

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, COURT-VI
I.A. 5008/2023 & 5803/2023
IN
C.P. No. IB-2924/ND/2019**

MR. NAVEEN SACHDEVA (M/S. JAY PACKAGING)

.... FINANCIAL CREDITOR

VERSUS

M/S. MAGPPIE INTERNATIONAL LTD

..... CORPORATE DEBTOR

AND

AND IN THE MATTER OF IA 5008/2023:

MR. VIVEK RAHEJA
RESOLUTION PROFESSIONAL OF
M/S MAGPPIE INTERNATIONAL LTD

.... APPLICANT

AND

AND IN THE MATTER OF IA 5803/2023:

MR. J.C. FLOWERS ASSET RECONSTRUCTION PRIVATE LIMITED

.... APPLICANT/ INTERVENER

VERSUS

MR. VIVEK RAHEJA
RESOLUTION PROFESSIONAL OF
M/S MAGPPIE INTERNATIONAL LTD

.... RESPONDENT/ NON-APPLICANT

SH. P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

PRESENT

For the JC Flower: Mr. Anand Shankar Jha, Mr. Abhilekh Tiwari,
Mr. Sachin Mintri, Advs. in IA No 5803/2023

For the RA: Mr. Karan Gandhi Adv

For the RP: Adv PBA Srinivasan Adv V Aravind Adv Srishti
Bansal Adv Sumit Swami Adv Pooja Kumari

ORDER

PER: P.S.N PRASAD MEMBER (JUDICIAL) &

RAHUL BHATNAGAR MEMBER (TECHNICAL)

ORDER DELIVERED ON: 09.02.2024

IA-5008/2023

1. The present application has been filed under Section 30(6) read with Section 31(1) of the Insolvency & Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') by Mr. Vivek Raheja, Resolution Professional (RP) of M/s Magppie International Ltd ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by M/s Worldfa Exports Pvt. Ltd. ('Successful Resolution Applicant') as approved by the Committee of Creditors ('CoC') with 77.45% voting shares in its 15th CoC Meeting held on 17.09.2021.
2. Briefly stated, the facts as averred by the applicant in the application are as follows:
 - a) That the Corporate Insolvency Resolution Process against the Corporate Debtor was initiated vide order dated 13.03.2020 and Mr. Ashwani Kumar Gupta was appointed as IRP in the matter.
 - b) That public announcement was made on 16.03.2020 in Financial Express (English) & Jansatta (Hindi) and accordingly the IRP prepared a list of Creditors after verification of claim received pursuant to the Public Announcement within 7 days from the last date of receipt of the claims i.e., 27.03.2020 and constituted Committee of Creditors.
 - c) That the IRP convened the first Meeting of Committee of Creditors ("COC") on 11.05.2020. In the said meeting, the COC

- resolved to appoint the Applicant i.e., Mr. Vivek Raheja as Resolution Professional which was subsequently confirmed by this Adjudicating Authority vide order dated 29.05.2020.
- d) That the applicant published Form G on 10.09.2020, inviting expression of interest from the prospective resolution applicants for the purpose of submitting a Resolution Plan in the CIRP for the Corporate Debtor.
 - e) The Applicant received five expressions of interest (EoI) from the Prospective Resolution Applicants for the purpose of submitting the Resolution Plan during the CIRP of Corporate Debtor.
 - f) The last date for submission of Resolution Plan was extended for further 15 days i.e., till 24.11.2020.
 - g) Till the last date, only two plans were received from namely;
 - (i) Worldfa Exports Pvt Ltd
 - (ii) One City Infrastructure Pvt Ltd & APM infrastructure Pvt Ltd.
 - h) In the 11th meeting of CoC held on 02.04.2021, the plan submitted by Worldfa was put before the COC and the CoC rejected the plan.
 - i) In the 12th meeting of CoC held on 14.06.2021, the RP informed the members of CoC that PRA i.e., Worldfa Exports Pvt Ltd. is ready to renegotiate for the resolution of the Corporate Debtor.
 - j) The PRA submitted revised resolution plan and in the 15th meeting of CoC held on 17.09.2021, the revised plan submitted by Worldfa Exports Pvt Ltd was approved by the members of CoC with 77.45% voting shares.
 - k) The RP filed IA no 5227/2021 seeking approval of Resolution Plan. This Adjudicating Authority vide order dated 06.07.2023 directed the CoC to reconsider the distribution of amount proposed in the Resolution Plan.
 - l) That pursuant to the aforesaid order the RP conducted 16th meeting of CoC to decide the distribution of plan value.
 - m) That claim of one of the unsecured creditors i.e., Edelweiss Asset Reconstruction Co. Ltd. was satisfied in full out of action initiated by him under SARFAESI Act. Accordingly, the amount of claim was revised to NIL.
 - n) The RP reconstituted the CoC and the same is as under: -

