IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

IA(IBC)/349(CHE)/2023 in CP/IB/279/CHE/2021

(Filed under Sec. 30(6) & 31 of the Insolvency & Bankruptcy Code, 2016)

IN THE MATTER OF:

CA Mahalingam Suresh Kumar
Resolution Professional of
G B J Hotels Private Limited

... *Applicant*

Present:

For RP : *E. Om Prakash, Senior Advocate*
A. G. Sathyanarayana, Advocate

CORAM:

Justice RAMALINGAM SUDHAKAR, PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)

Order Pronounced on 25th August 2023

ORDER

(hearing conducted through physical mode)

IA(IBC)/349(CHE)/2023 is an Application which is moved by the Resolution Professional of the Corporate Debtor viz., **G B J Hotels Private Limited** on **10.02.2023** under Section 30(6) & 31 of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC, 2016') read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency

Resolution Process for Corporate Persons) Regulations, 2016 (in short, 'CIRP Regulation, 2016') seeking relief as follows;

(a) *To pass an order approving the Resolution Plan which was approved by the CoC in the 11^{th} CoC meeting held on 01.02.2023 as per Section 30(6) & 31 of the Code; and.*

(b) *To pass such other orders or further orders which may deemed to be fit and proper in the interest of justice.*

2. <u>CORPORATE INSOLVENCY RESOLUTION PROCESS – G B J HOTELS PRIVATE LIMITED</u>

2.1. In an Application filed under Section '7' of the IBC, 2016, by the Financial Creditor, the CIRP in respect of the Corporate Debtor was ordered by this Tribunal vide order dated 19.04.2022 and the Applicant herein was appointed as the IRP. The IRP has caused paper publication on 22.04.2022 in accordance with under Section 15 of IBC, 2016 r/w Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in "The New Indian Express" (English) and Dinamani (Tamil).

2.2 Pursuant to the public announcement, the Stakeholders has filed their claim with the IRP and thereafter the IRP has constituted the Committee of Creditors (in short "CoC") based upon the Claims received and voting rights were assigned accordingly. Thereafter the claims were updated thrice and the details of the latest stakeholders list along with voting rights are given hereunder:

NATURE OF CREDITOR	VALUE (IN RS.)
Financial Creditor	115,41,21,769
Operational Creditor- Suppliers	13,55,03,657
Operational Creditors – Government Dues	5,34,52,804
Operational Creditors - Employee Claim	6,96,796
Other Creditors [Share Capital advance & Unsecured loans]	35,49,18,073
Total	**1,69,86,93,099**

2.3. It is stated that the Applicant has convened the 1" CoC meeting on 23.05.2022 wherein the applicant has briefed about the business operations of the Corporate Debtor and informed the CoC that Corporate Debtor is a going concern and the day-to-day affairs of the Corporate Debtor are taken care. In the said meeting, the CoC has confirmed the applicant herein to act as Resolution Professional in respect of the Corporate Debtor.

2.4. It is stated that the Applicant has appointed the IBBI Registered Valuers for valuation of the Corporate Debtor and further placed the draft Information Memorandum to the CoC for its approval in its 2nd meeting held on 02.06.2022. Subsequent to the above, it is stated that the applicant has also placed the Draft Expression of Interest (EoI) viz. Form-G for invitation of Resolution Plans from the Prospective Resolution Applicants ("PRA's) to revive the Corporate Debtor and the same was approved by the CoC. Accordingly, Form – G was published on 03.06.2022.

2.5. It is stated that applicant placed the Eligibility Criteria with the CoC and the same was approved by the CoC in the 2nd CoC meeting.

2.6. It is stated that the Applicant convened the 3rd CoC meeting on 23.06.2022 wherein he has updated to the CoC that he has received 19 EoIs in response to the Form-G as on cut-off date i.e.,20.06.2022 and the same will be verified and updated to the CoC. Further the RP has updated about the business operations of the Corporate Debtor and placed Request for Resolution Plan ("RFRP") and Evaluation Matrix for CoC approval and the same was approved by the CoC.

2.7. It is stated that the Applicant convened the 4th CoC on 01.08.2022 wherein the RP has updated about the business operations and cash flow to the CoC. Further placed the request of the PRA's to extend the submission of the Resolution Plan accordingly the COC after considering the CIRP timeline and in the interest of receipt of more plans has approved to extend the same upto 17.08.2022.

2.8. It is stated that the Applicant convened the 5th CoC on 23.08.2022 wherein the RP has updated about the business operations and cash flow to the CoC. Further, it is stated that the RP has placed the only Resolution Plan of M/s. Poppys Knitwear Private Limited to the CoC and briefed, the advantages and disadvantages of the plan to the CoC. It is stated that the PRA's has made a further request to extend the submission of the Resolution Plan and accordingly the CoC after detailed discussions has decided to extend the same upto 07.09.2022 to get more plans but denied to extend the submission of EoI.

2.9. It is stated that, in the meantime, Mr. Senthil Kumar who is son in law of Promoter has filed an application before this Tribunal in IA/903/2022 challenging their rejection of EoI. This Tribunal vide its order dated 15.09.2022 has passed the following order;

> "The representing Counsel Ms. Jeniffer Kaliffa on behalf of the Counsel on record Mrs. Ramani & Shankar appeared in person for the Applicant and the Learned RP Mr. Suresh Kumar appeared through video conferencing.
>
> Heard the statement made by the RP through Video conferencing.
>
> We are not inclined to consider the bald statement of the RP that the proposition of the plan given by Mr.P.S.Senthilkumar and Ors which are incapable for consideration under Sec. 29A of IBC 2016 R/w 60(5) of

IBC, 2016 R/w Reg 36A of IBBI of 2016 without any basic reason as ordered by the RP. RP should have given a self-speaking order, which is missing in the present case.

