

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Virtual Hearing)**

**PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)
: SHRI SANJAY PURI – MEMBER (TECHNICAL)**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 25.04.2024 AT 01:30 P.M.

TC/CP. Nos.	CA/IA No.	Section / Rule	Name of Parties
TCP(IB)/73/9/AMR/2019	Admitted	9 of IBC	Omega Glass Private Limited Vs Ceasan Glass Private Limited
	IA(IBC)/20/2023	60(5) of IBC	Ch. V.N. Raghuram Gupta (Suspended Director) Vs. Ceasan Glass Private Limited (represented by Mr. G. Murali, RP); DBS Bank India Limited (R2) and Emerge Glass India Private Limited (R3)

ORDER

IA (IBC)/20/2023:

Present: Dr. S. V. Ramakrishna, Ld. Counsel for the Applicant.

Mr. VVSN Raju, Ld. Counsel for R2.

Mr. Ankit Singhal & Mr. Samyak Jain, Ld. Counsels for R3.

Mr. Gonugunta Murali, RP.

Orders pronounced. IA (IBC)/20/2023 is dismissed with cost Rs.50,000/- (Rupees Fifty Thousand Only) and recorded vide Separate Sheets.

Sd/-

**SANJAY PURI
MEMBER (TECHNICAL)**

Sd/-

**RAJEEV BHARDWAJ
MEMBER (JUDICIAL)**

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI**

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**IA (IBC)/20/2023
In
TCP (IB)/73/9/AMR/2019**

[Under section 60(5) of the Insolvency and Bankruptcy Code, 2016]

In the Matter of M/s CEASAN GLASS PRIVATE LIMITED

Between:

Mr. Ch. V. N. Raghurama Gupta
S/o. Ch. Lakshmi Narayan
Aged 48 years, Marvel House 1st floor,
Harihara Nagar 1st Line,
Near SSN Degree College,
Mangamur Road Ongole – 523225, A.P.
Suspended Director of Ceasan Glass Pvt. Ltd

...Applicant

And

- 1. M/s Ceasan Glass Private Limited**
Flat No. 1209, 11th Floor, Vasavi MPM Grand,
Yella Reddy Guda Road, Opp. South India Shopping Mall,
Ameerpet, Hyderabad – 500 038
Represented by its Resolution Professional
Mr. G. Murali
- 2. M/s DBS Bank India Limited**
6-3-1109/1/P/G1 – Ground Floor,
Jewel Pawani Towers, Somajiguda,
Raj Bhavan Road, Hyderabad – 500082
- 3. M/s Emerge Glass India Private Limited**
2E/7, Block E 2, Jhandewalan Extension,
Jhandewalan, New Delhi, Delhi 110055

... Respondents

Sd/-

Sd/-

Date of Order: 25.04.2024

CORAM:

SHRI RAJEEV BHARDWAJ, MEMBER (JUDICIAL)

SHRI SANJAY PURI, MEMBER (TECHNICAL)

Appearance:

For Applicant : Dr. S. V. Ramkrishna, Advocate

For Respondent : Mr. Gonugunta Murali, RP/R1
Mr. VVSN Raju – Advocate for R2
Mr. Ankit Singhal – Advocate for R3

ORDER

(Per: Bench)

1. This Application has been filed by Applicant/ **Mr. Ch. V. N. Raghurama Gupta**, Suspended Director of Ceasan Glass Pvt. Ltd, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking to
 - i. Direct the Respondent No.1/Resolution Professional not to submit application for Approval of the defective and questionable Resolution Application of M/s. Emerge Glass India Pvt. Ltd., (Resolution Applicant) with serious questions of law and facts, but approved by CoC at its 13th meeting held on 19th December, 2022;
 - ii. Dismiss the said Resolution Plan if submitted by the Respondent No.1 following directions of the CoC; and
 - iii. Direct the CoC to accept the Resolution Plan with Rs.50.00 Lakhs more than that offered by the alleged Resolution Applicant, M/s. Emerge Glass India Pvt. Ltd.,

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2. The facts as mentioned in the Application are as follows:

- i. The Applicant, Ch. V.N. Raghurama Gupta is the promoter-director of the Corporate Debtor Company incorporated in 08.01.2007 and running the business of glass sheets etc. Due to severe market recession and adverse business environment, the Corporate Debtor suffered losses and as a result of which there was some delays and defaults in meeting its financial obligations.
- ii. This Hon'ble Tribunal vide its orders dated 24.12.2021 admitted the petition and appointed Mr. Gonugunta Murali as the Interim Resolution Professional of the Corporate Debtor.
- iii. That certain financial assistance has been availed by the Corporate Debtor from M/s. DBS Bank India Ltd., Hyderabad (Respondent No.2) which is also constituted 100% CoC voting power. There were certain lands owned by the promoters of the Corporate Debtor on which certain part of the plan and machinery of the Corporate Debtor Company were set up for the purposes of manufacturing activity. The promoters have also given personal guarantees to the Respondent No. 2 Bank as security for repayment of the loan amounts. However, as the account of the Corporate Debtor became NPA, Respondent No.2 took over the registered office and project site and all the books of account, records etc. are under the custody of the Respondent No.2. As the promoters shifted their residence to new places, the notices allegedly sent by the IRP and others including the Respondent No.2 have not been received and as a result of which the Promoters could not defend themselves in the cases and not responded to notices which is neither wanton nor wilful.

