

A-11

**BEFORE THE AJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH  
AHMEDABAD**

**IA 337 of 2018 in  
C.P. (I.B) No. 88/NCLT/AHM/2017**

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**  
**Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 27.02.2019**

Name of the Company: Virag Enterprise  
V/s.  
Ramachandra D. Chaudhary, RP of  
Rainbow Papers Ltd. & Anr.

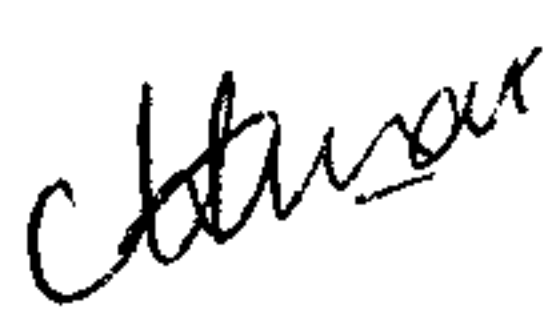
Section of the Companies Act: Section 61(5), 30 & 31 of the Insolvency and  
Bankruptcy Code

| S.NO. | NAME (CAPITAL LETTERS) | DESIGNATION | REPRESENTATION | SIGNATURE |
|-------|------------------------|-------------|----------------|-----------|
| 1.    | Rup Kothari            | Adv.        | Resp-Coc       | for.      |
| 2.    | Anup Gandhi            |             |                |           |

**ORDER**

The Respondent/COC is represented through their respective learned counsels.

The Order is pronounced in the open court, vide separate sheet.

  
**MANORAMA KUMARI**  
**MEMBER JUDICIAL**  
Dated this the 27th day of February, 2019

  
**HARIHAR PRAKASH CHATURVEDI**  
**MEMBER JUDICIAL**

**BEFORE THE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH**

**IA No. 224/271/272/337 of 2018 and  
P-01 of 2019 In  
CP.No. (IB) 88/9/NCLT/AHM/2017  
And IA No. 273 of 2018 in IA No. 224 of 2018 in  
CP.No. (IB) 88/9/NCLT/AHM/2017**

**In the matter of:**

**IA No. 224 of 2018 in CP(IB) 88 of 2017**

Shri Ramachandra D. Choudhary  
Resolution Professional of  
Rainbow Papers Limited

.....Applicant

**Versus**

The Committee of Creditors  
Represented through Lead Bank Indian Overseas Bank,  
Large Corporate Branch,  
1<sup>st</sup> Floor, Chinubhai Tower  
Ashram Road,  
Ahmedabad – 380 009

.....Respondent

**IA No. 271 of 2018 in CP(IB) 88 of 2017**

Shree Ganpatlal Onkar Agrawal and Co.  
110-111, TBC Tower,  
22/1, South Tukoganj,  
Near Geeta Bhawan Square,  
A.B. Road,  
Indore – 452 001

.....Applicant  
[Operational Creditor]

**Versus**

Mr. Ramchandra D. Chaudhary,  
Resolution Professional of  
Rainbow Papers Limited  
801, Avdhesh House,  
Opp. Guru Govinddham Gurudwara,  
S.G. Highway,  
Thaltej,  
Ahmedabad-380054

....Respondent





**IA No. 224/271/272/337 of 2018 and  
P-01 of 2019 In  
CP.No. (IB) 88/9/NCLT/AHM/2017  
And IA No. 273 of 2018 in IA No. 224 of 2018 in  
CP.No. (IB) 88/9/NCLT/AHM/2017**

**IA 272 of 2018 in CP(IB) 88 of 2017**

Swastik Coal Corporation Private Limited  
Swastika House,  
21/3, Ratlam Kothi Main Road,  
Indore – 452001  
Madhya Pradesh

.....Applicant  
[Operational Creditor]

**Versus**

Mr. Ramchandra D. Chaudhary,  
Resolution Professional of  
Rainbow Papers Limited  
801, Avdhesh House,  
Opp. Guru Govinddham Gurudwara,  
S.G. Highway,  
Thaltej,  
Ahmedabad-380054

....Respondent

**IA 273 of 2018 in IA 224 of 2018 in in CP(IB) 88 of 2017**

Tourism Finance Corporation of India Ltd.  
4<sup>th</sup> Floor, Tower – I,  
NBCC Plaza,  
Pushap Vihar, Sector V,  
Saket,  
New Delhi – 110017

.....Applicant  
[Operational Creditor]

**Versus**

Mr. Ramchandra D. Chaudhary,  
Resolution Professional of  
Rainbow Papers Limited  
801, Avdhesh House,  
Opp. Guru Govinddham Gurudwara,  
S.G. Highway,  
Thaltej,  
Ahmedabad-380054

....Respondent

**IA 337 of 2018 in CP(IB) 88 of 2017**

Virag Enterprise,  
404, 405, Ratan Galaxie,  
J.N. Road, Mulund West,  
Mumbai-400080

.....Applicant  
[Operational Creditor]



IA No. 224/271/272/337 of 2018 and  
P-01 of 2019 In  
CP.No. (IB) 88/9/NCLT/AHM/2017  
And IA No. 273 of 2018 in IA No. 224 of 2018 in  
CP.No. (IB) 88/9/NCLT/AHM/2017

**Versus**

Mr. Ramchandra D. Chaudhary,  
Resolution Professional of  
Rainbow Papers Limited  
801, Avdhesh House,  
Opp. Guru Govinddham Gurudwara,  
S.G. Highway,  
Thaltej,  
Ahmedabad-380054

....Respondent

**P-01 of 2019 in CP(IB) 88 of 2017**

Sales Tax Officer (1),  
Unit-33, Kadi,  
Mehsana,  
Gujarat

Applicant  
[Operational Creditor]

**Versus**

Mr. Ramchandra D. Chaudhary,  
Resolution Professional of  
Rainbow Papers Limited  
801, Avdhesh House,  
Opp. Guru Govinddham Gurudwara,  
S.G. Highway,  
Thaltej,  
Ahmedabad-380054

....Respondent

**Order delivered on 27<sup>th</sup> February, 2019**

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)**  
**Hon'ble Ms. Manorama Kumari, Member (Judicial)**

**Appearance:** Mr. Harmish K Shah, Mr. Rajesh Parikh, Mr. Anip Gandhi, Mr. Raju Kothari, advocates are present for the Applicants. Mr. Mihir Thakar and Mr. Salil Thakar are present for the CoC. Ms. Natasha D. Shah is present for the Resolution Professional

**COMMON ORDER**

**[Per se: Ms. Manorama Kumari, Member (Judicial)]**

1. The IA 224 of 2018 is filed under section 30(6) read with section 31 of the Insolvency and Bankruptcy Code, 2016 ("the Code" for short) and regulations framed thereunder, seeking approval of the Resolution Plan

*Chaturvedi*

for insolvency resolution of the Corporate Debtor as a going concern, with prayers:

(A) To approve the Revised Resolution Plan dated 26.05.2018 along with addendum dated 05.06.2018 with or without modification.

