

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI, BENCH-V**

I.A. No. 3612 of 2023

IN

C.P. No. 518 of 2022

In the matter of an Application under
Section 30(6) and Section 31 of the
Insolvency and Bankruptcy Code, 2016.

**Rajan Deshraj Agarwal,
(Resolution professional of Sristi
Hospitality Pvt Ltd)**

...Applicant/Resolution Professional

V/s

**Consortium of Admas Industries
Pvt Ltd, Subh Ashish Exim Pvt Ltd and Mr. Amit Jatia**

..... Respondent

In the matter of

Saraswat Co-operative Bank Ltd

... Financial Creditor

V/s.

Sristi Hospitality Pvt Ltd

... Corporate Debtor

Order Dated :12.07.2024

Coram:

Hon'ble Ms. Reeta Kohli

Member (Judicial)

Hon'ble Ms. Madhu Sinha

Member (Technical)

Appearance:

For the Applicant/RP: Adv. Amir Arsiwala (PH)

For the Respondent: Manoj Kumar Mishra

ORDER

1. The above captioned Application was filed under Section 30(6) and Section 31, of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**”) by the Resolution Professional (hereinafter referred as the “**Applicant**”), seeking approval of the Resolution Plan, submitted by the Resolution Applicant – Consortium of Admas Industries Pvt. Ltd, Subh Ashish Exim Pvt Ltd and Mr Amit Jatia, which was approved by 100% voting shares of the members of the Committee of Creditors (hereinafter referred to as ‘**COC**’).

2. The facts leading to the Application are as under:
 - a. Corporate Insolvency Resolution Process (**CIRP**) of the Corporate Debtor was initiated, vide an order dated 27.02.2023, under Section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as ‘**the Code**’) and Mr. Rajan Dashraj Agarwal, was appointed as Interim Resolution Professional. The IRP, constituted the Committee of Creditors. The COC in its 1st meeting held on 29.03.2023 appointed **the present Applicant** as the Resolution Professional. The IRP published a public announcement as per Section 15 of the Code, inviting claims from the creditors of the Corporate Debtor.

 - b. The Applicant published a Public Announcement in Form A in accordance with Section 15 of the Code read with Regulation 6 of the CIRP Regulations, on 02.03.2023, inviting submission of proof of claims from the creditors of the Corporate Debtor, on or before 13.03.2023.

 - c. The claims **received** and **accepted** by Interim Resolution Professional are as under:

Creditors	Claims Received	Claims Admitted
Secured Financial Creditor(Saraswat Co-op Bank Ltd)	29,78,73,126	29,78,73,126
Operational Creditors (1. K.K Financial Services Limited 2. Touch of Class Food Pvt. Ltd. 3. BMC-Property Tax)	1,59,84,998 89,16,408 31,91,120	96,37,700 0 31,91,120
Other Debts 1.Hardcastel Restaurant Pvt Ltd.(towards Water Charges) 2.Hardcastel Restaurant Pvt. Ltd(towards Deposit paid for conducting Agreement)	9,08,600 1,25,00,000	9,08,600 1,25,00,000
Total	33,93,74,252	32,41,10,546

3. After receiving the claims, the Committee of Creditors was constituted. The constitution of COC is as under:

Sr. No.	Name of the	Claim Received	Claim admitted	Voting Share (percentage %)
1.	Saraswat Co-op. Bank Ltd.	29,78,73,126	29,78,73,126	100%
2.	Mr. Santosh Shetty (Related)	1,98,35,710	0	0
3.	Mr. Aditya Shetty (Related)	22,57,093	0	0
4.	Ms. Girvani Shetty	72,84,771	0	0

4. The CoC decided to appoint valuers. The Resolution Professional accordingly appointed five Registered Valuers namely:

Sr. No.	Valuer Name	Asset Classification	Valuer fees
1.	Ashwin Vasu Shetty	Land and Building	Rs. 40,000/-plus GST
2.	Modilal Pamecha	Fixed Assets	Rs. 20,000/-plus GST
3.	Yogesh Rasal	Plant and Machinery	Rs. 20,000/-plus GST
4.	Pravin Navandar	Financial Assets	Rs. 20,000/-plus GST
5	AAA Valuation Professional LLP	Land & Building Plant & Machinery	Rs. 30,000/-plus GST Rs. 20,000/-plus GST

for conducting valuation across different asset classes, namely Land & Building, Plant & Machinery and Securities and Financial Assets to determine its fair value and liquidation value, as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016.

