

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

COURT III

1. I.A. 1451/2022
IN
C.P.(IB)-4251(MB)/2018

CORAM: SHRI H. V. SUBBA RAO, MEMBER (J)
SMT ANURADHA SANJAY BHATIA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **02.08.2022**

NAME OF THE PARTIES: Pegasus Assets Reconstruction Pvt Ltd.

V/s

Monarch Multilayers Pvt Ltd & Ors

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

I.A. 1451/2022

Mr. Nausher Kohli, counsel appearing for the Applicant is present through virtual hearing.

Order pronounced in the open court vide separate order. In the result, the above Application is **allowed**.

Sd/-
ANURADHA SANJAY BHATIA
Member (Technical)
//RKS//

Sd/-
H. V. SUBBA RAO
Member (Judicial)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-III**

**I.A. No. 1451 of 2022
IN
C.P. No. 4251 of 2018**

In the matter of an Application
under Section 30(6) and Section
60(5) of the Insolvency and
Bankruptcy Code, 2016.

Concur

In the matter of
Pegasus Assets Reconstruction Pvt.
Ltd.

... Financial Creditor

V/s.

Monarch Multilayers Pvt. Ltd.

... Corporate Debtor

I.A. No. 1451/2022

Mr. Vikas Prakash Gupta

...Applicant/

Resolution Professional

Date of conclusion of arguments : **05.07.2022**

Order pronounced on : **02.08.2022**

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance (through video conferencing):

For the Applicant: Mr. Nausher Kohli, Advocate a/w. Mr.

Neelanshu Roy

Ayush Rajani, Practising Chartered Accountant

i/b. AKR Advisors LLP

Mr. Vikas Gupta, Resolution Professional-in-
person

Per Shri H. V. Subba Rao, Member (Judicial)

ORDER

1. This is an Application under Section 30(6) and Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the

Code) filed by the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant M/s. Nikhil Sugar Pvt. Ltd., which is approved by 100% of the voting share of the members of the Committee of Creditors (hereinafter referred to as 'COC').

2. The facts leading to the Application are as under:

- i. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order dated 04.08.2021 under section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as 'the Code') (Admission Order) and Mr. Vikas Gupta, was appointed as Interim Resolution Professional. The COC in its 1st meeting held on 02.09.2021 appointed (the present Applicant) as the Resolution Professional (RP). The IRP published a public announcement as per Section 13 & 15 of the Code, inviting claims from the creditors of the Corporate Debtor.
- ii. The Applicant submits the claims of financial and operational creditors exist as on 17.01.2022 is as under:

(amount in ₹)

Sr. No.	Category of Creditor	Summary of Claims received		Admitted		Amount of claims not admitted
		No. of Claims	Amount	No. of Claims	Amount of claims admitted	
1	Secured financial creditors belonging to any class of creditors	1	14,11,07,525	1	14,11,07,524.81	-
2	Unsecured financial creditors belonging to any class of creditors	4	1,74,44,781	4	1,15,29,826	-
3	Secured financial creditors (other than financial creditors belonging to any class of creditors)	0	-	-	-	-
4	Unsecured financial creditors (other than financial creditors belonging to any class of creditors)	0	-	-	-	-

5	Operational Creditors (Workmen or Employees)	0	-	-	-	-
6	Operational Creditors (Government Dues)	2	94,89,640	2	94,89,640	-
7	Operational Creditors (other than Workmen and Employees and Government Dues)	2	79,91,334	2	79,91,334	-
8	Other creditors, if any, (other than financial creditors and operational creditors)	0	-	-	-	-
	TOTAL	9	17,60,33,279.81	9	17,01,18,324.81	59,14,955.00

iii. The Resolution professional has not received any claims from workmen & employee or from any other Creditor in FORM D, E and F respectively.

iv. Thereafter, Resolution Professional upon verification of the same, constituted the CoC. Pursuant to the public announcement RP received 2 (two) Expression of Interest from the Prospective Resolution Applicant (PRA).

v. The Applicant in compliance of the provisions of the Code and Rules framed there under conducted the CIRP of the Corporate Debtor.