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- iv. It came to light that the CoC constituted with DBS Bank (Respondent No.2) enjoying the voting power of 100% has been acting in a very prejudicial and biased manner against the interest of the Corporate Debtor and its promoters and taking most favourable decisions in their own favour and even bull-doing the Resolution Professional in spite of his professional handling of the matters. Various minutes of different meetings of CoC clearly reflected how the Respondent No. 2 Bank has already identified a prospective BUYER (and not an honest Resolution Applicant) and there is clear indication of under-hand dealings between the (already pre-determined) Resolution Applicant, M/s. Emerge Glass India Pvt. Ltd., and the DBS Bank which is absolutely clear from perusal of the minutes of CoC meetings from time to time.
- v. The Resolution Professional has issued FORM "G" dated 09.03.2022 "Invitation for Expression of Interest" fixing the last date for submission of Resolution Plan as "08.05.2022" and last date for submission of Resolution Plan to the Hon'ble Adjudicating Authority as "10.06.2022".
- vi. At the 5th CoC meeting held on 13.05.2022, the RP informed the CoC that he has received on Resolution Plan within the deadline of 8th May, 2022 (as per Form G) where the authorized representative of the Resolution Applicant has participated in the CoC meeting at the time of opening of the sealed Resolution Plan before the CoC members when RP wants to verify the complete resolution plan as per the compliances mentioned in the IBC, 2016 an put up for approval before the CoC meeting at the earliest.
- vii. At the 6th CoC meeting held on 23.05.2022, the RP placed the proposal when it was observed that there are some mistakes in the resolution

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plan and contents and the representative of Resolution Applicant admitted and proposed to submit revised resolution plan on or before 5 p.m. on 27th May, 2002. It is also recorded in the minutes that the Resolution Applicant has accepted to propose revised resolution plan on "AS IS WHERE IS BASIS" and IRP and CoC members are not responsible for any liabilities in future. The Resolution Applicant has agreed to the same.

- viii. At the 7th CoC meeting held on 04.06.2022, it was recorded by the RP that CoC members (having 100% voting share) informed that they need some additional time to take a decision of either to accept or reject the said resolution plan and deferred the agenda item to next CoC meeting. At this meeting at agenda item no. 4, the CoC by using their 100% voting power directed the IRP to seek extension of 90 days.
- ix. At the 8th CoC meeting held on 11.07.2022, at item no. 4, the proposal was to 'approve' or 'reject' the Resolution Plan but CoC informed RP that they need some additional time to take a decision on either to accept or reject the resolution plan submitted by the prospective resolution applicant. The IRP has noted the same. However, it is notable point that at item no. 5 in the same CoC meeting, IRP has shared the draft Form G with tentative time of issue of EOI on 13th July, 2022 but the CoC members bull-dozed him stating that they need some additional time to take decision on either to accept or reject the resolution plan and requested (forced) the IRP to defer the agenda with 100% voting.
- x. At the 9th CoC meeting held on 09.09.2022, at item no. 4 of agenda, supposed to 'approve' or 'reject' the resolution plan by the CoC, once again the CoC informed IRP they need some additional time to take

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decision in the matter and got the matter deferred to next CoC meeting. In this meeting the CoC directed the IRP to file an application seeking direction for additional 90 days extension of CIRP even though the IRP has informed that he already got 90 days extension & CIRP period of 270 days will be completed on 20.09.2022. But the CoC directed the IRP to file an application before Hon'ble Tribunal for additional 60 days extension of CIRP till 330 days of the CIRP maximum period allowed.

- xi. At the 10th CoC meeting held on 10.10.2022, when the agenda item no. 4 came up for consideration for "approve" or "reject" the Resolution Plan, once again the CoC informed IRP that they 'need some additional time to take a decision on either to accept or reject the resolution plan' submitted long time ago and deferred the agenda to next meeting. Here also, at agenda item no. 5, the IRP suggested to issue fresh Form-G (probably in his professional wisdom the matter cannot be postponed without assigning any specific valid reasons either to accept or reject the Resolution Application submitted long ago) but the brute 100% voting power enjoyed by CoC (single Private Bank i.e. Respondent No. 2 herein) again bull-dozed the IRP and got the matter deferred to next CoC. This time the excuse preferred by Respondent No. 2 is "*due to negotiations with resolution applicant*" instead of further issue of Form G. The private 'negotiations' off the CoC platform between the Respondent No. 2 Bank and prospective Resolution Applicant are intriguing and cannot be outside the platform of CoC and it is highly surprising as to why and how the IRP who is the Chairperson of the CoC was kept side-lined in the process and there is a clear nexus between the prospective Resolution Applicant and CoC (100% Bank).

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This leaves sufficient cause to believe that there are some underhand dealings going on between the Officers of the Bank and the Resolution Applicant to whisk away the valuable properties of the Corporate Debtor and the promoters who gave guarantees to the Bank for a song. This suspicion well proved in subsequent conduct of the CoC and prospective Resolution Applicant who transgressed all the canons of justice and gone to illegally take away the properties of the Personal Guarantors under the grab of Resolution Plan which is NOT PERMISSIBLE UNDER LAW.

- xii. At the 11th CoC meeting held on 15.11.2022, under agenda item no. 4, to 'approve' or 'reject' the Resolution Plan, it was recorded that CoC 'negotiated with the resolution applicant after submission of resolution plan way back on 07th May, 2022 and revised resolution to IRP on 26th May, 2022 and the CoC again negotiated with the Resolution Applicant after revised resolution plan submission on 26th May, 2022 to 'improve further the resolution plan amount' but the Resolution Applicant has not submitted any revised resolution plan, in spite of number of emails on 26.08.2022, 30.08.2022 and 14.11.2022 sent by IRP to the Resolution Applicant and expressed wonder to the response of the Resolution Application (vide email dated 15.11.2022) who said that *"part of the land on which plant & machinery is situated is owned by personal guarantors (erstwhile promoters) and access road to factory is also passing through the said land owned by personal guarantors."* One more strange thing is that when IRP shared the said Resolution Professional's email supra with CoC, they suggested to IRP to file and request for additional 30 days extension of CIRP but the IRP informed the CoC that the 330 days (including one-time extension of 90 days and

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additional extension of 60 days) would expire on 20.11.2022. Yet, the CoC bulldozed the IRP and directed him to file extension period for 30 days.

