



NATIONAL COMPANY LAW TRIBUNAL

COURT-V, MUMBAI BENCH

Application filed under Section 30(6)
read with Section 31 of the Insolvency
and Bankruptcy Code, 2016

I.A NO. 1496 OF 2023

IN

CP (IB) NO. 66 OF 2020

Mr. Ashish Saoji

...Applicant/ Resolution Professional

In the matter of:

Shree Shyam Trading Company

....Petitioner/Operational Creditor

Versus

Mohota Industries Limited

...Corporate Debtor

Order delivered on: 19.05.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

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

Appearances (via Video Conferencing):

For the Resolution Professional: Advocate Rohit Gupta i/b Yash Jariwala.

Per: Anuradha Sanjay Bhatia, Member (Technical).

ORDER

1. The present application is filed by **Mr. Ashish Saoji**, Resolution Professional (RP) of **Mohota Industries Limited** (hereinafter referred to as "**the Corporate Debtor**") under the provisions of Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 (**Code**)



r/w Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016 seeking approval of the Resolution Plan submitted by the Shrinivas Spintex Industries Private Limited (hereinafter referred to as “**Resolution Applicant**”).

Brief facts of the case:

2. The Hon’ble National Company Law Tribunal, Mumbai Bench, vide its Order in Company Petition No. CP (IB) – 66/MB/2020, dated 30th August, 2021, admitted the application filed by M/s. Shree Shyam Trading Company, under section 9 of the IBC, thereby appointing **CA Mahesh Kumar Gupta (IBBI registration number IBBI/IPA-001/IP-P00478/2017-2018/10866)** as the IRP.
3. Pursuant to that, a **public announcement was made on 11th November, 2021**, in widely circulated newspaper Financial Express and Prathkal (Marathi Newspaper) and in Nagpur in Economic Times (English Newspaper) and Loksatta (Marathi). Pursuant thereto, claims aggregating to Rs. 266.50 Crores were received by the IRP and the IRP submitted the Report certifying **the Constitution of Committee of Creditors (CoC) with the Hon’ble Tribunal on 1st December, 2021**.
4. Further, the Hon’ble Tribunal, vide its Order in IA/703(MB)2022, dated 23rd March, 2022 approved the appointment of CA Ashish Saoji as Resolution Professional (RP) of Corporate Debtor. RP took partial charge of the affairs on 18th April, 2022 and subsequently took full charge on 28th April, 2022. Upon taking over of the charge, it was noticed that certain claims were “pending for verification”, where only the principal component of claims of financial creditors were admitted and others were merely ‘Acknowledged Claims’. The claims relating to financial creditors and operational creditors (except workmen dues) were then verified by RP on 10th June, 2022 and the verification of the



workmen claims, relating to around 800 laborers aggregating to Rs. 141.58 crores commenced. The verification of the workmen claims was eventually completed by RP on 19th September, 2022 wherein the claims were re-submitted and admitted after considering the existing labour and related laws.

5. The RP revised the list of creditors and filed the same with the Hon'ble NCLT on 28th October, 2022. RP has, in total, received claims to the tune of Rs. 203.76 Crores. Out of those, claims to the tune of Rs. 136.45 Crores have been admitted after due verification by RP. Claims to the tune of Rs. 67.30 Crores have been rejected. Details of the claims accepted by the RP is being stated hereunder:

Sr. No.	Category of Creditors	Claims Admitted (in Crores)
1.	Financial Creditors	85.59
2.	Operational Creditors	29.60
3.	Employees & Workmen	17.50
4.	Government and Statutory Authorities	3.76
Total		136.45

6. **The brief summary of the Committee of Creditor's Meetings is given below:**

1st CoC Meeting, Held on Wednesday, 8th December, 2021 at 3.00 pm.	A resolution was passed by the members of CoC appointing the Applicant herein as the Resolution Professional of the Corporate Debtor.
2nd CoC Meeting, Held On 19th January, 2022 at 3.00 pm	2 nd Coc meeting of the Corporate Debtor was held by the IRP wherein registered valuers were appointed and invitation for Expression of Interest to be published in Form G was approved by the CoC.



