747/7/HDB/2019

Application under Sections 30(6) and 31(1) of the IBC (“**Code**”) read with
Regulation 39(4) of the IBBI (IRPCP) Regulations, 2016

In the matter of State Bank of India VS Rajvir Industries Ltd

Filed by:

Kalvakolanu Murali Krishna Prasad

Resolution Professional

M/s Rajvir Industries Limited

H.No.8-72, Plot No.106,

Mythripuram Colony, Jillelguda,

Vyshalinagar PO, Hyderabad-500079

...Resolution Professional

Date of order: 04.03.2024

Coram:

Dr. N.Venkata Ramakrishna Badarinath, Hon’ble Member Judicial

Shri Charan Singh, Hon’ble Member Technical

Appearance:

For Applicant: Ms. J.V.L Bharthi, Advocate

PER: BENCH

1. The present Application is filed by **Kalvakolanu Murali Krishna Prasad** (“**Resolution Professional**” / “**Applicant**”), the Resolution Professional of M/s Rajvir Industries Limited (“**Corporate Debtor**”), under Sections 30(6)

and 31(1) of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”), seeking the approval of the resolution plan of M/s. Vasavi Realty Pvt Ltd (“**Successful Resolution Applicant**”).

2. To put precisely, State Bank of India filed a petition under Section 7 of IBC against the Corporate Debtor i.e. Rajvir Industries and this Adjudicating Authority admitted the petition on 26.04.2021 ordering commencement of Corporate Insolvency Resolution Process by appointing Shri Taduvai Siva Naga Raja as IRP, who was subsequently confirmed as RP at the 1st COC meeting held on 26.5.2021. He was replaced by the Applicant herein on 26.05.2023. approval
3. The erstwhile Resolution Professional after verifying and collating the claims constituted COC comprising of the following members. The members of COC and their respective voting shares are as under:

Sl. No.	COC Member	Voting Share
1	State Bank of India	64.83%
2	IDBI Bank Ltd	17.14%
3	Axis Bank Ltd	13.83%
4	Central Bank of India	3.36%
5	ICICI Bank Ltd	0.84%
	Total	100.00%

4. The erstwhile RP published Form-G in Newspapers on 24-06-2021, calling for the Expression of Interest from Prospective Resolution Applicants (PRAs). Further, he issued Provisional and Final List and issued Information Memorandum (IM) and Request for Resolution Plan (RFRP) inviting submission of resolution plans from the eligible PRAs.
5. Pursuant to the above, he received 5 resolution plans and the COC has rejected all the resolution plans and consequently, the erstwhile RP filed application for liquidation of the CD.
6. Subsequently, the State Bank of India, lead member of the consortium banks, has filed an IA 521/2023 for extension of CIRP and Replacement of RP to explore further possibilities of resolution. Accordingly, the Hon'ble Adjudicating Authority vide its order dated 26-05-2023 had extended the CIRP period by 90 days and appointed the Applicant herein as Resolution Professional (RP) for taking further necessary steps for insolvency resolution of the CD.
7. Complying the above directions, the Applicant herein took charge on 05-06-2023 from the erstwhile RP and conducted 29th COC meeting on 12-06-2023 and taken the following the steps as decided by the COC:
 - a) Published modified Form-G on 28-06-2023.
 - b) Issued Provisional List of PRAs on 24-07-2023.
 - c) Request for Resolution Plan (RFRP) & Evaluation Matrix (EM) got approved by the COC at its 31st COC meeting held on 24-07-2023.
 - d) Appointed the registered valuers on 29-07-2023 for reporting the fair value and liquidation value of CD's assets.