IA/903(CHE)/2022 is allowed"

2.10. Thereafter, it is stated that the Applicant convened the 6th CoC meeting on 14.09.2022 wherein the RP has updated about the business operations and cash flow to the CoC. Further the CoC member has started discussing about the Resolution Plan of M/s. Poppys Knitwear Private Limited and the RP has highlighted the plan to the CoC. The RP further negotiated with the PRA to revise their plan value however the RA has agreed to increase upto 145 crores from 110.5 crores after two rounds of discussion. However, it is stated that the CoC after detailed discussions considering the revised proposal of the PRA payment timeline has rejected the plan. Further the CoC has directed the RP to issue **fresh Form-G** for invitation of resolution applicants for reviving the Corporate Debtor.

2.11 It is stated that the 2nd Form – G was issued on 16.09.2022 in "Economic Times, All India Editions" and "Dinamani, Coimbatore Edition". Subsequent to the above, it is stated that the CoC has considered that the period of CIRP is about to expire and further approved and resolved to apply extension of another 90 days of CIRP period. Accordingly, RP filed IA(IBC)/1020/CHE/2022 before this Tribunal and the same was allowed by this Tribunal vide its order dated 27.10.2022 in and by which the CIRP period was extended till 15.01.2023.

2.12. It is stated that, in response to the 2nd EoI, RP received EoIs from 4 PRAs and the same was updated to the CoC in its 7th CoC meeting held on 16.11.2022. It is stated that the RP has placed the request of the PRAs to the CoC, for extension of time for submission of Resolution Plan. The CoC after considering the same has resolved to extend the submission of resolution plans by 06.12.2022.

2.13. It is stated that the RP has placed the resolution plans received from 4 PRAs in the 9th CoC meeting held on 21.12.2022. It is stated that the CoC members after detailed discussions on the plan about proposed plan amount, implementation schedule, has informed the PRAs that the value of the Corporate Debtor is higher than the proposed amount and hence the PRAs were informed to increase their Resolution Plan amount.

2.14. In the meantime, it is stated that the RP has suggested to conduct "Swiss Challenge Method" so that the PRA's in open auction can increase their bid amount and the same was approved by the CoC members in majority.

2.15 It is stated that the RP has conducted the "Swiss Challenge Method". It is stated that except (i) M/s. KP advisory Services LLP and (ii) M/s. Bommidala Enterprises Pvt Ltd, others have withdrawn their Resolution plans.

2.16. It is stated that above named two PRAs participated in the "Swiss Challenge Method i.e. open bidding was conducted on 29.12.2022 and 02.01.2023 respectively wherein M/s.KP advisory Services LLP has emerged as successful bidder, though they have sought time to submit the final plan with required changes to be done and the same was updated to CoC. The details of the "Swiss Challenge Method" is stated below:

<u>Swiss Challenge bidding process conducted between 2 RA's as follows:-</u>

a) Bommidala Enterprises Private Limited
b) KP Advisory Services LLP

<u>1st Round of Swiss Challenge:</u>

a. M/s .Bommidala Enterprises Private Limited gave the highest plan value of Rs. 120 Crores among all 4 RA's. The said plan values are taken as Anchor Bid for the said Challenge method.

b. M/s. KP Advisory Services LLP submitted their bid against Anchor bidder for Rs. 126 Crores.

In reply M/s. Bommidala Enterprises Private Limited submitted their counter bid for Rs175 Crores (Rs132.30 Crs upfront payment and balance through non-convertible and redeemable preference shares).

<u>2nd Round of Swiss Challenge:</u>

a. It commenced with M/s. Bommidala Enterprises Private Limited's revised bid of Rs.175 Crores as anchor bid.

b. M/s. KP Advisory Services LLP submitted their bid against Anchor bidder for Rs. 184.87 Crores

In reply, M/s. Bommidala Enterprises Private Limited communicated that they don't want to submit counter bid for the revised values. They further informed that they will retain their resolution plan at Rs. 175 Crores and submitted their revised plan for further decision of the COC.

At the end of the SWISS challenge process, M/s. KP Advisory Services LLP has been declared as the successful party with 184.87 Crs plan value [Rs. 149 Crs upfront payment and balance through non-convertible preference shares). The said final values provide for 100% payment to the Financials Creditors and operational creditors along with payment in the form of instrument to all other creditors.

At the outset, RP placed before the COC, the Amended Resolution Plan of M/s Bommidala Enterprises Private Limited & M/s. KP Advisory Services LLP for detailed consideration and voting.

RP explained all aspects of both the revised resolution plans to the COC members through a detailed presentation during this meeting including the scoring under approved Evaluation Matrix. The summary of the plan presentation has been detailed in earlier pages of this minutes.

RP further informed the COC that

a. Both the resolution applicants are compliant u/s 29A [no disqualification is attracted]

b. Both the plans comply with the requirements of Sec 30 of IBC 2016 c. Both the resolution plans complies with all the mandatory contents of the resolution plan as detailed in Regulation 38 of CIRP regulations. d. Both the resolution plans provide for such measures for maximisation of the value in compliance with Regulation 37 of CIRP regulations.

RP further informed the COC that a detailed certificate has already been shared with the COC members regarding all the above compliances.

2.17. It is stated that the 10^{th} COC meeting was convened on 11.01.2023, wherein the RP informed the CoC that the 270 days CIRP period is expiring on 15.01.2023 hence it is required to get additional 60 days in addition to 270 days out of total available 330 days of CIRP timeline as per second proviso of Section 12 of the Code. Accordingly, the RP moved IA(IBC)/96(CHE)/2023 and this Tribunal vide its order dated 03.02.2023 extended the CIRP period upto 16.03.2023.

2.18 It is stated that the CoC after detailed discussions on resolution plans and the Swiss Challenge Method has noted that the M/s. KP advisory Services LLP has emerged as successful bidder though they have sought time to submit the final plan with required changes.

2.19. It is stated that the CoC after detailed discussions and deliberations has **approved** the Resolution plan submitted by M/s. KP Advisory Services LLP with **100%** Voting rights *(98.71% physical and 1.79% postal)* through Ballot sheet considering the payout ratio timelines in the present economic scenario and the backgropund of the Corporate Debtor. Further, it is stated that the Resolution Plan of M/s. Bommidala Enterprises Pvt Ltd plan was rejected by the CoC with 100% voting rights.