Name of FC	Voting Share
Punjab National Bank	92.52%
JC Flowers Asset Reconstruction Private Limited (pursuant to assignment from Yes Bank)	2.91%
Hero Fincorp Limited	2.63%
Electronica Finance Ltd.	0.37%
SIDBI	0.39%
Tata Capital Financial Services Ltd.	1.19%

- o) That in the 17th meeting of CoC held on 09.08.2023, the consent of CoC was accorded to the revised distribution pattern on their commercial wisdom with 92.5% voting in favour and which is as under: -

Name of the Financial Creditor	Amount to be distributed (in Rs.)
Punjab National Bank	28,90,55,163
JC Flowers Asset Reconstruction Private Limited (Pursuant to assignment from Yes Bank)	-
Hero Fincorp Limited	6,31,975
Electronica Finance Ltd. and	87,837
SIDBI	-
Tata Capital Financial Services Ltd.	2,25,025
Total	29,00,00,000

- p) That the Resolution Applicant has submitted an undertaking stating that the Resolution Applicant is eligible under Section 29A of the Code.
- q) That the average fair value is Rs. 34.39 crores and average liquidation value is Rs. 25.53 crores.

IA 5803/2023

3. This application has been filed under Section 60(5) read with read with Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') by one of the members of CoC i.e.,

J.C. Flowers Asset Reconstructions Pvt Ltd., raising objections to the Resolution Plan submitted by M/s Worldfa Exports Pvt. Ltd.

4. The submissions of the applicant are as under: -

- i. That the Applicant is an assignee of Yes Bank Limited who was one of the Financial Creditors to the Corporate Debtor. The Applicant's Application being 1.A No. 1755 of 2023 seeking substitution in place of Yes Bank Limited was allowed by the Tribunal vide Order dated 18.07.2023.
- ii. That Yes Bank Limited through an Application being I.A. No. 196 of 2022 had duly raised objections to the Resolution plan dated 28.08.2021 submitted by M/s. Worldfa Exports Pvt. Ltd. which was allowed by the Tribunal vide order dated 06.07.2023 and the Committee of Creditors ("CoC") was directed to reconsider the distribution of amount proposed in the Resolution Plan. However, the aforesaid order has not been complied and has been willingly disobeyed. In fact, the CoC dominated by the Punjab National Bank having 92.52% share has been adamant in the guise of "Commercial Wisdom" to take the entire amount proposed for the Secured Financial Creditors. The Resolution Professional has once again proposed the exact same Resolution Plan with no changes and not a penny being proposed for the present Applicant despite having a substantial admitted claim with second largest voting share in the CoC.
- iii. By way of proposing the exact same Resolution Plan once again and distributing the amount (Rupees NIL to the Applicant) in a completely unfair and arbitrary manner, the entire Corporate Insolvency Resolution Process has been brought to square one wasting the precious judicial time of this Tribunal as well as the time spent by the Applicant in pursuing the present matter.
- iv. It is submitted that the Applicant has a total claim of Rs. 2,91,76,595.00/- (Rupees Two Crores Ninety-One Lakhs Seventy-Six Thousand Five Hundred Ninety-Five Only) against

the Corporate Debtor which has been duly admitted. The Applicant had a voting share of 2.91% in the CoC. In view of the fact that the Resolution Plan is contrary to the settled law, and discriminating between the same class of secured creditors

- v. In essence, the Applicant is aggrieved by the fact that the Resolution Applicant has proposed in Para 5.2.4 of the Resolution Plan that the entire amount of Rs. 29 Crores meant for the secured financial creditors shall be paid to the first charge holder only i.e. Punjab National Bank. Further, the Applicant is aggrieved by the stipulation in Clause 5.2.4 which reads as follows

"Those secured financial creditors having second charge holder of corporate debtor are proposed to be paid NIL amount."

The aforementioned portion of the Resolution Plan in so far as it discriminates between same class of creditors i.e. Secured Financial Creditor is contrary to the settled law and liable to be rejected.

