

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - 1**



ITEM No.303

IA/933(AHM)2023 in CP(IB) 177 of 2020

**Proceedings under Section 30(6) & 31 IBC,2016 r.w Reg 39(4) IBBI Reg,2016**

**IN THE MATTER OF:**

Manish Bhchasia RP For Superdrawn Wire Industries Pvt Ltd .....**Applicant**

**Order delivered on: 19/09/2023**

**Coram:**

Mr. Shammi Khan, Hon'ble Member(J)  
Mr. Sameer Kakar, Hon'ble Member(T)

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-

**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

-SD-

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**



BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH COURT-1

**IA/933/AHM/2023 in CP(IB)177/AHM/2020**

*(Filed under Sec. 30(6) and Section 31 (1) of the Insolvency & Bankruptcy Code, 2016 for approval of resolution plan)*

In the matter of **Superdrawn Wire Industries Private Limited**

**MANISH BUCHASIA**

Resolution Professional of  
Superdrawn Wire Industries Private Limited  
Having Office at:  
306, "Gala Mart",  
Near SOBO Centre, Above SBI/Union Bank,  
South Bopal,  
Ahmedabad- 380058.

**... Applicant**

Appearance:

For the Applicant/RP: Monaal J Davawala, Adv.

CORAM:

**SHAMMI KHAN, MEMBER (JUDICIAL)**

**SAMEER KAKAR, MEMBER (TECHNICAL)**

**Order Pronounced on 19.09.2023**

**ORDER**

1. IA/933/AHM/2023 is an Application filed U/s 30(6) & 31 of IBC read with Regulation 39(4) of the Insolvency Resolution Regulations,



2016 by the Resolution Professional of Superdrawn Industries Private Limited (Corporate Debtor) seeking the following prayers:

*(i) Pass an order approving the Resolution Plan dated 19.07.2023 submitted by ASEL Financial Services Limited and duly approved by the CoC with 100% voting in accordance with Section 31(1) of the Code; and/or*

*(ii) Pass an order directing that in accordance with Section 31(1) of the Code, the approved Resolution Plan shall be binding on all stakeholders of the Corporate Debtor; and/or*

*(iii) Pass any such order and or other further relief as the Hon'ble Tribunal deems fit and proper in the interest of justice.*

2. It is stated that CIRP commenced vide order dated 16.03.2022 on an application under Section 7 filed by Teco Industries and one Mr. Dilip N Jagad was appointed as IRP. Claims were invited by the IRP and CoC was constituted.

3. The CoC resolved to replace the IRP consequent to which this Tribunal, vide order dated 13.06.2022 in IA 488 of 2022, appointed one Mr. Dinesh Gopal Mundada as the Resolution Professional.

4. It is stated that IA 573 of 2022 was filed by one of the members of the CoC seeking full admission of its claim. Another IA being IA 682 of



2022 was filed challenging the constitution of the CoC. Vide order dated 23.08.2022 passed in IA 573 of 2022, this Tribunal stayed the CIRP process. The stay was extended from time to time and continued till the passing of the order dated 06.03.2023 in IA 682 of 2022. The operative part of the order is produced below:

*“It is further noted that the RP did not inquire on the issue regarding related party even after serious grievance was raised by the Applicant vide mail dated 03.07.2022. Instead of inquiring into the issue of related party, the RP relied upon the confirmation of erstwhile IRP in which it was stated that Respondent No.2 to 4 do not fall under the definition of related party’ under section 5(24) and 5(24A) of IBC, 2016. Hence, we direct to replace the RP and appoint Mr. Manish Santosh Buchasia having registration no. IBBI/IPA-002/IP-N00487/2017-18/11449 and mail id manishbuchasiacs@gmail.com as the RP of the Corporate Debtor.*

*We also direct fresh constitution of CoC of the Corporate Debtor in accordance with law. In view thereof, this application stands allowed.”*



As such, it is seen that the applicant herein was appointed as the RP in the matter.

5. IA 397 of 2023 seeking extension/exclusion of time period of CIRP was ordered on 02.05.2023 by this Tribunal wherein the CIRP period was extended till 11.06.2023. It is stated that Form-G was published in various newspaper on 01.05.2023. Various entities expressed their interest. There were two Prospective Resolution Applicants on the last day viz. 24.05.2023. They were given time till 25.06.2023 for submission of the Resolution Plan.

6. Another IA being IA 673 of 2023 was filed by the RP seeking extension of CIRP which came to be ordered vide order dated 21.06.2023 and the CIRP period was extended by 90 days from 11.06.2023.