3. That the Applicant had appointed registered valuers for valuation of assets of the Corporate Debtor in three categories, namely land & building, plant & machinery and securities & financial assets. Two sets of registered valuers had been appointed for each category of assets of the Corporate Debtor and accordingly, the respective valuers had submitted their valuation reports to the Applicant. The Applicant states that the liquidation value and fair value as per the valuation reports submitted by the valuers is as under:

Sr. No.	Class of Asset	Name of Valuer	Date of valuation	Fair Value	Average	Liquidation Value	Average (ex situ)	Average (In Situ)
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1	Land and Building	Mahesh Boob	01.10.2021	19566052	2,00,33,026	1,77,52,841	1,78,76,421	1,78,76,421
		Avinash Bhatt	18.11.2021	2,05,00,000		1,80,00,000		
2	Plant and Machinery (ex situ)	Hemant Ambaselkar	11.10.2021	79,17,000	82,26,000	52,67,000	54,16,000	-
		Prashant Phusate	04.10.2021	85,35,000		55,65,000		
	Plant and Machinery (In situ)	Hemant Ambaselkar	11.10.2021	79,17,000	82,26,000	67,30,000	-	69,92,500
		Prashant Phusate	04.10.2021	85,35,000		72,55,000		
3	SFA	Neeraj Kalkotwar	04.01.2022	3,28,27,565	3,57,67,521	1,02,46,000	1,06,81,459	1,06,81,459
		Manisha Agrawal	04.01.2022	3,87,07,476		1,11,16,919		
Total					6,40,26,547		3,39,73,880	3,55,50,380

in Situ: As is where is basis

ex situ: removing the asset from its existing position

4. During the period of CIRP, the RP issued Form-G on 21.10.2021, for inviting Expressions of Interest (EOI), from prospective resolution applicants to submit their resolution plan(s) in respect of the Corporate Debtor. The last date for receiving the expression of interest, was 15.11.2021 and the last date of submission of resolution plan was till 21.12.2021.
5. The Applicant states that the COC in its 7th COC Meeting held on 29.01.2022, decided that a revised advertisement for inviting EOI be issued. Form G inviting EOI was published on 31.01.2022. The last date for receipt of EOI was 15.02.2022 and last date of receipt of Resolution Plan was 21.03.2022.
6. The Applicant further states that in furtherance of the revised Form-G issued by applicant, he received EOIs from 2 Prospective Resolution Applicants (PRAs) within the stipulated time period. Below are the names of the prospective resolution applicant:
 - a) Nikhil Sugar Pvt. Ltd.

b) Mr. Sanjay Chandaliya

7. The Applicant submits that, during the 13th Meeting of COC held on 03.05.2022, both the proposed Resolution Plans were evaluated on the basis of the evaluation matrix and it was declared that the plan submitted by the Mr. Sanjay Chandaliya has been disqualified from acting as a director under the Companies Act, 2013. Which was in violation of the provisions of Section 29A of the Code. Mr. Sanjay Chandaliya had also failed to furnish the requisite affidavit under Section 29A of the Code.
8. The Applicant submits that out of the above-mentioned two PRA's, Mr. Sanjay Chandaliya has been disqualified under Section 29A of the Code, and thus rejected by the COC as mentioned above. Since there was only one eligible PRA i.e. M/s. Nikhil Sugar Pvt. Ltd., who submitted a resolution plan for the Corporate Debtor which was considered, deliberated and voted upon by the COC members.
9. The COC in its 13th meeting held on 03.05.2022 considered the final Resolution Plan of M/s. Nikhil Sugar Pvt. Ltd. and approved the Plan with a voting share of 100% and compliance certificate was in Form "H" was issued by the Resolution Professional.
10. **The salient features of the Resolution Plan are as under:**
 - a. The Resolution Applicant is **Nikhil Sugar Private Limited** ("NSPL"), is a private limited company hereinafter referred as the "Successful Resolution Applicant" (SRA). Incorporated on September 15, 2005 and registered under the Companies Act, 1956, with the Authorized Share Capital of Rs. 9,00,00,000 and the Paid-up Share Capital of Rs.7,10,61,500. The company is registered under the Companies Act, 1956 with the Registrar of

Companies, Maharashtra vide registration no. U01542MP2005PTC017963 and is having its registered office at Ganesh Ginning Campus, Chhipaner Road, Harda, Madhya Pradesh.