- vi. The Resolution Plan does not in any manner secure the interest of financial creditors, who are similarly situated. The commercial wisdom of the Committee of Creditors was replaced with the brute majority exercised by Punjab National Bank having 92.52% voting share to seek several revisions of the Resolution Plan and with the sole objective of appropriating the entire proceeds of Resolution Plan to itself.
- vii. In view of the aforesaid facts, the applicant prayed to dismiss the Resolution Plan
5. The submissions of RP are as under: -
- i. That pursuant to order dated 06.07.2023, the Resolution Professional convened the 16th CoC meeting on 17.07.2023 and in the said meeting, the Resolution Professional assisted the COC by presenting 8 different scenarios for proposed distribution. After deliberation among the COC members, it

was decided that the following two scenarios will be put for voting before COC members and the voting results will be submitted before Adjudicating Authority for approval:

1. Distribution based on Security Interest i.e. fair market value of assets of CD and of plant and machinery to first charge holders holding first charge on plant and machinery purchased through loans advanced by them.
 2. Distribution based on COC voting share of secured financial creditor.
- ii. In the 17th meeting of CoC, held on 09.08.2023, following resolutions were put to vote
- A. Distribution based on Security Interest i.e. fair market value of assets of Corporate Debtor and of plant and machinery to first charge holders holding first charge on plant and machinery purchased through loans advanced by them
 - B. Distribution based on COC voting share of secured financial creditor
- iii. The first scenario i.e., Distribution based on Security Interest was approved by the members of CoC with 92.05% voting shares.
- iv. The manner of redistribution was reconsidered by the COC and as per resolution passed in 17th COC meeting, the distribution of funds is as per security interest i.e. fair market value of assets of CD and of plant and machinery to first charge holder.
- v. That COC has abided by the directions of this Adjudicating Authority and considered fair distribution as other charge holders have given loan only for purchase of machinery which is even not traceable and liquidation value is nil. Even then the distribution was done on Fair Value instead of Liquidation Value. Further, the applicant herein is the subservient Charge holder.

- vi. That conjoint reading of Explanation 1 to Section 30(2) read with 30 (4) of IBC, 2016 would indicate that the CoC's decision passed by majority will prevail. It is further submitted that having entitlement under the waterfall mechanism under Section 53(1)(b)(ii) of IBC, 2016 would not hold ground when this is the resolution plan stage and not liquidation, and the minimum threshold envisaged for dissenting Financial Creditor cannot be absurdly interpreted as to push the Corporate Debtor into liquidation. Attention is drawn to Explanation 1 to Section 30(2) and the provisions of Section 30(4) of IBC, 2016 which shows that the "minimum liquidation value" is not sacrosanct and the CoC's majority decision would prevail.
- vii. That Section 52 read with Section 53 of IBC and Section 30(2)(b) of IBC would reveal that Dissenting Financial Creditor would at best be entitled to the liquidation value commensurate with its security interest. Further, Explanation 1 of Section 30(2) of IBC, 2016 read with Section 30 (4) of IBC, 2016 provides that CoC's majority decision would prevail, and a dissenting Financial Creditor cannot be allowed to push the Corporate Debtor into liquidation even when there is a viable resolution plan. This will be contrary to the objective of the Code. In the present case the applicant is the subservient charge holder, liquidation value for which is NIL.
- viii. That section 30(4) provides that the committee of creditors may approve a resolution plan by a vote of not less than sixty-six per cent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor. It is submitted that the requirement of Section 30(2) ought to be read harmoniously with Section 30(4) and Section 53, therefore, unlike in the

event of liquidation, the distribution of funds during CIRP process would recognise an inter-se priority between secured creditor and such a decision would lie exclusively in the domain of the CoC's commercial wisdom.

6. We have heard the submissions made by the Ld. Counsel for all the parties and have gone through the documents placed on record.
7. It is observed that this Tribunal vide order dated 06.07.2023 directed the CoC to reconsider the distribution of amount proposed in the Plan. The manner of redistribution was reconsidered by the COC and as per resolution passed in 17th COC meeting, the distribution of funds was decided as per security interest i.e fair market value of assets of CD and of plant and machinery to first charge holder.
8. Earlier, the entire Resolution Plan amount of Rs. 29 Crores was proposed to be paid to PNB; however, after the aforesaid order, the Plan amount was also distributed to some other Financial Creditors. Details of the same are as follows: -