- e) Issued the updated Information Memorandum (IM) and approved RFRP was shared with PRAs on 29-07-2023.
- f) Issued Final List of PRAs on 08-08-2023 inviting resolution plans on or before 28-08-2023.
- g) The Applicant filed IA 1420/2023 for further extension of 90 days and the Adjudicating Authority has granted 90 days extension with effect from 24-08-2023, vide order dated 31-08-2023.
- h) Received 6 resolution plans and the same were opened in presence of the respective resolution applicants in 32nd COC meeting, held on 04-09-2023, whereat the committee noted the offers submitted by the RAs and advised the RP to submit report on all the resolution plans to the next COC meeting for further consideration. Further, the COC has advised that RAs shall submit RFRP complaint resolution plans. The RP also shared particulars of the fair value and liquidation value with the COC members.
- i) The Applicant submitted RP report on the resolution plans to the COC which were discussed at its 33rd COC meeting held on 15-09-2023, whereat the Committee, after considering the RP's report on the resolution plans received, had felt that the amounts offered by the resolution applicants are far below the liquidation value and after detailed deliberations on the amounts offered and various conditions stipulated by the resolution applicants, the committee decided to invite the RAs to next COC meeting for further negotiations by allocating separate time slots.

- j) The undersigned addressed separate letters to all the resolution applicants on 17-09-2023 informing the observations of the COC on their respective resolution plans, advised them to attend the 34th COC meeting to be held on 22-09-2023 with substantial improvements in payments offered under their resolution plans and also by addressing the observations of the COC.
- k) In response to the invitation for negotiations 4 RAs have attended the 34th COC meeting held on 22-09-2023 and at the request of other 2 RAs the negotiations with them were held at 35th COC meeting, conducted on 26-09-2023.
- l) The RAs have been once again called for attending the 36th COC meeting for further negotiations with their final offers and their revised resolution plan, to be held on 05-10-2023 physical meeting.
- m) In response to the above only 4 resolution applicants have attended the negotiations on 05-10-2023 whereat the COC has conducted final negotiations with RAs and advised them to submit their final and unconditional plans on or before 06-10-2023. In respect of the other 2 RAs who have not attended the final negotiations, the COC advised the RP to consider their resolution plans earlier submitted by them for further evaluation and further processing.
- n) The committee also advised RP to submit his report on such final resolution plans as above, to the next COC meeting along with the soft copies of Resolution Plans for further evaluation at their end.

8. The committee after due deliberation at its 37th COC meeting held on 18-11-2023, all the 6 resolution plans along with final RP report, together with the scores obtained as per the approved evaluation matrix , were placed for further evaluation by COC.
9. The COC in its 38th meeting held on 28-12-2023, decided to take up all the 6 resolution plans for e-voting up to 19-01-2024 08:00 PM to enable the respective COC members for obtaining approvals from their competent authorities for voting. The e-voting lines was extended up to 31-01-2024, and subsequently extended till 09.02.2024. The final Resolution Plan submitted by **M/s. Vasavi Realty Private Limited** has been approved by the COC with **95.80%** and the remaining 5 resolution plans were unanimously rejected by the COC. **The brief particulars of voting are as under:**

S No	To approve the Final Resolution Plan received from:	Payments offered under Plan Rs. in Crores	Agree (Approve)	Disagree (Reject)
1	M/s. Vasavi Realty Private Limited	128.00	95.80%	4.20%*
2	M/s. Jayman Dealers Private Limited & SVP Distributors Private Limited (Consortium)	90.00	0%	100%
3	M/s. Radha Smelters Private Limited	80.00	0%	100%
4	M/s. Sitaram Spinners Private Limited	53.60	0%	100%
5	M/s. Gurpreet Galvanising Private Limited	48.60	0%	100%
6	M/s. Anirudh Agro Farms Limited	33.00	0%	100%

- 10.** The Central Bank of India Ltd with 3.36% voting share and ICICI Bank Ltd with 0.84% were declared as dissenting creditors and they voted against all the 6 resolution plans, and are entitled to a minimum amount and priority in payment over the assenting financial creditors as per section 30(2)(b).
- 11.** Consequently, the Applicant issued Letter of Intent (LOI) to the SRA for their consent and deposit of performance security deposit of Rs. 12.80 crores (including Rs. 50.00 lakhs already received along with EOI & Resolution Plan).
- 12. Salient features of the Resolution Plan as approved by COC.**

