

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**MUMBAI BENCH, COURT-II**

**IA No. 2573/2021**

**In**

**CP (IB) 4367/MB/ of 2018**

Under Section 60 (5) r/w section 30 and 31 of the  
Insolvency and Bankruptcy Code, 2016

**Small Industrial Development Bank of India  
(SIDBI)**

Jeevan Shree Building, Ground Floor, S. No.  
1109, Plot No. 488, Pune University Road, Near  
Pune Central, Pune – 411 016.

**... Applicant/CoC Member**

V/s

**Harshad Deshpande**

403, Kumar Millennium, Shivatirtha Nagar  
Kaman, Opp Krishna Hospital, Paud Road,  
Kothrud, Pune, Maharashtra – 411 038.

**... Respondent No. 1**

**Bank of India**

Star House, C 54 Block, Bandra Kurla  
Complex, Mumbai – 400 051.

**... Respondent No. 2**

**IN THE MATTER OF**

**Altair Industrial Technologies Private Limited**

**... Corporate Debtor**

**Order delivered on :- 25/10/2024**

**Coram:**

**Anil Raj Chellan**  
**Member (Technical)**

**Kuldip Kumar Kareer**  
**Member (Judicial)**

**Appearances:**

**For the Applicant** : Counsel, Priyank Jadav a/w Ayush Rajani, Mitali Bhatt  
**For the Respondent No. 1/RP:** Counsel, Avinash R Khanolkar a/w Khushbu Bhanushali  
**For the Respondent No. 2 :** Counsel, Rakesh Gupta  
**For the Resolution Applicant:** Counsel, Nausher Kohli a/w Dikshat Mehra and H. Chandani

**ORDER**

***Per: - Anil Raj Chellan, Member (Technical)***

1. The present application is filed by the Applicant under Section 60(5) read with Sections 30 and 31 of the Insolvency and Bankruptcy Code, 2016 ('the Code') seeking the following reliefs:
  - (a) To pass necessary orders declaring the act of Respondents in accepting unsolicited resolution plans more than once as it is against the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2021 notified on 30.09.2021 and effective from 01.10.2021.
  - (b) Direct Respondent No. 1 to not accept a resolution plan from the proposed prospective Resolution Applicant, being the suspended Director, where "personal guarantees" stand to be extinguished which is a settled law that a resolution plan acceptance does not absolve the personal guarantor from their liabilities.

- (c) Declare the proposed Resolution Plan dated 18.10.2021 is in violation of the provision of section 30 of the Code since it is “conditional in nature”.
- (d) Pass necessary orders directing that the decision of Respondent No. 2 on the resolution plan having the requisite voting rights in excess of 66% in so far as compelling the Applicant to extinguish its legal rights to pursue appropriate action against the personal guarantors shall not be binding on the Applicant.

**Facts of the case as submitted by the Applicant:**

2. On an application filed under Section 10 of the Code, Altair Industrial Technologies Private Limited (‘the Corporate Debtor’) was admitted to the Corporate Insolvency Resolution Process (‘CIRP’) vide order dated 26.02.2019 passed by this Tribunal and Mr. Sunil Gajanan Nanal was appointed as the Interim Resolution Professional. Subsequently, Mr. Harshad S. Deshpande, the Respondent No. 1 herein was appointed, as Resolution Professional by an order dated 23.07.2019.
3. The Applicant is a member of the Committee of Creditors (CoC) with an admitted claim of Rs. 3,14,01,973/- and has a voting share of 8.05%. Respondent No. 2 is the other member of the CoC with 91.95% of the voting share.
4. The Applicant states that Respondent No.2 has agreed to consider the

Resolution Plan submitted by the suspended director which is not compliant with the provisions of the Code and directed the RP/ Respondent No.1 to place the resolution plan for e-voting. Accordingly, the Resolution Plan submitted by the suspended Director was voted upon and the voting would conclude on 25.10.2021.

5. The Applicant states that Respondent No.1 has failed to perform his duties as required under the Code with regard to ensuring that only IBC-compliant resolution plans are to be placed before the CoC for its consideration.
  
6. The Applicant submits that the resolution plan submitted by the suspended Director proposes the extinguishment of liabilities under the personal guarantees which is bad in law and against the settled position. Part III of the Code has been notified specifically for initiating the resolution process against personal guarantors of the corporate debtor and under no circumstances does the Code envisage that upon approval of the resolution plan, the personal guarantees shall stand absolved. It is a settled law that the assets of the personal guarantors are not covered as part of the corporate debtor's assets during CIRP.
  
