



**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
CP (IB) – 639 (PB)/2018**

**IA-985/2023
IA-4041/2021
IA-2294/2023**

IN THE MATTER OF:

State Bank of India

.... Petitioner

Versus

Metenere Limited

.... Corporate Debtor

AND

IN THE MATTER OF IA-985/2023

Under Section 60(5) of the Code, 2016

**Mr. Surender Raj Gang,
Resolution Professional of Metenere Limited**

.... Applicant

AND

IN THE MATTER OF IA-2294/2023

Under Section 60(5) of the Code, 2016

Jubilee Metals Private Limited

.... Applicant

Versus

**Mr. Surender Raj Gang,
Resolution Professional of Metenere Limited**

.... Respondent

AND

IN THE MATTER OF IA-4041/2021

**Mr. Surender Raj Gang,
Resolution Professional of Metenere Limited**

.... Applicant

ORDER DELIVERED ON: 21.11.2023



CORAM:

**CHIEF JUSTICE (Retd.) RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT**

**SHRI AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)**

Appearances:

For the Applicant/RP : Adv. Sunil Fernandes, Adv Vijyant Paliwal, Adv. Nikhil Mathur, Adv. Diksha Dadu, Adv. Vasu Manchanda Rajive R. Raj

For the SRA : Sr. Adv. P. Nagesh, Adv. Gaurav Mitra, Adv. Sujoy C. Datta, Adv. Nishtha Khurana, Adv. Mahima Shekhawat, Adv. Lavanya Pathak, Adv. Akshay Sharma, Adv. Kashish Chhabra

For the CoC : Adv. Ankur Mittal and Adv. Yashika Sharma

ORDER

1. IA-985/2023

This IA has been filed by the Resolution Professional of M/s Metenere Limited u/s 60(5) of IBC with the following prayer:

- a. *Pass an order allowing the withdrawal of Plan Approval Application bearing IA(IB) No. 4041 of 2021.*
- b. *Pass an order permitting the Resolution Professional to conduct expedited process inviting fresh resolution plans for resolution of the Corporate Debtor*
- c. *Pass an order for exclusion of time period from 05.02.2021 (the date on which first Form G inviting EOI and Resolution Plan was issued) till the date of passing of the order in the present IA by this Hon'ble Tribunal for the purpose of CIRP of the Corporate Debtor.*
- d. *Pass such other order/orders as it may deem fit and proper in the facts and circumstances of the case.*

Facts in Brief and Submissions made by the Ld. Counsel for the Applicant

2. It is submitted that RP has been constrained to file the present application due to development of certain events in the last few



months whereby the RP was apprised of the change of the constitutional pattern of the Successful Resolution Applicant (SRA) namely, Jubilee Metal Pvt Ltd. (“SRA”) and that Mr. Gaurav Gupta has ceased to be a director or stakeholder in the SRA.

3. It is submitted that that the above said development came as a complete shock to the RP as well as the CoC who were kept in dark about such a change. These developments have made the pursuing of the current resolution plan process infeasible. Thereafter in the 16th meeting of the CoC, the members passed the resolution to pray to this Adjudicating Authority for inviting fresh resolution plans.
4. It is submitted that the SRA i.e. Jubilee Metal (P) Ltd. is a 100% owned subsidiary of M/s Shoora Minerals Private Limited, India which in turn is a 100% owned subsidiary of M/s Shoora Capital FZE Ajman, UAE, hereinafter to as **“Shoora Capital”**. Shoora Capital Group (promoted by Mr. Gaurav Gupta) commenced its operations as a trading unit engaged in bulk trading of non-ferrous metals. Further, Mr. Gaurav Gupta has an experience of more than 16 years in commodity trading.
5. It is submitted that the Resolution Plan extensively lays down Mr. Gaurav Gupta’s experience as a promoter of the Shoora group entities and draws upon the same to provide the much-needed financial and operational support for the Corporate Debtor post-acquisition. The SRA has extensively relied on the capabilities of its group companies, i.e. the Shoora group entities and those of Mr. Gaurav Gupta, both for the calculation of net worth in determining the eligibility of the Resolution Applicant to submit the resolution plan itself, and also for displaying the necessary funds, as well as skills for achieving the resolution of the Corporate Debtor under the Resolution Plan.
6. It is submitted that considering that both the eligibility and the capability of the SRA to make good its commitments under the Resolution Plan were dependent on its association with Shoora Capital and Mr. Gaurav Gupta, the CoC had explicitly asked Mr. Gaurav Gupta to provide an undertaking that Shoora Capital will not