2. It is submitted by the Ld. Counsel on behalf of RP as well as CoC that the CP(IB)No. 88/2017 was filed by one Neeraj Papers Pvt. Ltd., the Operational Creditor under section 9 of the Code seeking initiation of Corporate Insolvency Resolution Process against Rainbow Papers Ltd (hereinafter referred to as "Corporate Debtor" having registered office at 801, Avdesh House, 8<sup>th</sup> Floor, Opp. Gurudwara Govinddham, S.G. Highway, Thaltej, Ahmedaba.
3. The said CP(IB) No. 88/2017 was admitted on 12.09.2017 by this Adjudicating Authority appointing IRP, on obtaining the recommendations from IBBI, Shri George Samuel on 22.09.2017.
4. On appointment of IRP, public announcement was made as per the provisions of section 15 of the Code calling upon the claims from the creditors. The public announcement was published in leading newspapers i.e. "Economic Times" and "Divya Bhaskar" on 26.09.2017, keeping the last date for submission of claims as 05.10.2017.
5. That on receipt of claims by 05.10.2017, Committee of Creditors was/is constituted on 10.10.2017 and the list of creditors is filed before this Bench as **Annexure-D**. Thereafter, IRP prepared Interim Information Memorandum dated 16.10.2017 on the basis of information collected in relation to the financial position.  
It is mentioned hereunder that on 29.09.2017 two registered valuers is/are also appointed by IRP to determine the liquidation value of the Corporate Debtor in due compliance of Regulation 27 read with Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
6. It is further submitted that in the first meeting of CoC, the resolution was passed to replace the Interim Resolution Professional with that of Mr. Ramchandra D. Chaudhary (hereinafter called RP). The change of IRP

*John*

was also subsequently approved by this Bench vide order dated 06.11.2017.

7. In pursuance of the public announcement under the provisions of Section 15 of the Code inviting claims from all the creditors, IRP/RP received claims, hence CoC was constituted on 10.10.2017.
8. It is further submitted that in compliance of the resolution passed in the second meeting of the CoC, a public announcement was made in the newspapers inviting the expression of interest (hereinafter called "EoI") fixing the last date as 07.02.2018. On the said date, the applicant received the resolution plan from one Kushal Limited (hereinafter referred to as "Resolution Applicant"), but the said plan was rejected by the CoC in their fourth meeting dated 17.02.2018, as the plan was devoid of minimum eligibility criteria with respect to the Earnest Money Deposit (hereinafter referred to as "EMD"). Consequent upon which, CoC further resolved to invite fresh EoI and the Resolution Applicant was also directed to do the needful.
9. Meanwhile, CoC resolved to get 90 days extension of CIRP beyond 180 days and vide order dated 19.03.2018, CIRP was further extended by 90 days by this Bench.
10. It is stated that on issuance of fresh EoI vide advertisement dated 21.02.2018, the RP received a resolution plan on 19.03.2018 from the same Resolution Applicant, though EoI were received from three parties but none came up except Kushal Ltd, who deposited Rs. 30 crores as EMD. The said plan was placed in the fifth meeting of CoC dated 27.03.2018 where the CoC decided to put up the same for consideration in the next meeting.
11. It is submitted that the revised resolution plan was discussed in the 6<sup>th</sup> meeting of CoC dated 25.04.2018. On detailed discussions in the CoC, it was found that Resolution Applicant has not made sufficient improvement in the resolution plan dated 31.03.2018. Hence Resolution Applicant was also directed to proceed with the forensic audit of the Corporate Debtor.

*Chauhan*

*[Signature]*

12. It is submitted that in the 7th meeting of CoC dated 03.05.2018, the scope of the forensic audit was decided and the revised resolution plan was further discussed and accordingly, the Resolution Applicant was directed to submit the improved resolution plan removing some of the legal defects as observed in the plan.
13. The Resolution Applicant again filed the amended resolution plan on 26.05.2018. On scrutiny RP issued certificate on 28.05.2018 in compliance of the Regulation 39(2). Accordingly, RP/the applicant issued notice dated 29.05.2018 for convening the eighth and final meeting of the CoC on 04.06.2018. In the said meeting, CoC sought certain changes in the plan. In view of that, the Resolution Applicant was permitted to provide the addendum to the revised plan within a period of one (1) day which was accepted and duly acted upon by the Resolution applicant.
14. The said amended revised resolution plan along with the addendum dated 05.06.2018 was placed for e-voting before the members of the CoC which took place on two (2) days i.e. on 06.06.2018 and 07.06.2018. The CoC in their aforesaid e-voting resolved to approve the resolution plan along with the addendum with majority of 79.79% voting share in favour of the Resolution Applicant.
15. It is stated that all the compliances are made. CoC had taken the decision based upon the commercial wisdom looking to the meaningful and viable plan. The said decision of CoC takes care of the interests of all the stakeholders.
16. On filing of the application by the RP under section 30(6) read with section 31 of the Code, notices were issued to the CoC and suspended management. CoC approved and conceded to the fact of filing application by the RP under section 33(6) of the Code and have supported the argument advanced by the Ld. Counsel of the RP. No representation received from the suspended management.
17. That during the pendency and/or on filing of the application by RP under section 33(6) of the Code, number of intervention applications are filed. Some of the intervention applications are being withdrawn in due course, however, some of the applications are decided and disposed of on merit

*Chaturvedi*

by hearing RP and the CoC. The order of those intervention applications are passed separately for the sake of convenience, as those are not maintainable.

18. Heard the arguments of the RP and CoC and also seen the Resolution Plan filed with the application.
19. That on perusal of the application as well as the Resolution Plan as also discussed above, which are not narrated here in again for the sake of brevity.
20. In the second meeting, CoC passed resolution and invited EoI which was published on 13.01.2018 with following criterion:
  - (i) That the net worth / market capitalization of the Resolution Applicant as the date of submission of the EOI shall be Rs. 1000 Crores or more'
  - (ii) That the Resolution Applicant shall have business experience in the Industry for a period of 3 years, immediately before the submission of the Resolution Plan.
  - (iii) That along with the EOI, the proposed Resolution Applicant shall deposit Rs. 50 Lakh (refundable) to the credit of a specified Bank Account of Corporate Debtor or by way of demand draft;
  - (iv) That the Resolution Applicant shall pay a minimum outright payment equivalent to at least 5% of the offer amount (refundable, if resolution plan is not accepted), to the credit of a specified Bank Account of Corporate Debtor or by way of demand draft along with the submission of the resolution Plan.
  - (v) The minimum offer amount shall be Rs. 535 Crores or more towards payment to the financial creditors;
  - (vi) In case, if Resolution Applicant is ARC / PE, the Assets Management Portfolio of such ARC / PE shall be Rs. 2500 Crores or more.
21. In view of the publication of announcement calling EoI, two EoI were received in relation to eligibility of resolution of the applicant, which were discussed in the CoC. The Resolution Plan of Kushal Limited jointly with Mr. Sandip Agrawal did not meet with the criteria of the initial deposit of 5% as on stipulated date. Hence the CoC rejected the Resolution Plan.