- xiii. At the 12th CoC meeting held on 10.12.2022, at the agenda item no. 4 under the heading "TO OPEN THE REVISED RESOLUTION PLAN IF RECEIVED FROM THE RESOLUTION APPLICANT", IRP informed CoC that the resolution applicant, M/s. Emerge Glass India Pvt. Ltd., (Respondent No. 3 herein) on 10th December, 2022 through email received the alleged 'revised resolution plan' before the CoC and Resolution Applicant and various serious defects/deficiencies are observed and sought following vital and critical clarifications from the Resolution Applicant:

1. *The CIRP cost is not updated completely as communicated by the IRP.*
2. *The payment (amount) to financial creditors is not matching with the description mentioned in the remark's column.*
3. *The status of payments to the Provident fund, ESI etc. – mandatory content not covered in the revised resolution plan etc.*
4. *The payment schedule has not updated at one place, it's scattered in different places, which needs to be updated in the payment table itself to give the clear picture on the resolution plan amount.*
5. *Assigned debt needs to be described with the details in the resolution plan.*

In this regard, the minutes at page 4 and 5 of the said 12th CoC Meeting held on 10.12.2022 are very significant, critical and highly surprising and suspicious of the manner and method the Respondent No.2 Bank and the Resolution Applicant are hand-in-glove and even

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seriously violated the public law and between themselves gone to the extent of exploiting the Applicant/promoters and depriving their fundamental and property rights without following the due process of law. The said minutes at pages 4 and 5 supra are extracted for kind perusal of the Hon'ble Tribunal:

Quote:

"In addition to the above, the IRP has raised the objection/clarification regarding the "Assignment of Debt" related to personal guarantee properties considered in the revised resolution plan. Mr. Nitin Parmar, representative of the DBS Bank has clarified that, the plant is situated in the company land and other personal guarantees land, not able to segregate the plant without personal guarantee adjacent lands due to part of the plant situated in the personal guarantee lands in four sides of the plant. Hence, it is advisable to allow to club the personal guarantee land with the company land to the extent not possible to separate from the company properties due to lack of separation. In addition to the above, he is also informed to the IRP that there are few case laws available to support clubbing of personal guarantee properties in the resolution plan where there is no possibility of separation of company's properties from the personal guarantee's properties.

The IRP has informed the CoC and RA that, he is a responsible to get the resolution plan only to the extent of company's properties alone but based on the clarification provided by the Mr. Nitin Parmar, the representative of the DBS Bank, the IRP has requested to share the

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relevant case laws along with the legal opinion to support the same. Then the IRP noted the same.

The CoC and IRP have suggested the resolution applicant to rectify the revised resolution plan with the above suggestions and comply the provisions of IBC, 2016 if any required before submission of final version of revised resolution plan due to CIRP period will complete on 20th December 2022. The Resolution applicant has noted and accepted to submit the revised plan at the earliest by complying all the provisions of the IBC, 2016.

The IRP has informed the CoC members that, he will appoint the legal professional to validate the revised resolution plan whether it's complied the provisions of the IBC, 2016 or not to place before the CoC members for their approval. The CoC members have agreed the same. The IRP also informed to the CoC members that he will get the quotations from the legal professionals and will be shared to the CoC members for their approval before appointment of the legal professional. The CoC members have agreed the same.

The IRP has discussed with the CoC members regarding the next date of CoC meeting tentatively at 3.30 pm on 14th December 2022 or at the earliest."

- ix. At the 13th CoC meeting held on 19.12.2022, for the first time suspended director and Applicant herein was invited to the virtual mode of CoC when two representative of proposed Resolution Applicant, three very senior representatives like Vice President, AVP, and Senior Manager of CoC Bank, and IRP and his team were present. What is very strange is that at agenda item nos. 3 & 4, the IRP stated

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that he received "revised resolution plan" from Emerge India Pvt. Ltd., on 17th December, 2022 i.e., two days before the CoC meeting. At page 4 of the said minutes, a NEW UNTENABLE AND ILLEGAL CONCEPT of "PERSONAL GUARANTEE LAND AS ASSIGNED DEBT IN THE RESOLUTION PLAN" was brought into light. The IRP is very right and expressed his true Professionalism in inter alia observing as under:

Quote:

"The Resolution applicant has considered personal guarantee land as assigned debt in their resolution plan but the same has not been mentioned by the IRP in the Information Memorandum and not in the RFRP document. The IRP has discussed with CoC members the below observations based on the revised resolution plan:

- 1. The resolution applicant has paid of Rs. 1,50,00,000/- to assignment debt for 11.90 acres of the personal guarantee land, which is note the asset of CD. The IRP has informed CoC members that, he has no information on the assigned debt till the receipt of the Resolution Plan and the property on assigned debt was not part of the assets mentioned in the Information Memorandum and it was that mentioned even in Request for Resolution Plan. But the resolution applicant has considered even though the IRP has informed that he is having powers only on the properties of the company alone.*

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2. *The details of the Assigned land of 11.86 acres as per the Resolution plan on the below mentioned persons:*

Description	Directors	No of Acres
Ch V N Raghurama Gupta	Yes	7.90
Ch Lakshmi Narayana	No	
G Venkata subbarao	Yes	
G Satish Kumar	No	
Ch Nagesh Kumar	Yes	
Ch V N Rahurama Gupta		3.96
Total Assigned land in the Resolution Plan		11.86

3. The above assigned land is personal guarantee land and not given either lease or rent to the company.
4. The IRP has informed the CoC members that major portion of the plant situated within the company's property which is having road access based on the survey within the company's property which is having road access based on the survey report but only some portion of the plant constructed over and above the company's property at four corners of 6.7 acres and remaining portion is empty land. The Resolution Applicant has considered the assigned land of 11.86 acres for Rs.1,5,00,000/-. IRP brought to the notice of CoC that as per the average fair value from valuation reports (two registered valuers) the fair value for the company's land is Rs.5,04,05,000/- "

Unquote

What is more intriguing and revealing concerns of IRP, in his professional wisdom is more clearly reflected in paras 6 & 7 at page 6 of the minutes of the said 13th CoC meeting and the same is extracted hereunder for reference:

Quote:

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5. *The resolution plan amount excluding assigned land value:*