3rd CoC Meeting, held on 21st February, 2022 at 3.00 pm	In the 3 rd CoC meeting, it was resolved to file IA for extension of CIRP period by 90 days and the CoC members were apprised that 9 Resolution Applicants have deposited the EMD.
4th CoC meeting held on 2nd March, 2022 at 3.00 pm	In the 4 th CoC meeting, resolution was passed by the members approving the draft of RFRP including evaluation matrix.
5th CoC Meeting, held on 17th March, 2022 at 3.00 pm	In the 5 th CoC meeting, it was deliberated to extend the last date for submission of resolution plan in compliance with the CIRP regulations.
6th CoC, held on 13th April, 2022 at 3.00 pm	RP took charge of the affairs of the Corporate Debtor.
7th CoC meeting, held on 18th May, 2022 at 4.00 pm	7 th CoC meeting of the Corporate Debtor was held wherein resolution was passed to reject all the resolution plans received by RP in lines with clause 3.2 of the RFRP and authorize RP to issue a fresh Form G for inviting expression of interest.
8th CoC meeting, held on 18th May, 2022 at 4.00 pm	The RP apprised the members about the status of verification of claims.
9th CoC Meeting, held on 13th June, 2022 at 3.00pm	The RP informed that he had published Form G on 20 th May 2022 and the last date for submission of EOI was 4 th June 2022.
10th CoC Meeting, held on 7th July, 2022 at 4.00 pm	Final list of PRAs was released on 17 th June 2022. The RP received 11 EOIs which were included in the provisional list circulated on 7 th June 2022. Whereas only 9 applicants out of the provisional list were



	considered as eligible and included in the final list of resolution applicants.
11th CoC meeting, held on 16th July, 2022 at 11.00 pm	The 11 th CoC meeting was held wherein the RP opened the resolution plans received from five applicants of which only 3 were held as eligible RAs.
12th CoC Meeting, held on 19th August, 2022 at 4.00 pm	The RP informed that application has been filed with Hon'ble NCLT being IA No. 2163 of 2022 for extension of CIRP period by 60 days.
13th CoC Meeting, held on 6th September, 2022 at 02.30 pm	The RP apprised the members regarding the filing of PUFÉ application on account of findings in the transaction audit report.
14th CoC Meeting held on 21st September, 2022 at 02.00 pm	The RP apprised the CoC with respect to updates on the pending civil suits of the Corporate Debtor.
15th CoC Meeting held on 11th October, 2022 at 04.00 pm	The resolution applicants were invited to the meeting wherein CoC members had discussion regarding the resolution plan and it was resolved that modified resolution plans shall be submitted by the resolution applicants on or before 19 th October, 2022.
16th CoC Meeting, held on 28th October, 2022 at 12.20 pm	In the 16 th CoC, the RP apprised that last date for submissions of the Resolution Plan with modifications was extended upto 21 st October, 2022 and the sealed envelopes of the resolution plans received were opened.
17th CoC Meeting, held on 4th November, 2022 at 12.30 pm	In the 17 th CoC, the RP apprised the members of the CoC that he received the legal opinion for the resolution plans and



	that plans submitted by Riddhi Siddhi Cotex Private Limited are compliant as per the IBC, 2016.
18th CoC Meeting, held on 16th November, 2022 at 03.00 pm	An email from State Bank of India (SBI) was received on 05 th November, 2022 wherein certain observations were pointed out on the resolution plans submitted by SSIPL and RSCPL.
19th CoC Meeting, held on 24th November, 2022 at 12.30 pm	Shriniwas Spintex Industries Private Limited (SSIPL) had submitted their resolution plan incorporating the replies on observations and the plan was circulated to all the CoC members. Riddhi Siddhi Cotex Private Limited (RSCPL) had submitted that they won't be making any further modifications to their resolution plan and their email response was circulated to members. Accordingly, both the plans were put to vote in the said meeting. The Resolution Plan submitted by Shriniwas Spintex Industries Private Limited came to be approved by the CoC by majority voting of 100%.