*Handwritten signature*

*Handwritten mark*

The letter received from M/s. M.R. Agarwal Industries Ltd. was also discussed. To receive the better plan, CoC decided to revise EoI by relaxing certain conditions. The revised conditions are as under:

1. The Net worth (NW) of the Resolution Applicant as on 31.03.2017 (as per the Audited Balance Sheet of Resolution Applicant) shall be INR 200 Crores;
  2. The Resolution Applicant, other than ARC/PE shall have business experience in the same Industry, whether in trading or manufacturing, for a period of 3 years immediately before the submission of the Expression of Interest and resolution Plan;
  3. In case if Resolution Applicant is ARC/PE, the Assets Management Portfolio of such ARC /PE shall be Rs. 2500 Crores or more; and
  4. That the minimum offer price to the Secured Financial Creditors shall not be less than INR 550 Crores.
22. The CoC convened the 4<sup>th</sup> meeting on 17.02.2018 and decided to vote for resolution plans submitted by Kushal Limited jointly with Mr. Sandip Agrawal on 07.02.2018 and was placed before the CoC but the same was rejected due to want of minimum criteria. Hence, CoC decided to invite fresh EoI and got extended the CIRP term for further 90 days.
23. On perusal of the record and the advertisement, EoI was received from three parties viz. (i) Kushal Limited jointly with Mr. Sandip Agrawal (ii) Shree Rama Newsprint Ltd jointly with Ridhi sidhi Glucoboils Limited and (iii) Poddar International Limited jointly with three other applicants. But out of three parties, the resolution plan came from only Kushal Limited joining with Mr. Sandip Agrawal.
24. In the fifth meeting of CoC, proposal of the Kushal Limited jointly with Mr. Sandip Agrawal was discussed. The CoC suggested the Resolution applicant to improve the offer. Accordingly, Resolution Applicant submitted the revised resolution plan on 31.03.2018 and finally in the 8<sup>th</sup> meeting convened on 04.06.2018, the CoC planned for e-voting which commenced on 06.06.2018 and terminated on 07.06.2018 and the plan dated 26.05.2018 of Kushal Limited jointly with Mr. Sandip Agrawal was approved by 72.79% voting along with the Scheme of Amalgamation forming part of the resolution and addendum.

*Handwritten signature*

*Handwritten signature*

**IA No. 224/271/272/337 of 2018 and  
P-01 of 2019 In  
CP.No. (IB) 88/9/NCLT/AHM/2017  
And IA No. 273 of 2018 in IA No. 224 of 2018 in  
CP.No. (IB) 88/9/NCLT/AHM/2017**

25. On perusal of the resolution plan, it is/was found that applicant made all the compliances in conformity with the provisions of the Code and the regulations framed thereunder and have taken care of creditors, shareholders, stakeholders and the employees. For the sake of convenience, the description of compliances made, are given hereunder in the tabular form:

| No. | Section<br>/<br>Regulation | Sub-<br>section/<br>Sub-<br>regulation | Criteria                                                                                                                                | Criteria is met                                                               | Ref. Page<br>No. in IA<br>224 of<br>2018 |
|-----|----------------------------|----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|------------------------------------------|
| 1   | Section<br>30              | (1)                                    | A resolution applicant may submit a resolution plan to the resolution professional prepared on the basis of the information memorandum. | Prepared on the basis of information provided into the Information memorandum | 136-137                                  |
|     |                            | (2)                                    | The RP shall examine each resolution plan received by him to confirm that each resolution plan :-                                       |                                                                               |                                          |
|     |                            | A                                      | Provides for the payment of the IPR costs in the manner specified by                                                                    | CIRP cost of Rs. 2 crores has been provided into the resolution               | 147                                      |

*Attn*

**IA No. 224/271/272/337 of 2018 and  
P-01 of 2019 In  
CP.No. (IB) 88/9/NCLT/AHM/2017  
And IA No. 273 of 2018 in IA No. 224 of 2018 in  
CP.No. (IB) 88/9/NCLT/AHM/2017**

|  |  |   |                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                      |         |
|--|--|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
|  |  |   | the Board in<br>priority to the<br>repayment of<br>other debts of<br>the corporate<br>debtor                                                                                                                                                                                                                      | plan                                                                                                                                                                 |         |
|  |  | B | Provides for<br>repayment of<br>debts of<br>operational<br>creditor in<br>such manner<br>as specified by<br>the Board<br>which shall<br>not be less<br>than the<br>amount to the<br>paid to the<br>operational<br>creditors in<br>the event of a<br>liquidation of<br>the corporate<br>debtor under<br>section 53 |                                                                                                                                                                      | 155-156 |
|  |  | C | Provides for<br>management<br>of the affairs<br>of the<br>Corporate<br>Debtor after<br>approval of<br>the Resolution<br>Plan                                                                                                                                                                                      | Resolution<br>Applicant<br>has provided<br>the detail of<br>management<br>of the affairs<br>of the<br>corporate<br>debtor after<br>approval of<br>resolution<br>Plan | 171     |

*Chhavi*

*[Signature]*

**IA No. 224/271/272/337 of 2018 and  
P-01 of 2019 In  
CP.No. (IB) 88/9/NCLT/AHM/2017  
And IA No. 273 of 2018 in IA No. 224 of 2018 in  
CP.No. (IB) 88/9/NCLT/AHM/2017**

|   |        |     |                                                                                           |                                                                                                                                     |                                        |
|---|--------|-----|-------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|
|   |        | D   | The implementation and supervision of the resolution plan                                 | Resolution applicant has provided for the measure for implementation and supervision of the resolution plan                         | 171                                    |
|   |        | E   | Does not contravene any of the provisions of the law for the time being in force          | The Resolution applicant submits that the resolution plan does not contravene any of the provisions of the law time being in force. | Certificate of Resolution Professional |
|   |        | F   | Confirms to such other requirements as may be specified by the Board                      | NA                                                                                                                                  |                                        |
| 2 | Reg 38 | (1) | A resolution plan shall identify specific sources of funds that will be used to pay the - | Sources of funds detail has been provided by the Resolution Applicant(s)                                                            |                                        |