Description	Fair value (Rs.)	Liquidation value (Rs.)
Average of value for the company's property	12,13,95,208	9,66,35,006
Revised Resolution Plan	9,72,00,000	9,72,00,000
Under value of Resolution Plan without Assigned debt	2,11,95,208	(5,64,995)

The IRP has informed the CoC members as below:

- a. *The proposed resolution plan amount (excluding the assigned debt) of Rs. 9,72,00,000/- which is less than the average fair value of Rs. 12,13,95,208/-*
- b. *And which is little bit higher than the average liquidation value by Rs. 5,64,995/-.*

4.15 *The IRP has further informed the CoC members that, he wants to take legal opinion whether assigned debt can be formed part of resolution plan or not since there are no provisions under IBC, 2016 or its regulations to consider the assets of persons other than CD in the Resolution Plan and further the information regarding the assigned land was neither mentioned in the Information Memorandum nor in the RFRP even though the Resolution Applicant has considered and mentioned in the Resolution Plan. The IRP has suggested the CoC members to take legal opinion on the same but the CIRP period will complete on next date of the CoC meeting i.e., 20th December, 2022."*

4.16 **The Suspended Director offered Rs. 50 Lakhs more than the Resolution Applicant amount and yet the CoC in its own wisdom**

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approved the lesser offer which is against the letter and spirit of law:

In the said 13th CoC meeting minutes at sl.no.12 (b) (at page no.9 of minutes) it was clearly noted by the CoC that the suspended director informed that he was ready to pay Rs. 50.00 Lakhs additionally comparative to present resolution plan amount proposed by the Resolution Applicant. It is surprising as to how the CoC in its 'commercial wisdom' refused higher amount rather than settled for Rs. 50.00 lakhs lower amount and the objective of the IBC, 2016 is to maximize the value. Without giving any chance for the suspended director who offered more amount than the amount offered by the Resolution Applicant, the CoC in a hurried manner 'approved' the Resolution Plan of M/s. Emerge Glass India Pvt. Ltd. that to claiming to be approved with 100% voting share 'on their commercial wisdom.'

4.17 Finally such questionable plan was approved with brute majority of 100% single bank voting power at page 10 of the said 13th CoC meeting:

It is very sad to state that inspite of IRP's serious observations, and in spite of repeated extensions in CIRP period sought by the CoC, inspite of refusing to give fresh FORM G invitations to maximize the value of the assets of Corporate Debtor, inspite of adding personal guarantors individual properties as if part of Resolution Plan (which is patently illegal) and no provisions of law of IBC, 2016 and Rules made thereunder authorize such strange clubbing of properties of Corporate Debtor with the personal guarantors properties (which amounts to invoking and clubbing both sec 95 & 9 of IBC, 2016),

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inspite of IRP's professional advice and observations, and inspite of Rs. 50 Lakhs more amount offered by the suspended director, the CoC bull-dozed the passing of Resolutions in the minutes of the 13th CoC approving the strange resolution plan of M/s. Emerge Glass India Pvt Ltd (Respondent No.3) and the said approval is serious abuse of process and powers vested in CoC (Respondent No.2) and the same are patently wrong, erroneous, mischievous, self-serving interests of CoC (100% voting power available to private bank), and the same are liable to be set aside and dismiss if any application is filed by IRP for approval of such Resolution Plan, in the interest of justice. The decisions of the CoC are bereft of commercial wisdom envisaged under the IBC, 2016 and is suffering from serious Bias, favouritism and questionable conduct of the CoC and alleged Resolution Applicant.

- 4.18** Assignment of Personal Guarantors lands to form part of Resolution Application is patently illegal and against public law. The resolution applicant has considered the assigned land of 11.86 acers for Rs. 1,5,000,000/- (Rupees one crore fifty lakhs only). In other words, the provisions of sec 95 are brought into Resolution Plan in a back-door entry which is opposed to public law. The debt gets extinguished with the approval of the Resolution plan and the Resolution Applicant cannot claim any right on the individual and personal properties of the suspended director/guarantors as a part and parcel of the Resolution Application. If this kind of Resolution plan is approved by CoC and sanctioned by Hon'ble Adjudicating Authority, it amounts to serious aberration and violation of provisions of law and virtually amounts to 'amendment to IBC, 2016 itself' by way of provision in Resolution

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Application. The acts of the CoC is unduly favouring the Resolution Applicant and it is CoC which stalled invitation for fresh 'FORM G' as reflected in various minutes of CoC as stated above. It is surprising as to why the CoC is not interested in higher amount of Rs. 50.00 Lakhs in the Resolution Plan but settled for less itself exposes there is something more fishy and under hand dealings between the CoC and Resolution Applicant and that too without waiting for "legal opinion" the Resolution Professional clearly stated to obtain due to the confusing and untenable statements and concepts such as 'assigned debt for 11.96 acres of personal guarantee land'.

It is quite evident that the "manner and method of approving the Resolution Application is highly suspicious" particularly when new fresh birds were allowed by CoC even when the Resolution proposed to issue fresh FORM 'G'. Thus, it is absolutely clear how the provisions of IBC, 2016 have been violated and abused for private benefit of Resolution Applicant and deprive the higher value to the Corporate Debtor and also burdening the Personal Guarantors in the process.

3. The averments made in the counter of **Respondent No.1** are as follows:
 1. The Respondent No.1/Resolution Professional on behalf of CD contended that all the averments made in the captioned appeal are wrong, incorrect, illegal, and untenable in law and shall be deemed to be denied.
 2. The Interim Resolution Professional has not received the required data of the Corporate Debtor from the Suspended directors of the CD as on the Insolvency commencement date as required under the IBC to conduct the CIRP of the CD and the IRP/RP filed an Application IA No. 18/2022 u/s

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19(2) of IBC, in which the applicant herein is one of the Respondents praying for a direction to cooperate with the IRP and the said IA was allowed on 31.03.2022 directing the Respondents to cooperate with the IRP/RP.