2.20. It is stated that the RP has given a letter declaring M/s. KP Advisory Services LLP as the Successful Resolution Applicant (SRA) and further requested them to submit the required 10% Performance Bank Guarantee (PBG). However, the RA has given an undertaking letter dt.09.02.2023 stating to use the EMD - BG till they submit the PBG whereas the value of the EMD BG is higher than the requisite PBG for submission of approved resolution plan with this Tribunal.

2.21. It is stated that the RP has conducted review of the transactions of the specified period and no avoidance transactions are identified during the review. Further the RP in discussion with the COC has decided not to appoint any external Forensic auditors as the RP's transaction review findings did not have any Preferential, Undervalued, Fraudulent and Extortionate (PUFE) transaction findings.

2.22 Under the said circumstances, the present Application has been filed by the RP seeking approval of the Resolution Plan which was approved by the CoC with 100% majority.

3. ABOUT THE RESOLUTION PLAN

3.1. The total admitted claims of the Financial Creditors as on the Insolvency Commencement date is Rs.115,41,21,769/- (Rupees One Hundred and Fifteen Crores Forty-one Lakhs Twenty-one Thousand Seven hundred and sixty-nine only). The Resolution Applicant proposes to pay the **entire admitted claim of the Financial Creditor** within a period of 45 days from the Plan Approval Date.

3.2. The total admitted claims of the Operational Creditors (including Government Dues) as on the Insolvency

Commencement date is Rs.18,89,56,461/- (Rupees Eighteen Crore Eighty-Nine Lakhs Fifty-Six Thousand Four hundred and sixty-one only). The Resolution Applicant proposes to pay the **entire admitted claim of the Operational Creditor** within a period of 45 days from the Plan Approval Date.

3.3. The total admitted claims of the Workmen & Employee as on the Insolvency Commencement date is Rs.6,96,796/- (Rupees Six Lakhs Ninety-Six Thousand Seven Hundred and Ninety-Six only). The Resolution Applicant proposes to pay the **entire admitted claim of the Workmen & Employee** within a period of 45 days from the Plan Approval Date.

3.4. The total admitted claims of the Other Creditors as on the Insolvency Commencement date is Rs.35,49,18,073/- (Rupees Thirty-Five Crore Forty-nine lakhs eighteen thousand and seventy-three only). The Resolution Applicant proposes to issue **0.01% Non – cumulative Redeemable Preference Shares of INR 1** of the Corporate Debtor to settle the entire amount admitted towards the claim of Other Creditors.

3.5. The gist of the Resolution Plan and the proposed payment to be made to each of the stakeholders is as under:

(Amount in INR)

CATEGORY OF STAKEHOLDERS	TOTAL AMOUNT	ADMITTED CLAIMS	AMOUNT PROPOSED TO BE PAID BY THE RESOLUTION APPLICANT
Unpaid CIRP Costs (net of cash and cash equivalent available with the Corporate Debtor.	Not Applicable	Not Applicable	10,00,00,000/- (Ref. Clause 4.2(6))
Operational Creditors (Workmen & Employees)	12,26,935/-	6,96,796/-	6,96,796/-
Operational Creditors (other than Workmen & Employees)	27,07,87,400/-	18,89,59,461/-	18,89,59,461/-
Financial Creditors (Ref. Clause 4.2(2))	144,66,14,678/-	115,41,21,769/-	115,41,21,769/-
Other Creditors – Related parties	42,31,09,157	35,49,18,073	35,49,18,073/-
Contingencies	2,81,50,000/-	Not Applicable	5,00,00,000/-
TOTAL	2,16,98,88,180/-	196,16,32,159/-	184,86,93,099/-

4. <u>SOURCE OF FUND</u>

4.1. The Resolution Applicant along with the Resolution Plan has appended the Financial Statements of the LLP for the last 3 Financial Years. Further, the Resolution Applicant viz. M/s. KP Advisory Services LLP has also appended its Net worth Certificate issued by the Chartered Accountant and has also placed on record the Proof of Funds in the form of Bank Statements.

4,.2. The Net worth Certificate issued by the Chartered Accountant in respect of M/s. KP Advisory Services LLP is as under:-

ANNEXURE - VI - E

Y. RAGHURAM & CO
Chartered Accountants

NETWORTH CERTIFICATE

I, Y Siva Harisha, Partner, M/s Y Raghuram & Co., Chartered Accountants, based on the request made by the management of M/s. K P Advisory Services LLP ("the LLP") having its registered office at 6-3-865/1/2, Flat No.203, Greenland Apartments, Ameerpet, Hyderabad, Telangana - 500016, India, upon verification of books of accounts and other reliable information, do hereby certify that the Networth of the LLP as on March 31, 2022 is INR 4,81,22,93,474/- (Indian Rupees Four Hundred and Eighty One Crores Twenty Two Lakhs Ninety Three Thousand Four Hundred and Seventy Four Only), as per the Financial Statements. The computation of net worth of M/s. K P Advisory Services LLP as on March 31 ,2022 is given below:

Description	Amount in INR
Partners Capital Account	75,58,34,180
Reserves & Surplus	4,05,64,59,294
Net worth as on March 31, 2022	**4,81,22,93,474**

For Y Raghuram & Co.,
Chartered Accountants,
FRN:0094155

Y Siva Harisha
Partner
Mem No:226481

Place: Hyderabad
Date:14.12.2022.
UDIN:22226481BFKYOB7198

5. MONITORING COMMITTEE

5.1. It is stated that for the Transition Period a *'Monitoring committee'* shall be constituted comprising of (i) 2 representatives of the Resolution Applicant; (ii) 2 members of the current CoC representing the Financial Creditors; and (iii) Existing Resolution Professional .

5.2. It is stated that the terms of the Monitoring Committee shall automatically terminate upon the occurrence of the Effective Date.