*Chauhan*

*[Signature]*

**IA No. 224/271/272/337 of 2018 and  
P-01 of 2019 In  
CP.No. (IB) 88/9/NCLT/AHM/2017  
And IA No. 273 of 2018 in IA No. 224 of 2018 in  
CP.No. (IB) 88/9/NCLT/AHM/2017**

|  |  |     |                                                                                                                                                                                                                                       |  |           |
|--|--|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-----------|
|  |  | (a) | Insolvency resolution process costs and provide that the insolvency resolution process costs will be paid in priority to any other creditor                                                                                           |  | 147 & 170 |
|  |  | (b) | Liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the AA |  | NA        |
|  |  | (c) | Liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by                                                                                                       |  | 152 & 170 |

*Chauhan*

**IA No. 224/271/272/337 of 2018 and  
P-01 of 2019 In  
CP.No. (IB) 88/9/NCLT/AHM/2017  
And IA No. 273 of 2018 in IA No. 224 of 2018 in  
CP.No. (IB) 88/9/NCLT/AHM/2017**

|  |  |                                  |                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                    |                    |
|--|--|----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
|  |  |                                  | the financial<br>creditors who<br>voted in<br>favour of the<br>resolution<br>plan                                                                                                                                                      |                                                                                                                                                                                                                                                                                    |                    |
|  |  | 1 A<br>Amended<br>05-10-<br>2017 | A resolution<br>plan shall<br>include a<br>statement as<br>to how it has<br>dealt with the<br>interests of all<br>stakeholders,<br>including<br>financial<br>creditors and<br>operational<br>creditors, of<br>the corporate<br>debtor. | Specific Parts<br>in the plan<br>dealing with<br>Secured<br>Financial<br>Creditors,<br>Unsecured<br>Financial<br>Creditors,<br>Dissenting<br>Financial<br>Creditors,<br>Operational<br>Creditors,<br>Statutory<br>Dues,<br>Contingent<br>dues,<br>Employees<br>and<br>Shareholders | 169, 147<br>to 171 |
|  |  | (2)                              | A resolution<br>plan shall<br>provide                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                    |                    |
|  |  | (a)                              | The term of<br>the plan and<br>its<br>implementatio<br>n schedule                                                                                                                                                                      | Term of the<br>plan and its<br>implementati<br>on schedule<br>is provided in<br>the Plan                                                                                                                                                                                           | 169                |
|  |  | (b)                              | The<br>management                                                                                                                                                                                                                      | Same has<br>been                                                                                                                                                                                                                                                                   | 171                |

*Chhavi*

**IA No. 224/271/272/337 of 2018 and  
P-01 of 2019 In  
CP.No. (IB) 88/9/NCLT/AHM/2017  
And IA No. 273 of 2018 in IA No. 224 of 2018 in  
CP.No. (IB) 88/9/NCLT/AHM/2017**

|  |  |                                                         |                                                                                                                                                                                                                                                                                                                           |                                                                                                |                                                 |
|--|--|---------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|-------------------------------------------------|
|  |  |                                                         | and control of the business of the corporate debtor during its term                                                                                                                                                                                                                                                       | provided into the plan                                                                         |                                                 |
|  |  | (c)                                                     | Adequate means for supervising its implementation                                                                                                                                                                                                                                                                         | Same has been provided into the Plan                                                           | 171                                             |
|  |  | 3<br>[3 <sup>rd</sup><br>Amendm<br>ent – 07-<br>11-2017 | A resolution plan shall contain details of the resolution applicant and other connected persons to enable the committee to assess the credibility of such applicant and other connected persons to take a prudent decision while considering the resolution plan for its approval.<br>Explanation:<br>for the purposes of | Detail of Resolution Applicant and other connected persons are included in the resolution plan | Certificate of Resolution Professional u/s 29A. |

*Chennai*

|  |  |  |                                                                                                                                                                                                                                 |  |  |
|--|--|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|
|  |  |  | <p>this sub-regulation – (i) ‘details’ shall include the following in respect of the resolution applicant and other connected person, namely :-</p> <p>.....</p> <p><i>The word connected person is also defined there.</i></p> |  |  |
|--|--|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|

26. It is found that RP/the applicant is duly authorized to submit the approved resolution plan before this Bench for approval in accordance with the provisions of the Code. Though resolution plan was approved by CoC by 72.79% of voting, however, in view of the amendment in Section 30 of the Code, 2018 which came into force on 06.06.2018, revised resolution plan ought to have been approved by the minimum of 66% of voting share of Financial Creditors, but in the instant case, resolution plan was duly approved by majority of 72.79% of the members of CoC. The Hon’ble Supreme Court in its recent judgment in Civil Appeal No. 10673 of 2018 in **K. Sashidhar Vs. Indian Overseas Bank & Ors.** Comprising of Hon’ble Justice A.M. Khanwilkar and Hon’ble Justice Ajay Rastogi observed that:

***“33. As aforesaid, upon receipt of a “rejected” resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under section 33(1) of the I&B Code. The Legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyze or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the***

*Abhinav*

*dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies.”*

*“39. In our view, neither the adjudicating authority (NCLT) nor the appellate authority (NCLAT) has been endowed with the jurisdiction to reverse the commercial wisdom of the dissenting financial creditors and that too on the specious ground that is only an opinion of the minority financial creditors. The fact that substantial or majority percent of financial creditors have accorded approval to the resolution plan would be of no avail, unless the approval is by a vote of not less than 75% (after amendment of 2018 w.e.f. 06.06.2018, 66%) of voting share of the financial creditors. To put it differently, the action of liquidation process postulated in Chapter-III of the I&B Code, is avoidable, only if approval of the resolution plan is by a vote of not less than 75% (as in October, 2017) of voting share of the financial creditors. Conversely, the legislative intent is to uphold the opinion or hypothesis of the minority dissenting financial creditors. That must prevail, if it is not less than the specified percent (25% in October, 2017; and now after the amendment w.e.f. 06.06.2018, 44%). The inevitable outcome of voting by not less than requisite percent of voting share of financial creditors to disapprove the proposed resolution plan, de jure, entails in its deemed rejection.*

*“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 confirm 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*

*Chander*

*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, 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.*

27. Being aggrieved by the Resolution Plan, the Interlocutory Applications No. 271 of 2018, 272 of 2018, 273 of 2018, 337 of 2018 and P-01 of 2019 have been filed by the above named applicants in C.P.(I.B.) No. 88 of 2017 in the matter of Neeraj Papers Pvt. Ltd versus Rainbow Papers Limited apart from other IAs which are already disposed of on merits except above said IAs.