3. That even after the said Order there is no response/ cooperation from the Suspended Directors and then the IRP on 05.04.2022, 08.04.2022 requested the Respondents through emails as per the orders passed by this Hon'ble Tribunal to provide the following:
 - a. Provisional Financial Statement as on commencement of CIRP i.e., 24.12.2021.
 - b. Bank balances as on CIRP date.
 - c. Tally back up.
 - d. List of fixed assets as on commencement CIRP date, etc.
4. The Suspended directors have not complied the Orders of this Hon'ble Tribunal dated 31.03.2022 in IA No. 18/2022 therefore respondent filed an Application IA No. 70/2022 under section 19(2) & 60(5) r/w Section 70, of Insolvency Bankruptcy Code, 2016 read with Section 425 of the companies act, 2013, section 12 of the Contempt of Courts Act, 1971 and rule 11 of NCLT rules to initiate contempt of court proceedings.
5. That the Applicant issued notice to the email ids and to the postal address of the Respondents but the said postal covers are returned with an acknowledgement with an endorsement "no such person in the address" and the Applicant filed an IA No. 128/2022 for substitute service and this Hon'ble Tribunal allowed the said IA on 11.07.2022 and directed to publish paper notice in two daily newspapers Business Standard (English Daily), Andhra Jyothi (Telugu Daily) accordingly the IRP issued paper publication on 18.07.2022. The Suspended Directors not responded to that

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paper publication and this Hon'ble Tribunal issued bailable warrant on 07.09.2022 through the police and the same was also returned.

6. It is humbly submitted that this Hon'ble Tribunal is pleased to refer the matter to the Insolvency and Bankruptcy Code, 2016 u/s 236 of IBC, 2016 to refer the matter to the special court for trial and disposal on 17.11.2022.
7. That the IRP to the mail id to which the CoC notices and minutes are sent also sent the application copy of the non-cooperation IA, Contempt IA and the orders passed in respective IAs and requested the Suspended Directors/ Applicant herein to furnish the required information to provide the same to the valuers and to prepare information memorandum, to verify the claims etc. Having not responded to any of the mails, WhatsApp messages, the Applicant herein filed this IA well aware of the fact that the resolution plan is approved by CoC, just to derail and delay the ongoing CIR process and if these types of frivolous applications are entertained the main aim and objective of IBC will be in bind.
8. The respondent contended that it is not true that the notices are not received, the notices sent through emails are received by Applicant.
9. It is not true that the CoC acted in prejudicial and biased manner against the interest of the CD and its promoters and taking most favourable decisions in their own favour and even bull-dozing the resolution professional and the applicant has been put to strict proof of the same. The applicant has to answer what favourable decisions that CoC has taken in their own favour. In this regard it is pertinent to mention that the Resolution applicant submitted the resolution plan in response to the EOI (Form G) dated 09.03.2022. It is not correct to state that the Respondent No. 3 Bank already identified a buyer and there are under-hand dealings between them and the applicant is put to strict proof of the same. The respondent strongly

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and vehemently condemns the words “bull-dozing the resolution professional” which are unparliamentarily.

10. The averment made by the applicant that the CoC members bull- dozed the IRP and forced the IRP to defer the agenda item “to issue Form G” are strongly and vehemently denied. The members of CoC with utmost care and caution keeping in view of the non-cooperation from the Suspended Directors/ Applicant herein to the Resolution Professional during the course of CIRP, and also for the reason that not to push the CD into Liquidation and to discuss with their higher officials took time decide on acceptance or rejection of the Resolution Plan received. The Applicant with total knowledge of CIRP of the CD and actions taken by the IRP like filing of non-cooperation application, contempt application and orders passed therein and also being aware of the fact of receiving resolution plan, negotiations between the Resolution Applicant and CoC members not approached the Financial creditors with his offer and now only with a motive to derail the resolution process and to delay the resolution process filed this application and liable to the dismissed in limini. All other averments are without any substance or proof, therefore, they are averred only to cause damage to the IRP and members of CoC
11. It is true that the resolution applicant sent mail to the RP about the land of the personal guarantor in the month of May and the CoC to survey the land belonging to CD instructed the IRP to file application for extension. It is true that the IRP raised an objection/clarification regarding the “Assignment of Debt” related to personal guarantee properties considered in the revised resolution plan. Member of CoC Mr. Nitin Parmar, representative of the DBS Bank has clarified that, the plant is situated on the CD land and other personal guarantees land, not able to segregate the plan without personal

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guarantee adjacent lands due to part of the plan situated in the personal guarantee lands and the land is situated at four sides of the plant and they are the secured creditors of the property and they can assign their debt and further opined that it is advisable to allow to club the personal guarantee land with the company land to the extent not possible to separate from the company properties due to lack of separation. In this context it is pertinent to mention that the Hon'ble Tribunals to maximize the value of the Corporate Debtor allowed assignment of personal guarantor's debt to the Resolution applicants, recently the Hon'ble Tribunal Hyderabad Bench in the matter of Sri Mata Infratech Limited in CP (IB) No. 104/HDB/2020 allowed the Successful resolution applicant to purchase the land of the suspended director of the CD.

12. It is not true that for the first time applicant was invited to CoC meeting, in fact all the notices pertaining to CoC meetings are sent to the applicant and all the minutes are also shared with the applicant.
13. As per the provisions of IBC, 2016 IRP has to invite expression of interest from prospective resolution applicants in Form G and the applicant who submitted their expression of interest only are eligible to submit resolution plan. The offer made by the Applicant and the rejection of the same by CoC is not in the purview of the respondent.
14. The language used by the applicant is most derogative and this Hon'ble Tribunal may kindly direct the Applicant to expunge the same. It is humbly submitted that as stated supra, assignment of personal guarantor debt is approved by the Hon'ble Tribunals. In view of the above made submissions and fact stated it is humbly submitted that this Hon'ble Tribunal may kindly dismiss the captioned application as not maintainable by imposing heavy costs on the Applicant.