6. CONTROL AND MANAGEMENT OF THE CORPORATE DEBTOR

6.1. It is stated that immediately upon the Plan Approval Date, the Resolution Professional shall demit his office. However, in order to ensure continued operations of the Corporate Debtor, the Resolution Professional, shall carry out the day-to-day operations of the Corporate Debtor till the Effective Date in order to maintain the Corporate Debtor as a going concern (i.e. "Implementing Agent").

6.2. It is stated that the tenure of Implementing Agent shall start from Plan Approval Date and shall end on the Effective Date (Transition Period"). During the Transition Period, Implementing Agent shall work under the overall supervision and direction of the Monitoring Committee and shall have the same obligations as applicable to a resolution professional under the Code, provided that, the Implementing Agents not assume the powers of the Board of the Corporate Debtor.

6.3. It is stated that the Implementing Agent shall perform its obligations under the supervision of the Monitoring Committee, including but not limited to ensuring the delivery of all information, documents and records in any form pertaining to the Corporate Debtor and its business, to the Resolution Applica and its representatives.

7. <u>INFUSION OF FUNDS:-</u>

7.1. It is stated that the Resolution Applicant shall within forty-five (45) days of Plan Approval Date will infuse equity and/ or debt in the Corporate Debtor aggregating to an amount equal to the aggregate of the amount to be paid to the creditors as envisaged under this Resolution Plan, as detailed out in Section 4 of this Resolution Plan.

7.2. It is stated that the Resolution Applicant retains the right to decide, the appropriate mix of debt and equity that needs to be infused for the purpose of making payments committed under this Resolution Plan, either for the purpose of settling the liabilities, as identified under Section 4 of this Resolution Plan, in compliance with applicable Laws and as long as the acquisition structure meets the objectives of implementing the Resolution Plan in the most time and cost-efficient manner.

8. **<u>EXISTING SHAREHOLDERS:-</u>**

8.1. It is stated that the Resolution Applicant proposes to make NIL payment towards full and final settlement / discharge of any liability of the Corporate Debtor towards the existing shareholders.

8.2. It is stated that the entire existing share capital (both equity and preference) of the Corporate Debtor i.e., the share capital, other than the shares which are issued and allotted to the Resolution Applicant and its nominees as mentioned *supra*, which are held by the existing shareholders of the Corporate Debtor, shall stand fully extinguished as part of the Resolution Plan, without any additional payment to the existing shareholders, in such a manner that the Resolution Applicant and its nominees are thereafter the only shareholders of the Corporate Debtor.

8.3. It is stated that the face value of the equity shares and preference shares so cancelled shall stand transferred to the reserves of the Corporate Debtor, as per applicable accounting standards. The Corporate Debtor shall not be required to make any separate application before the Tribunal for the said Capital Reduction and for other matters set out herein, under the provisions of the Companies Act, 2013 and that the approval of this Resolution Plan by this Tribunal shall be treated as if all the procedural requirements under applicable Law (including but not limited to Section 66 of Companies Act, 2013) and all the necessary approvals required to have been obtained under the Companies Act2013, including consent of shareholders or creditors of the Corporate Debtor and applications to any other appropriate authority, as required under the Companies Act2013, together with the process laid down under the Companies Act, 2013, have been obtained and duly complied with.

8.4. It is stated that an amount of upto INR 1 Crore (Rupees One Crore only) or any additional amount, as may be required. is proposed to be infused by the Resolution Applicant in the Corporate Debtor in one or more tranches/ series in the form of compulsorily convertible preference shares/optionally convertible preference shares/compulsorily convertible debentures secured debentures optionally convertible debentures/debt / subordinate debt/ shares, or any combination thereof. Such infusion shall be made within a period of 12 months from the Effective Date based on the requirements of the Corporate Debtor.

9. PERFORMANCE BANK GUARANTEE:-

9.1. The RP has placed on record the Performance Bank Guarantee issued by Canara Bank on 13.02.2023 for a sum of Rs.18,48,70,000/- (Rupees Eighteen Crore Forty-Eight Lakh and Seventy Thousand Only). The said Performance Bank Guarantee is valid 12.02.2024.

10. TABULATION OF VARIOUS COMPLIANCES REQUIRED UNDER THE PROVISIONS OF IBC, 2016

10.1. The Applicant has submitted the details of various compliances as envisaged within the provisions of IBC, 2016 and CIRP Regulations, which requires a Resolution Plan to adhere to, which is reproduced hereunder:

CLAUSE OF S.30(2)	REQUIREMENT	HOW DEALT WITH IN THE PLAN
(a)	Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	Clause 4.2.6 of the Resolution Plan.
(b)	(i) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amountpayable to them in the event of liquidation u/s 53; or (ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall be not less than amount thatwould have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,whichever is higher and (iii) provides for payment of debts of financial creditors who do not vote in favour of theresolution plan, in such manner as may be specified by the Board.	Clause 4.2.3 of the Resolution Plan.
(c)	Management of the affairs of the Corporate Debtorafter approval of the Resolution Plan.	Clause 5 and 6.3 of the Resolution Plan.
(d)	Implementation and Supervision.	Clause 6.2 of the Resolution Plan.
(e)	Plan does not contravene any of the provisions ofthe law for the time being in force.	Clause 8.1 and 8.5 of the Resolution Plan.
(f)	Conforms to such other requirements as may bespecified by the Board.	Clause 8.1 and 8.5 of the Resolution Plan.