7. The 11<sup>th</sup> meeting of CoC was held on 14.07.2023 wherein Resolution Plans of following two entities were discussed and deliberated upon:

(i) ASEL Financial Services Limited

(ii) Serva Shanti Properties Limited



8. The CoC in the 11<sup>th</sup> meeting requested PRA to improve their respective Resolution Plans and submit revised plans within a week thereafter.

9. The 12<sup>th</sup>CoC meeting was held on 28.07.2023. The fair and liquidation value was discussed by the RP. In the same meeting, CoC with 100% majority resolved as under:

*“RESOVLED THAT subject to the confirmation of National Company Law Tribunal, Resolution Plan submitted by M/s. ASEL Financial Services limited be and is hereby approved under Regulation 39(3) of the CIRP Regulations.”*

*“RESOLVED FURTHER THAT RP Manish Santosh Buchasia Resolution Professional, be and hereby authorized to prepare and submit necessary application to Hon’ble NCLT, Ahmedabad Bench and he be and is hereby authorized to appoint Advocate(s), other professionals and to take all steps as may be required.”*

And thereafter, the RP has filed the present application.



11. It is seen that under the plan, the Successful Resolution Applicant (SRA) being ASEL Financial Services Limited has proposed the following: -

Particulars	Claims admitted	Proposed payment amount	Proposed payment structure
CIRP cost	NA	10,00,000/-	Payment within 30 days from Effective Date
Secured Financial Creditors	9,95,58,833/-	1,65,00,000/-	Payment within 30 days from Effective Date
Unsecured Financial Creditors	38,32,82,671/-	4,00,000/-	Payment within 30 days from Effective Date
Operational Creditors (Other than workmen and Employees and Government Dues)	5,89,62,036/-	4,00,000/-	Payment Within 15 days from Effective Date
Operational Creditors (Government Dues)	1,12,78,397/-	2,00,000/-	Payment within 15 days from Effective Date
TOTAL	55,30,81,937/-	1,85,00,000/-	-

12. In the 12<sup>th</sup> meeting of CoC, the Resolution Plan submitted by Serva Shanti Properties Limited was rejected by the CoC.

13. It is seen that CoC in the matter comprises of sole Financial Creditor Raj Radhe Finance Limited.



14. It is stated by the RP in para J of the application that the SRA is eligible under Section 29A of the Code.

15. It is also stated that the entire amount of Rs.1.85 Cr. will be brought in by the ASEL Financial Services Limited out of own sources.

It is further stated that the Resolution Plan submitted by the SRA met with all the requirement prescribe under the Code and Regulations therein.

16. Compliance certificate being Form-H is placed on from Page No.150-156.

17. It is seen that the Resolution Applicant has provided a sum of Rs.10,00,000/- to the RP which is kept under Fixed Deposit in the ICICI Bank. Additional affidavit was filed by the RP which is dated 25.08.2023 attaching therewith a copy of the bank account statement of the SRA showing a credit balance of Rs.1,80,70,702.93/- to show the proof of funds.





18. As regards the dues of the Financial Creditor, RP has filed a letter dated 31.08.2023 issued by the sole Financial Creditor giving breakup of the claim of Rs.9.95 Crs. The same is reproduced below:

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount</b>
1	Principal O/s	11,87,78,137.16/-
2	Unrealized accrued interest	5,61,53,131.07/-
3	Penal Interest (2%)	82,27,564.99/-
4	Legal expenses	3,00,000.00/-
	Total	18,34,58,833.22/-
	(-) Recoveries	8,39,00,000/-
	Total Claim	9,95,58,833.32/-

19. Unsecured Financial Creditors are being paid a sum of Rs.4,00,000/- being 0.1% against their admitted claim of Rs.38.32 Crs. It is stated that the average liquidation value of the Corporate Debtor is Rs.1.30 Crs and the liquidation value of the payable for the Operational Creditors (workmen and employees) is NIL.

20. The Operational Creditors will be paid in priority to the Financial Creditors.

21. As regards Operational Creditors other than the workman, employees and Government Dues, the SRA proposes to pay a sum of



Rs.4,00,000/- against the admitted claim of Rs.5.90 crs within a period of 15 days.