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4. The averments made in the counter of the **Respondent No.2** are as follows:

- a. The Respondent No.2 contended that the Corporate Debtor, namely M/s. Ceasan Glass Pvt Ltd has availed loan secured facilities from this Respondent (i.e. Erstwhile Laksmi Vilas Bank and now DBS Bank India Limited, Ongole Branch) by way of term loan of Rs. 24,04,00,000.00 (Rupees Twenty Four Crores and Four Lakhs only and working capital of Rs. 8,00,00,000.00(Rupees eight Crores Only) from time to time. Various promoter guarantors including the Applicant have executed Memorandum of Deposit of Title deeds along with other documents to secure the facilities availed by the Corporate Debtor. It is not out of place to mention here that the entire CD is located on the land that jointly belongs to the Corporate Debtor as well as the personal guarantors/Promoter Director.
- b. The CD has made repayment for the loan facilities procured up to January 2018 and stopped payment from thereafter. Subsequently the account of the CD was declared as NPA on 02.05.2018. The outstanding dues as on the date of declaration of the account of the CD as NPA is Rs. 28,05,14,718.89(Rupees Twenty-eight crores Five Lakhs Fourteen Thousand Seven Hundred and Eighteen Rupees Eighty-Nine Paisa). Therefore, the Respondent No.2 has initiated necessary action for recovery of the loan amounts including legal action against the property of Personal Guarantor forming part of the CD as per the provisions of SARFAESI Act and has also taken possession of the properties through the possession notice dated 18.12.2018.
- c. While it is so, Ch. V N Raghurama Gupta, the authorised representative of the Corporate Debtor has approached the Respondent bank and offered an OTS for Rs. 12.65 Crores. This Respondent, while approving the OTS

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- proposal, vide its letter dated 12.07.2019 directed the CD to pay an amount of Rs. 12.65 Crores as against the total outstanding due, with a validity up to 30.09.2019. The Applicant paid an amount of Rs. 1.70 Crores diligently, thereafter no payment was made and OTS stood expired.
- d. Further, on 16.02.2021 the CD has once again approached the Respondent for making payment of Rs. 10,00,00,000 (Rupees Ten Crores) through OTS. The Respondent has once again approved the OTS with a validity up to 15.03.2021. However, the CD or Applicant did not make a single payment against the said OTS proposal and thus, the OTS has lapsed once again.
- e. While it is so, the Operational Creditor, namely Omega Glass Private Limited, has filed an application before this Hon'ble Tribunal on 01.12.2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016 and the Hon'ble Tribunal for initiation of CIRP, which was admitted by this Hon'ble Tribunal on 24.12.2021 and the Respondent has been declared as CoC with 100% voting right.
- f. The Applicant being the Suspended management has never attended any of the meetings (except the 13th COC meeting) and also never cooperated with the appointed Resolution Professional. In fact, an application under Section 19 was filed before this Hon'ble Tribunal and this Hon'ble Tribunal had issued arrest warrant against the Applicant.
- g. Further, on 09.03.2022 the Corporate Debtor has once again approached the Respondent with a request letter to revive OTS and has issued a cheque for Rs. 2 crores with a request to deposit after a period of 7 days. Thereafter, there was no communication with regard to such deposit. As there was no communication, the Respondent wrote a letter to CD that it would pursue the matter under the provisions of IBC vide its letter dated 30.03.2022. The

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- Petitioner failed to utilize the opportunities given by the Respondent which are much less than his present offer given by Resolution Applicant.
- h. The Resolution Professional as a part of CIRP has issued EoI in Form-G, in response to which only one Prospective Resolution Applicant, namely, M/s. Emerge Glass India Private Limited has submitted the Resolution Plan, who later became the Successful Resolution Applicant. In the 5th CoC, the Resolution Plan was opened to verify the compliances of Resolution Plan as per the provisions of the Code and was placed before the CoC only in the 6th CoC meeting.
- i. As there was only one Successful Resolution Applicant and the Plan amount was not as significant, the CoC took time to accept or reject the resolution plan and sought time from this Hon'ble NCLT to extend the CIRP timelines accordingly. It was also advised to the Resolution Applicant to revise the Resolution Plan as the plan originally submitted was not commercially viable. As a part of due diligence performed by the Resolution Applicant, it was observed by it that certain part of plan and machinery of the CD and road to factory was located on the land of the promoter guarantor and inquired regarding the same with the RP vide its email dated 15.11.2022.
- j. Subsequently, in the 12th Meeting, the Revised Resolution Plan was placed before the CoC, wherein the Resolution Applicant discussed the plan and same was approved by the CoC in the 13th CoC. The Suspended Director, i.e., the Applicant has only attended the 13th Meeting held on 19.12.2022 and raised certain queries to which the CoC and IRP responded as follows:
- “The CoC Members and the IRP informed to the suspended board of directors that*
- a. He has not supported and not attended the CoC Meetings form the date of Insolvency commencement of CIRP till date.*

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- b. Not provided any financial information/data/documents including provisional financials. Fixed assets register. List of bank accounts, etc.*
 - c. Not responded to the non-cooperation application filed by the IRP*
 - d. Not responded to the contempt application filed by the IRP.*
 - e. The Hon'ble NCLT, Amaravati bench has issued the bailable warrant against him and referred the matter to the IBBI to deal in special court.*
 - f. Further explained the reason for non-issuance of the reason of Form G for the second time- as the IRP received the resolution plan from the Resolution applicant as per the Form G timelines."*
- k. The inclusion of the property of the personal guarantor in the Resolution Plan is very much permissible, within the ambit of the law and only method in which maximization of the value of the assets of the CD is possible. It is an undisputed fact that the Applicant along with the CD have mortgaged the entire land to the Respondent, which includes the land belong to the Suspended Board of Directors/Personal Guarantors/Applicant.
- l. By creating a mortgage over the land, the Personal Guarantors created a security over the land in favour of the Respondent. Thus, the land as has been committed by the Personal Guarantors can be utilized for the repayment of the debts of the Respondent. It is once again submitted herewith that the Respondent has already taken possession of the land of the Personal Guarantors.
- m. By implication of Section 13(4) of the SARFAESI Act, 2002, a secured creditor can take possession of the secured assets, including the right to

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transfer by way of lease, assignment or sale for realising the second asset. Accordingly, the mortgagee will have the right to enforce the mortgage over the land. The Resolution Plan herein provides the mechanism for the transfer of the land through assignment of debt of the personal guarantor from the Respondent to the Resolution Applicant, subject to the approval by this Hon'ble NCLT. Therefore, once the Resolution Plan is approved, the Debt that is due with the Respondent shall be assigned to the Resolution Applicant for the amount mentioned in the Resolution Plan, which it is entitled to do, as per the provisions of SARFAESI. It is submitted that such assignment of debt is only method herein for maximizing the value of assets and is lawful as per the law of the land.

