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

**IA(IBC)/1023(CHE)/2021 in IBA/323/2019**

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

IN THE MATTER OF:

Mahalingam Suresh Kumar,  
*Resolution Professional of*  
**M/s. Nag (India) Private Limited**  
No. 27/9, Nivedh Vikas, Pankaja Mill Road,  
Puliyakulam,  
Coimbatore – 641 045

*... Applicant*

Present:

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

**CORAM:**

**JUSTICE (RETD.) RAMALINGAM SUDHAKAR, PRESIDENT  
SAMEER KAKAR, MEMBER (TECHNICAL)**

*Order Pronounced on 09<sup>th</sup> November 2022*

**ORDER**

***Per: SAMEER KAKAR, MEMBER (TECHNICAL)***

IA(IBC)/1023(CHE)/2021 is an Application which is moved by the Resolution Professional of the Corporate Debtor viz., **M/s. Nag (India) Private Limited** under Section 30(6) & 31 of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC, 2016') read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short, 'Regulation') seeking the approval of



the Resolution Plan submitted by the successful Resolution Applicant viz., **Star Exports**

2. In an Application filed under Section 7 of IBC, 2016 by a Financial Creditor viz. Union Bank of India, this Adjudicating Authority vide order dated 06.01.2020 passed in IBA/323/2019 initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor viz. M/s. Nag (India) Private Limited, by appointing the Applicant herein as the Interim Resolution Professional (IRP), who was subsequently confirmed and appointed as the Resolution Professional (RP) of the Corporate Debtor by the Committee of Creditors (CoC).

3. The Learned Counsel for the Applicant submitted that, upon the receipt of the CIRP order, the Applicant caused Public announcement in "The New Indian Express" in English and "Dinamani" in Tamil on 10.01.2020 and invited the creditors to submit the claim before the IRP. Thereafter, it was submitted that on the basis of the claim submitted by the claimants, the IRP had constituted the Committee of Creditors with Union Bank of India having 100% voting share and the 1<sup>st</sup> CoC meeting was convened on 03.02.2020.

4. The Form – G was issued on 20.03.2020 and the last date was fixed as 04.04.2020. In pursuance to the same, the Resolution



Applicant herein has submitted its Expression of interest before the RP and the same was also taken on record in the 5<sup>th</sup> CoC meeting held on 25.09.2020. In the meantime, it was submitted that due to Covid – 19 lockdown, the CIRP in respect of the Corporate Debtor could not be carried forward and the RP has also filed IA/121/2021 for exclusion of 251 days and extension of 20 days and the same was also granted by this Tribunal vide its order dated 10.03.2021.

5. It was submitted that the Resolution Applicant submitted its Resolution Plan on 30.03.2021 for a sum of Rs.2.5 Crore. After several round of negotiations with Financial Creditor, the Resolution Applicant has improved its offer to Rs.3.9 Crore. At this juncture, it is significant to refer to the breakup of the claim of the Financial Creditor.

<b>PARTICULARS</b>	<b>CLAIM CUT – OFF DATE</b>	<b>AMOUNT (IN Rs.)</b>
Loan Availed by <b>Corporate Debtor</b>		NIL
Claim against Corporate guarantee provided for <b>M/s. Nag Leathers Pvt. Ltd.</b>	20.01.2020	6,61,75,461.88
Claim against Corporate Guarantee provided for <b>M/s. Nag Yang Shoes Pvt. Ltd.</b>	20.01.2020	24,92,77,529.35
<b>TOTAL</b>		<b>31,54,53,991.23</b>

6. Further, it was submitted that the Resolution Plan submitted by M/s. Star Exports meets the conditions as laid down under Section 30(2) of IBC, 2016 read with IBBI (CIRP) Regulations, 2016.



The summary of the Resolution Plan proposed by the Resolution Applicant is as follows;

Payment Plan	Amount (in ₹)	Remarks
EMD**	10,00,000	This will be kept in Escrow Account and will not be distributed to any of the stakeholders until AA Approval
Within 15 days from the date of approval of CoC	50,00,000	This will be kept in Escrow Account and will not be distributed to any of the stakeholders until AA Approval
Within 30 days from the date of NCLT Approval	3,30,00,000	84.61% of the remaining plan amount.
<b>TOTAL</b>	<b>3,90,00,000</b>	

7. It was submitted that the Resolution Applicant has already paid EMD of Rs.10 Lakh in separate CIRP account as security deposit.