21. Compliance of the various provisions is seen 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?	Affidavit Format no. XIII	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?	Affidavit Format No. XIII	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Affidavit Format No. XIII	Yes
Section	Whether the Resolution Plan:-	Chapter IV	Yes



30(2)	<p>a) Provides for the payment of insolvency resolution process cost?</p> <p>b) Provides for the payment to the operational creditors?</p> <p>c) Provides for the payment to the financial creditors who did not vote in favour of the resolution plan?</p> <p>d) Provides for the management of the affairs of the corporate debtor?</p> <p>e) Provides for the implementation and supervision of the resolution plan?</p> <p>f) Contravenes any of the provisions of the law for the time being in force?</p>	<p>Part B</p> <p>Part E &amp; F</p> <p>Part C</p> <p>Part M</p> <p>Part N</p> <p>No</p>	
Section 30(4)	<p>Whether the Resolution Plan</p> <p>a) Is feasible and viable, according to the CoC?</p>	<p>Approved by @100% of CoC</p>	<p>Yes</p>



	b) Has been approved by the CoC with 66% voting share?		
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Page 37 of the Plan	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?	Chapter IV Part E and Part F	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interest of all stakeholders?	Chapter IV Part B, C, D, E and F	Yes
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contribute to the failure of implementation of any resolution plan approved under the code.  (ii) If so, whether the Resolution Applicant has submitted the	-	No



	statement giving details of such 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?	Page 37  Part M  Part N	Yes
38(3)	Whether the resolution plan demonstrate 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 approval required and the timeline for the same?  (e)the resolution applicant has the capability to implement the	Part O	Yes



	resolution plan?		
39(2)	Whether the RP has filed application in respect of transactions observed found or determined by him?	The same was dismissed by NCLT	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Page 23	Yes

22. Time frame for obtaining relevant approvals as per Form H is as under:

Sl No.	Nature of Approval	Name of applicable Law	Name of Authority who will grant approval	When to be obtained
1.	Form INC28, Form SH7 Reduction & Form PAS-3, New	Companies Act, 2013	ROC	Within 30 of the



	allotment Form DIR12, issue of share certificate			approval of Resolution Plan
2.	Stamp Duty	Stamp Act	Gujarat Stamp Department	Within 30 days of the approval of Resolution Plan
3.	Other relaxation			as per Chapter IV- Part 1

23. It is seen from the Form H that presently no application under Section 43, 45, 50 or 66 of the Act is pending on the file of this Tribunal.

24. The pre and post CIRP structure of the equity capital of the Corporate Debtor is outlined below:



Sl. No.	Category of share holder	No. of shares held before CIRP	No. of shares held after the CIRP	Voting share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity	1999554	0	100%	0

25. It is pleaded that the existing equity shares issued to the erstwhile suspended directors/promoters/shareholders be extinguished.

26. Reliefs and Concessions:

Sr. No.	RELIEF AND/OR CONCESSIONS AND APPROVAL SOUGHT BY RESOLUTION APPLICANT	Orders thereon
1.	To exempt the Corporate Debtor and / or Resolution Applicant from payment of any charges, duty, levy for transfer / recognizing change in Share Holding of the Company pursuant to the Resolution Plan sanctioned by Adjudicating Authority.	<b>Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i> 2021 SCC Online SC 313</b>
2.	Stamp duty, registration charges, levies and taxes on the transactions undertaken pursuant to NCLT order to be exempted.	<b>Subject to approval of Concerned Authorities</b>





3.	The Resolution Applicant will not be liable for any liabilities which are neither appearing in the Provisional Balance Sheet nor mentioned in Information Memorandum under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 except those liabilities which are mentioned in this Resolution Plan.	<b>Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i> 2021 SCC Online SC 313</b>
4.	All licenses & consents to operate to be available within 1 month of completion date without any further act and deed.	<b>Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i> 2021 SCC Online SC 313</b>
5.	Full waiver of other contingent dues and unconfirmed dues.	<b>Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i> 2021 SCC Online SC 313</b>
6.	Waiver/ dropping of the proceedings and consequently waiver of liability on shortfall of mortgage deed duty along with the interest	<b>Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam</i></b>



	and penalty (levied if any if affixed) if any for the past period.	<i>Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i> <i>2021 SCC Online SC</i>  <b>313</b>
7.	All Government Authorities to grant any relief, concession or dispensation as may be required for implementation of the transactions contemplated under the plan in accordance with its terms and conditions.	<b>Subject to approval of Concerned Authority</b>
8.	Although the Resolution Applicant may seek reliefs and concessions from the Adjudicating Authority in the resolution plan, the same will have to be without prejudice to the validity and implementation of the resolution plan and none of the reliefs and concessions sought shall be made conditions for effectiveness of the resolution plan.	<b>Specific relief sought have been granted /denied in this order to prevail</b>
9.	To confirm that, on and from the effective date, all the accounts of the CD shall stand regularized and their asset classification shall be “standard” and “regular” for the purposes of all applicable Laws of RBI	<b>Granted</b>
10.	All outstanding dues of Unsecured Financial Creditors shall stand waived off against the Corporate Debtor immediately upon sanction of the Scheme. All Cheques / Promissory notes / instrument given as security to such	<b>Granted</b>