dilute its investment in all the subsequent chain entities i.e. M/s Shooru Minerals Private Limited, Jubilee Metal Private Limited including the Jubilee Metal Holding Private Limited (an SPV incorporated by Jubilee Metal (P) Ltd. for executing the resolution plan), until the implementation of the plan i.e. 5 years from the effective date, without the consent of top 2 financial creditors. Similar undertaking was also given by the SRA as well as Mr. Gaurav Gupta in the LoI dated 28.07.2021.

7. The copy of approved Resolution Plan (along with the addendum dated 18.06.2021) is annexed with the application as **Annexure A-1** and Copy of executed LoI dated 28.07.2021 is annexed with the application as **Annexure A-2**.
8. It is submitted that on 25.10.2022, the RP was first intimated about the change in the directorship & constitutional pattern of the SRA by Mr. Gaurav Gupta (one of the key persons basis which the Resolution Plan was approved by the CoC) and subsequently on 26.10.2022 another email was received by the RP from the ultimate parent company of the SRA i.e. Shooru Capital wherein it was stated that Mr. Gaurav Gupta is no longer a stakeholder and director in three of its entities, namely Shooru Minerals Private Limited, Jubilee Metal Private Limited (SRA) and Jubilee Metal Holding Private Limited.
9. It is submitted that both the eligibility and the capability of the SRA to make good the commitments under the resolution plan were dependent on its association with Shooru Capital and Mr. Gaurav Gupta and any alteration in the constitutional structure of the SRA is in direct violation of the Resolution Plan and the Letter of Intent (LOI) dated 28th July 2021. Relevant extract of addendum to Resolution Plan dated 09.06.2021 is extracted below:

“We undertake that Shooru Capital FZE will not dilute its investments in the Companies viz. Shooru Minerals (P) Ltd (CIN: U28110DL2019PTC347808 and Jubilee Metal (P) Ltd. (CIN:



U51909DL2020PTC370271) until the implementation of the resolution plan i.e. 5 years from the effective date of the resolution plan without the consent of top 2 financial creditors of the Committee of Creditors in terms of their respective voting shares”.

And Relevant extract of LoI dated 28.07.2021 is extracted below:

Since Shoora Capital FZE, Azman, UAE is the ultimate parent company whose net worth has been considered at Eol stage and also currently under Resolution Plan, reliance is placed on net worth of Shoora Capital FZE for source of funds to be infused by the Successful Resolution Applicant, you undertake that Shoora Capital FZE will not dilute its investment in all the subsequent chain entities (M/s Shoora Minerals Private Limited, Jubilee Metal Private Limited including the SPV Jubilee Metal Holding Private Limited) until the implementation (5 years from Effective Date (as defined in the Resolution Plan)) of the Resolution Plan in full (without the consent of Top 2 Financial creditors). Additionally, Mr. Gaurav Gupta shall not dilute his investment in Shoora Capital FZE until the implementation of Resolution Plan (5 years from Effective Date).