- n. It is pertinent to mention that Regulation 37 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulation, 2016 provides that *"a Resolution Plan shall provide for the measures, as may be necessary for Insolvency Resolution of the Corporate Debtor for maximisation of value of its assets, including but not limited to the following*
- a. ...
 - b. *Sale of all or part of the assets whether subject to any security interest or not."*

This Respondent is entitled to perform such actions.

- o. It is also important to point out that land is an essential part of the corporate debtor's business. The entire plan and factory of the corporate debtor is being established on the said land sought to be transferred to the successful resolution applicant by virtue of the approval of the resolution plan. Therefore, it is an essential part of the Resolution Process. Further it is highlighted here that part of the plan and machinery is constructed on the

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land owned by promoter and it is practically impossible to dismantle the factory assets as that will make the plant non-feasible/ non-viable. Resolution Applicant or for that matter any other buyer will be able to restart the factory and employ labourers only if the plan and machinery is sold in entirety including the portion of assets and land owned by personal guarantors.

- p. This is a commercial decision of the CoC herein should not be questioned/interfered by the Applicant and he is, as a matter of fact is bound by it. As per section 31 of the Insolvency and Bankruptcy Code, 2016, the approved Resolution Plan binds all the stakeholders, including the Corporate Debtor Guarantors. Thus, the suspended board of directors and guarantors to the corporate debtor are bound by the approved resolution plan.
- q. Similar judgment has been passed by the Hon'ble NCLAT in the matter *Vanguard Credit & Holdings Pvt. Ltd V. Kshitiz Chhawchharia RP of Ramsarup Industries Ltd. & Anr (Company Appeal (AT) (Ins.) No. 1135 of 2019* and was not interfered with by the Hon'ble Supreme Court in as much as the Civil Appeal being 1688 of 2021 was dismissed on 02.07.2021. It is also submitted that Hon'ble NCLT, Kolkata Bench has approved such inclusion of the property on the matter of *Bank of India V. Sri Balaji Forest Products Private Limited* in IA 319/KB/2021 in its order dated 04.07.2022.
- r. In the matter of "*Arcelor Mittal India Pvt. Ltd v. Satish Kumar Gupta and Ors.*" the Hon'ble Supreme Court observed that "the 'Corporate Debtor' consists of several employees and workmen whose daily bread is dependent on the outcome of the CIRP. If there is a resolution applicant who can continue to run the corporate debtor as a going concern, every effort must be made to try and see that this is made possible". Thus, the properties of the Personal Guarantors can included in the Resolution Plan.

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- s. The CoC can direct the IRP to take such number of extensions as may be required as long as it permitted under the provisions of the Code. Besides, it submitted that the CoC has taken such time to ensure that the Resolution Plan is up to the mark and to ensure that maximum asset value is derived from the plan. It is also established law that the timelines as mentioned in the Code are directory in nature and not mandatory. Therefore, the allegations against this Respondent to have allegedly to have bull-dozed is not maintainable, as the Petitioner never attended the any of the CoC except one last meeting and the Petitioner is responsible for making such unparliamentary wordings in the pleadings without attending the CoC meetings and without cooperating for CIRP. Respondent pray this Hon'ble Tribunal to impose penalties against the Petitioner.
- t. The IRP has sent communication regarding the dates of the meeting but none of the Suspended Directors have ever attended the meeting. The IRP has also initiated action for non-cooperation and contempt against the suspended board before this Hon'ble Tribunal. Therefore, it cannot be said the Applicant has never received an email with regard to the meeting.
- u. The Applicant herein is submitting a proposal for paying an amount of Rs. 50 lakhs over and above the Resolution Plan amount and is expecting the Respondent herewith to accept the same. It is submitted that the Applicant was already given multiple opportunities, thrice to be precise, through OTS proposal to settle the dues. However, it has failed to settle the dues of this Respondent. In such circumstances, the Applicant cannot expect the Respondent to approve its proposal merely on trust as the Applicant has failed to fulfil its obligations multiple times. Further, it is also submitted it is the commercial decision of the CoC whether to accept the proposal of the Applicant or not and cannot be "bull-dozed" into accepting his proposal,

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even through this tribunal. Thus, this contention of the Applicant is also not maintainable and dismiss the Application filed by the Applicant as the same is devoid of any merits along with substantial cost for baseless allegations and derailing the CIRP process.