	Creditors shall stand cancelled if not encashed/ deposited before CIRP date.	
11.	Unsecured Financial Creditors will have no right to seek any remedy under any law for recovery of Principal Amount, Unpaid interest and/or any form of compensation upon sanction of the Scheme by Adjudicating Authority.	<b>Granted</b>
12.	All Claims of Previous management, Directors, Shareholders, their associates and family members shall stand waived and cease to exist for either Equity Share Capital, Preference Share Capital, operational creditor, Unsecured Financial Loans and Deposits, outstanding dues and claims as Employees' Consultants etc.	<b>Granted</b>
13.	Previous management, Directors, Shareholders and their associates and family members shall restore back all assets of the company In their possession immediately with no claim for that in any form.	<b>Granted</b>
14.	Previous management, Directors, Shareholders and their associates and family members shall make good all dues and claims of Corporate Debtor within 7 days of the sanction of the Resolution Plan by Adjudicating authority.	<b>Granted</b>



15.	All the Non-current Assets and Current Assets of the Corporate Debtor as on Insolvency Commencement date after releasing all lien/charges will be transferred to RA without making any adjustment from the amount except specifically mention in the instant resolution plan.	<b>Granted.</b> <b>The date to be the date of approval of this plan by Adjudicating Authority</b>
16.	For the compliance of Companies Act, 2013, if any condonation is required from the NCLT, the said condonation is deemed to be granted to the Resolution Applicant through this plan. No further application to the NCLT for approval will be required.	<b>Not Granted</b>
17.	The Central Board of Direct Taxes (CBDT) or any other relevant Governmental Authority to exempt the Resolution Applicant and the Company from the applicability of and payment of all Taxes under the Income Tax Act, 1961 (including Section 115JB), including any liability under the Minimum Alternate Tax which may arise on account of the transactions envisaged under this Resolution Plan either on the Resolution Applicant, the Company or any other person who is likely to be impacted due to implementation of the Resolution Plan, and the Adjudicating Authority shall pass an order to that effect. The CBDT and or any other Governmental	<b>This is for the appropriate Authorities to consider in view of clean slate principles envisaged under IBC, 2016</b>



	Authority to allow the Company to enjoy and avail in future any tax benefits, deductions, exemptions as per the relevant provisions of the applicable law which the Company was entitled to as on the Plan Effective Date	
18.	Further, not to treat the waiver/extinguishment by the financial/operational creditor as chargeable to tax under section 41(1) or 28 (iv) of income tax act 1961 or otherwise.	<b>This is for the appropriate Authorities to consider in view of clean slate principles envisaged under IBC, 2016</b>
19.	All business permits required by the Corporate Debtor to conduct its business and which have not been granted/cancelled/terminated/revoked/suspended or not renewed may please be directed to be granted/restored/renewed/reinstated as the case maybe (by the concerned competent authority of local body/State/Central Government/ any other competent authority/Board / Tribunal) at no additional cost/claim to the Resolution Applicant.	<b>This is for the appropriate Authorities to consider in view of clean slate principles envisaged under IBC, 2016</b>
20.	All Statutory authorities to accept “Reset Financial Creditors” and “Reset Operational Creditors” for the purpose of making any	<b>This is for the appropriate Authorities to</b>



	future assessment/ proceedings.	<b>consider in view of clean slate principles envisaged under IBC, 2016</b>
21.	All existing Licenses and Permissions, Approvals, registration certificates and registrations including Environmental Clearances, Food Safety and Standard Authority of India, lease, leave and license agreements / arrangements and any other business of the Corporate Debtor shall (without seeking any approval or no-objection, but subject to mandatory procedural formalities/ NOCs under the Applicable Law, if any) shall continue in full force and effect and shall remain valid and binding against the Corporate Debtor, the respective Governmental Authorities and the relevant counter-party(ies) as required for the purpose of continuing the business of the Corporate Debtor (notwithstanding that corporate insolvency resolution proceedings have been initiated against the Corporate Debtor, a change in control / ownership of the Corporate Debtor has been effected at least for a period of one (1) year after the approval of the Resolution Plan pursuant to Section	<b>This is for the appropriate Authorities to consider in view of clean slate principle envisaged under IBC, 2016</b>