10. It is submitted that vide email dated 26.10.2022, the SRA categorically stated that Mr. Gaurav Gupta is no longer director nor a stakeholder in Shoora Minerals Pvt Ltd., Jubilee Metal Pvt Ltd. and Jubilee Metal Holding Pvt Ltd.
11. It is submitted that the RP vide email dated 26.10.2022 and 30.10.2022 informed the SRA that alterations as intimated in the email dated 26.10.2022 are a major deviation from the terms of the approved resolution plan and further urged the SRA to share details of the current constitutional structure of all the chain entities of the SRA and the effective date of changes in the constitutional structure.
12. It is submitted that despite being sensitized about the gravity of the situation, the RP received a reply from the SRA only on 24.11.2022, i.e. almost a month after the first request for further information was



made, wherein SRA refrained from providing information to the RP under the garb of confidentiality.

13. It is submitted that members of the CoC were apprised of the above developments in the 15th CoC meeting held on 25.11.2022, wherein the CoC decided and directed the RP to send an email in the form of notice to the SRA. Various emails were sent to both Mr. Gaurav Gupta and the SRA wherein they were directed to provide details of the change of directorship/constitutional pattern of the SRA and the SRA was requested to remain present in the CoC meeting on 21.12.2022. Instead of attending the said meeting of the CoC on 21.12.2022, the SRA sent an email inter alia stating that due to some unavoidable circumstances they would not be able to attend the meeting and that the required information will be shared by them at relevant point of time.
14. In the 16th CoC meeting dated 21.12.2022, the RP apprised the CoC members about the further developments and remedies available in case of non-compliance to various terms of the Resolution Plan by the SRA. After discussion the CoC members decided to vote on the resolution to forfeit the performance security of Rs. 20,00,00,000 deposited with the CD's account at State Bank of India and to approach this Adjudicating Authority for seeking exclusion of time spent in pursuing the current resolution plan and for submission of fresh resolution plans. The relevant portion of the resolution passed by CoC is extracted as under:

RESOLUTION 4(D)(1): TO FORFEIT INR 20 CRORES DEPOSITED WITH SBI BY SRA AS A PERFORMANCE GUARANTEE

“RESOLVED THAT pursuant to **Clause 13.2** of the RFRP issued on 12 February 2021, approval of members of the Committee of Creditors is hereby accorded to forfeit the performance guarantee of INR 20 Crores deposited by Jubilee Metals Pvt Ltd (Successful Resolution Applicant) along with interest earned thereon kept as Term Deposit with State Bank of India and to approach Hon'ble NCLT, for inviting fresh resolution plans for resolution of the Company and seeking exclusion and/or extension of time spent in pursuing the current resolution plan process which was unsuccessful due to acts of the SRA”

The Resolution was passed and approved by a majority of 86.16%.



Submissions made in Reply by the Ld. Counsel for the SRA

15. The LOI dated 28.07.2021 provides for change in shareholding/ownership of the Resolution Applicant, if such change is approved by top 2 financial creditors of the CoC, therefore the LOI does not restrict the change in shareholding structure of the Resolution Applicant.
16. The major reason for delay in the approval of the resolution plan can be attributed to petty inter-se disputes among the CoC members only, wherein one of the CoC member has been objecting to the approval of resolution plan. This inter-se creditor dispute cannot be called upon at the cost of Respondent/SRA who has deposited the hard earned money of Rs. 20,00,00,000/- as performance security and even after such a long delay, the Resolution Applicant remains fully committed and shall honour its obligations to the Committee, and in fact has taken positive steps for further investment in order to better implement the plan.
17. The request for Resolution Plan provides that “time is of essence”. However, in the present case, the approved resolution plan by CoC has been delayed due to petty inter-se creditor dispute, the entire cost of which in terms of business viability has been put upon the Respondent/SRA. The Respondent/SRA submitted the resolution plan keeping in view certain timelines, which were never met due to the delays on account of CoC and applicant only. Therefore, any change in shareholding structure of the Respondent due to delay in approval of Resolution Plan cannot be termed as breach of the resolution plan and the onus cannot be solely attributed to the Respondent.
18. The respondent after depositing the performance security of Rs. 20,00,00,000/-, sent an email dated 02.09.2021 informing the Applicant/RP that the Resolution Applicant has engaged consultants to plan the post-merger integration and requested co-operation with respect to statutory compliances of the CD. However, the



Applicant/RP never responded to the same and in the absence of any information from the applicant, the potential investors of the Respondent/SRA (which were already part of the approved resolution plan) were getting wary of the situation, coupled with the delays in the approval plan. The Respondent was left with no other option but to induct investor, so as to successfully implement the Resolution Plan.