(a) Brief Background of the SRA:

M/s. Vasavi Realty Private Limited (SRA) is a Private limited company incorporated on 04 February 2005, having its registered office at 8-2-120/86/9/A/1, 12 & 2/13, 1st Floor, Northend, Anilath Maja Housing Society, Road No 2, Banjara Hills Hyderabad, TG 500034. It is classified as non-govt company and is registered with Registrar of Companies, Hyderabad. M/s. Vasavi Realty Pvt Ltd, based out of Hyderabad, is a flagship Company of Vasavi group led by Shri. Yerram Vijay Kumar (Promoter).

- (b)** The CoC comprised of the following Financial creditors and the distribution of voting share among them is as under:-

(Rs. In Lakhs)

Sl No	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan	% of Amount Provided to the Amount Claimed
1	2	3	4	5	6	7

1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	0	0	0	0.00
		(b) Other than (a) above:	0	0	0	0.00
		(i) who did not vote in favour of the resolution Plan	912.81	912.81	495.22	54.25
		(ii) who voted in favour of the resolution plan	20801.84	20801.84	11090.38	53.31
		Total [(a) + (b)]	21714.65	21714.65	11585.6	53.35
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	1896.63	771.54	0.00	0.00
		(b) Other than (a) above:	0	0	0	0.00
		(i) who did not vote in favour of the resolution Plan	0	0	0	0.00
		(ii) who voted in favour of the resolution plan	0	0	0	0.00
		Total[(a) + (b)]	1896.63	771.54	0	0.00
3	Operational Creditors	(a) Related Party of Corporate Debtor	0	0	0	0.00
		(b) Other than (a) above:	0	0	0	0.00
		(i) Government!	0	0	0	0.00
		COMMERCIAL TAX DEPT	479.02	479.02	0.00	0.00
		ESI	47.10	47.10	47.10	100.00
		NSE	25.40	25.40	0.00	0.00
		(ii)Workmen	0	0	0	0.00
		(iii)Employees (Incl. EPF claim of Rs. 49.65 lakhs) *	422.39	287.32	287.32	68.02
		(iv) Others				
		TSSPDCL	1408.15	989.73	352.90	25.06
		Other OCs #	1753.04	1019.20	100	5.70
Total[(a) + (b)]	4135.10	2847.77	787.32	19.04		
4	Other debts and dues (M/s. Surya Laxmi Cotton Mills Ltd)	1211.17	1211.17	0	0.00	
Grand Total		28957.55	26545.13	12372.92	42.73	

- a. Amount provided under OC – Govt. category, the ESI dues amounting to Rs. 47.10 lakhs are provided in full, balance Rs. 352.90 lakhs towards TSSPDCL.
- b. Any increase in liability towards EPF dues claimed up to the date of approval by COC will be additionally provided during implementation of the plan limiting to Rs. 80.00 lakhs.
- c. Amount provided will be distributed equally to all the claimants in the category
- d. The CIRP cost was estimated up to Nov-2023 as Rs. 435.64 lakhs and same was provided towards 100% CIRP cost as per the information memorandum. Any additional CIRP cost till the date of approval of the Resolution Plan shall be taken care by the COC or the additional cost will reduce the amount provided in the plan towards Secured Financial creditors.
- e. Due to delay in CIRP process at certain additional demands raised by municipal authorities and TSSDPCL pertaining to the CIRP period there is an over run CIRP cost estimate. The revised CIRP cost is estimated including expenses up to Apr-2024 which works out to Rs. 526.07 lakhs