5. These Registered Valuers submitted their reports. **The Liquidation and fair value** is stated as under:

Fair Value and Liquidation Value :-

Sr No.	Name of the Valuer and Asset Description	Fair value (in Rs.) Valuer 1	Liquidation Value (in Rs.)
1.	AAA Valuation Professional LLP (Plant and Machinery)	1,33,000	93,000
2.	Yogesh Rasal (Plant and Machinery)	1,07,500	86,000
3.	Ashwin Shetty (Land and Building)	44,06,11,720	33,04,58,790
4.	AAA Valuation Professional LLP (Land and Building)	35,04,91,956	26,28,68,967
5.	Pravin Navandar (Financial Assets)	7,65,564	7,65,564
6.	Modilal Pamecha (Financial Assets)	8,40,315	8,40,315

6. The Applicant submits that for inviting Expression of Interest (“EOI”) from Prospective Resolution Applicants as per section 25(2)(h) of the Code, Form G was published on 16.05.2023. **The last date for submission of Expression of Interest (EOI) from Prospective Resolution Applicants was 15.06.2023.**
7. The Applicant further Submitted that in 4th meeting of the COC the COC approved the minimum eligibility criteria, Request for Resolution Plan (**RFRP**) along with evaluation matrix and the Information Memorandum to the PRAs on 12.06.2023.
8. On 20.06.2023, 3 (three) Resolution Plans were received for the Corporate Debtor from the following PRAs (“**Resolution Applicants**”/“**RAs**”)):
 - (a) Consortium of Satish Manohar Phalke & Ors.
 - (b) Krishna Sheet Processors Private Limited
 - (c) Consortium of Admas Industries Private Limited & Ors.
9. **The COC, in its 7th meeting held on 05.08.2023, approved Resolution Plan submitted by Consortium of Admas Industries Private Limited & Ors with a voting share of 100%. Thereafter, the Applicant has issued compliance certificate in Form “H”.**
10. **The Salient Features of the Resolution Plan are as under:**
 - A. Brief Background of the Corporate debtor**
 - i. Sristi Hospitality Pvt Ltd (hereinafter “**Corporate Debtor**”), is a company incorporated under the Companies Act, 2013 on 08.08.2003, having its registered office at Liberty Lodge, Final Plot No.80-B, CTS No.1217 TPS III,Vile Parle (W), Mumbai -400 056.

- ii. The Corporate Insolvency Resolution Process (“**CIRP**”) of Sristi Hospitality Pvt Ltd has been initiated as per the provisions of the Insolvency and Bankruptcy Code (“**IBC**”) under Section 7. The application was moved before the Hon’ble National Company Law Tribunal, Mumbai Bench (“**NCLT**”) and was admitted vide its order dated 27.02.2023 (“**CIRP Order**”). Pursuant to such order, Mr. Rajan Deshraj Agarwal, (having IP Registration no. IBBI/IPA-001/IP-P01069/2017-2018/1176 Insolvency Professional, was appointed as the Interim Resolution Professional (**IRP**).

B. Background of the Resolution Applicant

- i. **ADMAS INDUSTRIES PRIVATE LIMITED** is a part of the group promoted by Mr. Amit Jatia. The objects include the business of construction of buildings and other civil constructions, operating and running hotels, restaurants etc. and also to purchase, hold, lease and deal with immovable properties.
- ii. **SUBH ASHISH EXIM PRIVATE LIMITED** is a part of the group promoted by Mr. Amit Jatia. The objects include the business of construction of buildings and other civil constructions, operating and running hotels, restaurants etc. and also to purchase, hold, lease and deal with immovable properties.
- iii. **AMIT JATIA** is an Indian entrepreneur who is often pegged as the pioneer of Western Fast Food in the country. He is the man who introduced India to McDonald’s Golden Arches and built McDonald’s as one of the most loved food brands in the nation.