19. On 25.10.2022 Mr. Gaurav Gupta intimated the applicant vide email that since the process of Resolution Plan approval by this Adjudicating Authority is taking a long time, the Resolution Applicant is in the process of receiving further significant investments and there might be some changes in the directorship and constitutional pattern of the Resolution Applicant and thereafter on 26.10.2022, an email was sent by Shoora Capital disclosing to the applicant that Mr. Gaurav Gupta had ceased to be a director and a stakeholder of the Resolution Applicant and its holding company. Further the investments and consequential changes in the directorship and constitutional pattern of the SRA has been introduced in order to assist the implementation of the plan despite the unwarranted delays on the part of the applicant in the approval of the resolution plan.
20. The Respondent/SRA vide email dated 01.11.2022 provided an assurance that the Resolution Applicant and the Resolution Plan continued to be in compliance with provisions of law. The Respondent/SRA also responded to the applicant's email dated 24.11.2022 stating that it was not open for it to furnish further details of the shareholding and the incoming investment to the applicant, as it was constrained from doing so under confidentiality requirements imposed by the investor and once again assured the applicant that it remains fully committed to Resolution Plan.
21. That the view taken by CoC wrt. to forfeit the performance guarantee of Rs. 20,00,00,000 along with interest earned and kept as term deposit with SBI as deposited by the Respondent/SRA and for



- seeking exclusion and/or extension of time spent in pursuing the current Resolution Plan is without giving any opportunity to the Respondent/Resolution Applicant to present its case before the CoC.
22. That on 18.01.2023, the Respondent/SRA sent a detailed representation dated 18.01.2023 to the members of CoC through the Applicant/RP stating that Respondent is not in contravention of the Resolution Plan and letter of intent and is fully committed towards implementation of the Resolution Plan. Thereafter, on 23.01.2023 before responding to the representation dated 18.01.2023, the RP filed the present application seeking withdrawal of the plan approval application and exclusion of time spent in pursuing the current Resolution Plan process.
23. That the present application is not maintainable both in the facts of the present case as also in law. The Resolution Plan after approval by CoC is binding on both the SRA and the CoC, its withdrawal cannot be sought by the RP and in view of the binding nature of the CoC approved resolution plan, the resolution passed by CoC in its meeting dated 21.12.2022 is unlawful.
24. It is submitted that now Respondent is in a position to disclose the shareholding structure of the Resolution Applicant. Now as on date Mr. Sandeep Parwal holds 99.99% in Jubilee Metals Private Limited, the SRA and is the majority shareholder in the Resolution Applicant. As per the eligibility criteria set out in the RFRP, the Resolution Applicant shall have a minimum net-worth of Rs. 45,00,00,000 (Rupees Forty-Five Crores Only). The net worth of Mr. Sandeep Parwal is Rs. 50,29,65,064 (Rupees Fifty Crores Twenty-Nine Lakhs Six-Five Thousand and Sixty-Four only) as on 31.03.2022 and therefore he meets the eligibility criteria.
25. It is submitted that as per Clause 5.3 of the Resolution Plan submitted by the Respondent, the CoC has approved the infusion of Quasi Equity funds of Rs. 180,00,00,000/- (Rupees One Hundred Eighty Crore only) for a period of 5 years into the Corporate Debtor which includes Equity Share Capital. However, the actual proposed



equity share capital to be infused by the Resolution Applicant is Rs. 10,00,00,000/- (Rupees Ten Crores Only). Therefore, the balance amount has to be infused by way of quasi-equity which would eventually change the shareholding structure of the Resolution Applicant.