S No	Particulars	Incurred up to Jan-2024	Estimate from Feb to Apr24	Total
1	Staff Salaries	1,10,97,220	7,04,310	1,18,01,530
2	Wages	4,90,864	-	4,90,864
3	Statutory Payments	11,87,004	-	11,87,004
4	Property Tax	1,00,83,734	-	1,00,83,734

5	Electricity Bills	1,22,27,475	-	1,22,27,475
6	Rents	1,53,900	52,108	2,06,008
7	Security Salaries	23,92,270	6,93,000	30,85,270
8	Misc. Expenses	7,86,600	2,64,000	10,50,600
9	Excess Sale consideration refundable to SS Traders	3,48,510	-	3,48,510
10	RP & Associates Remuneration	76,00,500	8,58,000	84,58,500
11	RP Out of Pocket Expenses	85,000	-	85,000
12	Insurance Renewals	4,83,355	53,684	5,37,039
13	Audit Fees	9,62,800	6,00,000	15,62,800
14	Legal & E-Voting	3,06,500	2,00,000	5,06,500
15	Publication	3,27,523	-	3,27,523
16	Valuers Remuneration & Exp	5,54,515	-	5,54,515
17	Due Delicence Sec 29A	94,400	-	94,400
Total		4,91,82,170	34,25,102	5,26,07,272

f. The SRA proposes the following additional investment for revival of the CD:

S No	Investment	Amt Rs. in Crores
1	Plant Improvement	30.00
2	Working Capital	15.00
3	Building Repairs	3.00
4	Deposits	2.00
5	Preliminary and Pre- Operation Expenses	5.00
Total		55.00

g. The total outlay, including CIRP cost, payments to creditors and additional capital expenditure (investments) envisaged under the resolution plan is **Rs. 183.00 crores**.

(c) Term of Implementation of the Resolution Plan:

(Rs. In Crores)

Plan Out Lay-Development	Within 5 Days from LOI	Within 30 days from effective date	Within overall period of 365 Days from effective date	Total
Resolution Plan (Acquisition Price)	12.80	38.49#	76.80*	128.09
Capital Expenditure	0	0.00	55.00	55.00
Outlay Total	12.80	38.49	131.80	183.09
Equity	12.80	17.20	0.00	30.00
Advance from development	0	0.00	50.00	50.00
! LOAN / ICD	0	21.29	81.80	103.09
Total	12.80	38.49	131.80	183.09

- a. *SRA shall pay these amounts together with further interest @ 12% p.a. (compounded monthly in terms of RFRP), on the balance amount paid from 91st day of approval of resolution plan by Hon'ble NCLT, Hyderabad.*
- b. *Further, the SRA has agreed to pay as part of his resolution plan, the amount payable to dissenting creditors not less than the liquidation value in priority over the assenting creditors (as per resolution plan page no. 28, para 12 and clause c).*
- c. *The amount payable to dissenting financial creditors is Rs. 492.55 lakhs as against Rs. 486.66 lakhs requiring an additional amount Rs. 8.56 lakhs on the basis of liquidation value.*

(Rs. In Lakhs)

Name of SFC	Assenting (A) / Dissenting (D)	Claimed	Admitted	Voting Share %	Distribution as per Plan		Revised Distribution		Additional Payment
					Amt	%	Amt	%	
State Bank of India	A	14077.59	14077.59	64.83	7505.39	53.31	7505.39	53.31	0.00
IDBI Bank Ltd	A	3720.96	3720.96	17.14	1983.81	53.31	1983.81	53.31	0.00
AXIS Bank Ltd	A	3003.29	3003.29	13.83	1601.18	53.31	1601.18	53.31	0.00
Central Bank of India	D	729.36	729.36	3.36	388.86	53.31	395.69	54.25	6.83
ICICI Bank Ltd	D	183.45	183.45	0.84	97.80	53.31	99.53	54.25	1.73
Total		21714.65	21714.65	100	11577.04		11585.60		8.56