11. MANDATORY CONTENTS OF THE RESOLUTION PLAN IN TERMS OF REGULATION 38 OF THE CIRP REGULATIONS:-

Reference to relevant Regulation	*Requirement*	*How dealt with in the Resolution Plan*
38(1)	The amount due to the Operational Creditors under a Resolution Plan shall be given priority in payment over Financial Creditor.	Clause 3(b) of the Resolution Plan.
38(1A)	A Resolution Plan shall include a statements as to how it has dealt with the interest of all stakeholders, including Financial Creditors and Operational Creditors of the Corporate Debtor	Clause 4.2 of the Resolution Plan.
38(1B)	A Resolution Plan shall include a statement giving details if the resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.	Appendix 1A of the Resolution Plan
38(2)	A Resolution Plan shall provide (a) the term of the plan and its implementation schedule	Clause 6 of the Resolution Plan
	(b) the management and control of the business of the Corporate Debtor during its terms; and	Clause 6 of the Resolution Plan
	(c) adequate means for supervising its implementation	Clause 6 of the Resolution Plan
38(3)	A Resolution Plan shall demonstrate that (a) It addressed the cause of default;	Clause 3.2 of the Resolution Plan
	(b) It is feasible and viable;	Clause 4.1 of the Resolution Plan
	(c) it has provisions for its effective implementation;	Clause 4.7 of the Resolution Plan

Reference to relevant Regulation	*Requirement*	*How dealt with in the Resolution Plan*
	(d) it has provisions for approvals required and the timeline for the same; and	Clause 6.2 of the Resolution Plan
	(e) the Resolution Applicant has the capability to implement the Resolution Plan	Clause 2.6 of the Resolution Plan

12. The successful Resolution Applicant has submitted a Certificate of Eligibility under Section 29A of IBC, 2016 to submit a Resolution Plan under the provisions of IBC, 2016 and the same is appended as Appendix – 10 to the Resolution Plan.

13. RELIEFS AND CONCESSIONS

SL. NO	RELIEF AND/OR CONCESSIONS AND APPROVAL SOUGHT BY RESOLUTION APPLICANT	ORDERS THEREON
1	The Corporate Debtor and the Resolution Applicant shall not be liable for any Taxes (including but not limited to stamp duty) and shall be granted an exemption from all Taxes, levies, fees, transfer charges transfer premiums, and surcharges that arise from or relate to implementation of the Resolution Plan, since payment of these amounts may make the Resolution Plan unviable. Any reference to Taxes shall include any transfer premiums or charges, change of ownership/ Control charges payable in connection with the implementation of this Resolution Plan and the consequent change in ownership and Control of the Corporate Debtor.	**Granted, only in so far as the payment of taxes or dues prior to approval of this Resolution Plan**

	Further i. All the assessments, proceedings, demand notices, penalty proceedings, show-cause notice and appeals, whether completed or uncompleted, initiated or not initiated with respect to Tax and any other applicable Taxes under any applicable Laws (including Tax Laws) shall be deemed to have been completed and closed and the Resolution Applicant and/or the Corporate Debtor shall not be liable to pay any Taxes or interest or penalty arising out of such assessments or adjust its taxable income or brought forward losses under the Income Tax Act 1961 or input tax credit/ MODVAT/CENVAT pertaining to any period prior to the Effective Date including but not limited to claim arising out of any notice or order received by Corporate Debtor pertaining to any period prior to Effective Date having an impact on the taxable income, brought forward losses, Tax payable, and/or availment / utilization of Input Tax credit / CENVAT / MODVAT by the Corporate Debtor an account of following reasons or other reason not listed below.	Granted
	• Any Non-Compliance in relation to filling of any returns or any other forms as required to be filed by Corporate Debtor under provisions of Tax Laws.	Granted
	• Non-deduction of or non-deposit of TDS under provisions of Income Tax Act 1961.	Granted

	• Any transaction entered by Corporate Debtor having an impact on taxable income, brought forward losses, Tax payable, and/or availment / utilization of Input Tax credit / CENVAT / MODVAT of such entity for any period prior to Effective Date and any underreporting or misreporting in relation to the same.	This is for the Appropriate Authority to consider
	• Any Tax payable on the transaction of corporate guarantee provided by the Corporate Debtor for loans / facilities availed by its related parties or personal guarantee provided by the directors of the Corporate Debtor to the Banks / Non-Financial Banking Company or any other financial institutions for loans / facilities availed by the Corporate Debtor.	Granted
	• Any non-recording/reporting of income by Corporate Debtor in its books of account	Granted
	Any tax losses/input tax credit/ CENVAT/MODVAT which may not be available due to tax returns not filed by the Corporate Debtor as per the provisions of applicable Tax laws or discrepancy in reporting of the said losses by the Corporate Debtor should also be available to the RA. Further, any such non-compliance or discrepancy in reporting for any financial year will not restrict the Corporate Debtor to set-off or cany forward any business loss or unabsorbed depreciation computed as per provisions of IT Act notwithstanding provisions of Section 139(4) or any other applicable provision of the IT Act.	This is for the appropriate Authorities to consider

	ii. The Corporate Debtor shall not be disallowed any previous deductions before the Effective Date on the grounds of non-payment or non-deduction of TDS which has already been allowed in previous returns. iii. The Resolution Applicant and/or the Corporate Debtor, as the case may be, shall be entitled to all the assets including all benefits with respect to CENVAT, MODVAT, Input tax credit of various Taxes including but not limited to central excise duty, service tax, sales tax, goods and service tax or cess by whatever name known, available as balance in financial statements as of Effective Date which pertains to the transactions of the Corporate Debtor for the period prior to the Effective Date. iv. All the appeals filed by the Tax authorities in relation to the period prior to the Effective Dase shall be construed as withdrawn. Consequently, the Tax authorities shall withdraw all the pending appeals before the various appellate or judicial authorities (as the case may be) and no further appeals shall be filed by the relevant Tax authorities in relation to the period prior to the Effective Date. v. Filing of appeal by the Tax authorities before higher appellate and judicial authorities relating to the period prior to the Effective Date shall not be construed as raising or filing of Claims before the Resolution Professional.	Granted Granted Granted Granted