28. Facts of each IA are as under:

**28.1 IA 271 of 2018 – Shree Ganpatlal Onkar Agrawal & Co.**

It is stated that the applicant submitted the proof of the claim for Rs. 20,52,203/- to the IRP along with the affidavit dated 30.11.2017 with all the relevant documents. The total amount of the claim included interest as on the insolvency commencement date. However, the Resolution Professional reduced the claim to Rs. 15,14,698/- without giving any explanation.

*Shree*

It is stated by the applicant that as per the resolution plan, applicant, the operational creditor will get cash payment of the 10% of the total outstanding amount in five equal installments from the 3<sup>rd</sup> to 7<sup>th</sup> year after the effective date. It is also stated by the applicant that apart from 10% of the outstanding amount, the Resolution Plan provides for issue of share warrant with an option to purchase the shares by paying 75% of the offer price within the next 18 months at their sole discretion. The initial subscription towards share warrant, which is 25%, is a credit given by the Resolution Applicant to the applicant, the operational creditor. However, this provision is not compulsive and the applicants, the operational creditors are not compelled to take the shares. It is submitted by the applicant, the operational creditor, that by this arrangement, the operational creditor will lose 65% of the amount, if the applicant subscribes the shares.

**28.2 IA 272 of 2018 – Swastik Coal Corporation Private Limited**

It is stated that the applicant submitted the proof of the claim for Rs. 4,94,71,355/- to the IRP along with the affidavit dated 30.09.2017 with all the relevant documents. The total amount of the claim included interest as on the insolvency commencement date. However, the Resolution Professional reduced the claim to Rs. 3,22,51,656/- without giving any explanation.

It is stated by the applicant that as per the resolution plan, applicant, the operational creditor will get cash payment of the 10% of the total outstanding amount in five equal installments from the 3<sup>rd</sup> to 7<sup>th</sup> year after the effective date. It is also stated by the applicant that apart from 10% of the outstanding amount, the Resolution Plan provides for issue of share warrant with an option to purchase the shares by paying 75% of the offer price within the next 18 months at their sole discretion. The initial subscription towards share warrant, which is 25%, is a credit given by the Resolution Applicant to the applicant, the operational creditor. However, this provision is not compulsive and the applicants, the operational creditors are not compelled to take the shares. It is submitted by the applicant, the operational creditor, that by this

*Chaturani*

arrangement, the operational creditor will lose 65% of the amount, if the applicant subscribes the shares.

**28.3 IA 273 of 2018 – Tourism Finance Corporation of India Ltd**

It is stated that the applicant is a company within the meaning of Companies Act, 2013 and a notified Public Financial Institution within the meaning of Section 2(72). The applicant, claims to be a Secured Creditor of Rainbow Papers Limited, the Corporate Debtor of CP(IB) No. 88 of 2017, states that Corporate Debtor approached it for obtaining financial assistance for its business purpose and accordingly, the applicant had sanctioned credit facility by way of corporate loan of Rs 30.00 crores for meeting its capital requirements for expansion of paper manufacturing capacity and the said corporate loan had been secured by way of pledge of equity shares of Rainbow Papers Limited and Corporate guarantee of Orient Newsprint Ltd. The applicant has further stated that subsequent to availing the loan, the principal borrower and the guarantor committed persistent defaults in making payment of overdue principal amount and interest and the applicant issued notices upon them on 04.04.2016 and 15.04.2016 calling upon them to make the payment of Rs. 21,20,71,823/- as on 01.04.2016 which rose to Rs. 22,48,28,156/- as on 30.09.2017.

It is further submitted by the applicant that in the Resolution Plan dated 26.05.2018 submitted by Kushal Limited, the claim of the applicant was categorized as "Secured Financial Creditor". It is stated by the applicant that during the course of meeting of CoC held on 04.06.2018, it was casually informed by the Resolution Professional that the claim of the applicant is proposed to be categorized as "Unsecured Financial Creditor". Despite several protests and objections raised by the applicant, the Addendum dated 05.06.2018 to the Resolution Plan, replaced the applicant from the category of Secured Financial Creditor to Unsecured Financial Creditor. It is stated by the applicant that respondent No. 1 had considered the claim of the applicant as Unsecured Financial Creditor on the basis of Form C and legal opinion that had been sought from an advocate.

*Chhavi*

**28.4 IA 337 of 2018 – Virat Enterprises**

It is stated that the applicant submitted the proof of the claim for Rs. 41,01,098/- to the IRP along with the affidavit dated 29.09.2017 with all the relevant documents. The total amount of the claim included interest as on the insolvency commencement date. However, the Resolution Professional reduced the claim to Rs. 29,38,689/- without giving any explanation.

It is stated by the applicant that as per the resolution plan, applicant, the operational creditor will get cash payment of the 10% of the total outstanding amount in five equal installments from the 3<sup>rd</sup> to 7<sup>th</sup> year after the effective date. It is also stated by the applicant that apart from 10% of the outstanding amount, the Resolution Plan provides for issue of share warrant with an option to purchase the shares by paying 75% of the offer price within the next 18 months at their sole discretion. The initial subscription towards share warrant, which is 25%, is a credit given by the Resolution Applicant to the applicant, the operational creditor. However, this provision is not compulsive and the applicants, the operational creditors are not compelled to take the shares. It is submitted by the applicant, the operational creditor, that by this arrangement, the operational creditor will lose 65% of the amount, if the applicant subscribes the shares.

**P-01 of 2019 – Sales Tax Officer, Kadi, Dist. Mehsana, Gujarat**

29. This P-01 of 2019 has been filed by the Sales Tax Officer (1), Office of the Assistant Commissioner of State Tax, Unit-33, Kadi, Dist. Mehsana, State of Gujarat, for a demand of Rs. 47,35,72,314/- towards Value Added Tax/Central Sales Tax due from the Corporate Debtor, vide Demand Notice in Form 305 under Gujarat Value Added Tax, 2003 and Demand Notice in Form 8(B) under Central Sales Tax Act, 1956 for the year 2012-13 to 2015-16 and as per return filed by the Dealer, the Corporate Debtor for the period 01.03.2016 to 30.06.2016.