- (c) The term of the payments to various types of creditors under the resolution plan are mentioned here under:

(Rs. In Lakhs)

S No	Outstanding dues	Amount of claim	Admitted Claim	Provision Made	Time Line
1	CIRP Cost	435.64	435.64	435.64	Within 30 Days of NCLT approval
2	Operational Creditors Employees	422.39	287.32	287.32	Within 30 Days of NCLT approval
4	Operational Creditor Govt.	1959.67	1541.25	400.00	Within 30 Days of NCLT approval
3	Operational Creditor (Other)	1753.04	1019.19	100.00	Within 30 Days of NCLT approval

	than Govt and Employees)				
5	Secured Financial Creditor	21714.65	21714.65	11585.60	Within 365 days of NCLT approval (RA agreed to pay amounts payable to dissenting creditors in priority to the assenting creditors)
7	Un Secured Financial Creditors	1896.63	771.54	0.00	NA
8	Other Creditors	1211.17	1211.17	0.00	NA
Total		29393.19	26980.76	12808.56	

The term of the plan is 365 days from the date of approval by this Tribunal.

- (d) **The SRA has deposited Rs. 12.80 crores** equivalent to 10% of the resolution plan amount (including the EMD of Rs. 50.00 lakhs provided along with the EOI & Resolution Plan) **in lieu of performance security as per** the terms of RFRP, by way of DD/RTGS in favor of the CD as interest free deposit covering the entire resolution plan period. The details are as under:-

S No	Date	Transaction Ref No	Amount Rs.
1	12-07-2023 (along with EOI)	M3514798	10,00,000
2	25-08-2023 (along with Plan)	M3424145	40,00,000
3	19-02-2024	M3696271	4,00,00,000
4	19-02-2024	M3713660	2,00,00,000

5	23-02-2024	M3365710	3,00,00,000
6	23-02-2024	M3482447	2,30,00,000
7	23-02-2024	M3513131	1,00,00,000
Total Rs.			12,80,00,000

The Applicant further submitted that the RA complied with the performance security requirement with a delay of 4 days and sought to condone the delay.

(F) MONITORING COMMITTEE:

Complying with the provisions of the code and as per the terms of the RFRP the resolution plan provides for constitution of the monitoring committee as under:

- a. Resolution Professional as Chairman
- b. One Representative from COC
- c. One Representative from SRA

The assets of the CD shall be handed over to the SRA on approval of the Resolution Plan by this Tribunal and upon payment of initial upfront payment or Down payment of Rs 38.40 crores (Apart from the deposit of Rs 12.80 crore as performance security). Further, the SRA undertakes that the CD, under the new management, shall take prior approval from the monitoring committee for any resolutions to be put up to the reconstituted board.

(G) COMPLIANCE OF MANDATORY CONTENTS OF RESOLUTION PLAN UNDER THE CODE AND REGULATIONS.

The Applicant has conducted a thorough compliance check of the Resolution Plan in terms of the Code as well as Regulations 38 & 39 of the

Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016 (herein after referred to as Regulation) and has submitted his Form-H under Regulation 39 (4). It is submitted that Resolution Applicant has filed an Affidavit declaring that they are eligible to submit the plan under Section 29A of the Code and that the contents of the said affidavit are in order. The fair value and Liquidation value as submitted in Form-H is Rs.1,82,41,00,500/-and Rs. 1,25,24,19,250/- respectively.

13. In the above backdrop we heard Ms. JVL Bharati, Learned Counsel for the Resolution Professional. She submits that the Resolution Plan meets the requirement of Section 30 (2) of the Code, as under:-

(a) **Section 30 (2) (a) – The Resolution Plan provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor.**

The CIRP cost was estimated up to Nov-2023 as Rs. 435.64 lakhs and same was provided towards 100% CIRP cost as per the information memorandum. The COC will take care of any additional CIRP cost till the date of approval of the Resolution Plan or the additional cost will reduce the amount provided in the plan towards Secured Financial creditors. Due to delay in CIRP process and certain additional demands raised by municipal authorities and TSSDPCL pertaining to the CIRP period, there is an over run CIRP cost estimate. The revised CIRP cost is estimated at Rs. 526.07 lakhs, including expenses up to Apr-2024 and the same will be paid in priority to the payment of other debts of Corporate Debtor. (page No 24 & 28).