Name of the Financial Creditor	Amount to be distributed (in Rs.)
Punjab National Bank	28,90,55,163
JC Flowers Asset Reconstruction Private Limited (Pursuant to assignment from Yes Bank)	-
Hero Fincorp Limited	6,31,975
Electronica Finance Ltd. and SIDBI	87,837
Tata Capital Financial Services Ltd.	2,25,025
Total	29,00,00,000

9. The objection of the applicant in IA 5803/2023 was that the Resolution Plan is discriminating between the same class of secured

creditors. However, it is admitted position that M/s J.C. Flowers Asset Reconstructions Pvt Ltd is subservient charge holder, having 2.91% voting shares and the liquidation value for which is NIL. Hence, this Tribunal cannot venture into the commercial wisdom of CoC as held by the Hon'ble NCLAT and Supreme Court in plethora of judgements. Accordingly, we **dismiss** the IA 5803/2023.

10. Some key features of the Resolution Plan are as follows:

OVERVIEW OF THE RESOLUTION PLAN

i. Total Resolution Plan Value: Rs. 3,000 Lakhs

CIRP Cost:

The Resolution Applicant proposes to pay the total CIRP cost of Rs. 80.00 Lakhs. However, in case, CIRP cost exceeds Rs. 80.00 Lakhs then such amount over and above Rs. 80.00 Lakhs shall be adjusted in the 1st instalment to be paid to the secured financial creditors and shall be paid in priority over any other creditors.

Compliances

ii. That the final Resolution Plan submitted by SRA meets the requirements of the Code as under: -

Section	Provisions under Section 30(2) of the Code	Compliance under Resolution Plan
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	YES Page No 20 of the Resolution Plan
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional	YES Page No 20 and Page no 50 of the

	or Order, if any, of the Adjudicating Authority	Resolution Plan
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that he is eligible	YES Page No 61 of the Resolution Plan.
30(2)(a)	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;	YES Clause 5.2.4(c)(6) of the Resolution Plan – Page no 32
30(2)(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 (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the	Yes Clause 5.2.4(c)(7) & (8) of the Resolution Plan – Page no 32 and 33

	order of priority in sub-section (1) of section 53	
30(2)(c)	provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;	Yes Clause 5.2.4(c)(3) of the Resolution Plan – Page no 31
30(2)(d)	the implementation and supervision of the resolution plan;	Yes Clause 5.2.4(c)(9) of the Resolution Plan – Page no 33.
30(2)(e)	does not contravene any of the provisions of the law for the time being in force	Yes Clause 6.1 of the Resolution Plan - Page no 51
30(2)(f)	conforms to such other requirements as may be specified by the Board.	Yes

iii. Mandatory Contents as specified under Regulation 38 of IBBI CIRP Regulations 2016 are as under: -

Regulation	Provisions under Regulation 38 of IBBI CIRP Regulations 2016.	Compliance under Resolution Plan
38(1)(a)	The amount payable under a resolution plan – (a) to the operational creditors shall be paid in priority over financial creditors; and (b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over	Yes 6.1 - Page no 50 of the Resolution Plan

	financial creditors who voted in favour of the plan.]	
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.]	Yes 5.2.4(c)(10) – Page no 34 of the Resolution Plan
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has 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.]	Yes Refer clause 6.1 of Resolution Plan- Page 52
38(2)(a)	A resolution plan shall provide the term of the plan and its implementation schedule;	Yes 5.2.4(c)(11) – Refer Page no 34 of the Resolution Plan
38(2)(b)	A resolution plan shall provide the management and control of the business of the corporate debtor during its term; and	Yes 5.2.4(c)(3) - Refer Page no 34 of the Resolution Plan
38(2)(c)	A resolution plan shall provide adequate means for supervising its implementation	Yes 5.2.4(c)(9) – Refer Page no 33 of the Resolution Plan
38(2)(d)	provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the	YES Any recovery on the basis of the said application shall be payable to the secured financial Creditors after deducting legal expenses incurred in

	proceeds, if any, from such proceedings shall be distributed:	pursuing PU FE application. Page 47 of the Resolution Plan
38(3)(a)	A resolution plan shall demonstrate that – it addresses the cause of default;	Yes Clause 6.1- Refer Page no 52-53 of the Resolution Plan
38(3)(b)	A resolution plan shall demonstrate that – it is feasible and viable;	Yes Clause 6.1- Refer Page no 52-53 of the Resolution Plan
38(3)(c)	A resolution plan shall demonstrate that – it has provisions for its effective implementation;	Yes Clause 6.1- Refer Page no 52-53 of the Resolution Plan
38(3)(d)	A resolution plan shall demonstrate that – it has provisions for approvals required and the timeline for the same; and	Yes Clause 6.1- Refer Page no 53 of the Resolution Plan
38(3)(e)	A resolution plan shall demonstrate that – the resolution applicant has the capability to implement the resolution plan.]	Yes Clause 6.1- Refer Page no 53 of the Resolution Plan