7. OVERVIEW OF THE RESOLUTION PLAN FOR MOHOTA INDUSTRIES LIMITED:

I. INTRODUCTION OF THE RESOLUTION APPLICANT:

For the purposes of this Resolution Plan, the resolution applicant is Shriniwas Spintex Industries Pvt Ltd (CIN-U17200MH2013PTC251074). The Resolution Applicant has extensive experience in spinning industry of more than 8 years. The promoters of the Resolution Applicant have technical capability and the ability to run this unit successfully.

**Constitution of the COC -**

Sr. No.	Name of the COC Member	Voting %
	Secured Financial Creditor	
1.	State Bank of India	60.04%
2.	Bank of India	32.58%
	Unsecured Financial Creditor	
1.	Fair Growth Enterprises Private Limited	0.80%
2.	Hari Finance & Trade Private Limited	0.80%
3.	Indusind Bank	0.82%
4.	The Diamond Company Limited	1.13%
5.	The Mohota Mill Workmens Co-operative Society Limited	0.43%
6.	The R.S.R.Mohota SPE.& Wvg. Mills Employees Provident Fund Trust	2.52%
7.	Trinetra Traders Private Limited	0.81%
8.	Veer Enterprise Pvt Ltd.	0.07%
9.	Vinay Mohota	0.00%
	Total	100%

Liquidation value of the Corporate Applicant:

Asset Class / Valuer	Fair Value	Liquidation Value
A. Land & Building		
Adroit Appraisers and Research Pvt. Ltd. (IBBI/RV-E/07/01/2020/121)	54.32	41.46
Mr. Manoj Nashine (IBBI/RV/07/2018/10055)	55.22	38.65
Average Value - Land & Building	54.77	40.06
B. Plant & Machinery		
Adroit Appraisers and Research Pvt. Ltd. (IBBI/RV-E/07/01/2020/121)	9.76	7.07
Fintech Valuation Advisory LLP (IBBI/RV-E/07/14/2021/154)	12.22	10.86
Average Value - Plant & Machinery	10.99	8.97
C. Securities & Financial Assets		
CA Milan Rupchandani (IBBI/RV/06/2019/12563)	0.41	0.41
CA Ramesh Shetty (IBBI/RV/06/2018/10497)	0.41	0.29
Average Value - Securities & Financial Assets	0.41	0.35
Total Valuation - Average Value	66.17	49.38

**Payments as envisaged under the Resolution Plan***(INR in Cr)*

Sr. No.	Particulars of Claim	Type of Claim	Admitted Amount	Settlement Amount
1.	CIRP Costs	Actuals	0.76	0.76
2.	Financial Creditors	Secured and Unsecured	85.58	31.99
3.	Operational Creditors (including statutory dues)	Unsecured	33.36	1.00
4.	Employees and Workmen	Unsecured	17.50	16.25 (Excl. Gratuity Fund of 1.25 Cr) (dues are paid in full)
5.	Other creditors	Unsecured	-	-
Total			137.20	50.00

II. AMOUNT UNDER THE RESOLUTION PLAN

The total amount proposed under the Resolution Plan is Rs.50.00 crores which shall be paid as under:

(INR in Cr)

Particulars	Amount
Upfront payment within 30 days from the date of approval of the Plan by the Hon'ble NCLT in the following manner- a. CIRP Cost – 0.76 Cr b. Financial Creditors – 6.99 Cr c. Operational Creditors – 1.00 Cr d. Employees & Workmen Dues – 16.25 Cr	25.00
Within 90 days from the date of approval by the Hon'ble NCLT	25.00
Total	50.00

III. TREATMENT OF CIRP COSTS:

As required by the Code, the Resolution Plan in Section IV, Clause B provides that CIRP costs shall be paid in priority of all the claims. It records that the CIRP cost is being paid out of the cash flows of the Corporate Applicant.