The Resolution Applicant is eligible to act as a Resolution Applicant of the Corporate Debtor and is not ineligible under section 29A of Insolvency and Bankruptcy Code and also satisfies the eligibility criteria as mentioned in clause (h) of sub-section (2) of section 25 of the Code.

11. Summary of Payments under the Resolution Plan

Sr. No	Category of Stakeholders	Amount Claimed	Amount Admitted	Amount provided under the Resolution Plan	Amount Provided to Amount Claimed (%)
1	CIRP Cost	15,50,000 including Regulatory fees payable to IBBI and incentives payable to the Resolution Professional as per the provisions of CIRP Regulations	15,50,000 including Regulatory fees payable to IBBI and incentives payable to the Resolution Professional as per the provisions of CIRP Regulations	At actuals*	100%
2	Secured Financial Creditors	29,78,73,126	29,78,73,126	29,78,73,126	100%
3	Unsecured Financial Creditors	2,93,77,574	0	0	0
4	Operational Creditors	2,80,92,526	1,28,28,820	1,28,28,820	100%
5	Other Creditors	1,34,08,600	1,34,08,600	9,08,600	6.78%
	Total	36,92,17,677	32,45,76,397	31,16,10,546 + CIRP Cost at Actuals	

12. Sources of Funds

Sr. No	Amount	Instruments for infusion
1	INR 5,00,000	Subscription to Equity Shares of the Corporate Debtor
2	INR 31,16,10,546 (Indian Rupees Thirty One Crores Sixteen Lakhs Ten Thousand Five Hundred Forty Six Only) plus CIRP Cost	Towards settlement of Creditors

The Resolution Applicant has liquid investments of over INR 32,00,00,000 (Indian Rupees Thirty-Two Crores Only). Therefore, the Resolution Applicant has adequate capacity and a ready ability to honor their commitment being made in this Resolution Plan. Documentary Proof

towards liquid investments is enclosed with this Plan as **Annexure – “A”**

Payments proposals of the various stakeholders under the Resolution Plan:

A. CIRP Costs

- i. The Resolution Applicant proposes to make payment of entire CIRP Costs incurred until the NCLT Approval Date including Regulatory fees payable to IBBI and incentives payable to the Resolution Professional as per the provisions of CIRP Regulations in priority over payments towards or settlement of claims and debts of Creditors as specified in this Resolution Plan on 46th (Forty – Sixth) day from the NCLT Approval Date provided that there is no stay on implementation of the Resolution Plan by any court / tribunal or Appellate Authority.
- ii. Once the CIRP Costs have been paid in full as set out above, it is clarified that no claims, liabilities, fines, costs, expenses or any other payment of such nature or otherwise, that are or are claimed to constitute CIRP Costs shall be payable by the Resolution Applicant or the Corporate Debtor.

B. Treatment to Operational Creditor

- i. As per the list of Creditors available as on 14 July 2023, the Resolution Applicant understands that the claims by Operational Creditors of the Corporate Debtor amounts to INR 2,80,92,526 (Indian Rupees Two Crores Eighty Lakhs Ninety-Two Thousand Five Hundred Twenty-Six Only) out of which claims aggregating to INR 1,28,28,820 (Indian Rupees One Crore Twenty Eighty Lakhs Twenty-Eight Thousand Eight Hundred and Twenty Only) have been verified and admitted by the Resolution Professional. **(“Admitted Operational Creditors Debt”).**
- ii. The Resolution Applicant will make entire payment of Admitted Operational Creditors Debt amounting to INR 1,28,28,820 (Indian Rupees One Crore Twenty Eighty Lakhs Twenty-Eight Thousand Eight Hundred and Twenty Only) on 46th (Forty – Sixth) day from

the NCLT Approval Date towards full and final settlement of amounts due and payable to the Operational Creditors.

Treatment of Secured Financial Creditors

- i. As per the List of Creditors available as on 14 July 2023, the Resolution Applicant understand that the claim by Secured Financial Creditor of the Corporate Debtor amounts to INR 29,78,73,126 (Indian Rupees Twenty-Nine Crores Seventy-Eight Lakhs Seventy-Three Thousand One Hundred and Twenty-Six Only) and the entire amount has been verified and admitted by the Resolution Professional for the purposes of CIRP for the Corporate Debtor (**“Admitted Secured Financial Creditor Debt”**).
- ii. The Resolution Applicant will make entire payment of Admitted Secured Financial Creditor Debt amounting to INR 29,78,73,126 (Indian Rupees Twenty-Nine Crores Seventy-Eight Lakhs Seventy-Three Thousand One Hundred and Twenty-Six Only) on 46th (Forty – Sixth) day from the NCLT Approval Date towards full and final settlement of amounts due and payable to the Secured Financial Creditor.

