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

IA(IBC)/643(CHE)/2021 in IBA/902/2019

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

Along with

IA/IB/1286/2020 in IBA/902/2019

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

IN THE MATTER OF:

A R Ramasubramania Raja
Resolution Professional of
M/s. Topknit Processing Mill Private Limited
No.3, Sundaram Brothers Layout,
Opp to All India Radio, Trichy Road,
Ramanathapuram,
Coimbatore – 641 045

... Applicant

Present:

For RP : *CP Hem Kumar, Advocate*
OLV Ganesan, Advocate

CORAM :

Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

Order Pronounced on **20th June 2022**

ORDER

***Per:* Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)**

IA(IBC)/643(CHE)/2021 is an application which is moved by the Resolution Professional of the Corporate Debtor viz., **M/s. Topknit Processing Mill 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 approval of the Resolution Plan submitted by the successful Resolution Applicant, who are the promoters of the Corporate Debtor. It was submitted that the Corporate Debtor is an MSME.

2. IA/IB/1286/2020 is an application filed by the RP seeking exclusion of lockdown period and extension of CIRP for a period of 60 days. For the reasons stated in 5, 6 and 7 of the Application, IA/IB/1286/2020 stands **allowed**.

3. In an Application filed under Section 9 of IBC, 2016 by an Operational Creditor, this Adjudicating Authority vide order dated 21.11.2019 passed in IBA/902/2019 initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor viz. M/s. Topknit Processing Mill Private Limited and the Applicant herein was appointed as Interim Resolution Professional (IRP).Thereafter, the IRP had caused public announcement on 02.12.2019 in 'The New India Express' and 'Dinamani' and based on the claims received from the stakeholders, the IRP constituted the Committee of Creditors (CoC) and the 1st CoC meeting was convened on 27.12.2019. In the said meeting, CoC has resolved to continue with the Applicant as the Resolution Professional of the Corporate Debtor

4. The Learned Counsel for the Applicant submitted that as per Regulation 27 of the IBBI (Insolvency Resolution process for Corporate Persons) Regulations, 2016 had appointed two IBBI Registered valuers for valuation of the Plant & Machinery and land & Building and the valuers had submitted their report before the Applicant. From Form – H filed along with the Application, it is evident that the erstwhile RP / Applicant has conducted a total of 19 CoC meetings in relation to the Corporate Debtor and that the Fair Value and the Liquidation value is arrived at Rs.11.38 Crore and Rs.9.78 Crore respectively.

5. The Learned Counsel for the Applicant submitted that the CoC in its 2nd meeting held on 28.01.2020 has placed the Draft Information Memorandum and has also placed an agenda for approval of Form – G and the same was approved by the Sole CoC member to issue Expression of Interest (EoI) and accordingly the RP has issued EoI on 08.02.2020 in 'Dinamani' and in "The New Indian Express" and the last date was fixed on 23.02.2020.

6. It was submitted that the RP has updated to the CoC in the 3rd CoC meeting dt.09.03.2020 that there is no response to the Eol received for filing of the resolution plan. However, the CoC after discussions has informed to the applicant to proceed to the next

stage of CIRP process i.e. to initiate the process of Liquidation. However, it was submitted that no resolution to that effect was passed in the CoC meeting.

7. It was submitted that since no EoI was received in response to the Form G, the COC in its 4th CoC meeting dt.08.07.2020 gave a chance to the promoter for settlement of dues. However, the CoC has discussed about one time settlement and also about revival of the Corporate Debtor and the promoter informed to the CoC that they were interested in settling the dues to the financial creditor and wanted to revive the business. The CoC further discussed that the Corporate Debtor comes under MSME sector, and the promoters are eligible to submit the resolution plan.