29.1 It is pertinent to mention here that during the hearing before the Gujarat Value Added Tax Tribunal at Ahmedabad, Shri N.C. Andharia, Hon'ble Member has stated that as the Adjudicating Authority, (NCLT),



Ahmedabad Bench, Ahmedabad in its order dated 12.09.2017 has declared moratorium under Section 13(1)(a) of the I&B Code, prohibiting the institution of suits or continuation of pending suits or proceedings against the appellant (the Corporate Debtor) including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority as provided in Section 14(1)(a) of the I&B Code and since there is moratorium prohibiting the execution of any order before any authority under Section 13 and 14 of the I&B Code & since it has the overriding effect vide Section 238 of the I&B Code over other laws, I admit these appeals without order for pre-deposit and remanded the matters to the First Appellate Authority.

29.2 It is stated by the applicant vide letter Sr. No -JCCT/Div-4/Mehsana/NCLT Case/O.W. No-3090 dated 22.10.2018 approached the Resolution Professional of the Corporate Debtor Company, asking the RP to confirm the amount of claim accepted by the Resolution Professional and the current status of resolution proceedings.

29.3 It is submitted by the applicant that RP in reply to his letter dated 22.10.2018 has informed the applicant as under:

***“Applicant’s claim has been shown under the head “Proposal for Contingent liabilities of the Corporate Debtor’ and all the above contingent liabilities which may or may not have been confirmed in the past, during or before the CIRP or even may be confirmed in the time to come are proposed to waived off fully. Even any other known or unknown (whether recorded or not recorded in books) are proposed to be waived of fully”.***

29.4 Being aggrieved with the reply received from the RP of the Corporate Debtor, the applicant has filed this P-01 of 2019 stating that Resolution Plan submitted to this Bench of NCLT is clearly in contravention of provisions of Section 30(2)(e) of the Code as it contravenes the provisions of the law being in force, being Gujarat Value Added Tax, 2003 and Central Sales Tax Act, 1956 by waiving off the dues of the Gujarat Value Added Tax and Central Sales Tax as payable to the Applicant as suo moto.

*Abur*

29.5 The applicant admittedly filed this application before this Bench on 19.12.2018 and on perusal of the records, it is observed that the applicant has approached the RP on 22.10.2018, whereas the Resolution Plan dated 26.05.2018 along with Addendum dated 05.06.2018 was approved by the CoC with voting majority of 72.79 per cent in favor of the said Resolution Plan. Thus, the claim was made by the applicant at a much belated stage not only before the RP but also before this Bench too. Since CIRP is a time bound process, this application cannot be entertained due to delay and latches. The applicant should have submitted his claim when the RP invited the claims through public announcement on initiating the Insolvency Resolution Process. However, on perusal of the Resolution Plan, it is found that Resolution Applicant has taken care of all the operational creditors as per provisions of Section 53 of the Code which deals with distribution of assets and approved by the CoC. The Hon'ble Supreme Court in its recent judgment in Civil Appeal No. 10673 of 2018 in **K. Sashidhar Vs. Indian Overseas Bank & Ors** has upheld the supremacy of the CoC and their commercial wisdom cannot be questioned.

30. The respondent/the Resolution Professional has filed with this Tribunal his written replies and in some of the IAs has simply argued during the course of proceedings about the maintainability of the IAs. The submissions made by the respondent/the Resolution Professional are common for IA No. 271, 272, 337 of 2018 and P-01 of 2019 and the same are deliberated below.

It is pertinent to mention herein that arguments so advanced by the Ld. Lawyer of the RP has also been supported by CoC.

The Resolution Professional has submitted that the above said IAs are against the true intent, purport and object of the Insolvency and Bankruptcy Code, 2016 and the rules framed there under in order to circumvent the resolution process.

30.1 It is submitted by the Resolution Professional that as far as **IA No. 271 of 2018** is concerned, the claim of the applicant for Rs. 20,52,203/-

*Chandra*

(Rupees Twenty Lakhs Fifty-Two Thousand Two Hundred Three Only) was examined with all professional diligence and documents examined in support of the claim and the books of account of the corporate debtor. It was found that there was discrepancy in the amount claimed and the amount legally due and payable. The account was reconciled and the claim was admitted at Rs. 15,14,698/- (Fifteen Lakhs Fourteen Thousand Six Hundred Ninety-Eight Only) and the same was informed to the applicant vide email dated 24.11.2017 and filed this Interlocutory Application with this Tribunal on 24.07.2018 after a lapse of 9 months for the reasons best known to the applicant.

30.2 It is submitted by the Resolution Professional that as far as **IA No. 272 of 2018** is concerned, the claim of the applicant for Rs. 4,94,71,355/- (Four Crores Ninety-Four Lakhs Seventy-One Thousand Three Hundred Fifty-Five Only) was examined with all professional diligence and documents examined in support of the claim and the books of account of the corporate debtor. It was found that there was discrepancy in the amount claimed and the amount legally due and payable. The account was reconciled and the claim was admitted at Rs. 3,22,51,656/- and the same was informed to the applicant vide email dated 24.11.2017 and filed this Interlocutory Application with this Tribunal on 24.07.2018 after a lapse of 9 months for the reasons best known to the applicant.

30.3 With respect to the averments made in paragraph 4(viii), the respondent, the Resolution Professional denies that during the course of meeting of CoC held on 04.06.2018, it was casually informed to the applicant by the Resolution Professional that the claim of the applicant is proposed to be categorized as "Unsecured Financial Creditor and further denies that despite several protests and objections raised by the applicant, an addendum dated 05.06.2018 to the Resolution Plan was obtained from the Resolution Applicant and the same was approved by CoC. It is stated by the Resolution Professional that on the contrary, the Resolution Professional addressed an email dated 30.05.2018 requesting the applicant to substantiate its claim whether the same falls under the category of secured creditors and if so, the security involved. However, the applicant failed to substantiate its claim as secured creditor as contemplated under the Insolvency and Bankruptcy Code, 2016 and the regulations for the time being in force. With respect to the averments

*Atanu*

made in paragraph 4(xii), the Resolution Professional also denies the allegation that Resolution Professional had considered the claim of the applicant as unsecured financial creditor on the basis of Form C and legal opinion that had been sought from an advocate.