- b. Nikhil Sugar Private Limited is indulged in the business of Sugar Manufacturing in the District Harda of Madhya Pradesh. The company is promoted by Agrawal family and the group is involved in agro business from the year 1985. Having a long and progressive experience the promoters decided to establish a Sugar Industry. Presently the company is having business of Agriculture commodities and Rental Business of Warehouses. The total net worth of the SRA, along with its directors, as on March 31, 2021, was approximately Rs.15.4 Crore.
- c. Corporate Debtor Monarch Multilayers Private Limited (CIN: U27130MH1990PTC058010) is a local specialty plastics company, offering Multilayers Printed Film, Laminating Pouch Film & Polycarbonate Plastic & Polyvinyl Chloride. The Corporate Debtor, inter alia, specializes in manufacturing 3-layer milk pouch of low density Polyethylene and Linear Low Density PE in 3 layers. The outer layer is printed after slitting. While repacking milk, the single film rolled film is formed in tubular shape, filled and sealed on a form fill seal machine. The Corporate Debtor was incorporated in the year 1990. The manufacturing unit of the Corporate Debtor situated at MIDC Hingna is presently functional and operational.
- d. Fresh Equity infusion for improving operations: The Resolution Applicant will be infusing INR 100 Lacs (Rupees One Hundred Lacs only) to improve the operations of the Corporate Debtor. Equity offer to Financial Creditors: The Resolution Applicant do not offers any Equity to secured financial creditors.

- e. Up-front cashpayment: The Resolution Applicant is offering INR 110 Lacs (Rupees One Hundred and Ten Lakhs only) and unpaid CIRP cost (at actuals) as upfront cash payment to be paid within 30 days of approval of resolution plan by adjudicating Authority.
- f. NPV over 60% of resolution amount: The tenor of the resolution plan is 5 months only. Thus, the NPV of all payments to be made is more than 60% of the resolution plan amount.
- g. Additional collateral security etc.: The Resolution Applicant do not offers to provide additional collateral security, corporate guarantee and personal guarantees for resolution plan amount excluding upfront payment.
- h. Changes in Staff: The Resolution Applicant may reduce, increase, or make any changes in the staff strength after taking over charge of the Corporate Debtor by assessing the actual requirement of no. of staff for the effective working of the Corporate Debtor in accordance with applicable law and terms of employment.
- i. Provident Fund Claims: As per information provided by the Resolution Professional, no claims have been received from the P.F. department. The Resolution Applicant shall not be responsible for any claim towards P.F. dues by the P.F. department or the staff/ workers of the Corporate Debtor in future.
- j. Gratuity Claims: As per information provided by the Resolution Professional, no claims have been received for Gratuity.
- k. Share Capital: The entire shareholding of the Corporate Debtor will be restructured/ reorganized by making the shareholding of all the existing shareholders as NIL; and re issuing all the shares to new shareholders (i.e Resolution applicant and its group company only). All the benefits of the

existing shareholders shall become non-operative and non-effective from the date of approval of resolution plan by the Adjudicating Authority.

1. The Resolution Plan proposes a total Consideration of Rs. 4.3 Crores for the settlement of claim by the Resolution Applicant.
11. The details of the proposed payments are as follows:

A) **CORPORATE INSOLVENCY RESOLUTION PROCESS**

COSTS

- i. CIRP Costs not paid out the Company's cash flows shall be paid out of the resolution plan amount at actuals, in priority to the repayment of any other claims or payments. The funds generated during the period will be first allocated for payment of CIRP cost and the balance, if any, would belong to the Committee of Creditors.