2	The requirement of obtaining a no objection certificate under section 281 of the Income-tax Act 1961 and provisions of taking over its predecessor's Tax liability under section 170 of the Income-tax Act and section 85 of the Goods and Service Tax Act, 2017 shall not be applicable. Further, the transaction shall not be treated as void under section 281 of the Income Tax Act, 1961 and Section 81 of the Goods and Service Tax Act, 2017 for any claims in respect of Tax or any other sum payable by the Corporate Debtor or any shareholder of the Corporate Debtor.	**This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016**
3	Similarly, the requirement of affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner of the Corporate Debtor under section 79 of the IT Act is deemed to have been fulfilled upon approval of this Resolution Plan. Further, any requirements to obtain waivers from any Tax Authorities including in terms of Section 115JB and any other provision of the Income Tax Act, 1961 is deemed to have been granted upon approval of this Resolution Plan on the Effective Date.	**This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016**
4	That the Adjudicating Authority be pleased to give or issue necessary directions, instructions to the Tax Authorities (including but not limited to CBDT, Central Board of Indirect Taxes and Customs and State Duly Authorities) to exempt income/ gain / profits, if any, arising as a result of giving effect to the Resolution Plan and from being subjected to any Tax (including Income Tax and Goods and Service Tax) in the hands of the Corporate Debtor or the Resolution Applicant under the provisions of Tax Laws Including but not limited to any income	**This is for the CBDT and other appropriate authorities to consider keeping in view the clean slate principle enshrined under the provisions of IBC, 2016**

	tax liability arising on capital reduction in Corporate Debtor, merger, consolidation of share capital of Corporate Debtor, write off! write down of current amounts due to employees, vendors, Operational Creditors, Financial Creditors, value of assets, value of inventories, etc. without any impact on brought forward fax and book loss / depreciation and waive all liabilities whether crystallized or not in respect of Taxes (including interest and penalty) arising in respect of periods up to the Effective Date.	
5	Waiver of any Tax (including withholding tax, Income Tax and Goods and Service Tax) of consequences (including interest, fine, penalty, etc) on Corporate Debtor, Resolution Applicant and its shareholders on account of various steps as proposed in the Resolution Plan, including but not limited to liabilities if any under Section 28, Section 41, Section 55, Section 43, Section 28. Section 79, Section 45, Section 269SS, Section 269T, Section 115JB and Section 271E of the Income-tax Act, 1961, including, without limitation waiver of income tax implication arising due to write back/write off of liabilities or share capital in the books of accounts of Corporate Debtor without any impact on brought forward tax and book loss / depreciation and input tax credit, pursuant to this Resolution Plan	This is for the appropriate authorities to consider keeping in view the clean slate principle enshrined under the provisions of IBC, 2016
6	That necessary exemption be provided to the Corporate Debtor from adding the words "and reduced" in its name, as required under the provisions of Companies Act, 2013	Granted, subject to the provisions of Companies Act, 2013

7	Any and all restrictions, impositions, prohibitions, debarments and limitations, whether interim or permanent on the Corporate Debtor, arising out of any order and/or legal proceedings and/or any investigations by any Governments Authorities to the effect that on and from the Effective Date, the Corporate Debtor shall be discharged and released in perpetuity from any and at claims, suits, actors, charges, demands, judgments, costs and executions present and future, known or unknown, both legal and equitable in any manner arising out of out of any order and/or legal proceedings and/or any investigations by any governmental bodies or authorities, as afore-stated.	**Granted**
8	The moratorium provisions under the Code including but not limited to Section 14 of the Code shall *mutatis mutandis* apply for the period from the Plan Approval Date till the Effective Date. Without prejudice to the generality of the foregoing, the Corporate Debtor shall be provided un-interrupted supply of essential services and goods during the period from the Plan Approval Date till the Effective Dele by all relevant Stakeholders	**Not Granted**
9	The Corporate Debtor and Resolution Professional to ensure filing of any pending e-forms with the RoC in relation to the Corporate Debtor. In case of any Non-Compliance, no penalty or liability should be initiated or accrued on the RA or any of its new director / management and the RoC shall accept all past filings done by the Resolution Professional or Resolution Applicant, as the case may be. without any compounding, condonation or any similar penalty.	**Granted, keeping in view of the clean slate principle enshrined under IBC, 2016**

10	The Corporate Debtor and/or RA, as the case may be, should be allowed to carry forward the losses of Corporate Debtor and unabsorbed depreciation in its books notwithstanding any Non-Compliances by Corporate Debtor on or prior to Effective Date under the Income-tax Act, 1961 and/or any order Issued by any Income-tax Authority under the income-tax Act1961 for any period on or before the Effective Date.	**This is for the CBDT and other appropriate authorities to consider keeping in view the clean slate principle enshrined under the provisions of IBC, 2016**
11	Upon approval of the Resolution Plan by the Adjudicating Authority all the regulatory authorities shall waive the non-Compliances on account of expiry of licenses, approvals; etc., as would be granted to the Corporate Debtor.	**Granted**
12	Upon approval of the Resolution Plan by the Adjudicating Authority, any adverse or coercive action already taken, initiated or issued or action that may be taken in future for any Non-Compliance pertaining to any period prior to Effective Date, by any regulatory authority(ies) against the Corporate Debtor, shall be waived and a rectification period of at least 48 months from Effective Date would be granted to the RA to regularize such issues and ensure that all licenses, approvals and rights are renewed and made effective. Upon approval of the Resolution Plan by the Adjudicating Authority. any adverse or coercive action already taken by authorities including initiated or issued or action that may be taken in future for any Non-Compliance pertaining to any period prior to Effective Date, by any regulatory authority(ies), shall be waived and a rectification period of at least 48 months from Effective Date would be granted to the RA to regularize such issues and ensure that all licenses,	**Granted, however a time period of 1 year is envisaged under IBC, 2016 for compliance**

	approvals and rights are renewed and made effective.	
13	Upon approval of the Resolution Plan by the Adjudicating Authority all Non-Compliances, breaches and defaults of the Corporate Debtor for the period prior to the Effective Date (including but not limited to those relating to tax), shall be deemed to be waived by the concerned Governmental Authorities. Immunity shall be deemed to have been granted to the Corporate Debtor from all proceedings and penalties under all Applicable Laws for any Non-Compliance for the period prior to the Effective Date and no interest / penal implications shall arise due to such Non – compliance / default / breach prior to the Effective date.	Granted, keeping in view of the clean slate principle enshrined under IBC, 2016
14	Upon approval of the Resolution Plan by the Adjudicating Authority, necessary directions would deemed to have been issued by the Adjudicating Authority to relevant authorities in relation to approval of the Resolution Plan and to take necessary actions expediently in relation to making necessary updation in the records with respect to the assets or rights in the name of the CD.	Not Granted. However, appropriate authorities shall keep in view the clean slate principles enshrined under IBC, 2016
15	Upon approval of the Resolution Plan by the Adjudicating Authority all Non-Compliances, breaches and defaults of the Corporate Debtor for the period prior to the Effective Date (including but not limited to those relating to lease / licenses and if any Non-Compliances, breaches and defaults) shall be deemed to be waived by the concerned Governmental Authorities. Immunity shall be deemed to have been granted to the Corporate	Granted, for the period prior to the Effective Date