7. As against the Applicant's admitted claim of Rs.3,14,01,973/- (Rupees 3.15 crore) the proposed resolution plan is offering a mere Rs.10 lakh in

case of voting in favour of the resolution plan and just Rs.1 lakh in case of voting against the resolution plan and also provides for absolving their liabilities even under personal guarantees. At the same time, Respondent No.2 has been offered Rs.8.05 crores against their debt. This is nothing else but a clear differentiation of similarly placed secured financial creditors which is nothing but an abuse of the process under the Code.

8. IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2021 notified on 30.09.2021 restricted the number of submissions and revisions of a given resolution plan to not more than once w.e.f. 01.10.2021. However, Respondent No.1 has allowed the suspended Director to submit multiple revisions even after the effective date of the aforesaid amendment by accepting an unsolicited revised Resolution Plan dated 14.10.2021 and then again, the revised Resolution Plan dated 18.10.2021.
9. The Applicant further submits that Respondent No.1 has failed in his duties in so far as it relates to filing the appropriate application before this Tribunal under Sections 43, 45 and 66 as applicable considering the fact that there are adverse findings in the transaction audit report against the conduct of the suspended Director. Respondent No.1 deliberately

withheld and refrained from filing a suitable avoidance applications before the Tribunal to avoid disqualification under 29A of the Code.

10. Respondent No.1 has also deliberately misrecorded the proceedings of the CoC meeting held on 18.10.2021 by not recording the Applicant's objections.
11. On the above grounds, the Applicant objects to the approval of the resolution plan submitted by the suspended Director.

**Submissions of Respondent No. 1:**

12. Respondent No.1, the RP has denied the contentions of the Applicant and has submitted that the application is not maintainable.
13. Respondent No.1 states that the Resolution Plan submitted for approval is in adherence to the provisions of the Code which can be seen from the compliance certificate in Form H filed as per Regulation 39 (4) of the CIRP Regulations.
14. Respondent No.1 submits that the extinguishment of personal guarantee falls within the commercial wisdom of CoC and there is no provision in the Code which restricts such extinguishment.
15. Respondent No.1 submits that the initial resolution plan submitted by

the suspended director, when placed for the consideration of the CoC, was rejected by 91.95% of the voting and resolved for the liquidation of the Corporate Debtor. Accordingly, the Respondent filed an application (M.A. No. 3932 of 2019) seeking liquidation of the Corporate Debtor. During the pendency of the said application, the Resolution Applicant/suspended director moved an application (I.A. No. 963 of 2020) seeking appropriate directions for submission of the Resolution Plan and extension of the CIRP period which was allowed vide order dated 29.07.2021. Accordingly, the resolution plan was placed again before the CoC.

16. Respondent No.1 states that he has filed an application (IA. No. 124 of 2020) under the provisions of Section 66 of the Code and the same is still pending for adjudication. The pendency of such application does not bar the Resolution Applicant under Section 29A of the Code.
17. Respondent No.1 further states that as per the valuation report, the market value of the Corporate Debtor is Rs. 35,20,750/- and the liquidation value is Rs.20,04,590/- which is significantly below the resolution amount of Rs.11,43,23,000/-, as proposed by the Resolution Applicant. In the event of liquidation of the Corporate Debtor, the Applicant is not likely to get any amount as it holds only subservient

charge over the movable and immovable assets of the Corporate Debtor

18. In view of the facts and circumstances, the CoC in its wisdom has taken a decision to approve the only resolution plan.

**Submissions of the Respondent No. 2:**

19. The Respondent No. 2 has filed its reply affidavit denying the contentions of the Applicant. Respondent No.2 is a secured financial creditor of the Corporate Debtor with an admitted debt of Rs. 35,87,50,098/-constituting a voting share of 91.95%. Respondent No.2 has the first charge on the assets of the Corporate Debtor and also on the assets of the personal guarantors of the Corporate Debtor.
20. It is submitted that the 1<sup>st</sup> Resolution Plan offered Rs. 9,06,98,000/- as the resolution amount for the resolution of the Corporate Debtor to be paid over a period of 270 days from the date of passing the approval order and the last revised plan, as submitted on 18.10.2021, offered an amount of Rs. 11,42,23,000/- to be paid with a period of 180 days from the approval date. The final Resolution Plan dated 18.10.2021 was considered by the CoC in its meeting held on 22.10.2021 which was approved by Respondent No.2 and rejected by Applicant.
21. The Resolution Plan was considered by the CoC as per the provisions

of the Code. Since no other Resolution Plan was available and considering the fact that the CIRP was expiring on 27.10.2021 and the plan value was above the liquidation value, the resolution Plan was approved. The object of the Code is to maximize the value of the Corporate Debtor and the lead banker has time and again acted fairly in the best interest of all the Stakeholders of the Corporate Debtor including the operational creditors.