- 30.4 It is submitted by the Resolution Professional that as far as IA No. 337 of 2018 is concerned, the claim of the applicant for Rs. 41,01,098/- (Forty-One Lakhs One Thousand Ninety-Eight Only) was examined with all professional diligence and documents examined in support of the claim and the books of account of the corporate debtor. It was found that there was discrepancy in the amount claimed and the amount legally due and payable. The account was reconciled and the claim was admitted at Rs. 29,38,689/- (Twenty-Nine Lakhs Thirty-Eight Thousand Six Hundred Eighty-Nine Only).
31. The respondent/the Resolution Professional submits that present applications deserve to be rejected out rightly since the applicants have approached this Tribunal without any locus standi. It is further submitted by the RP, as per the Scheme envisaged under the provisions of the IBC, particularly under section 30 and 31 of the Code, it is the Resolution Professional who submits the Resolution Plan after the approval of CoC and thereafter, the Tribunal adjudicates upon the Resolution Plan.
- 31.1 It is submitted that the liquidation value of the Corporate Debtor is Rs.424 crores (Rupees Four Hundred Twenty-Four Crores Only) whereas the Resolution Applicant has proposed to offer the value to the tune of Rs. 632.67 crores (Rupees Six Hundred Thirty-Two Crores and Sixty-Seven Lakhs Only) which is way beyond the liquidation value of the Corporate Debtor. It is pertinent to mention here that the total outstanding amount due to the financial creditors is around Rs 1468.25 crores, whereas the total amount due to the operational creditors is to the tune of Rs. 139.40 crores.
- 31.2 It is further submitted by the Resolution Professional, that liquidation value due to the applicant(s) shall be NIL as per Section 53 of the IBC, which provides for the distribution of the proceeds from the sale of the liquidation assets of the Corporate Debtor. The liquidation value of the

*Chatur*

**IA No. 224/271/272/337 of 2018 and  
P-01 of 2019 In  
CP.No. (IB) 88/9/NCLT/AHM/2017  
And IA No. 273 of 2018 in IA No. 224 of 2018 in  
CP.No. (IB) 88/9/NCLT/AHM/2017**

Corporate Debtor is Rs. 424 crores, whereas the outstanding dues of the Financial Creditors, is around Rs. 1437.11 crores. Therefore, the applicants shall not be entitled for any stake from the proceeds of the liquidation of estate of the Corporate Debtor. The percentage wise stake of all the stakeholders is presented in a tabular form:

| <b>S.No.</b> | <b>Type of Stakeholder/Creditor</b>            | <b>Total claim of Stakeholder (Rs. In crores)</b> | <b>%age of Stakeholder in total claim</b> |
|--------------|------------------------------------------------|---------------------------------------------------|-------------------------------------------|
| 1            | Secured Financial Creditors                    | 1437.11                                           | 88.85                                     |
| 2            | Unsecured Financial Creditors                  | 40.89                                             | 2.53                                      |
| 3            | Operational Creditors including Statutory Dues | 139.40                                            | 8.55                                      |
|              | <b>Total:</b>                                  | <b>1617.40</b>                                    | <b>100.00</b>                             |

31.3 It is submitted that the application(s) are not maintainable and the objections against the Resolution Plan are nothing but to stall the resolution plan/process despite being offered 10% (along with 25% share warrant) though the debt which is owed to the applicants in aggregate is not forming more than 1% of the total debt of the Corporate Debtor.

32. Heard the Ld. Counsels of all the applicants and the respondent/ Resolution Professional and perused the application and the documents annexed therewith. On perusal of the Resolution Plan, it is found that Resolution Applicant shall make cash payment of 10% i.e. amount of Rs. 1.84 Crores to the Unsecured Financial Creditors as per Table A given below. Further an amount of Rs. 4.60 Crores i.e. 25% of the total outstanding of Unsecured Financial Creditors shall be adjusted or appropriated towards initial payment of 25% of Share Warrants to be issued by resolution Applicant as per terms given below. Remaining amount of 65% i.e. Rs. 11.97 Crores shall be deemed to be waived and no claim shall be allowed for the same.

Table A: Cash Payment to Unsecured Financial Creditor:

| <b>At the end of the year w.e.f. effective date</b> | <b>% of total amount dues of the Unsecured Financial Creditors</b> |
|-----------------------------------------------------|--------------------------------------------------------------------|
| 1                                                   | 0                                                                  |

*Chavan*

|              |               |
|--------------|---------------|
| 2            | 0             |
| 3            | 2.00%         |
| 4            | 2.00%         |
| 5            | 2.00%         |
| 6            | 2.00%         |
| 7            | 2.00%         |
| <b>Total</b> | <b>10.00%</b> |

**Terms and conditions for the issuance of Share Warrants to the Unsecured Financial Creditor:**

1. Thus, the total amount of Share Warrants to be issued shall be for amount of Rs. 18.40 crores to respective Unsecured Financial Creditors i.e. four times of the initial subscription (amount of Rs. 4.60 crores) which is adjusted or appropriated from total amount of Share Warrants to be issued. All Share Warrants shall be issued within a period of 90 days of effective date subject to requisite approvals from competent authorities being received on timely basis in relation to issue of share warrants.

2. Pursuant to issue of Share Warrants to the Unsecured Financial Creditor, they are entitled to convert these Share Warrants into Equity Shares of Resolution Applicant as per pricing norms mentioned in Chapter VII of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

3. If the Unsecured Financial Creditors exercise the option to convert Share Warrants into Equity Share they will be required to pay the balance subscription amount of Rs. 13.80 crores i.e. 3X (three times) of Initial subscription amount out of the total amount of Share Warrants, on payment of which the Share Warrants will be converted into Equity Shares by allotment.

4. If the Unsecured Financial Creditor do not exercise the option to convert Share Warrants into Equity Shares, the initial amount of 25% as adjusted or appropriated shall stand forfeited in accordance with Regulation 77(4) of the Chapter VII of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009. Notwithstanding such forfeiture, the liability of the resolution Applicant / Corporate Debtor against the unsecured Financial Creditor would stand discharged in full pursuant to this Resolution Plan.

5. The time period allowed for exercising the option for conversion of Share Warrants into Equity Shares shall be 18 months from the date of

*Attn*

allotment of warrants as per Chapter II of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

6. The shares issued pursuant to conversion of warrants would be subject to lock-in and other conditions as per Chapter VII of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

7. All the Equity Shares to be issued and allotted by the Resolution Applicant in terms hereof shall rank pari-passu in all respects with the existing Equity Shares of the Resolution Applicant. The equity shares issued by the Resolution Applicant, including the new equity shares issued in terms of the Resolution Plan, shall be subject to Companies Act, 2013 and the Securities and Exchange Board of India Act, 1992 and its applicable regulations, guidelines, rules and other enactments and shall be listed and/or admitted to trading on the relevant stock exchange/s where the Equity Shares of the Resolution Applicant are already listed and/or admitted to trading.

8. In case if any of the Unsecured Financial Creditors does not want to subscribe for the warrant than the same may be renounced to any other Unsecured Financial Creditor/any other third person.

Thus, on perusal of the Resolution Plan, it is found that Resolution Applicant has taken care of employees, members, creditors, guarantors and other stake holders, as the case may be, involved in the Resolution Plan.