8. Thus, the prospective Resolution Applicant has submitted his final Resolution Plan before the CoC for its approval on 18.09.2021 for a sum of Rs.3.9 Crore, which was approved unanimously by the CoC in its 9<sup>th</sup> meeting held on 21.09.2021 and the CoC has passed a Resolution to the following effect;

"RESOLVED THAT the final Resolution Plan dated 29.07.2021 as submitted by the resolution applicant is hereby approved and confirmed by this Committee under Section 30(4) of the IBC, 2016"

9. The Applicant has also filed Form – H in accordance with the IBBI (Corporate Insolvency Resolution Process for Corporate Persons) Regulations, 2016 along with this Application.



10. The summary of payment particulars as follows;

SL. No.	CATEGORY OF STAKEHOLDERS	AMOUNT ADMITTED	AMOUNT PROPOSED UNDER THE PLAN	% OF REALIZATION
1	CIRP Cost	-	40,00,000	100%
2	Secured Financial Creditor	31,54,52,991.23	3,39,32,336	10.75%
3	Operational Creditors	-	-	-
4	Statutory Dues - Income Tax	5,33,83,189	10,67,664	2%
<b>TOTAL</b>		<b>36,88,76,180.23</b>	<b>3,90,00,000</b>	

11. The existing shareholding pattern of the Corporate Debtor is as follows;

S. No.	NAME OF SHAREHOLDER	NO. OF EQUITY SHARES	% OF SHAREHOLDING
1	Chockalingam Pillai Shanmugathammal	51,000	33.33%
2	Subramanipillai Chokkalingam Pillai	51,000	33.33%
3	Chockalingam Jagadeesh	51,000	33.33%
<b>Total</b>		<b>1,53,000</b>	<b>100%</b>

12. The Resolution Plan is being submitted by the Resolution Applicant viz. Star Exports and they are engaged in the business of trading, manufacturing, distribution of Leather and its related products across the globe. It is seen that the Resolution Applicant was formed as a Partnership Firm on 01.05.1999 and the partners of the Resolution Applicant are as follows;

- (i) Sarfraz Ahmed
- (ii) Shabana Ahmed





13. The Proposal for the Shareholders of the Corporate Debtor is envisaged in Note 6 of the Resolution Plan, which is as follows;

As the value of Shareholders fund of the Corporate Debtor is eroded completely and will be insufficient to repay even the secured financial creditors and in view of the large losses suffered by the Corporate Debtor, the intrinsic value of its equity shares is Zero and, hence it is proposed that the Prospective Resolution Applicant shall at liberty may increase or decrease the existing Authorised Capital of Rs 50,00,000/ (Rupees Fifty Lakhs Only) and the issued, subscribed and paid up share capital of the Corporate Debtor is valued at Zero and the same shall Comprise of 1,53,000/-(Rupees One Lakh Fifty Three Thousand Only) held by the existing promoters/promoter groups and other general public first will be cancelled

Thereafter the company will issue fresh equity share capital of the company to the representatives of the Prospective Resolution Applicant as suggested at a face value of Rs.10/- per share for a value of Rs 50 lakhs and the remaining amount will be treated as Unsecured loans to the Corporate Debtor which will be Infused by the Resolution Applicant. The necessary modification and alterations in the MOA & AOA will be made by amending the same.

The additional funds to be infused by the RA's will be partly in the form of equity/preference share capital which will be introduced at such price as the RA's may deem fit in accordance with the applicable rules, regulations and guidelines or through the way of unsecured loans by RA's.

The RA's reserves the right to have the final capital structure in accordance with the applicable rules and regulations as per the provisions of the companies act as applicable in this regard,

14. It is also stated that the Resolution Applicant will appoint Board of Directors after the approval of the Resolution Plan by this Adjudicating Authority.