8. Thereafter, it was submitted that the promoters expressed their inability to arrange funds and requested some more time because of the Covid-19 pandemic. In the 5th COC meeting dt.29.09.2020, the financial creditor insisted the promoters to prove the genuine intention of settlement and asked them to deposit a sum of Rs 90 lakh in a separate lien account in response to the draft settlement proposal as submitted by the Promoters and submit the resolution plan. Also, the CoC asked the promoters to send the formal proposal on resolution plan and the investors details to

consider for approval. Further to the above, it was submitted that the RP has informed about the CIRP timeline.

9. It was submitted that the CoC in its 6th COC meeting held on 15.10.2020 has discussed about the settlement proposal of the promoters; however, the financial creditor considered the request of the promoters' inability to arrange funds for payment and requested some more time because of the Covid-19. Considering the same, the CoC postponed the further course of action to the next CoC meeting.

10. Again, it was submitted that the CoC has discussed the same about the pending settlement proposal whereas no concrete proposal was submitted as on date to the CoC. However, the CoC has decided to give last chance to the promoters to submit the concrete plan either for withdrawal of CIRP or for resolution plan and discussed in detail about the process involved to take approval from the higher authorities.

11. Further to the above, it was submitted that the RP has informed to the CoC either to approve CIRP extension or to proceed with liquidation since the CIRP has originally expired on 28.05.2020 but due to Covid-19 lockdown there is exclusion available for the said lockdown period and the same was considered by the CoC. After

detailed discussions, the CoC has approved and passed a unanimous resolution to apply for extension of CIRP period for a further period of 60 days in addition to 180 days of CIRP period as prescribed under Section 12 of the Code and also approved to avail exclusion of CIRP timeline for the Covid-19 lockdown period. CoC after considerations had resolved and directed the RP to file an application for extension of CIRP for another 60 days period and the same was filed as IA/1286/2020 before this Tribunal.

12. In the subsequent meetings i.e. 8th CoC meeting dt. 02.03.2021, it was submitted that the promoter settlement proposal amount has been discussed, wherein the financial creditor insisted that the promoters had to come with concrete plan for settlement. However, the GM of SIDBI asked the promoter to submit the source of funds and schedule of payment for settlement proposal on or before 31.03.2021. Also DGM of SIDBI informed the promoter that unless the settlement is made on or before 31.03.2021 the Corporate Debtor will be recommended for liquidation. In response to the same, the promoter has replied stating that the Corporate Debtor is an MSME sector, and the investors are available to invest and the Resolution Plan shall be submitted to the CoC for revival of the business. Accordingly, the meeting was adjourned to seek

approval from SIDBI head office against the promoters settlement proposal.

13. It was submitted that the Erstwhile promoters had submitted the draft Resolution Plan dated 09.04.2021 to the applicant. However, it was submitted that the RP has verified the resolution plan and found that the same is in order as per the Code and relevant regulations and informed the same to the Sole Financial Creditor Le. SIDBI. Subsequently the Applicant has called for the 9th CoC meeting on 16.04.2021 for consideration of the draft resolution plan as submitted by the Erstwhile Promoters. In the said CoC meeting, the sole Financial Creditor informed that they would discuss internally for approving the plan or otherwise they would recommend for liquidation. In addition to the same, the financial creditor has also asked the promoters to increase Rs.50 lakh on the offer amount since there is CIRP costs involved accordingly meeting was concluded for decision on approval of the resolution plan from the higher authorities of the SIDBI.

14. Further to the above, it was submitted that the CoC has discussed the plan in its 10th CoC meeting held on 25.06.2021. In the said meeting, the CoC has directed the Prospective Resolution Applicant to revise the settlement amount from Rs.9.50 Crore to

Rs.9.80 Crore and a sum of Rs.30 lakh towards CIRP expenses to be paid by the Resolution Applicant and the same was agreed by the Resolution applicant to revise the offer up to Rs.10.10 Crore and a sum of Rs.46.25 Lakh was agreed to be paid towards margin money and the meeting was adjourned to 29.06.2021 only to get the revised final resolution plan for the approval of COC.