Treatment of Unsecured Financial Creditors

- i. As per the list of Creditors available as on 14 July, 2023, the Resolution Applicant understands that the claims by Unsecured Financial Creditors of the Corporate Debtor amounts to INR 2,93,77,574 (Indian Two Crores Ninety-Three Lakhs Seventy-Seven Thousand Five Hundred and Seventy-Four Only) has been **rejected by the Resolution Professional**.

Treatment of Other Creditors

- i. As per the list of Creditors available as on 14 July 2023, the Resolution Applicant understands that the claims by Other Creditors of the Corporate Debtor amounts to INR 1,34,08,600

(Indian Rupees One Crore Thirty-Four Lakhs Eight Thousand and Six Hundred Only) and an amount of INR 1,34,08,600 (Indian Rupees One Crore Thirty-Four Lakhs Eight Thousand and Six Hundred Only) has been verified and admitted by the Resolution Professional. (**“Admitted Other Creditors Debt”**).

- ii. The Resolution Applicant will make payment of INR 9,08,600 (Indian Rupees Nine Lakhs Eight Thousand Six Hundred Only) on 46th (Forty – Sixth) day from the NCLT Approval Date.
- iii. A sum of INR 1,25,00,000 (Indian Rupees One Crore Twenty-Five Lakhs Only) out of the Admitted Other Creditors Debt is towards the interest free refundable security deposit payable under the Conducting Agreement - Hardcastle Restaurants Private Limited. The aforesaid security deposit shall continue to be a debt in the books of the Corporate Debtor and the same shall be paid as per the terms and conditions of the Conducting Agreement - Hardcastle Restaurants Private Limited.

Treatment on litigation and violations

- i. All monetary liabilities, whether known or unknown, related to the Corporate Debtor up to the NCLT Approval Date will be treated as Operational Debt or debt to Other Creditors in the Resolution Plan. These liabilities are considered due from the Insolvency Commencement Date and will be paid as part of the Total Resolution Amount.
- ii. The Total Resolution Amount towards the Stakeholders will be paid as per clause 9.3 of this Resolution Plan. In the event, any litigations or legal proceedings are instituted in relation to the Resolution Plan or matters pertaining to the Corporate Insolvency Resolution Process of the Corporate Debtor then the Resolution Applicant shall make the payment of the Total Resolution Amount within 7 (Seven) Business Days from the date the approval granted by the NCLT sanctioning the resolution plan attains finality.

Payments to Creditors submitting claims after approval of the Resolution

Plan/persons whose claims were not accepted by the Resolution Professional

Except as otherwise agreed by the Resolution Applicant, any claims which are not admitted or accepted by the Resolution Professional shall stand extinguished by virtue of the order of the NCLT approving this Resolution Plan. For avoidance of doubt, it is clarified that even if any claims or amounts are admitted at a stage after the submission of this Resolution Plan for any reason whatsoever, then the same (or any part thereof) may be paid out of the Total Resolution Amount without any further additional liability on the part of the Resolution Applicant.

13. Implementation Schedule:

Implementation of the Resolution Plan shall commence from the NCLT Approval Date. Subject to Clause 5.6. (ii), the Resolution Applicant will undertake the following steps to implement the Resolution Plan in the indicative timeline provided below for the implementation of the Resolution Plan:

Sr. No.	Activity	Timeline
1	Statutory Compliances by RP until by NCLT Approval Date	A
2	NCLT Approval Date	T
3	Formation of Monitoring Committee	T+5 days
4	CIRP Cost to be paid	T + 46 th Day
5	Payment to Operational Creditors	T + 46 th Day
6	Payment to Secured Financial Creditor	T + 46 th Day
7	Payment to Other Creditors	T + 46 th Day
7	Cessation of existing Directors and induction of New Board	T + 46 th Day
8	Cessation of existing equity shares and acquisition of 100% shares by RA	T + 46 th Day
9	Satisfaction of charge on the assets of the Corporate Debtor by Financial Creditors and Issuance of No Dues Certificate and other necessary documents for satisfaction of charge to the Corporate Debtor/Resolution Applicant	T+ 46 th Day

14. Earnest Money Deposit

The Resolution Applicant has submitted Earnest Money Deposit of INR 50,00,000 (Indian Rupees Fifty Lakhs Only) along with this Resolution Plan.