15. As per Section – V of the Implementation of the Resolution Plan, it is seen that the Monitoring Committee consist of the following three persons;

- (i) Mahalingam Suresh Kumar, RP
- (ii) One Person from CoC; and
- (iii) One person from Prospective Resolution Applicant

16. At this juncture, it is required to be noted that the Income Tax Department has provisionally attached the properties of the Corporate Debtor in F. No./281B/A.Y.2017-18/2019-20 vide its order dated 23.09.2019. It is also seen that the Income Tax Department has filed its claim before the RP for a sum of Rs.5,33,83,189/- which came to be admitted by the RP in its entirety. The Resolution Plan proposes a payment of Rs.10,67,664/- to be payable to the Income Tax authorities, which is 2% of the admitted claim amount. Further, the Income Tax Authorities have also not raised any objection in relation to the same. Under the Corporate Insolvency Resolution Process, the dues of the Income Tax authorities, be if secured or unsecured, will be treated as dues of the 'operational creditor' and hence they cannot form part of the CoC. Under the said circumstances, the amount of Rs.10,67,664/- which is payable to the Income Tax Department by the Resolution Applicant will be in discharge of liability of their entire claim filed before the RP. The provisional attachment by the Income Tax authorities had a life of six months, has since expired.



17. From the averments made in the Application as well as in Form-H as filed by the Resolution Professional in relation to the procedural aspects, the same seems to have been duly complied with for which the Resolution Professional has issued a Certificate and it is not necessary for this Authority to go into the same. However, this Authority is duty bound to examine the Resolution Plan within the contours of Section 30(2) of the IBC, 2016. A comparison *vis-à-vis* with the Mandatory compliance under the IBC and the Compliance made under the Resolution Plan is captured hereunder;

MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS	COMPLIANCE UNDER RESOLUTION PLAN
<b>S. 30(1)</b> - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	The Resolution Applicant (RA) in the Resolution Plan at Section – IV at Page 15 has stated that they are eligible under Section 29A of IBC, 2016 to submit a Resolution Plan.
<b>S. 30(2)(a)</b> - Payment of Insolvency and Resolution cost in the manner specified by the Board	Section – V of the Resolution Plan provides for the payment of CIRP costs in priority. The CIRP Cost is arrived at ₹40 Lakh.
<b>S. 30(2)(b)</b> - Payment of 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 Sec. 53	The Resolution Plan states that the amount available to Operational Creditors in the event of liquidation is NIL and since the Resolution Plan amount is much less than the admitted claims of the secured creditors who have priority payment, no amount is payable to the Operational Creditor. However, the dues of the Income Tax have been paid to an extent of 2% of the admitted claim.



MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS	COMPLIANCE UNDER RESOLUTION PLAN
<p><b>Reg. 38(1)</b> - Resolution Plan identifies specific source of funds that will be used to pay the</p> <p>(a) Insolvency Resolution Process cost?</p> <p>(b) Liquidation value due to Operational Creditors?</p> <p>(c) Liquidation value due to dissenting financial creditors</p>	<p>Section - V of the Resolution Plan deals with the Insolvency Process Costs, and the Liquidation value due to the Operational Creditors.</p>
<p><b>Reg. 38(1A)</b> - Resolution Plan shall include a statement as to how it has dealt with the interest of all the stakeholders, including financial creditors and operational creditors of the Corporate Debtor</p>	<p>Section - V (Note 1 to Note 5) and sub clauses thereunder enumerates how the interest of all the stakeholders including operational and financial creditors has been dealt with under the Resolution Plan.</p>
<p><b>S. 30(2)(c)</b> - Management of the affairs of the Corporate Debtor after approval of the Resolution Plan</p>	<p>Section - VII of the Resolution Plan states that upon approval of the plan, the management of the Corporate Debtor shall be taken over by the Monitoring Committee (MC) which shall oversee the implementation during the term of the Resolution Plan</p>
<p><b>S. 30(2)(d)</b> - Implementation and Supervision of the Resolution Plan</p> <p style="text-align: center;"><b>and</b></p> <p><b>Reg. 38(2)</b> - Resolution Plan shall provide:</p> <p>a) term of plan and its implementation schedule</p> <p>b) management and control of the business of the Corporate Debtor during its term;</p>	<p>The supervision of the Resolution Plan during the implementation term shall be done by the Monitoring Committee as stated in Section VII. The Monitoring Committee consist of (i) RP, (ii) One person from CoC, (iii) One person from Resolution Applicant.</p>



MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS	COMPLIANCE UNDER RESOLUTION PLAN
<p>c) it has provisions for effective implementation</p> <p>d) it has provisions for approval required and the timeline for the same; and</p> <p>e) the Resolution applicant has the capability to implement the Resolution Plan.</p>	
<p><b>Reg. 38(3)</b> - Resolution Plan shall demonstrate:</p> <p>a) it address the cause of default</p> <p>b) it is feasible and viable</p> <p>c) it has provisions for effective implementation</p> <p>d) it has provisions for approval required and the timeline for the same</p> <p>e) the resolution applicant has the capability to implement the resolution plan</p>	<p>Section V of the Resolution Plan address the cause of default and the Resolution Plan deals with the operational Viability of the project by the Resolution Applicant.</p>
<p><b>S. 30(2)(e)</b> - Does not contravene any of the provisions of the law for the time being in force</p>	<p>The Resolution Professional in Form H has confirmed that the Resolution Plan is not in contravention with the provisions of any Applicable Law.</p>
<p><b>S. 30(4)</b> - Committee of Creditors approve the Resolution Plan by not less than 66% of voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by the Board</p>	<p>The CoC, in its 9<sup>th</sup> meeting has unanimously approved the Resolution Plan</p>

18. The Resolution Applicant in the Resolution Plan has sought for a total of 24 Relief and concessions from this Adjudicating Authority



so as to implement the Resolution Plan. These are ordered as follows;

SL. No.	RELIEF / CONCESSIONS SOUGHT FOR	ORDERS THEREON
1	To pass an order confirming that this Resolution Plan for the CD has dealt with the interests of all the stakeholders of the CD, including the Financial Creditors (whether secured or unsecured, assenting or dissenting), Operational Creditors, Statutory Authorities, Other Creditors and all other stakeholders in accordance with the Code:	<b>Ordered</b>
2	To pass an order directing the Income tax to remove the CD's properties attachment vide Provisional Income Tax attachment order no.F.No./281B/AY 2017-18/2019-20 by releasing the charge and also with the concerned Sub-Registrar office and handover the same in to the prospective resolution applicant in accordance with Section 238 of the Code. And no actions will be taken against the prospective Resolution Applicant for any of the violations, pending litigations, penalties done by the ex-promoters/suspended directors of the CD whether through the CD or using the CD's name.	<b>Granted, in terms of para 16 of this Order</b>
3	To pass an order directing, that in accordance with Section 32A and 238 of the Code, any action undertaken pursuant to the Resolution Plan by the Resolution Applicant or the CD will not require compliance with requirements under any other laws. For the implementation of this Resolution Plan, and except as set out in the Resolution Plan, upon the Resolution Applicant ensuring compliance with the provisions of the Code and the CIRP Regulations, no further compliance, actions or consents will be required under other laws and regulations for undertaking, the individual actions contemplated under the Resolution Plan. The Code is a complete code by itself and the NCLT acting under the Code functions as a single window clearance for all action proposed to be undertaken pursuant to a resolution plan approved by the NCLT. Accordingly, the process stipulated under the code for implementation of a Resolution Plan is a final and binding process	<b>Granted, subject to the provisions of IBC, 2016</b>



SL. No.	RELIEF / CONCESSIONS SOUGHT FOR	ORDERS THEREON
	on all other any stakeholders (Including any Government Authorities):	
4	The Adjudicating Authority shall approve and pass an order for extinguishment and waiver of other claims and liabilities other than those in the knowledge of the Resolution Applicant. Also, (i) all obligations, claims and liabilities (whether final or contingent, whether disputed or undisputed and whether or notified to or claimed against the Company) of the Company and (ii) all outstanding disputes or legal proceedings against the Company, and (iii) all rights or claims of any person against the Company: in each case relating to the period prior to the Effective Date, shall immediately irrevocably and unconditionally stand extinguished, waived, withdrawn and abated on and from the Effective Date and no person shall have any further rights or Claims against the Company in this regard.	<b>Granted, subject to the provisions of IBC, 2016</b>
5	To pass an order directing that any and all security interest created or suffered to exist where there is a right to create such a security over the assets of the Company, to secure any obligations towards the Financial Creditors and/or Operational Creditors (whether by way of hypothecation, pledge, mortgage guarantee or otherwise shall stand automatically, irrevocably and unconditionally extinguished, released, discharged and terminated, and the Financial Creditors shall make all the necessary filings and notifications to the same.	<b>Granted, subject to the provisions of IBC, 2016</b>
6	To pass an order that the Resolution Applicant or the CD shall not be liable to pay any Taxes whatsoever arising (directly or indirectly on such entity) as a result of the actions for implementation of the Resolution Plan taken by the CD or the Resolution Applicant as set out in the Resolution Plan approved by the NCLT.	<b>Not Granted</b>
7	To pass an order that any person appointed to the reconstituted board of directors of the CD pursuant to this Resolution Plan, shall neither be	<b>Granted, subject to the provisions of</b>