15. It was submitted that the Mr. Chellappa Gounder Sivasami and Mr.Jana Bharathi has filed with the revised plan on 29.06.2021, in adherence to SIDBI requirements i.e. commercials and the Applicant/RP has duly verified the plan and found the Resolution Plan submitted met the conditions laid down in the Sec. 30(2) of the Code. The summary of the Resolution Plan Proposed in the Resolution Applicant as follows:

Payment Plan	Amount (InRs.)	Remarks
At the time of Submission of plan	46,25,000	This will be kept in Escrow Account and will not be distributed to any of the stakeholders until AA Approval
Within 180 Days from the date of NCLT Approval	9,64,75,000	Remaining amount will be disbursed to the stakeholders
Total	10,11,00,000	

** Note the above amount will be deposited in the escrow account and the same will be distributed to the stakeholders.

16. It was submitted that the Resolution Plan ensures the revival and continuity of business along with most effective use of the Corporate Debtor business. With a view of maintaining the spirit of the Code, the Resolution Applicant wished to take over to revive and manage the Corporate Debtor's entity as same as a "Going Concern" thereby keeping the brand value intact. The Resolution Applicant will pay 60.49% i.e. Rs 9.80 Crore of the total claim of Rs.16,20,23,215/- to the financial creditor. It was submitted that the resolution applicant has already paid a sum of Rs 46.25 lakh in separate escrow account as security deposit and balance amount as per the Resolution Plan will be paid within 180 days from the effective date of approval of this plan by this Tribunal.

17. It was further submitted that the Resolution professional placed the resolution plan as submitted by the Resolution Applicants to the Committee of Creditors in accordance with section 30(3) of the code r/w Regulation 39(2) of the CIRP Regulations 2016 for consideration /approval of the CoC in its 10th CoC meeting held on 29th June 2021. The committee had detailed discussion on the resolution plan submitted the CoC observed the following while approving the Resolution Plan:

a) it provides for payment of entire CIRP cost.

b) it provides for payment to operational creditor.

c) it addresses the cause of default.

d) it is feasible and viable as the resolution applicant proposes to pay @100% of the principal due to the financial creditors,

e) the Resolution applicant has the capacity to implement the resolution plan and will arrange the settlement amount from their own sources, investors, friends, and relatives within the time limit as provided in the plan.

f) on settlement of Rs 9.80 crores by the resolution applicant, the financial creditor will release all collaterals, personal guarantees, legal cases.

g) it has proposed for its effective implementation within180 days from the date of approval of NCLT.

h) as only one plan is submitted for consideration application of evaluation matrix does not arise.

i) it has provision for approval required and the timelines for the same.

j) the resolution applicant has the capacity to implement the resolution plan.

18. The details of the liabilities of the Corporate Debtor are as follows;

Sl. No.	Particulars	Amount Claimed	Amount Admitted
A	**Financial Creditors -Secured**		
	Small Industries Development Bank of India	16,20,23,215	16,20,23,215
	Sub-Total - A	16,20,23,215	16,20,23,215
B	**Operational Creditors**		
	Sushi EnvroChem	19,03,955	19,03,955
	Sub-Total - B		
C	Statutory Liabilities	-	-
	GRAND TOTAL (A+B+C)	16,39,27,170	16,39,27,170

19. The summary of payment particulars as follows:

Payee	Amount Claimed	Admitted Liabilities per IM	Liability proposed by Resolution Applicant	% of Claim	Remarks
CIRP Costs			30,00,000	100	Note 1
Financial Creditors	16,20,23,215	16,20,23,215	9,80,00,000	60.49	Note 2
Operational Creditors	19,03,955	19,03,955	1,00,000	5.25	Note 3
Total	16,39,27,170	16,39,27,170	10,11,00,000		

20. 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 with the Mandatory compliance under the IBC *vis-à-vis* the Compliance made under the Resolution Plan is captured hereunder;

MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS	**COMPLIANCE UNDER RESOLUTION PLAN**
S. 30(1) - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	Clause I of the Resolution Plan states that the Resolution Applicant does not suffer from any ineligibility under Section 29A of IBC, 2016.
S. 30(2)(a) - Payment of Insolvency and Resolution cost in the manner specified by the Board	Clause IV – 1 of the Resolution Plan provides payment of the CIRP costs in priority.
S. 30(2)(b) - Payment of debts of Operational Creditors in such manner as may be specified by the Board, which shall not be less that the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under Sec. 53	Clause IV – 3 of the Resolution Plan deals with the payment of money to the Operational Creditors.
Reg. 38(1) - Resolution Plan identifies specific source of funds that will be used to pay the (a) Insolvency Resolution Process cost? (b)Liquidation value due to Operational Creditors? (c) Liquidation value due to dissenting financial creditors	Clause IV – 3 of the Resolution Plan deals with the Source of Funds and also deals with the Treatment of the CIRP costs.
Reg. 38(1A) - Resolution Plan shall include a statement as to how it has dealt with the interest of all the stakeholders, including financial	Clause 3.1 of the Resolution Plan and sub clauses thereunder enumerates how the interest of all the stakeholders including

creditors and operational creditors of the Corporate Debtor	operational and financial creditors has been dealt with under the Resolution Plan.
S. 30(2)(c) - Management of the affairs of the Corporate Debtor after approval of the Resolution Plan	Clause 6.1 of Part – IV of the Resolution Plan deals with the Management and Control and Implementation of Terms in relation to the Resolution Plan.
S. 30(2)(d) - Implementation and Supervision of the Resolution Plan **and** **Reg. 38(2)** – Resolution Plan shall provide: a) term of plan and its implementation schedule b) management and control of the business of the Corporate Debtor during its term; c) it has provisions for effective implementation d) it has provisions for approval required and the timeline for the same; and e) the Resolution applicant has the capability to implement the Resolution Plan.	Clause V of the Resolution Plan deals with the Implementation and supervision of the Resolution Plan and it shall comprise of (i) the Resolution Professional (ii) one representative of the Resolution Applicant (iii) one person from SIDBI.
S. 30(2)(e) - Does not contravene any of the provisions of the law for the time being in force	The Resolution Professional in Form – H has certified that the Resolution Plan complies with all the provisions of IBC, 2106 and does not contravene any of the provisions of the law for the time being in force.
S. 30(4) - 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	The CoC, in its 10th meeting held on 29.06.2021 with a 100% voting share has approved the Resolution Plan.

21. As to the Relief and Concessions sought in the Resolution Plan, taking into consideration the Judgments of the Hon'ble NCLAT, and more particularly the decision of the Hon'ble Supreme Court of India in the matter of **Embassy Property Developments Pvt. Ltd. –Vs- State of Karnataka & Ors.** in *Civil Appeal No. 9170 of 2019*, we direct the Resolution Applicant to file necessary application before the necessary forum / authority in order to avail the necessary Relief and Concessions, if it is in accordance with law.

22. 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."

23. 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).

24. 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. <u>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.</u>
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> 58. <u>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.</u> 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)

25. 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)

26. 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.
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> 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.

27. 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.

28. On perusal of the documents on record, we are also satisfied that the Resolution Plan is in accordance with sections 30 and 31 of IBC, 2016. 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. In case of non-compliance of this order or withdrawal of Resolution Plan, the performance guarantee amount already paid by the Resolution Applicant shall stand forfeited, in addition to the Resolution Applicant being liable for any other action as per law.

29. 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 Application, if required, in connection with implementation of this Resolution Plan. The RP shall stand discharged from his duties with effect from the date of this Order. He shall, however, perform his duties in terms of the Resolution Plan as approved by this Adjudicating Authority.

30. 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. Accordingly, IA(IBC)/643(CHE)/2021 stands **allowed**.

-SD-

ANIL KUMAR B
MEMBER (TECHNICAL)

-SD-

Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)

Raymond