However, if any amount remains unpaid, the same shall be paid out of the



amount proposed under the Resolution Plan and the proportionate amount shall be reduced from the amount proposed towards the secured financial creditors.

IV. TREATMENT OF OPERATIONAL CREDITORS:

The operational creditors shall be paid in priority to the financial creditors within 30 days of approval of the resolution plan by the Hon'ble NCLT in the following manner:

(INR in Cr)

Operational Creditors	Admitted claim	Settlement Amount
Employees & Workmen	17.50	16.25 (Excl. Gratuity Fund of 1.25 Cr) <i>(dues are paid in full)</i>
Other Operational Creditors (including statutory dues)	33.36	1.00
Total	50.86	17.25

V. TREATMENT OF SECURED AND UNSECURED FINANCIAL CREDITORS:

- A sum of Rs. 31.99 crores is proposed to be paid to the Financial Creditors as full and final settlement as set out in Clause B of Section IV.
- The total admitted claims of these secured/unsecured financial creditors and payment to be made under the Plan is as follows:

(INR in Cr)

Sr. No.	Particulars of Claim	Admitted Amount	Settlement Amount	Upfront payment	Deferred Payment
Secured Financial Creditors					
1.	State Bank of India	51.17	20.09	3.88	16.21
2.	Bank of India	27.76	10.90	2.11	8.79



Unsecured Financial Creditors						
1.	Fair Growth Enterprises Private Limited	0.68	0.10	0.10	-	
2.	Hari Finance & Trade Private Limited	0.68	0.10	0.10	-	
3.	IndusInd Bank	0.70	0.11	0.11	-	
4.	The Diamond Company Limited	0.96	0.14	0.14	-	
5.	The Mohota Mill Workmens Co-operative Society Limited	0.36	0.05	0.05	-	
6.	The R.S.R.Mohota SPE.& Wvg. Mills Employees Provident Fund Trust	2.15	0.32	0.32	-	
7.	Trinetra Traders Private Limited	0.69	0.10	0.10	-	
8.	Veer Enterprise Pvt. Ltd.	0.06	0.01	0.01	-	
9.	Vinay Mohota	0.36	0.05	0.05	-	
Total		85.59	31.99	6.99	25.00	

- c. The RA shall be making the payment of the aforesaid **31.99 crores** in three tranches within a period of 90 days from the date of approval of the Resolution Plan by the Hon'ble NCLT.
- d. The Upfront Payment of Rs. 25.00 Crs shall be made within 30 days from the date of Hon'ble NCLT approval.
- e. The Deferred Payment of balance Rs. 25.00 Crs shall be paid within 90 days from approval date in the following manner:
- Rs. 15 Cr within 60 days from the approval date.
 - Rs. 10 Cr within 90 days from the approval date.

VI. RESTRUCTURING OF THE SHARE CAPITAL:

The Resolution Plan provides that the existing pre-CIRP shareholding (including equity shares, the preference share capital of the Corporate Debtor on the CIRP Commencement Date) of the Promoters / Promoter Group and



all other existing shareholders including public shareholding in the Corporate Debtor shall stand cancelled and the resolution applicant shall hold **100%** of the share capital of Corporate Debtor.

VII. SUPERVISION AND TERM OF THE PLAN:

- The term of the resolution plan is 90 days;
- The supervision of the Plan shall be done by a Monitoring Committee and the remuneration/ expenses to be incurred during the implementation period shall be paid out of the cash flows of the corporate debtor. In case the cash flows are insufficient, then the cost shall be paid by the Resolution Applicant.
- The Monitoring Committee shall be constituted and shall comprise of the Resolution Professional, one nominee of the Resolution Applicant and one nominee of the Secured Financial Creditors.