SL. No.	RELIEF / CONCESSIONS SOUGHT FOR	ORDERS THEREON
	disqualified to hold directorships in terms of Section 164(2) of the Companies Act, 2013 noc have to vacate their office as directors in terms of Section 167 of the Companies Act. 2013 on account of any non- compliance by the CD of the requirements set out in Section 164(2) of the Companies Act, 2013,	<b>Companies Act, 2013 and other Applicable laws.</b>
8	To pass an order that all contracts of employment or consultancy with, and any benefits, fees, commissions, perquisites or profit in lieu of or in addition to any salary or wages or any policy of providing such benefits, fees, commissions, perquisites or profit extended by the CD to the promoters of the CD or the related parties of the promoters of the CD shall be deemed to be terminated and extinguished on and from the NCLT Approval Date, and the CD will not have any further obligation to provide the same.	<b>Granted in terms of the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</b> <i>2021 SCC Online SC 313</i>
9	To pass an order directing that any and all pledge created on the Equity Shares shall stand automatically, irrevocably and unconditionally released and discharged, on and from the Effective Date.	<b>Granted, subject to the provisions of Companies Act, 2013 and other Applicable laws</b>
10	To pass an order directing that the Existing Promoters or other stakeholders of the Company shall cease to have any right, title and interest in the intellectual properties of the Company including but not limited to all patents, trademarks, service marks, get-up, trade names, rights in designs, logos, copyrights (including, without limitation, rights in computer software), trade secrets, internal domain names, website registration, rights in technology, licenses, moral rights, database rights, utility models, rights in know-how, proprietary and confidential information and rights in databases (whether or not any of these are registered and including any applications for registration of any such thing) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of those which subsist anywhere in the world, and all such intellectual properties shall vest in the Company in entirety and the Resolution Applicant shall have right to use it either by using the same name or by changing name	<b>Granted, subject to the provisions of Trademarks Act, and other Applicable laws</b>



SL. No.	RELIEF / CONCESSIONS SOUGHT FOR	ORDERS THEREON
11	<p>Upon approval of the plan by the NCLT under Section 31 of the Code, all pending proceedings relating to the winding up of the CD, if any shall stand irrevocably and unconditionally abated in perpetuity and all violation or breach of any agreement of the CD shall stand condoned or waived and such agreements shall be treated as if no violation or breach has ever been committed. Upon approval of this Resolution Plan by the NCLT, all dues under the provisions of the Income Tax Act, 1961, the Central Excise Act, 1944, the Finance Act, 1994 (Service Tax), the Customs Act, 1952 the Central Sales Tax Act, 1956. the Goods and Services Tax Act, 2017 and any other indirect tax laws, including taxes, duty, penalties, interest, fines, cess, charges, unpaid TDS/TCS (to the extent applicable), whether admitted or not, due or contingent, whether part of above claim of income tax authorities or not, asserted or unasserted, crystalized or uncrystalized, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the Completion date, shall stand extinguished and the CD shall not be liable to pay any amount against such demand. All assessments/appellate or other proceedings pending in case of the CD, on the date of the order of NCLT relating to the period prior to that date, shall stand terminated and all consequential liabilities, if any, stand abated and should be considered as not payable by the CD. All notices proposing to initiate any proceedings against the CD in relation to the period prior to the date of NCLT order and pending on that date, shall be initiated on the CD in relation to period prior to acquisition of control by the Resolution Applicant and any consequential demand should be considered non-existing and as not payable by the CD. Any proceedings which were kept in abeyance in view of the Insolvency process or otherwise shall not be revived post the order of NCLT</p>	<p><b>Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i></b></p> <p><i>2021 SCC Online SC 313</i></p>