- iv. The SRA has submitted performance security for an amount of 10% of plan value as per the terms specified on page no 21 of RFRP. The said amount of Rs. 3 crore was deposited on 28.09.2021 in Bank Account of Corporate Debtor through 3 RTGS of Rs.1 crore each and having reference no. as HDFCR52021092867408295, HDFCR52021092867408294 and HDFCR52021092867444016 respectively
- v. With respect to compliance regarding Regulation 39(4) of the CIRP Regulations, the applicant has filed compliance certificate in Form-H certifying that the Resolution Plan submitted by the successful resolution applicant meets the requirements as laid

down in various sections of the Code and the CIRP Regulations and there are sufficient provisions in the Plan for its effective implementation as required under the provisions of the Code. the Successful Resolution Applicant on an affidavit has stated that he is not falling under ineligible category in terms of Section 29A of the Code, 2016.

- vi. The applicant has prayed for number of waivers in the Resolution Plan. As to the relief and concessions sought in the resolution plan, by taking into consideration of the decision of the Hon'ble Supreme Court in the matter of **Embassy Property Development Private Limited v. State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019**, we direct the Successful Resolution Applicant to file necessary application before the necessary forum/ Authority in order to avail the relief and concessions, in accordance with respective laws. The relevant part of the judgement is reproduced herein below:-

39. Another important aspect is that under Section 25 (2) (b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:

“25. Duties of resolution professional –

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions:-

(a).....

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings.”

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”

11. In so far as the approval of the resolution plan is concerned, this Adjudicating Authority has relied upon the decision of the **Hon’ble Supreme Court in the matter of K. Sashidhar v. Indian Overseas Bank (2019) 12 CC 150**, wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as under : -

35. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite 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. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial

creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.

12. This Adjudicating Authority has also looked into, the Hon'ble Supreme Court of India's decision in the matter of **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019, vid its judgement dated 15.11.2019 wherein the Hon'ble Supreme Court** has observed as under:

“38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with Prospective Resolution Applicants.”

13. Thus, from the judgements cited above, it is amply clear that judicial review is available to the Adjudicating Authority under Section 30(2) read with Section 31 of the Code, 2016 and this Adjudicating Authority need not look into the commercial wisdom of CoC
14. Therefore, we are of the considered view that the plan proposed is generally in order. Accordingly, we hereby approve the Resolution Plan, and the same shall be binding on the corporate debtor and its employees, shareholders of corporate debtor, creditors including the Central Government, any State Government or any local

Authority to whom statutory dues are owed, guarantors, successful resolution applicant and other stakeholders involved. In view of the above, I.A. 5008/2023 stands allowed.

15. It is declared that the moratorium order passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of pronouncement of this order.
16. However, the resolution plan shall not be construed as waiver to any statutory obligations/liabilities arising out of the approved resolution plan and the same shall be dealt in accordance with the appropriate authorities concerned as per relevant laws. We are of the considered view that if any waiver is sought in the resolution plan, the same shall be subject to approval by the concerned authorities. The same view has been held by the Hon'ble Supreme Court in **Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Embassy Property Development case (supra).**
17. Accordingly, MoA and AoA of the corporate debtor shall be amended and filed with the RoC for information and record as prescribed. While approving the 'resolution plan' as mentioned above, it is clarified that the resolution applicant shall pursuant to the resolution plan approved under section 31(1) of the Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for such in law.
18. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the corporate debtor and the Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code. The Resolution Professional is further directed to handover all the records, premises, properties

of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.

19. The approved 'Resolution Plan' shall become effective from the date of passing of this order. The Resolution Plan duly approved by CoC and also by this Adjudicating Authority may be reckoned as a part of this order.
20. Let the copy of the order be served to the parties

SD/-
(RAHUL BHATNAGAR)
MEMBER TECHNICAL

SD/-
(P.S.N PRASAD)
MEMBER JUDICIAL