33. Before proceeding further, we find it expedient to discuss **Section 53 of the Code i.e. distribution of assets.**

Section 53(1) Notwithstanding anything to the contrary contained in any law enacted by the parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely: -

- (a) The insolvency resolution process costs and the liquidation costs paid in full;
- (b) The following debts which shall rank equally between and among the following: -
  - (i) Workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and

*Altaf*

- (ii) Debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;
- (c) Wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;
- (d) Financial debts owed to unsecured creditors;
- (e) The following dues shall rank equally between and among the following: -
  - (i) Any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
  - (ii) Debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
- (f) Any remaining debts and dues;
- (g) Preference shareholders, if any; and
- (h) Equity shareholders or partners, as the case may be.

(2) Any contractual arrangement between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipients shall be distributed after such deduction.

Explanation – For the purpose of this section –

(a) It is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and

(b) the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).

34. Section 53 of IBC lists the priorities to be given to the beneficiaries of liquidation value of the assets of the Corporate Debtor. The provisions of Section 53 make it amply clear that Operational Creditors are at the end

*Atwar*

of the list of beneficiaries as the Secured Financial Creditors have edge over the others. Moreover, the claims of the applicants who filed the Intervention Applications are having the claim below 10 per cent of the total debt of the Corporate Debtor. Hence, in view of Section 24(3)(c) of the Code, the operational creditors, if the amount of their aggregate dues is less than 10 per cent of the debt, they are not entitled to attend and vote in the meetings of CoC. Section 24(3) of the Code is reproduced below:

Section 24:

- (3) The Resolution Professional shall give notice of each meeting of the committee of creditors to –
  - (a) member of [Committee of creditors, including the authorized representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5)];
  - (b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;
  - (c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent of the debt.

35. It would also be pertinent to mention here that Operational Creditors have no locus standi as far as approval of the Resolution Plan by the CoC is concerned. They are not eligible to attend and vote at the meetings of CoC if they are holding less than 10% of the total debt – Section 24(3)(C) of IBC. To make the provisions clearer, Section 30 and 31 of the IBC is reproduced hereunder:

**Section 30: Submission of resolution plan:**

“30. (1) A resolution applicant may submit a resolution plan *1[along with an affidavit stating that he is eligible under section 29A]* to the resolution professional prepared on the basis of the information memorandum.

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

- (a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the *2[payment]* of other debts of the corporate debtor;
- (b) provides for the *3[payment]* of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;
- (c) provides for the management of the affairs of the Corporate debtor

*Khurai*

- after approval of the resolution plan;  
(d) the implementation and supervision of the resolution plan;  
(e) does not contravene any of the provisions of the law for the time being in force;  
(f) conforms to such other requirements as may be specified by the Board.

*4[Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]*

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

*5["(4) The committee of creditors may approve a resolution plan by a vote of not less than 6[sixty-six] per cent. of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board:*

**Provided** that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

**Provided further** that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

**Provided also** that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of **section 12**, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section.”.]

*7[Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.]*

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:

**Provided** that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.”

*Khari*

**Section 31: Approval of resolution plan:**

“31. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

*1[Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]*

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1),—

(a) the moratorium order passed by the Adjudicating Authority under **section 14** shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.”

*2[(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later.*

**Provided** that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.”.]

36. The above provisions dispel the misconceptions of the Operational Creditors/intervener that they have edge over the other beneficiaries.

37. The very object of the Code is resolution of failing corporate debtor companies and not liquidation of corporate debtor companies. Our Parliament has enacted the Code with the following object:

**Object of the Code:**

“An Act to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and

*Abhinav*

individuals in a time bound manner for maximization of value of assets of such persons to promote entrepreneurship, availability of credit and balance the interests of the stakeholders including alternation in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India and for matters connected therewith or incidental thereto.”

Keeping in view such object behind the enactment of the Code and intention of the Legislature, is that the priority is to be given to the resolution than liquidation in the larger interests of the public, workmen, stakeholders and the other employees of the corporate debtors in the interest of justice and in order to achieve the object of the Code and liquidation of a company can be only as a last resort, wherein, all efforts for brining Resolution Plan were failed or it cannot be found workable in the larger public interest. Hence, now the approval of Resolution Plan by this Adjudicating Authority is rule as per the apex court's decision in the matter of **K. Sashidhar Vs. Indian Overseas Bank & Ors** as discussed above. Furthermore, the Resolution Plan not only meets the requirements of sub-section 2 of section 30 of the Bode, but the offer made by the Resolution Applicant amounting to Rs. 632.67 crores as against the liquidation value of Rs. 424 crores which is much higher than the liquidation value.

38. Under the facts and circumstances as narrated hereinabove, we are of the considered opinion and also satisfied that Resolution Plan as approved by the Committee of Creditors “CoC” meets the requirements as referred to under section 30(2) of the Insolvency and Bankruptcy Code, 2016 and therefore, IA 224 of 2018 is liable to be allowed as prayed for. Accordingly, we hereby approve the Resolution Plan dated 26.05.2018 along with Addendum dated 05.06.2018 submitted by the RP with approval of the CoC with following observations:

- (i) The Resolution Plan dated 26.05.2018 along with Addendum dated 05.06.2018 which is approved by the financial creditors of the CoC with voting share of 72.79% is hereby approved under the provisions of Section 31(1) of the Code which will be binding on the Corporate Debtor, its employees, members, creditors and other stake holders involved in the Resolution Plan.



- (ii) The approved Resolution Plan shall come into force with immediate effect.
- (iii) The Resolution Applicant shall pursuant to the Resolution Plan approved under section 31(1) of the Code, obtain the necessary approvals required under any laws for the time being in force within a period of one year from the date of approval of the Resolution Plan by the Adjudicating Authority under section 31(1) or within such period as provided for in such law, whichever is later or as the case may be.
- (iv) The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and resolution plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.
- (v) IA 271 of 2018 in CP(I.B.) 88 of 2017 is dismissed as not maintainable.
- (vi) IA 272 of 2018 in CP(I.B.) 88 of 2017 is dismissed as not maintainable.
- (vii) IA 273 of 2018 in CP(I.B.) 88 of 2017 is dismissed as not maintainable.
- (viii) IA 337 of 2018 in CP(I.B.) 88 of 2017 is dismissed as not maintainable.
- (ix) P-01 of 2019 in CP(I.B.) 88 of 2018 is not maintainable.
- (x) IA 224 of 2018 in CP(I.B.) 88 of 2017 is allowed and stand disposed of, along with other IAs, if any, pending in view of the instant order.

  
**Ms. Manorama Kumari,  
Adjudicating Authority  
Member (Judicial)**

  
**Harihar Prakash Chaturvedi,  
Adjudicating Authority  
Member (Judicial)**