Sr No.	Particulars	Timeline
1.	Presentation of Resolution Plan to CoC	As per the schedule, prior to Resolution Plan submitted for Approval to the Hon'ble Tribunal
2.	Formation and appointment of Implementation and Monitoring Committee	Date of Approval by Hon'ble Tribunal ("T")
3.	Payment of unpaid CIRP Cost and upfront amount to stakeholders as per Resolution Plan ("Effective Date")	T + 30 days
4.	Balance payment to financial creditors (full payment to stakeholders and complete implementation of the plan – completion date)	T + 90 days

VIII. SOURCES OF FUNDS:

Sr. No.	Source of Funds	Amount (in INR Cr)
1.	Liquid funds in the form of fixed deposits with the Resolution Applicant along with its promoters and associate concerns	40.01



2.	Inter-corporate Deposits, Unsecured Loans from friends and relatives and internal accruals, sale of immovable properties of directors and shareholders of applicant, obtaining Loan against properties by directors and shareholders of applicant	10.00
Total		50.01

8. The compliance of the Resolution Plan as envisaged in Form-H is as under:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Section I Page No. 16 The resolution applicant qualifies the criteria as stipulated in the Expression of Interest. The resolution applicant was accordingly included in the provisional list and final list of resolution applicants	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Sec 29A Affidavit submitted by the resolution applicant	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Affidavit submitted separately. Section I Page No. 19	Yes
Section 30(2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs?	Section IV: 1.2 B Page No. 31	Yes



	(b) provides for the payment to the operational creditors? (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan? (d) provides for the management of the affairs of the corporate debtor? (e) provides for the implementation and supervision of the resolution plan? (f) contravenes any of the provisions of the law for the time being in force?	Section IV: 1.2 B Page No. 34 Section IV: 1.2 (iv) Page No. 33 Section XI Page No.80 Section XII Page No.82 & 84 Section IV, Clause (C) Page No. 36	Yes Yes Yes Yes Yes
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	Section IX Page No. 75 The resolution plan is approved by 100 % votes	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Section XIII Page No. 84 & 82	Yes
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Section VI, Point 3 (d) Page No. 47	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Section VI, Page No. 41 Treatment of Stakeholders	Yes
Regulation 38(1B)	(c) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (d) If so, whether the Resolution Applicant has submitted the statement giving details of such	Section III Page 25 Not applicable	No



	non-implementation?		
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	Section V, Page No. 38 Section XI, Page No. 80 Section XII, Page No. 82	Yes Yes Yes
38(3)	Whether the resolution plan demonstrates that – (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	Section II, Page No. 21 Section IX, Page No. 75 Section XIII, Page No. 84 Section X, Page No. 76 Section I, Page No. 16	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Interlocutory Application being IA/2514/2022 u/s 66 (fraudulent transactions) of IBC, 2016 was filed by RP on 08.09.2022.	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	The resolution applicant is required to submit a bank guarantee of Rs. 7.50 crores as per the provisions of RFRP.	

9. **Workmen and Employees:**

As per the Information Memorandum and the updated list of Creditors as on 15th October, 2022, claims have been filed by workmen or employees for INR 78.89 cr out of which claim of INR 17.50 cr is admitted and claim of INR 61.39 cr is not admitted. The Applicant herein had multiple meetings with the president and secretary of labour union wherein a 15-member committee



was formed to finalise the claims related to labour dues. **After much discussion and deliberation, the committee had submitted revised claim forms on 8th August, 2022. Accordingly, INR 16.25 Cr payment (excluding Gratuity fund with the Corporate Debtor amounting to INR 1.25 Cr) is proposed to be made to Workmen and Employees towards the 100% full and final settlement of admitted claims in compliance Section 30(2)(b) of the Code read with Regulation 38 of the CIRP Regulations (i.e., Workmen and Employees Payments).** On such payment as specified in the Resolution Plan, all Employees and Workmen shall be deemed to have been validly terminated in accordance with the applicable laws, and no Workman or Employee shall have any claim whatsoever, against the Corporate Debtor or Resolution Applicant on any account whatsoever.