	<p>31(4) of the IBC or within such period as provided for in relevant law, whichever is later. The Corporate Debtor with respect to its business shall not be liable for any non-compliance, default, breach, etc., during the period prior to the NCLT Approval Date, in relation to failure to take, or obtain, or failure to comply with, any lease, leave and license agreements / arrangements, Licences and Permissions from Government Authorities, Food Safety and Standard Authority of India, Ministry of Environment, Forest and Climate Change, the Central Pollution Control Board, the Telangana Pollution Control Board (and Telangana Government (Department of Industries, Energy and Labour).</p>	
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27. From the resolution plan, it is evident that the SRA has sought for constitution of a Monitoring Committee. Accordingly, a Monitoring Committee is constituted with two representative of the SRA and one representative of Financial Creditors.

28. The Resolution Professional is hereby appointed as the Chairman of the Monitoring Committee.



29. ANALYSIS AND FINDINGS OF THIS TRIBUNAL

29.1. It is seen from Form – H that the Liquidation value of the Corporate Debtor is arrived at Rs.1,29,98,269/- and the corresponding Fair value is arrived at 2,08,33,217/- Crore. The Resolution Plan is for an amount of Rs.1,85,00,000/-.

29.2. Further, it is seen from Form – H, that presently no Application under Section 43, 45, 49 and 66 of IBC, 2016 in the present matter is pending on the file of this Tribunal.

29.3. In so far as the approval of the Resolution Plan is concerned, this Authority is convinced on the decision of the Committee of Creditors, following the Judgment of Hon'ble Supreme Court in the matter of **K. Sashidhar –Vs– Indian Overseas Bank (2019) 12 SCC 150**, wherein in para 19 and 62 it is held as follows;

“19.....In the present case, however, our focus must be on the dispensation governing the process of approval or rejection of resolution plan by the CoC. The CoC is called upon to consider the resolution plan under Section 30(4) of the I&B Code after it is verified and vetted by the resolution professional as being compliant with all the statutory requirements specified in Section 30(2).

62. ....In the present case, however, we are concerned with the provisions of I&B Code dealing with the resolution process. The dispensation provided in the I&B Code is entirely different. In terms of Section 30 of the I&B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC and they express





their opinion on the proposed resolution plan in the form of votes, as per their voting share. In the meeting of the CoC, the proposed resolution plan is placed for discussion and after full interaction in the presence of all concerned and the Resolution Professional, the constituents of the CoC finally proceed to exercise their option (business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, non-recording of reasons would not per-se vitiate the collective decision of the financial creditors. The legislature has not envisaged challenge to the “commercial/business decision” of the financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count.”

29.4. Further, the Hon’ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steels –Vs– Satish Kumar Gupta & Ors. in Civil Appeal No. 8766 – 67 of 2019** at para 42 has held as follows;

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).

29.5. Further the Supreme Court in the matter of **K. Sashidhar v. Indian Overseas Bank and Ors. (2019) 12 SCC 150** has lucidly delineated the scope and interference of the Adjudicating Authority in the process of approval of the Resolution Plan and held as follows;



“55. 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 per cent 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.

58. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with Section 31(1) of the I&B Code. No other inquiry would be permissible. Further,



the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters “other than” enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers.”

*(emphasis supplied)*

29.6. Also, the Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Ors.** (2020) 8 SCC 531 after referring to the decision in *K. Sashidhar (supra)* has held as follows;

“73. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or sub-class of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The



reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal.”

*(emphasis supplied)*

29.7. The Supreme Court in its recent decision in **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Ltd. & Ors.** in *Civil Appeal no. 3395 of 2020* dated 24.03.2021 has held as follows;

76. The expositions aforesaid make it clear that the decision as to whether corporate debtor should continue as a going concern or should be liquidated is essentially a business decision; and in the scheme of IBC, this decision has been left to the Committee of Creditors, comprising of the financial creditors. Differently put, in regard to the insolvency resolution, the decision as to whether a particular resolution plan is to be accepted or not is ultimately in the hands of the Committee of Creditors; and even in such a decision making process, a resolution plan cannot be taken as approved if the same is not approved by votes of at least 66% of the voting share of financial creditors. Thus, broadly put, a resolution plan is approved only when the collective commercial wisdom of the financial creditors, having at least 2/3rd majority of voting share in the Committee of Creditors, stands in its favour.