22. The contentions raised by the Applicant are not sustainable under law. The provisions of the Resolution Plan including the release of the personal guarantor are in accordance with the Code and the resolution plan provides for payment in accordance with the security interest held by each person.
23. The process envisaged under the Code is not a recovery proceeding and the Applicant is attempting to make the same look like one. This application is filed with the sole intent to derail the resolution which is not as per the Applicant's expectation in terms of recovery in complete disregard to the interest of the Corporate Debtor.
24. Respondent No.2 further submits that the objections of the Applicant cannot be sustained under law and the application is liable to be dismissed.

*Analysis:-*

25. We have heard the Counsel for the parties and have gone through the records.
26. It is noticed that CIRP was initiated on 26.02.2019 against the Corporate Debtor on a petition under Section 10 of the Code and the initial resolution plan submitted by the suspended directors of the Corporate Debtor was rejected by the CoC consisting of Applicant and Respondent No.2. The CoC at its meeting held on 19.11.2019 approved initiation of liquidation of Corporate Debtor and accordingly the Respondent No.1 filed an application (M.A. No. 3932 of 2019) for liquidation of the Corporate Debtor. During the pendency of the said application, the unsuccessful resolution applicant has filed another application (IA No. 963 of 2020) seeking an appropriate order for submission of the Resolution Plan and extension of the CIRP period. The said application stood allowed vide an order dated 29.07.2021.
27. Thereafter, the unsuccessful resolution applicant filed a revised resolution plan dated 18.10.2021 which was approved by the CoC at its meeting held on 18.10.2021(e-voting commenced on 22.10.2021 and concluded on 28.10.2021) with 91.95 voting in favour and the Applicant voting against the resolution plan. The Applicant immediately filed the

present application on 01.11.2021 raising certain objections to the resolution plan which was heard along with the application (IA No. 170 of 2022) filed by Respondent No.1 for approval of the resolution plan.

28. The Applicant submits that the resolution plan submitted by the suspended Director proposes to extinguish the liabilities under the personal guarantees which is bad in law and against the settled position. In support of the above contention, the Applicant points out that it is a settled position of law that the assets of the personal guarantors are not covered as part of the corporate debtor's assets during CIRP. Furthermore, the notification specifically for initiating the resolution process against personal guarantors of the corporate debtor under Part III of the Code establishes that under no circumstances does the Code envisage the release of personal guarantees upon approval of the resolution plan.
29. Per contra, the Respondents argued that the resolution plan containing a clause for the extinguishment of personal guarantees furnished by promoters as security for the financial assistance granted to the Corporate Debtor is not violative of the provisions of the Code. Further, giving effect to Part III of the Code allowing the initiation of the resolution process against the personal guarantors of the corporate

debtor has nothing to do with the approval of the resolution plan.

30. In SVA Family Welfare Trust & Anr v. Ujjas Energy Ltd & Ors (Company Appeal (AT) (Ins) 266 of 2023), the Hon'ble NCLAT upheld the commercial decision of CoC for extinguishing the personal guarantees of the financial creditors as part of the resolution plan. The appeal filed against the order before the Hon'ble Supreme Court was also dismissed vide its order dated 06.11.2023.

31. The present is a case where the promoters of the Corporate Debtor have submitted the resolution plan as permitted under Section 240A of the Code which deals with both the security interest of the Corporate Debtor and the personal guarantees of promoters. In addition, the personal properties of the personal guarantors are also forming part of the security created in favour of the financial creditors. In the circumstances, there are justifiable reasons for the expectation of composite resolution of debt of the Corporate Debtor. On the basis of the decision referred to above and the facts of the present case, we hold that the conscious decision of the CoC to extinguish the personal guarantees given to financial creditors including dissenting financial creditors does not contravene any of the provisions of the Code nor the same is justiciable.

32. As regards the contention that Respondent No.1 has violated the

provisions of Regulation 36A of the CIRP Regulations, it is observed that there was no revision in the invitation for expression of interest, but this Tribunal vide its order dated 29.07.2021 permitted the Respondent No.1 to place the Resolution Plan before the CoC and also granted the extension of the CIRP period. The Applicant, after having participated in four subsequent meetings of the CoC without challenging the order dated 29.07.2021 before the Appellate forum, cannot now raise a valid objection that the same is not in accordance with the provisions of the Code.