- (b) **Section 30 (2) (b) – Provides for payment of debts of operational creditors in such a manner as may be specified by the Board.**

The plan provides for payment of 19.04% to the amount claimed, to the operational creditors on priority over Financial Creditors. (Page 24 & 28 of the plan).

- (14) The Resolution Plan is in compliance of Regulation 38 of the Regulations in the following manner:

- (a) **Regulation 38(1)(a) of the CIRP Regulations 2016:** The Plan provides for payment of Rs. 787.32 lakhs to Operational Creditors to be paid in priority to any other creditors of the Corporate Debtor. (**Page 24 of the Resolution Plan**).
- (b) **Regulation 38 (1) (b):** There are two dissenting Financial Creditors and the amount payable to dissenting financial creditors is Rs. 492.55 lakhs as against Rs. 486.66 lakhs requiring an additional amount Rs. 8.56 lakhs on the basis of liquidation value. In the LOI issued to SRA, the above additional amount payable to the dissenting creditors has been mentioned and accordingly included in the upfront payment.
- (c) **Regulation 38 (1A):** Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code.
- (d) **Regulation 38(1B):** Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of its related party has either failed or

contributed to the failure of the implementation of any other approved Resolution Plan

- 15 ***In K. Sashidhar v. Indian Overseas Bank & Others (in Civil Appeal No. 10673/2018) 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. On receipt of such proposal, the Adjudicating Authority (NCLT) is required to satisfy itself that the resolution plan as approved by CoC meets the requirements specified in Section 30(2). No more and no less*”.
- 16 The Hon'ble Supreme Court has further held at para 35 of the above judgement that ***the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 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.***
17. The Hon'ble Supreme Court in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors**, held that “*the limited judicial review available to AA has to be within the four corners of section 30(2) of the Code. Such review can in no circumstance trespass upon a business decision of the majority of the CoC. As such the Adjudicating Authority would*

not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved”.

18. The Hon’ble Supreme Court of India, in the recent ruling in re **Vallal RCK vs M/s Siva Industries and Holdings Limited & Ors**, has held as under:-

*21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in the cases of K. **Sashidhar v. Indian Overseas Bank and Others, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another, and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.***

*27. This Court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the case of **Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another:***

“95.However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.....”

19. We observe that the Ex-promoter of the Corporate Debtor filed IA No. 1033/2022 with a prayer to direct Respondent No. 1 & 3 therein to consider his resolution plan and submitted that the reasons for not allowing the Applicant’s Resolution Plan, is the categorization of the Applicant therein as willful defaulter by one of the Financial Creditors, which is under challenge before Hon’ble High Court of Telangana and Hon’ble High Court of Telangana

has granted an interim stay on his classification as willful defaulter by the Financial Creditor. The Resolution Professional on 30.10.2023 submitted before the Tribunal that, the COC had taken up the resolution plan of the Applicant for voting and has rejected the same on the ground that the Applicant is ineligible and EMD was also returned, which has been accepted by the Applicant in IA 1033/2022. Thereafter, fresh Form-G was issued and the very same Applicant again filed EOI, which was also rejected by the COC and the EMD was also returned. Further, the Resolution Professional submitted that in view of the above, this Application has become infructuous and accordingly the said IA 1033/2022 was dismissed by this Tribunal on 30.10.2023.