B) **FINANCIAL CREDITORS**

i. Financial Creditors – Secured

As on Insolvency Commencement Date, the admitted claim of Financial Creditor- Secured is INR 1411.07 Lakhs. The Resolution Applicant proposes to make a payment of INR 410.00 Lakhs ("FC Payment") to settle the admitted claims of the Financial Creditors – Secured in the following manner:

Financial Creditor	Admitted Claim as per Claim Sheet (INR in Lakhs)	Total Payment (in Lakhs)	Upfront Payment (in Lakhs)	Balance Payment (in Lakhs)
Secured Financial Creditors	1411.07	410.00	90.00	320.00
TOTAL	1411.07	410.00	90.00	320.00

The sum of INR 410.00 Lakhs as the payment to Financial Creditors- Secured (as per the above table) shall be paid to

the Financial Creditors (Secured) in full and final settlement of all their claims against the Company.

- Further, the total payment to Financial Creditors (Secured) shall be made in the following manner:

Sr. No.	Amount	Tenure	Remark
1	INR 90.00 Lakhs	Upfront payment. To be made within 30 days from the Closing Date	To be paid to Secured Financial Creditor against admitted claim
2	INR 320.00 Lakhs	To be paid in 4 monthly installments of Rs. 80.00 Lakhs each.	To be paid to Secured Financial Creditor against admitted claim
TOTAL	INR 410.00 Lakhs		

- The total FC payment of INR 410.00 Lakhs is made against the secured financial creditor's liability of INR 1411.07 Lakhs as well as the following property mortgaged with the banks:

Sr.	Property Details	Mortgage Details
1	Industrial land and building at M-3 Hingna MIDC, Nagpur	The property as well as the Building, Plant and Machinery is in the name of Corporate Debtor

ii. Financial Creditors – Unsecured

As on Insolvency Commencement Date, the admitted claim of Financial Creditor- Unsecured is INR 115.30 Lakhs. The Resolution Applicant proposes to make a payment of INR 11.00 Lakhs ("**FC Payment**") to settle the admitted claims of the Financial Creditors – Unsecured in the following manner:

Financial Creditor	Admitted Claim as per Claim Sheet	Total Payment (in Lakhs)	Upfront Payment (in Lakhs)	Balance Payment

	(INR in Lakhs)			(in Lakhs)
Unsecured Financial	115.30	11.00	11.0 0	0.00
TOTAL	115.30	11.00	11.0	0.00

The sum of INR 11.00 Lakhs as the payment to Financial Creditors- Unsecured (as per the above table) shall be paid to the Financial Creditors in full and final settlement of all their claims against the Company.

Since no claim is received from related parties, no amount is proposed to be paid to the erstwhile promoters or related parties of the Corporate Debtor against their claim, if any, against the Company for any debt, whether financial or operational or otherwise.

The payment to Financial Creditors shall be treated as full and final payment to all the outstanding liabilities towards Financial Creditors who have submitted the claims or otherwise.

C) **OPERATIONAL CREDITORS** would be paid as follows:

Operational Creditors' (Except Workmen and & Employee Claims and Statutory Claims & Dues)	2.00
Operational Creditors' (Government Dues)	7.00

D) **EMPLOYEES/WORKMEN CLAIMS**

The Applicant submits that he has not received any claims from workmen & employee or from any other Creditor in FORM D, E and F respectively.

12. **SOURCES OF FUNDS**

The Resolution Applicant has sufficient liquid funds available in the form of Cash in hand/ Cash at bank, FDRs, Loans and

Advances given which are recoverable on short notices etc., which is sufficient for making upfront payment upon approval of Adjudicating Authority.

13. SUMMARY OF PAYMENTS:

The Resolution Applicant proposes to utilise the Share Capital and Unsecured Loans to pay and settle various claims as a part of the Resolution Plan, in the following manner:

Stakeholder	Admitted Claim as per IM (INR in Lakhs)	Total Payment (INR in Lakhs)	Upfront (INR in Lakhs)	Balance Payment (INR in Lakhs)
CIRP Costs (A)	30.00	To be paid at actuals to the extent remaining unpaid out of company's cash flow during CIRP period.		0.00
Financial Creditors (B)				
Total Payment to Financial Creditors – Secured	1411.07	410.00	INR 90.00 Lacs (within 30 days from the Closing Date)	INR 320.00 Lacs to be paid in 4 monthly installments of INR. 80.00 Lacs each.
Total Payment to Financial Creditors – Unsecured	115.30	11.00	11.00	0.00
Operational Creditors (C)				
Operational Creditors' Claims (Except Workmen and & Employee Claims and Statutory Claims & Dues)	79.91	2.00	2.00	0.00
Operational Creditors' Claims (Government Dues)	94.89	7.00	7.00	0.00
Total	1731.17	430.00	110.00	320.00
Sum to be retained by the Company (D)				
	Total sum to be introduced (INR in Lakhs)	Upfront (INR in Lakhs)	Balance payment (INR in Lakhs)	