	Debtor from all proceedings and penalties under all Applicable Laws for any Non-Compliance for the period prior to the Effective Date and no interest / penal implications shall arise due to such Non-Compliance /default/breach prior to the Effective Date.	
16	Upon approval of the Resolution Plan by the Adjudicating Authority, any Non-Compliances, breaches and defaults arising out of any claims made by the employees, vendors, third parties for past disputes against the Corporate Debtor, shall be deemed to be waived by the concerned Governmental Authorities and immunity shall be deemed to have been granted to the Corporate Debtor from all proceedings and penalties under all Applicable Laws for any Non-Compliance for the period prior to the Effective Date and no interest / penal implications shall arise due to such Non-Compliance/default breach prior to the Effective Date;	Granted
17	Upon approval of the Resolution Plan by the Adjudicating Authority all confirmations, terms and conditions, work orders, purchase orders, invoices, employment agreements, offer letters, standing orders, letters, commitments, power(s) of attorneys, and/or any other deed or document in favour of or for the benefit of or executed with any person, especially a related party, shall stand terminated If within 6 months of the Effective Date, the Resolution Applicant determines that they or any of those need termination, and all liabilities and obligations including contingent liabilities and obligations of the Corporate Debtor in relation thereto will be reduced to NIL and permanently extinguished, discharged and settled.	Granted in terms of the judgment of the Hon'ble Supreme Court in *Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.* *2021 SCC Online SC 313*

18	Upon approval of the Resolution Plan by the Adjudicating Authority, the Operational Creditors shall be deemed to have waived all termination rights and rights to payment of penalty, default payment or any payment of like nature under any agreement against the Corporate Debtor in relation to such rights arising from any breach, default, act or omission, under any such agreement executed by the Corporate Debtor and/ or the Resolution Professional for and on behalf of the Corporate Debtor, the Effective Date.	**Granted in terms of Section 32A of IBC, 2016**
19	That the Adjudicating Authority be pleased to give or issue necessary directions instructions to all relevant Governmental Authorities to grant relief/concessions from payment taxes, levies, fees charges, transfer premiums, stamp duty registration fees (including fees payable to the jurisdictional ROC) for various actions contemplated under this Resolution Plan (including for the Capital Reduction) and that the fees payable to the ROC in respect of the restructuring, recategorization and increase of authorized share capital and amendment of memorandum of association and articles of association of the Corporate Debtor and other relevant parties be waived and the ROC be directed to approve the relevant forms under the Companies Act, 2013 and rules thereto without payment of fees in respect thereof.	**This is for the appropriate authorities to consider keeping in view the clean slate principle enshrined under the provisions of IBC, 2016**
20	The Corporate Debtor or the Resolution Applicant shall not at any point of time, be held financially and/or legally liable as a successor of business in relation to the liability of the Corporate Debtor	**Granted, in view of the clean slate principle envisaged under IBC, 2016 and**

	under the relevant provisions of applicable Tax Laws including but not limited to the provisions of Section 170 of the Income tax Act1961 and Section 85 of the Central Goods and Service Tax Act2017, in respect of any transaction contemplated under the Resolution Plan, or on account of any action taken pursuant to this Resolution Plan including acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan. The transaction contemplated under the Resolution Plan shall not be treated as void under section 281 of the Income Tax Act, 1961 and Section 81 of the Goods and Service Tax Act2017. All Encumbrances created or suffered to exist, if any, over the Securities of the Corporate Debtor held by erstwhile Promoters of Corporate Debtor or loan due by Corporate Debtor to Financial Creditors (including any priority of claims that could have otherwise been claimed by the Tax Authorities under Section 281 of the Income Tax Act1961 and/or under Section 81 of the Central Goods and Services Tax Act, 2017, on account of any litigation on such Promoters or Financial Creditors), whether by contract or applicable Law whether created for the benefit of the Corporate Debtor or any third party, shall stand unconditionally and irrevocably terminated, released, cancelled, discharged, extinguished or withdrawn.	**also in view of Section 32A of IBC, 2016**
21	Upon approval of the Resolution Plan by the Adjudicating Authority, a Non-Compliances, breaches and defaults of the Corporate Debtor for the period prior to the Effective Date (including but not limited to those relating to tax), shall be deemed to be waived by the concerned Governmental	**Granted in terms of Section 32A of IBC, 2016**

	Authorities. Immunity shall be deemed to have been granted to the Corporate Debtor from all proceedings and penalties under all Applicable Laws for any Non-Compliance for the period prior to the Effective Date and no interest/penal implications shall arise due to such Non-Compliance / default / breach prior to the Effective Date. This includes, without limitation, waiver/extinguishment of (i) any liability arising out of Non-Compliance under the provisions of Companies Act, 1956 and the Companies Act, 2013 for including but not limited to maintaining proper secretarial records (minutes book, statutory registers, etc.) of the Corporate Debtor, adherence to applicable Secretarial Standard, non-fling or delay in filing of required e-forms with the Registrar of Companies on the MCA portal, non-appointment of company secretary: (ii) any liability arising out of Non-Compliance under the provisions of this Tax Laws, or out of EPCG or any other export obligations, as applicable to the Corporate Debtor. For brevity, the Corporate Debtor or the Resolution Applicant shall not at any point of time, be held financially and/or legally liable as a successor of business in relation to any liability under the applicable Tax Laws including but not limited to the provisions of Customs Act, 1962, Foreign Trade Policy 2009-2014, 2015- 2020, or Foreign Trade (Development and Regulation) Act, 1992as amended, modified or extended from time to time.	