77. In the scheme of IBC, where approval of resolution plan is exclusively in the domain of the commercial wisdom of CoC, the scope of judicial review is correspondingly circumscribed by the provisions contained in Section 31 as regards approval of the Adjudicating Authority and in Section 32 read with Section 61 as regards the scope of appeal against the order of approval.

77.1. Such limitations on judicial review have been duly underscored by this Court in the decisions above-referred, where it has been laid down in explicit terms that the powers of the



Adjudicating Authority dealing with the resolution plan do not extend to examine the correctness or otherwise of the commercial wisdom exercised by the CoC. The limited judicial review available to Adjudicating Authority lies within the four corners of Section 30(2) of the Code, which would essentially be to examine that the resolution plan does not contravene any of the provisions of law for the time being in force, it conforms to such other requirements as may be specified by the Board, and it provides for: (a) payment of insolvency resolution process costs in priority; (b) payment of debts of operational creditors; (c) payment of debts of dissenting financial creditors; (d) for management of affairs of corporate debtor after approval of the resolution plan; and (e) implementation and supervision of the resolution plan.

77.2. The limitations on the scope of judicial review are reinforced by the limited ground provided for an appeal against an order approving a resolution plan, namely, if the plan is in contravention of the provisions of any law for the time being in force; or there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period; or the debts owed to the operational creditors have not been provided for; or the insolvency resolution process costs have not been provided for repayment in priority; or the resolution plan does not comply with any other criteria specified by the Board

77.6.1. The assessment about maximisation of the value of assets, in the scheme of the Code, would always be subjective in nature and the question, as to whether a particular resolution plan and its propositions are leading to maximisation of value of assets or not, would be the matter of enquiry and assessment of the Committee of Creditors alone. When the Committee of Creditors takes the decision in its commercial wisdom and by the requisite majority; and there is no valid reason in law to question the decision so taken by the Committee of Creditors, the adjudicatory process, whether by the Adjudicating Authority or the Appellate Authority, cannot enter into any quantitative analysis to adjudge as to whether the prescription of the resolution plan results in maximisation of the value of assets or not. The generalised submissions and objections made in relation to this aspect of value maximisation do not, by themselves, make



out a case of interference in the decision taken by the Committee of Creditors in its commercial wisdom

78. To put in a nutshell, the Adjudicating Authority has limited jurisdiction in the matter of approval of a resolution plan, which is well defined and circumscribed by Sections 30(2) and 31 of the Code read with the parameters delineated by this Court in the decisions above referred. The jurisdiction of the Appellate Authority is also circumscribed by the limited grounds of appeal provided in Section 61 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by the CoC. Within its limited jurisdiction, if the Adjudicating Authority or the Appellate Authority, as the case may be, would find any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by Code and exposted by this Court.

29.8. Thus, from the catena of judgments rendered by the Supreme Court on the scope of approval of the Resolution Plan, it is amply made clear that only limited judicial review is available for the Adjudicating Authority under Section 30(2) and Section 31 of IBC, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the Committee of Creditors.

29.9. On hearing the submissions made by the Ld. Counsel for the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with **100%** voting share. As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the



Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Bench. On perusal of the documents on record, we are also satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016,

29.10. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.

29.11. The Resolution Plan in question is hereby **Approved** by this Adjudicating Authority, subject to the observations made in this order. The Resolution Plan shall form part of this Order. The Resolution Plan is binding on the Corporate Debtor and other stakeholders.

29.12. The Resolution Applicant is directed to make payment of the entire Resolution Plan amount within the time period stipulated under the Resolution Plan, failing which the entire amount paid by the Resolution Applicant (*including the Performance Bank Guarantee*) as on the said date would stand automatically forfeited, without any recourse to this Tribunal.



29.13. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.

29.14. Liberty is hereby granted for moving any Application if required in connection with the implementation of this Resolution Plan.

29.15. A copy of this Order is to be submitted to the concerned Office of the Registrar of Companies.

30. IA/933/AHM/2022 shall stand **disposed of** accordingly.

31. The *Registry* is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsel for information and for taking necessary steps. Files be consigned to the record.

-SD-

-SD-

**SAMEER KAKAR**  
MEMBER (TECHNICAL)

**SHAMMI KHAN**  
MEMBER (JUDICIAL)

*Anuj*