26. It is submitted that it has always been an inherent/explicit intention that investors will be inducted in the Resolution Applicant/Corporate Debtor for the implementation of resolution plan by way of induction of funds as “Quasi Equity” which included Equity Share Capital and thus the CoC cannot term induction of investor into the Resolution Applicant as breach of Resolution Plan because the resolution plan itself contains infusion of funds from potential investors for which the Letter of Intent were also submitted along with the Resolution Plan.
27. It is submitted that as per the addendum to the final resolution plan dated 09.06.2021, the following was added to the Resolution Plan:

We undertake that Shoora Capital FZE will not dilute its investments in the Companies viz. Shoora Minerals (P) Ltd (CIN: U28110DL2019PTC347808 and Jubilee Metal (P) Ltd. (CIN: U51909DL2020PTC370271) until the implementation of the resolution plan i.e. 5 years from the effective date of the resolution plan without the consent of top 2 financial creditors of the Committee of Creditors in terms of their respective voting shares.

It is stated that the Effective Date comes into play only 30 days’ after the order of this Adjudicating Authority approving the Resolution Plan, which is still pending for approval and thus currently, even before the period of implementation has begun, there is no bar against or breach by further investments and change in directorship/shareholding constitution. The induction of investors and change in constitution of the Respondent does



not amount to breach of the Resolution Plan and further, there is no restriction under the Resolution Plan and the addendum regarding exit of Mr. Gaurav Gupta and thus it cannot be said that there is breach of terms of Resolution Plan.

28. It is submitted that in the LOI issued on 28.07.2021, a restriction is imposed on Mr. Gaurav Gupta from diluting his investment in Shoora Capital FZE until 5 years from the Effective Date. It is stated that LOI dated 28.07.2021 was never approved in any resolution of the CoC and does not attain legal sanctity or does not become a binding document and deviation, if any, from the same would not amount to any breach of the plan.

29. **IA- 2294/2023**

This IA has been filed by the SRA for seeking the following relief:

- a. *Pass an order directing the Respondent to not take any coercive action against the Applicant including withdrawal of Resolution Plan;*
- b. *Pass an order setting aside or quashing the resolution passed by the Committee of Creditors in its meeting dated 21.12.2022 qua withdrawal of resolution plan pending for approval before this Hon'ble Tribunal;*
- c. *Pass an order directing the CoC to consider the submissions of the Applicant before passing any resolution towards withdrawal of Resolution Plan of the Applicant;*
- d. *Pass an order directing the Respondent not to forfeit the Performance Bank Guarantee deposited by the Applicant herein;*
- e. *Pass such other order/orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

30. **IA-4041/2021**

This IA has been filed by the RP for seeking approval of the Resolution Plan dated 09.06.2021 along with addendum dated 18.06.2021 as submitted by the SRA Jubilee Metal Pvt. Ltd.



31. We take note that the issue espoused in the above 3 IAs are interlinked as has been submitted by Ld. Counsel Mr. Sunil Fernandes. Therefore, we proceed to pass a common order.

32. **Analysis and Findings**

- i. We have heard the Ld. Counsels for both the Applicant/RP as well as the Respondent/SRA and perused the documents submitted by them. We take note that clause 3.1, clauses 3.5. 3.6. 3.7 3.8, clause 4.2 and clause 4.4 of the resolution plan mainly deal with the background of the Resolution Applicant, information about promoter, board and Key managerial personnel of the SRA, financial performance of the SRA and creditworthiness of the SRA.
- ii. The credentials and net worth of Mr. Gaurav Gupta and the Shoora Group companies have been heavily relied upon by the SRA and were duly considered by the CoC while approving the Resolution Plan. Further in response to the email communication dated 18.06.2021 received by SRA from the RP asking Mr. Gaurav Gupta that Shoora Capital FZE will not dilute its investment in all the subsequent chain entities including the SPV Jubilee Metal Holdings Pvt Ltd until the implementation (5 years from the effective date) of the plan in full without the consent of top 2 financial creditors, the SRA in addendum dated 18.06.2021 to the Resolution Plan dated 09.06.2021 has submitted an undertaking, the contents of which read as under:

We undertake that Shoora Capital FZE will not dilute its investments in the Companies viz. Shoora Minerals (P) Ltd (CIN: U28110DL2019PTC347808 and Jubilee Metal (P) Ltd. (CIN: U51909DL2020PTC370271) until the implementation of the resolution plan i.e. 5 years from the effective date of the resolution plan without the



consent of top 2 financial creditors of the Committee of Creditors in terms of their respective voting shares.

(The above undertaking was signed by Mr. Gaurav Gupta as Director of SRA Jubilee Metal (P) Ltd.)

- iii.** Similar undertaking as in the addendum to the Resolution Plan has also been given by the SRA and Mr. Gaurav Gupta in the LOI dated 28.07.2021 which has been accepted and signed by Mr. Gaurav Gupta on behalf of SRA, the content of which is extracted below:

Since Shoora Capital FZE, Azman, UAE is the ultimate parent company whose net worth has been considered at Eol stage and also currently under Resolution Plan, reliance is placed on net worth of Shoora Capital FZE for source of funds to be infused by the Successful Resolution Applicant, you undertake that Shoora Capital FZE will not dilute its investment in all the subsequent chain entities (M/s Shoora Minerals Private Limited, Jubilee Metal Private Limited including the SPV Jubilee Metal Holding Private Limited) until the implementation (5 years from Effective Date (as defined in the Resolution Plan)) of the Resolution Plan in full (without the consent of Top 2 Financial creditors). Additionally, Mr. Gaurav Gupta shall not dilute his investment in Shoora Capital FZE until the implementation of Resolution Plan (5 years from Effective Date).

- iv.** On the basis of above extracted provisions, it is evident that the only scenario wherein a change in shareholding of the SRA could be permitted was where the top 2 financial creditors give their consent for the said change in shareholding, which admittedly has not been sought in the present case. Hence, the undertaking holds good.
- v.** In its reply to the Plan withdrawal application i.e. IA-985/2023, the SRA has contended that the Effective Date as per the Plan comes into play only after 30 days of the NCLT plan approval order and the Plan approval application is still pending before NCLT and therefore there is no bar or breach by introducing further investments and change in directorship/shareholding



constitution since the period of implementation has not commenced yet.

We do not find any substance in this argument as the phrase “*until the implementation of the resolution plan i.e. 5 years from the effective date of the resolution plan*” merely defines the term of implementation of the plan and not the date of triggering the restriction engrafted in the clause, it is obvious that the above restriction is always applicable even before the implementation of the plan commences. Further, it is an undertaking to CoC for the purpose of CoC approval of the plan and that undertaking has to continue before the Adjudicating Authority gives its nod to the plan. Any change has to be by consent as written and acknowledged. In this case respondent has unilaterally changed the status of SRA and that is a breach of the undertaking. Hence we hold that respondent SRA has breached the undertaking and the express terms of the CoC approved plan. We hold accordingly.

vi. In its reply the SRA has also contended that the LoI was never approved in any resolution of the CoC and therefore does not attain legal sanctity and cannot be treated as a binding document. This argument also lacks substance as the LoI has been derived from the RFRP which has been prepared in accordance with the approval of the CoC, the SRA itself has expressly signed off the terms of the LoI which expressly stipulate that “*This Letter of Intent shall be binding on you as the Successful Resolution Applicant*”

vii. In its reply the SRA has contended that the CoC has proceeded to pass the resolution to forfeit the PBG furnished by it and to restart the insolvency resolution process of the CD by inviting fresh resolution plans in a hurried manner, without providing any opportunity to the SRA to present its case. This argument also lacks substance as we take note that numerous opportunities were granted to SRA by the CoC to present its



case. Also, at request on various hearing dates the SRA was given several opportunities by this Adjudicating Authority to resolve the issue with CoC. The revised proposals as submitted by SRA have been declined by the CoC in its 19th and 20th meetings dated 19.07.2023 and 04.10.2023. We have nothing to say on the failed attempts by Respondent.