Working capital	100.00	110.00	320.00
GRAND TOTAL	100.00	110.00	320.00

14. **DISBURSEMENT OF AMOUNT:**

The Resolution Professional has submitted the following chart showing the details of the total claims received and admitted by him and amount under plan as follows:

(amount in Rs. Lakh)

Sr. No	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
1	Secured Financial Creditors	a. Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		b. Other than (a) above:				
		(i) who did not vote in favour of the Resolution Plan (ii) who voted in favour of the resolution plan	-	-	-	-
		Total [(a) + (b)]	14,11,07,525	14,11,07,525	4,10,00,000	-
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-

		(b) Other than (a) above:	1,74,44,781	1,15,29,826	11,00,000	
		(i) who did not vote in favour of the resolution Plan				
		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	-	-	-	-
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above:				
		(i) Operational Creditor	79,91,334	79,91,334	2,00,000	-
		(ii) Workmen & Employees	-	-	-	-
		(iii) Government	94,89,640	94,89,640	7,00,000	-
		a. ESIC	5,71,210.00	5,71,210.00		
		b. Income Tax	89,18,430.00	89,71,210.00		
		Total [(a) + (b)]	-	-	-	-
4	Other Debts and Dues		-	-	-	-
Total			17,60,33,279	17,01,18,325	4,30,00,000	-

“#amount provided over time under the Resolution plan and includes estimated value of non-cash components. It is not NPV.”

15. The indicative timeline and total payment schedule towards various creditors in the events for implementation of Resolution plan from approval date is as follows:-

Part	Particulars	Amount (INR in Lakhs)
Part A	CIRP Payment (within 30 days of Closing Date)	To be paid at actuals to the extent remaining unpaid out of company's cash flow during CIRP period.
	Upfront Payment to Secured Financial Creditors (within 30 days of Closing Date)	90.00

Part B	Upfront Payment to Unsecured Financial Creditors (within 30 days of Closing Date)	11.00
	Balance Payment to Secured Financial Creditors (to be paid in 4 monthly installments of Rs. 80.00 Lakhs each.)	320.00
	Upfront Payment to Operational Creditors' (Except Workmen and & Employee Claims and Statutory Claims & Dues)	2.00
	Upfront Payment to Operational Creditors' (Government Dues)	7.00
	Total Amount	430.00

“A performance guarantee or fund remittance to the designated bank account in terms of RFRP shall be deposited with the Resolution Professional on approval of Resolution Plan by COC. Upon submission of the Performance Guarantee or fund remittance as the case may be, the Plan Participation Deposit of INR 25 Lakhs (Indian Rupees Twenty-Five Lakhs only) and EOI Participation Fees (Refundable) of INR 15 Lakhs (Indian Rupees Twenty-Five Lakhs only) shall be released and returned to the Resolution Applicant. Further, once all payments envisaged in the table above are complete, the performance guarantee as mentioned above shall also be unconditionally released and returned to the Resolution Applicant.”

16. The Resolution Applicant is eligible to submit resolution plan, and the declaration dated 18.04.2022 in terms of Section 29A of the Insolvency & Bankruptcy Code, 2016 is given by the Resolution Applicant.

17. **OBSERVATIONS AND FINDINGS :-**

- i. The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor in terms of Section 30(2)(c).
- ii. The Plan also provides for implementation of provision of the Resolution Plan as stated above as per Section 30(2)(d).
- iii. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force.