33. Another contention raised by the Applicant is with regard to the distribution of amounts among the financial creditors under the proposed Resolution Plan. It is submitted that as against the Applicant's admitted claim of Rs.3,14,01,973/- (Rupees 3.15 crore apprx.), the proposed resolution plan is offering a mere Rs.10 lakh in case it votes in favour of the resolution plan and just Rs.1 lakh in case it votes against the resolution plan. At the same time, Respondent No.2 has been offered Rs.8.05 crores against their debt of Rs. 35,87,50,098/-. According to the Applicant, this is nothing but a clear case of differential treatment being given to similarly placed creditors and amounts to gross abuse of the process under the Code.

34. In this regard, it is pertinent to notice the security interest and voting share of the two financial creditors. Respondent No.2 enjoys the first charge and mortgage on all the assets of the Corporate Debtor, the first charge on the personal assets of the promoters, and the personal guarantee of promoters. The voting share of Respondent No.2 is 91.95%. The Applicant, however, enjoys only residual/subservient charge on all movable assets of the Corporate Debtor and promoters' personal guarantee. The voting share of the Applicant is 8.05 %. As per the settled position of law, the subservient charge holder can recover/realize its dues only after the full satisfaction of the first charge. In the circumstances, although both Applicant and Respondent No.2 are secured financial creditors, by no stretch of the imagination can they be considered as equally placed with regard to the security interest.
35. The Applicant submits that the proposed resolution plan has offered a mere Rs.10 lakh in case of voting in favour of the resolution plan and just Rs.1 lakh in case of voting against the resolution plan. During the course of the argument, it has been brought to the notice of the Bench that the Applicant has voted against the Resolution Plan and hence, in the event of approval of the Resolution Plan by the Tribunal, it would be paid just Rs.1 lakh. The extent of the minimum amount receivable by a dissenting financial creditor is provided in Section 30(2)(b) of the

Code as per which it shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor. It is submitted that in the event of liquidation of the Corporate Debtor, the amount receivable as per the above security provision is Nil as the Applicant holds only subservient charge over the assets of the Corporate Debtor.

36. In the case of India Resurgence ARC Pvt. Ltd vs. Amit Metaliks Ltd & Another (Civil Appeal No.1700 of 2021), the Hon'ble Supreme Court observed;

*“ 11. It needs hardly any elaboration that financial proposal in the resolution plan forms the core of the business decision of Committee of Creditors. Once it is found that all the mandatory requirements have been duly complied with and taken care of, the process of judicial review cannot be stretched to carry out quantitative analysis qua a particular creditor or any stakeholder, who may carry his own dissatisfaction. In other words, in the scheme of IBC, every dissatisfaction does not partake the character of a legal grievance and cannot be taken up as a ground of appeal.*

37. In the circumstances, the dissatisfaction expressed by the Applicant with regard to the amount provided under the Resolution Plan cannot be a

valid ground to reject a resolution plan which was approved by the CoC in its commercial wisdom by the requisite majority.

38. Yet another contention raised by the Applicant is that the Resolution Applicant is not eligible to be a resolution applicant on account of the pendency of the application filed under Section 66 of the Code. With respect to the above, there is a catena of judgements delivered by the Hon'ble NCLAT more particularly in the matter of *Namdev Hindurao Patil Vs. Virendra Kumar Jain, Liquidator of Warana Dairy and Agro Industries Limited and other (Company Appeal)(AT) (Ins.) No. 858 of 2023 and IA No. 2925 of 2024* whereby it was held that the ineligibility for submission of the Resolution Plan would be determined by the date on which the Resolution Applicant submits his plan. Thus, it is evident that there was no disqualification on the date of submission of the Resolution Plan. Even otherwise, it is worth mentioning that this Tribunal disposed of the pending IA No. 124 of 2020 directing Mr. Anoop Anand, the suspended director to pay an amount of Rs. 1.99 crores to the Corporate Debtor under Section 66(1) of the Code which has been duly complied with by the said suspended director. Taking the above into account, we hold that the disqualification on account of the pendency of the avoidance application will not be attracted to Mr. Anoop Anand who is part of the Successful Resolution Applicant.

39. We thus are fully satisfied that the clause in the resolution plan for extinguishing the personal guarantees of promoters furnished in favour of all financial creditors or the commercial decision of the CoC to approve such release of personal guarantees, including guarantees executed in favour of descending financial creditors, will not contravene any provisions of the Code. Further, the dissatisfaction of a creditor in respect of payment under the Resolution Plan is of no consequence unless it violates any of the provisions of the Code.
40. In view of the foregoing discussions, we do not find any merits in the objections raised by the Applicant. Thus, **IA No. 2573 of 2021 stands dismissed**. No order as to costs.

**Sd/-**  
**Anil Raj Chellan**  
**Member (Technical)**

//SALAM//

**Sd/-**  
**Kuldip Kumar Kareer**  
**Member (Judicial)**