	(iii) any liability arising out of Non-Compliance under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 for making Inadequate contribution towards the provident fund of the employees drawing wages less than the statutory wage limit of INR 15,000/- (iv) any liability arising out of Non-Compliance under the provisions of the Employee State Insurance Act for making Inadequate contribution towards the employers state insurance funds of the employees drawing wages less than the statutory wage limit of INR 21,000/-. (v) any liability arising for the contractual labour/employees engaged by the Corporate Debtor for Inadequate payment towards their provident fund, their regularization in the employment, claim for gratuity, claim for bonus or any other payment pertaining to their services with the Corporate Debtor. (vi) any liability arising out of non-Compliances for not having a policy on prevention, prohibition and redressal of sexual harassment at workplace and not having an internal complaints committees in place. (vii) any liability arising out for non-renewal of Building License under Tamil Nadu Public Buildings (Licensing) Act, 1965 (viii) any liability arising out for non – renewal of NoC for Height Clearance under the Aircraft Act, 1934	

	(ix) any liability arising out of Non – compliance for non-filing / delay in filing annual returns and maintenance of records and registers under various applicable labour laws, including but not limited to • Factories Act, 1948; • Maternity Benefit Act, 1961; • Contract labour (Regulation and Abolition Act), 1970; • Minimum wages Act, 1945; • Payment of Bonus Act, 1965; • Equal Remuneration Act, 1976; • Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 • Payment of Gratuity Act, 1972; • Employees' Provident Fund and Miscellaneous Act, 1952; • Employee State Insurance Act, 1948 • The Shops and Establishment Act, as may be applicable to the Corporate Debtor.	
22	All contracts, deeds, bonds, agreements, indemnitees or other similar rights or entitlements whatsoever schemes, arrangements and other instruments, permits, rights, entitlements, licenses (including the licenses granted by any Governmental Authority, statutory or regulatory bodies) for the purpose of carrying on the business of the Corporate Debtor, and in relation thereto, and those relating to tenancies, privileges, powers, facilities of every kind and description of whatsoever nature in relation to the Corporate Debtor, or to the benefit of which the Corporate Debtor may be eligible and which are Subsisting or having effect immediately before the Effective Date, shall by endorsement, delivery or recording	**Granted**

	of or by operation of applicable Law pursuant to the order of the Adjudicating Authority sanctioning the Resolution Plan, and on this Resolution Plan becoming effective be deemed to and continue to be in full force, valid and subsisting contracts, deeds, bonds, agreements, indemnities. rights, entitlements, licenses (including the licenses granted by any Governmental Authority) of the Corporate Debtor and any termination initiated pursuant to the initiation of the CIRP for any reason (including change of Control or liquidation/insolvency related) shall be deemed to have not been terminated. Such contracts, assets, properties and rights described hereinabove shall stand vested in the Resolution Plan and shall be deemed to be the property and become the property by operation of applicable Law as an integral part of the Resolution Plan.	
23	The Corporate Debtor shall be exempted from compliance of provisions of Companies Act, 2013 and rules made thereunder, in relation to issuance of NCRPS to the Other Creditors to the extent it is not able to comply with the same viz. requirement of valuation report, etc.	Granted only in respect of valuation report. Other compliances are required to be made as per Companies Act, 2013

14. The suspended Directors of the Corporate Debtor has filed objection to the Resolution Plan and the same has been dealt with by this Tribunal separately in IA(IBC)/493/CHE/2023.

15. ANALYSIS AND FINDINGS OF THIS TRIBUNAL

15.1. It is seen from Form – H that the Liquidation value of the Corporate Debtor is arrived at Rs.203.26 Crore and the corresponding Fair value is arrived at Rs.261 Crore.

15.2. At this juncture, we find it apt to refer to the decision of the Hon'ble Supreme Court in the matter of **Maharasthra Seamless Limited –Vs- Padmanabhan Venkatesh & Ors.** in *Civil Appeal No. 4242 of 2019* at para 26 and 27 has held as follows;

> "26. No provision in the Code or Regulations has been brought to our notice under which the bid of any Resolution Applicant has to match liquidation value arrived at in the manner provided in Clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. This point has been dealt with in the case of Essar Steel (supra). We have quoted above the relevant passages from this judgment.
>
> 27. It appears to us that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Once, a resolution plan is approved by the CoC, the statutory mandate on the Adjudicating Authority under Section 31(1) of the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof. We, per se, do not find any breach of the said provisions in the order of the Adjudicating Authority in approving the resolution plan."

15.3. Thus, as held by the Hon'ble Supreme Court, there is no provision in IBC, 2016 or in the Regulations which stipulates that the bid of the Resolution Applicant has to match the Liquidation value of the Corporate Debtor.

15.4. Further, it is seen from Form – H, that the RP has **NOT** filed any Applications under Section 43, 45, 49 and 66 of IBC, 2016 in the present matter.

15.5. 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 much-celebrated Judgment of the 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."

15.6. 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).

15.7. 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)

15.8. 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

<u>of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal</u>."

(emphasis supplied)

15.9. 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 exposited by this Court.

15.10. 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.

15.11. 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,

15.12. 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.

15.13. In case of non-compliance with this order or withdrawal of the Resolution Plan by the Successful Resolution Applicant, the Monitoring Committee shall forfeit the Performance Security furnished by the Resolution Applicant in the form of Performance Bank Guarantees.

15.14. 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.

15.15. 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.

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

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

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

16. IA(IBC)/349/CHE/2023 shall stand **disposed of** accordingly.

17. 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-

SAMEER KAKAR
MEMBER (TECHNICAL)

Sd

Justice RAMALINGAM SUDHAKAR
PRESIDENT

Raymond