15. Monitoring Committee

The Monitoring Committee shall comprise of 3 (Three) members comprising of the following:

- a) 1 (One) Nominee/Representative of the Secured Financial Creditor
- b) 1 (One) Nominee/Representative of the Resolution Applicant and
- c) The Resolution Professional.

The Monitoring Committee shall be constituted within 5 (Five) Business Days of NCLT Approval Date and pending constitution of the Monitoring Committee, the Resolution Professional shall be authorised to exercise all his powers and shall observe all its duties in accordance with the Code.

16. The compliance of the Resolution Plan is as under:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	6	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	11	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?		Yes
Section 30(2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs?	5.1	Yes
	(b) provides for the payment to the operational creditors?		
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	5.2	Yes
	(d) provides for the management of the affairs of the corporate debtor?	5.3	Yes
	(e) provides for the implementation and supervision of the resolution plan?		
	(f) contravenes any of the provisions of the law for the time being in force?	7	Yes
		7 & 9	Yes
		4.11	Yes

Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	CoC Resolution No.9 C	Yes Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	5	Yes
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	5.2	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	5	Yes
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	10.20 NA	No No
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	7	Yes
38(3)	Whether the resolution plan demonstrates that – (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	2(v) 6 & 7 6, 7 & 9 9 6, 7 & 9	Yes Yes Yes Yes Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		Transactions observed, found & determin

			ed. Applicati on is still to be filed as report of Transacti on Auditor is awaited.
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.		Rs. 5.00 crores received by RTGS transfer to the bank account of the CD.

Observations and Findings:

- i. As per IBC Code 30(2)(a) – A Resolution Plan provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor.
- ii. As per Section 30(2)(b), the Respondent has agreed to pay Operational Creditors an amount which shall not be less than liquidation value or the amount that would have been paid to such creditors if the amount to be distributed under the Resolution Plan is distributed in accordance with priority under Section 53(1), whichever is higher.
- iii. The Resolution Applicant has also agreed that dissenting financial creditors shall be paid not less than the value they would have been paid in the event of liquidation of the Corporate Debtor.
- iv. The plan provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan. Section 30(2)(d).
- v. The Resolution Plan does not contravene any of the provisions of the law for the time being in force - Resolution Plan provides for the implementation and supervision of the resolution plan

as per Section 30(2) (e)

- vi. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force as per Section 30(2)(f).
- vii. The resolution applicant or any of its related parties has not 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.
- viii. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:
 - a. The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors. Regulation 38(1).
 - b. The Resolution Plan has all the adequate means of supervising of the implementation of the Plan as required under Regulation 38(2) (c), of the IBBI, Insolvency resolution process for corporate persons, Regulation 2016.
 - c. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company (Regulation 38(1)(a)).
 - d. Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
 - e. The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.
 - f. The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a resolution plan under Section 29A of the Code and other provisions of the Code and any other Applicable Law.
 - g. The plan provides for the management and control of the business of the Corporate Debtor during its term.

- h. All the above factors demonstrate that the plan address as the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.
 - i. That the Resolution Applicant or any of its related parties has never 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. This is in compliance of Regulation 38(1)(b) of the Regulations.
 - j. The interests of all stakeholders (including Financial Creditors, Operational Creditors and other creditors, guarantors, members, employees and other stakeholders of the Company, keeping in view the objectives of the Code (Regulation 38(1A)).
17. The Resolution Plan has been approved in the 7th COC meeting held on 05.08.2023 with 100% voting in accordance with the provisions of the Code.
18. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150*** the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