20. The record reveals that IA 231/2022 has been filed against the suspended directors/promoters under PUFEE transactions on 07-03-2022 seeking certain relief. The IA was heard on 15-02-2024 and the same is listed for pronouncement of orders on 21.03.2024. As per the Resolution Plan the FCs shall dispose the receivables from PUFEE transactions as NRRRA asset or pursue on their own.
21. During the hearing of this Application, Ld. Counsels who have been engaged by the previous Resolution Professional Shri T.S.N. Raja, have made a submission that only part of the invoices raised were honoured and therefore, the present Resolution Professional may be directed to place the balance claim before COC for ratification. The Tribunal on 28.02.2024, therefore passed the following order: -

Admittedly part of the amount claimed by the learned counsels has been paid, therefore, it is clear that the services of these learned counsels were engaged by the previous resolution professional Mr TSN Raja.

*As regards the terms of fee is concerned, let the resolution professional and the learned counsels meet within three days from the date of this order hold negotiations and finalize the amount payable to them and the sum so arrived at shall place, before the COC by the Resolution Professional within a week, and thereafter and the COC shall release the said amount to the learned counsels and report the compliance to this court.
For compliance, call on 04.03.2024.*

On 04.03.2024, it is represented by the Resolution Professional that, basing on the information and records furnished by the Advocate, he is in the process of preparing the final invoice for ratification by the COC, and will report the outcome within a week.

22. Ld. Resolution Professional further submitted that in the event the payment of the fee and expenses of the Counsels above, results in the increase in the CIRP costs, the Tribunal may pass suitable directions in this regard.
23. We therefore, hereby direct the Secured Financial Creditors to share the increased CIRP costs, if any, on account of payment of the Advocates fee and expenses. We further, direct the Secured financial creditors to comply the same at the earliest, but not later than 10 days of approving the same and report compliance by 18.03.2024.
24. The present resolution plan, when tested on the touch stone of the afore-stated rulings, we are of the view that the instant resolution plan satisfies the requirements of Section 30 (2) of the Code and Regulations 37, 38, 38 (1A)

and 39 (4) of the Regulations. Therefore, we hereby approve the Resolution Plan submitted by Vasavi Realty Pvt Ltd (“**Successful Resolution Applicant**”) along with annexure, schedules forming part of the Resolution Plan annexed to the Application subject to above direction and order as under:

- (i) We condone the delay of 04 days in complying with the performance security requirement by the Successful Resolution Applicant.
- (ii) The Resolution Plan along with annexures and schedules forming part of the plan 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.
- (iii) All crystallized liabilities and unclaimed liabilities of the Corporate Debtor as on the date of this order shall stand extinguished on the approval of this Resolution Plan.
- (iv) The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/ liabilities of the Corporate Debtor and shall be dealt with by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned as held by Hon’ble Supreme Court in the matter of **Ghanashyam Mishra and Sons Private Limited Versus Edelweiss Asset**

***Reconstruction Company Limited in CIVIL APPEAL NO.8129 OF 2019
dated 13.04.2021.***

- (v) It is hereby ordered that the deposit amount of Rs. **12.80 crores** made by the Resolution Applicant shall remain as performance Guarantee till the amount proposed to be paid to the creditors under this plan is fully paid off and the plan is fully implemented.
- (vi) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC) Hyderabad 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.
- (vii) Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to supra.
- (viii) We further direct the Secured Financial Creditors to share the increased CIRP costs, if any, on account of payment of the Advocates fee and expenses. We further, direct the Secured financial creditors to comply the same at the earliest, but not later than 10 days of approving the same and report compliance **by 18.03.2024**.
- (ix) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- (x) 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.

- (xi). The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.
- (xii). The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.
- (xiii) The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and also forward a copy to IBBI.
- (xiv). Accordingly, IA (Plan) 4/2024 stands disposed of.

SD/-

(Charan Singh)
MEMBER (TECHNICAL)

SD/-

(DR N.V. Ramakrishna Badarinath)
MEMBER (JUDICIAL)

Binnu