SL. No.	RELIEF / CONCESSIONS SOUGHT FOR	ORDERS THEREON
12	To pass an order granting a time period of 60 days, or such other extended time as may be required by the concerned Government Authority, to the CD and the Resolution Applicant to obtain all the necessary approvals from Government Authorities required for implementation of the Resolution Plan.	<b>Granted</b>
13	To pass an order granting a restraint on, and prohibition of, all adverse actions against the CD until the implementation of this Resolution Plan in full.	<b>Granted, subject to the provisions of IBC, 2016 and other Applicable laws.</b>
14	To pass orders in respect of such incidental, consequential and supplemental matters as are necessary to ensure that the Resolution Plan is fully and effectively carried out:	<b>Granted, subject to the provisions of IBC, 2016 and other Applicable laws.</b>
15	The Adjudicating Authority shall exempt compliance with the applicable provisions of the Companies Act 2013 and the corresponding rules issued there under, in respect of cancellation of shares of the Existing Equity Shareholders.	<b>Granted, subject to the provisions of Companies Act, 2013 and other Applicable laws</b>
16	The concerned Government Authority for revenue/ Stamp duty/registry, in every relevant state, should waive (1) the stamp duty and other fees to be paid for any registration of the documents, which are required to be registered under the Applicable Law, but have not been registered by the Company as on the Effective Date, (i) Late fee or penalty for delay in registration by the Company as on the Effective Date, (ii) right and power to claim penalties for no registration and inadequate/ Non-stamping of the documents required to be registered and stamped under Applicable Law, but have not been registered/properly stamped by the Company as on the Effective Date.	<b>Not Granted</b>
17	The NCLT should direct the Ministry of Corporate Affairs to waive of its rights and power to levy penalty and initiate proceedings of any nature	<b>Granted in terms of the judgment of the Hon'ble Supreme</b>



SL. No.	RELIEF / CONCESSIONS SOUGHT FOR	ORDERS THEREON
	against the Company or any person responsible (1) for the Non-compliance of any provision of the Companies Act, 2013 and rules made there under, (ii) Statutory registers not being properly maintained, etc. Non-compliances by the Company as per the information received	<b>Court in Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</b>  2021 SCC Online SC 313
18	The NCLT should direct the relevant Government Authority that the Company shall not be held liable for any non-compliance, default, breach, etc, by the Company during the period prior to the Effective Date, in relation to: (1) any contractual arrangements of the Company with counter parties, including Government Authorities and (ii) failure to take or obtain any approvals, consents or permits or make any filings required to made by the Company to the relevant Government Authorities under the Applicable Law	<b>Granted, subject to the provisions of IBC, 2016 and other Applicable laws. Also in view of Section 32A of IBC, 2016</b>
19	The Adjudicating Authority shall direct that (a) pending the occurrence of the Effective Date, no Financial Creditor shall be entitled to take initiate or continue any steps or proceedings against the Company or its assets (whether by way of demand, legal proceedings, alternative determination process such as arbitration or other expert determination process, the levying of distress, execution of judgement or otherwise) in any jurisdiction whatsoever for the purpose of obtaining payment of any liability, or for the purpose of placing the Company into Liquidation or any analogous proceedings; and (b) pending the occurrence of the Effective date, no Operational Creditors shall be entitled to take, Initiate or continue any steps or proceedings against the Company or its assets (whether by way of demand, legal proceedings, alternative determination process such as arbitration or other expert determination process, the levying of distress, execution of judgement or otherwise) in any jurisdiction whatsoever for the purpose of obtaining payment of any liability or for the purpose of placing the Company into liquidation or any analogous proceedings	<b>Granted in terms of the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</b>  2021 SCC Online SC 313