viii. In its reply the SRA has also contended that as per clause 5.3 of the Resolution Plan, the CoC has approved the infusion of Quasi Equity Funds of Rs. 180,00,00,000/- for a period of 5 years into the CD which includes Equity Share Capital, whereas the actual proposed equity share capital to be infused by the Resolution Applicant is Rs. 10,00,00,000 only and therefore the balance amount has to be infused by way of quasi-equity which would eventually change the shareholding structure of the CD. Thus the CoC cannot term induction of investor into the Resolution Applicant as a breach of Resolution Plan. This particular argument lacks substance as it is very much evident that the condition in the addendum to resolution plan dated 09.06.2021 and LoI dated 28.07.2021, also signed by Mr. Gaurav Gupta on behalf of SRA, has been violated.

There was a provision in the plan that Shoora Capital FZE will not dilute its investment in all the subsequent chain entities (M/s Shoora Minerals Private Limited, Jubilee Metal Private Limited including the SPV Jubilee Metal Holding Private Limited) until the implementation (5 years from Effective Date as defined in the Resolution Plan) in full without the consent of Top 2 Financial Creditors. So it is very much evident that bringing of quasi equity if any should have been done with the consent of top 2 financial creditors.

ix. Keeping the above key provisions of the Resolution Plan, Addendum to Resolution Plan and letter of intent we find that the SRA has contravened the material provisions of the Resolution Plan, addendum to the Resolution Plan dated



09.06.2021 and Letter of Intent dated 28.07.2021, and as per the new structure the SRA is not the original SRA whose plan was approved by the CoC. It is seen that the very sound assessment on which the CoC approved the Resolution Plan has been sought to be changed. The CoC find that the plan is not implementable in the manner it had approved and therefore have sought to restart the process as above. We are informed that the decision to go back on fresh Form G is best suited as the CD is viable and has better potential than liquidation. It has worth and CoC is confident of achieving a viable plan from a stable Resolution Applicant. We note the above plea made by CoC counsel in the course of the arguments.

- x. In view of the above, we have no other option but to allow the RP/COG to withdraw the plan and to invite fresh resolution plans of the CD. It is noteworthy that the CD Company is a going concern and there is buoyancy in the market for its products of non-ferrous metals. Thus invoking our powers under Rule 11 of the NCLT Rules, 2016 read with Section 60(5) of IBC, we permit the RP to withdraw the plan approval application. We also direct the RP to expedite the process of inviting fresh resolution plans by issuing fresh Form G inviting expression of interest within a period of not more than 15 days from the passing of the order. Prayers (a), (b), (c) of IA-985/2023 are accordingly allowed.
- xi. Further, as prayed by the Applicant/RP in order to start the CIR Process afresh, we also allow exclusion of time from the date of issuance of invitation calling for EoI i.e. 05.02.2021 till today i.e. passing of this order in the CIR process of the Corporate Debtor.

33. **Order**

It is ordered as:

- a. The application No. IA-985/2023 is allowed as above.



- b. We have considered the issue in depth in IA-985/2023 and for the reasons as stated therein we find none of the relief sought for by the SRA in IA-2294/2023 is justified and maintainable. We find no merits as at their request we permitted the CoC to relook into their offer and it was decided by CoC. We do not want to express anything more. Accordingly, IA-2294/2023 is dismissed
- c. IA-4041/2021 is disposed of as having become infructuous
- d. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
- e. Copy of the Order be sent to IBBI.
- f. File be consigned to the record.

Sd/-

**RAMALINGAM SUDHAKAR
(PRESIDENT)**

Sd/-

**AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)**