10. **Compliance of Section 29A:**

The Resolution applicant has filed Compliance Report under Section 29 of the Code to state that the Resolution Applicant does not attract the ineligibility set out as under Section 29A of the Code. Therefore, the Shrinivas Spintex Private Limited is eligible to be a Resolution Applicant.

11. **Bank Guarantees and performance guarantees:**

The Successful Resolution Applicant, in compliance with the provisions of the Code and RFRP has also submitted a performance Bank Guarantee to the tune of Rs. 7,50,00,000/- to the Applicant herein as confirmed by Punjab National Bank having Branch at Hinganghat for a period of 12 months.

12. **Compliance Certificate:**

The Applicant herein has prepared a Compliance Certificate as mandated under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in Form-H.

**Findings:**

12. The approval of the resolution plan has been sought under the provisions of Section 30(6) and 31 of the Code. We have carefully considered the submissions of the learned counsel for the RP and perused the records. The conditions provided under Section 31(1) are that the Resolution Plan is approved by Committee of Creditors under Section 30 (4) of the Code and that the Resolution Plan so approved meets the requirement of Section 30(2) and that the Resolution plan has provisions for its effective implementation.
13. The admission order of the CIRP was passed on 30th August, 2021 and the Resolution plan submitted by the Shrinivas Spintex Industries Private Limited was approved by the COC in their 19th meeting on 24th November, 2022 with **100 %** voting. Thus, the provisions of Section 30 (4) are satisfied. The approval has been sought under the provision section 31(1) of the Code.

14. The provisions of Section 30(2) are as follow:

The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment payment of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than—

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(i) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,



15. 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.
16. In ***India Resurgence Arc Private Limited vs. Amit Metaliks Limited and Ors. (2021)*** the Hon'ble Apex Court held that the process of consideration and approval of resolution plan is essentially within the commercial wisdom of Committee of Creditors (CoC). The scope of judicial review remains limited under Section 30(2) of the Insolvency and Bankruptcy Code (IBC), 2016 by which the court would examine that the resolution plan does not contravene any statutory provisions and it conforms to such other requirements as may be specified by the Board. The court held that the process of judicial review cannot be stretched if all the above-mentioned requirements have been duly complied with and that dissenting financial creditor, expressing dissent over the value of security interest held by it, cannot seek to challenge an approved Resolution Plan. Lastly, it was held that Section 30 of the IBC, 2016 only amplified the considerations for the CoC while exercising its commercial wisdom so as to take an informed decision in regard to the viability and feasibility of resolution plan, with fairness of distribution amongst similarly situated creditors; and that the business decision taken in exercise of the



commercial wisdom of CoC does not call for interference unless creditors belonging to a class being similarly situated are denied fair and equitable treatment.

17. The Hon'ble Apex Court at para 42 in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC Online**, has 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.

*“Para 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).”*

18. In view of the above cited case law, 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 of scrutiny provided under section 31 of Code and the direction of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code.
19. In view of the discussions and the law thus settled, this Bench is of the considered view that 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

- a) The Interlocutory Application No. 1496 of 2023 is **allowed**. The Resolution Plan submitted by **Mr. Ashish Saoji**, 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 payment of dues arising under any law for the time being in force is due.
- b) We shall clarify here that any amount recovered under any avoidance applications relating to the Corporate Debtor allowed by the Adjudicating Authority would inure unto the benefit of the Resolution Applicant.
- c) 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.
- d) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- e) 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.
- f) 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.



- g) The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- h) The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- i) The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.
- j) The Registry is directed to send copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- k) Ordered accordingly.

SD/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

SD/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)