SL. No.	RELIEF / CONCESSIONS SOUGHT FOR	ORDERS THEREON
20	The Adjudicating Authority shall direct that there shall be no interruption or Stoppage in the supply of essential goods and services as defined under Regulation 32 of the CIRP Regulations to the Company until ninety (90) days from the date of approval of resolution plan.	<b>Granted, subject to the provisions of IBC, 2016 and other Applicable laws.</b>
21	The Adjudicating Authority shall direct that the Company shall incur no liabilities, directly or indirectly (including but not limited to debt servicing liabilities), other than to the extent specified in this plan, for the period from the Insolvency Commencement Date until the Effective Date.	<b>Granted, subject to the provisions of IBC, 2016</b>
22	The Adjudicating Authority shall direct that the Resolution Applicant be granted such reliefs and concessions as granted by the Adjudicating Authority from time to time in favour of the Resolution Applicant of CIRP of other corporate debtors as may be beneficial to the Resolution Applicant and/or the Company for the successful corporate insolvency resolution of the Company and which shall not adversely impact the financial proposal under this plan for the Financial Creditors.	<b>Granted, subject to the provisions of IBC, 2016</b>
23	The payment to all persons contemplated in this Resolution Plan shall be the CD's and Resolution Applicant's Full and final performance and satisfaction of all its obligations towards any dues or outstanding against the CD and all remaining claims, dues, outstanding amount shall be waived by whatever name called like interest, penal interest, compound interest, damages other commitment charges and any other amount whatsoever nature in terms of Section 32A of the Code.	<b>Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i></b>  <i>2021 SCC Online SC 313</i>
24	For any default in making payment as specified in this plan, a cure period of 30 days would be provided to cure the default/delayed payment.	<b>Not granted</b>
25	The Resolution Applicant and the company shall be entitled to share certified copy of the resolution plan and the order of the Adjudicating Authority approving this resolution plan with the third parties including Government Agencies	<b>Ordered</b>




19. It is seen from Form – H, that the RP has not filed any avoidance transactions under Section 43, 45 and 50 and fraudulent trading / wrongful trading applications under Section 66 of IBC, 2016.

20. In so far as the approval of the Resolution Plan is concerned, this Authority is not sitting on an appeal against the decision of the Committee of Creditors and this Authority is duty bound to follow 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.”

21. 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)*.

22. 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)*

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





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

*(emphasis supplied)*

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

76. The expositions aforesaid make it clear that the decision as to whether corporate debtor should continue as a going concern or should be liquidated is essentially a business decision; and in the scheme of IBC, this decision has been left to the Committee of Creditors, comprising of the financial creditors. Differently put, in regard to the insolvency



resolution, the decision as to whether a particular resolution plan is to be accepted or not is ultimately in the hands of the Committee of Creditors; and even in such a decision making process, a resolution plan cannot be taken as approved if the same is not approved by votes of at least 66% of the voting share of financial creditors. Thus, broadly put, a resolution plan is approved only when the collective commercial wisdom of the financial creditors, having at least 2/3rd majority of voting share in the Committee of Creditors, stands in its favour.

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

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

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

77.6.1. The assessment about maximisation of the value of assets, in the scheme of the Code, would always be subjective in nature and the question, as to whether a particular



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

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

25. 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.



26. Thus, the Resolution Plan is hereby **approved** and is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect and the "Moratorium" imposed under section 14 of IBC, 2016 shall not have any effect henceforth. The Resolution Professional shall submit the records collected during the commencement of the Proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance. Liberty is hereby granted for moving any Miscellaneous Application, if required, in connection with implementation of this Resolution Plan. That in respect of stepping by the New Promoters/Resolution Applicant into the shoes of the erstwhile Company and taking over the business, the provisions of Companies Act, 2013 shall be applicable and because of this reason a copy of this Order is to be submitted in the Office of the Registrar of Companies, Chennai.

27. The Resolution Professional is further directed to handover all records, premises / documents to Resolution Applicant to finalise the further line of action required for starting of the operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access to all the records premises / documents through



Resolution Professional to finalise the further line of action required for starting of the operation.

28. Accordingly, the Application stands **ordered**. Let IBA/323/2019 be consigned to records.

- Sd -

**SAMEER KAKAR**  
MEMBER (TECHNICAL)

- Sd -

**JUSTICE RAMALINGAM SUDHAKAR**  
PRESIDENT

*Raymond*