19. In ***India Resurgence Arc Private Limited vs. Amit Metaliks Limited and Ors. (2021)*** the Hon'ble Apex Court held that the process of consideration and approval of resolution plan is essentially within the commercial wisdom of Committee of Creditors (CoC). The scope of judicial review remains limited under Section 30(2) of the Insolvency and Bankruptcy Code (IBC), 2016 by which the court would examine that the resolution plan does not contravene any statutory provisions and it conforms to such other requirements as may be specified by the Board. The court held that the process of judicial review cannot be stretched if all the above-mentioned requirements have been duly complied with and that dissenting financial creditor, expressing dissent over the value of security interest held by it, cannot seek to challenge an approved Resolution Plan. Lastly, it was held that Section 30 of the IBC, 2016 only amplified the considerations for the CoC while exercising its commercial wisdom so as to take an informed decision in regard to the viability and feasibility of resolution plan, with fairness of distribution amongst similarly situated creditors; and that the business decision taken in exercise of the commercial wisdom of CoC does not call for interference unless creditors belonging to a class being similarly situated are denied fair and equitable treatment.
20. The Hon'ble Apex Court at para 42 in ***Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC Online***, has clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved.

“Para 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)."

Reaffirming the principal set forth in the matter of ***Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC Online***, the Hon'ble Supreme Court in the matter of ***Maharashtra Seamless Limited vs Padmanabhan Venkatesh and Ors*** held that "there is no provision in the Regulations or Code which provides that the bid of any Resolution Applicant has to match the liquidation value. It further articulated that the object behind prescribing such a valuation process is to assist the CoC to take decisions 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 just to test the Resolution Plan with reference to provisions of Section 30(2) of the Code."

21. The Hon'ble Supreme Court in ***Ghanashyam Mishra and Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*** has clearly established that the once a Resolution Plan is approved by the Adjudicating Authority (AA), the same, irrespective of whether or not they participated in the CIRP, binds all creditors and any claims not forming part of the approved Resolution Plan shall stand extinguished.

"with respect to any statutory dues owed/claims raised in relation to the period prior to the 2019 Amendment, the resolution plan shall still be binding on the statutory creditors concerned, and the statutory dues owed to them, which were not included in the resolution plan, and such claims shall stand extinguished."

22. Regarding to the Relief and Concessions the Resolution Applicant will approach all the consent Authorities for reliefs and concessions, if any hindrance faced by the Resolution Applicant from any Authority at latter stage, the Resolution Applicant may approach the Tribunal after the sanction of the Plan. The carry forward loses if any are permitted under Section 79 of the Income Tax Act 1961. The law has been well settled by the Hon'ble Supreme Court in the case of ***Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors.*** in the following

words :

- I. *"The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plan would go haywire and the plan would be unworkable.*
- II. *87. We have no hesitation to that the word "other stakeholders" would squarely cover the Central Government any State Government or any local authorities. The legislature, noticing that on account of obvious omission certain tax authorities were not abiding by the mandate of I&B Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief...*
- III. *In view of the above we hold that the Resolution Applicant cannot be saddled with any previous claim against the Corporate Debtor prior to initiation of its CIRP..."*
- IV. *Consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued."*

23. In view of the above cited case law, the legislature has given paramount importance to the commercial wisdom of committee of creditors (CoC) and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent of scrutiny provided under section 31 of Code and the direction of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code.

24. In view of the discussions, this Bench is of the considered view that the instant Resolution Plan meets the requirements of Section 30(2) of the

Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The Resolution Plan is feasible and viable. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.

ORDER

- a) The Interlocutory Application No. 3612 of 2023 is **allowed**. The Resolution Plan submitted by **Consortium of Admas Industries Pvt Ltd, Subh Ashish Exim Pvt Ltd and Mr. Amit Jatia**, is hereby approved. **It shall become effective from this date and shall form part of this order.** It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force is due.
- b) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- c) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- d) The Monitoring Committee shall supervise the implementation of the Resolution Plan and shall file status of its implementation before this Authority from time to time, preferably every quarter.
- e) The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.

- f) The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- g) The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- h) The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.
- i) The Registry is directed to send copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- j) The Interlocutory Application **No. 3612 of 2023** is accordingly **allowed**.

SD/-
Madhu Sinha
Member (Technical)
/priyanka/

SD/-
Reeta Kohli
Member (Judicial)