- iv. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:
- a) Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company (Regulation 38(1)(a)).
 - b) Provides for the mechanism regarding management and control of the Company post the NCLT Approval Date.
 - c) Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
 - d) The amount payable under a resolution plan to the Financial Creditors, who have right to vote under subsection (2) of section 21 and did not vote in favor of the resolution plan, shall be paid in priority over financial creditors who voted in favor of the plan.
 - e) The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.
 - f) The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a resolution plan under Section 29A of the Code and other provisions of the Code and any other Applicable Law.
 - g) Provides that the amount due to the Operational Creditors under a resolution plan shall be given priority in payment over Financial Creditors.
 - h) Provides for the management and control of the business of the Corporate Debtor during its term.

- i) All the above factors demonstrate that the plan address the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.
- j) That the Resolution Applicant or any of its related parties has never failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past. This is in compliance of Regulation 38(1)(b) of the Regulations.
- k) The interests of all stakeholders (including Financial Creditors, Operational Creditors and other creditors, guarantors, members, employees and other stakeholders of the Company, keeping in view the objectives of the Code (Regulation 38(1A)).

18. The Resolution Plan has been approved in the 13th COC meeting held on 03.05.2022 with 100% votes in accordance with the provisions of the Code.

19. In the judgement of ***Venus Recruiters Private Limited v. Union of India and Ors.: CM Appl. 36026/2019*** the Hon'ble Delhi High Court observed that:

“74.....

The role of the RP is not adjudicatory but administrative in nature. Thus, the RP cannot continue beyond an order under Section 31 of the IBC, as the CIRP comes to an end with a successful Resolution Plan having been approved. This however subject to any clause in the Resolution Plan to the contrary, permitting the RP to function for any specific purpose beyond the approval of the Resolution Plan.”

20. In view of the above ruling of the Delhi High Court, it can be easily derived that, the Resolution Professional in case it is so proposed in the Resolution Plan will continue to discharge his duties regarding the

pending applications to the main petition even though the Resolution Plan is approved.

21. In **K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150** 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.

22. In **CoC of Essar Steel** (*supra*) 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)."

23. In view of the above ruling of the Apex Court, the legislature has given paramount importance to the commercial wisdom of committee of creditors (CoC) and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent provided under section 31 of Code and of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code, is no more an untouched-matter.
24. 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 not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The Resolution Plan is feasible and viable. There are no workers claims. Resolution Applicant agreed to pay the full CIRP costs and also future costs if any as certified by the Resolution Professional and CoC. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.

ORDER

- i. The Interlocutory Application No. 1451 of 2022 is allowed. The Resolution Plan submitted by **M/s. Nikhil Sugar Pvt. Ltd.** is hereby approved. It shall become effective from this date and shall form part of this order. 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. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned 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.
- iii. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- iv. The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.
- v. In line with the judgement of Hon'ble Delhi High Court in the matter of **Venus Recruiters Private Limited v. Union of India and Ors.** and as proposed by the Resolution Professional during the course of hearing of the Resolution Plan, the Resolution Professional will pursue application u/s. 43, 45, 60 & 66 with the Adjudicating Authority.
- vi. The Bench takes note of the Addendum to the Resolution plan dated 05.05.2022 filed along with the application which reads as under:
“Recovery, if any, made pursuant to the order passed by Hon'ble NCLT under Sections 43, 45, 50 and 66 of the Code shall be the exclusive right of the Committee of Creditors of the Corporate Debtor.”

- vii. In line of the above the Bench as decided by COC approves that, even subsequent to the approval of the Resolution plan any other application under Section 43, 45, 49, 50, 66, 68, 70, 71, 72, 73 and 74 of the Insolvency and Bankruptcy Code, 2016, pending would be pursued by the COC.
- viii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.
- ix. In terms of the judgement of Hon'ble Supreme Court in the matter of **Ghanshyam Mishra and Sons Private Limited v. 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 part of the resolution plan.”*
- “95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the 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 part of the resolution plan;*

(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;
(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”

- x. In line of the above judgement the applicant is entitled to waivers/ concessions/ reliefs as expressly provided under the Code and under any other law for the time being in force.
- xi. 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.
- xii. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- xiii. The Interlocutory Application No. 1451 of 2022 is accordingly allowed and disposed of.

Sd/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-

H. V. SUBBA RAO
MEMBER (JUDICIAL)