5. The averments made in the counter of the **Respondent No.3** are as follows:
 - a. The Respondent No. 3 contended that present application IA(IBC)/20/2023 is pre-mature, uncalled for and non-maintainable in absence of any final decision by the Adjudicating Authority with respect to the IA(IBC)/399/2022 filed by the IRP for the approval of the resolution plan approved by the CoC. It is the obligation of the Resolution Professional to examine the validity of the Resolution Plan qua the provisions of the IBC, 2016. Thereafter, the Resolution Plan is to be examined by this Hon'ble Adjudicating Authority. As such, the suspended board of directors have no role to play in the scheme of the IBC, 2016 at this stage. Knowing the same completely well and having no right to be heard in the application seeking approval of the Resolution Plan, the Applicant has mischievously filed the present application is mala fide and ought to be dismissed.
 - b. During the 9th & 10th CoC meeting held on 09.09.2022 & 10.10.2022, the CoC informed the IRP that "... *they need some additional time to take a decision on either to accept or reject the resolution plan submitted by the prospective resolution applicant due to negotiations and requested the IRP to defer this agenda...*"
 - c. The CoC decided not to issue Form G for the second time because the IRP received the resolution plan from the Respondent no. 3 as per Form G timelines as is evident from the minutes of the meeting of CoC 17.12.2022. As per the Request for Resolution Plan (RFRP) dated 21.03.2022, the CoC

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had reserved its right to negotiate with the resolution applicant(s) to achieve the best outcome of the resolution plan process and that the decision of the CoC in selection of the successful resolution plan shall be final and binding on the resolution applicants. The extensive negotiations held between the Respondent No. 2 and Respondent No. 3 itself demonstrate that there is no nexus or under-hand dealings between them and the resolution plan has been approved by the CoC in their commercial wisdom. The same is evidenced by the increase of approx. 25% i.e. INR 2,22,00,000/- (Indian Rupees Two Crores Twenty- Two Lakhs Only) in the amount to be released by the Respondent no. 3 under the resolution Plan. Under the first resolution plan submitted on 07.05.2022, the payments proposed to be made under the resolution plan amounted to INR 9,00,00,000/- (Indian Rupees Nine Crores Only). Whereas, under the resolution plan submitted on 17.12.2022, which was approved by the CoC (Respondent No. 2), the said amount was increased to INR 11,22,00,000/- (Indian Rupees Eleven Crores Twenty- Two Lakhs Only).

- d. The 12th meeting of the CoC dated 10.12.2022 evidently state that *“The IRP and CoC members have requested few clarifications from RA on the revised resolution plan...”* The Applicant is inserting words ‘serious defects/deficiencies’ in the minutes of the CoC meetings in order to mislead and prejudice this Hon’ble Tribunal.
- e. It is evident from the resolution plan dated 17.12.2022 and the minutes of the 13th CoC meeting on 19.12.2022, the Respondent No. 3 has proposed payment of Rs. 1,50,00,000/- for assignment debts within 120 days of receipt of certified copy of NCLT order approving resolution plan. The IRP issued the Form G dated 09.03.2022 “Invitation of expression of interest’ fixing the last date of resolution plan as 08.05.2022 and that no resolution

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plan was submitted by the Applicant in response to the same. Without prejudice to the above, it is submitted that the Applicant has even otherwise failed to demonstrate as to how the Applicant is even eligible under the IBC, 2016 and regulations thereof to submit resolution plan with respect to the CD. It is further relevant to note that the minutes of the CoC meeting on 17.12.2022 at paragraph 12 (c) and (d) have dealt with the malafide offer (at 12(b)) of the Applicant to derail the CIRP of the CD and the same is extracted as under:

12(c). He (Applicant) has informed the CoC members that there are so many statutory liabilities like dues to various operational creditors, Electricity dues, PF etc. in the books of accounts which need to be paid and also he has discussed with the applicant of the main CP to settle the matter and requested them to withdraw the CIRP. Then the CoC members informed the suspended Board of Director that they have already given opportunity twice to settle the matter but he has not utilized the same and the CoC members have not having any confidence on the suspended board of directors for his proposal.

12(d). The IRP informed to the suspended board of director that he may approach the secured financial creditor for OTS proposal/withdrawal of CIRP u/s 12A of the IBC, 2016 and submit the Form FA, etc to the IRP for filing withdrawal application before the Hon'ble Tribunal. IRP reiterated that CIRP period is ending by 20th December, 2022. The suspended board of director has noted the same.

The CoC members and the IRP informed the suspended board of director that:

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- a. He has not supported and not attended the CoC meetings from the date of insolvency commencement of CIRP till date.
 - b. Not provided any financial information/data/documents including provisional financials, fixed assets register, list of bank accounts etc.
 - c. Not responded to the non-cooperation application filed by the IRP
 - d. Not responded to the contempt application filed by IRP
 - e. The Hon'ble NCLT, Amaravati bench has issued the bailable warrant against him and referred the matter to the IBBI to deal in special court
 - f. Further, explained the reason for non-issuance of Form G for the second time – as the IRP received the resolution plan from the resolution applicant as per Form G Timelines."
- f. The resolution plan in question is in accordance with the law in force as the same was presented to the CoC for voting, by the IRP, after duly confirming that the same is in accordance with the provisions of IBC, 2016 (including Section 30(2) thereof). It is submitted that, admittedly, "there were certain lands owned by the promoters of the CD on which certain part of the plant and machinery of the CD company were set up for the purposes of manufacturing activity." It is in this background that the resolution plan dated 17.12.2022 was submitted, to maximise the value of the assets of the CD and to keep it going as a going concern. The Applicant has annexed the incorrect and erroneous copy of the resolution plan dated 17.12.2022 and

approved by the CoC. Under the facts and circumstances stated hereinabove, this Hon'ble Tribunal may be pleased to dismiss the instant interlocutory application with exemplary costs.

6. Following the submissions in the counters of the Respondents, the Applicant filed Rejoinders broadly reiterating the facts as initially stated in the Application.

Decisions:

- a) In *K Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No.10673/2018 decided on 05.02.2019) 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.
- b) In *CoC of Essar Steel* (Civil Appeal No.8766-67 of 2019 decided on 15.11.2019) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution

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Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

"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)."

- c) The Hon'ble Supreme Court of India, in the recent ruling in *re Vallal RCK vs M/s Siva Industries and Holdings Limited & Ors*, has held as under:-

21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in the cases of K. Sashidhar v. Indian Overseas Bank and Others, Committee of Creditors of Essar Steel India Limited through

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Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another, and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.

27. This Court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the case of Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another:

"95.However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC....."

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- d) The relevant Paragraphs of the NCLAT Judgement in '*Ravi Shankar Vedam vs. Tiffins Barytes Asbestos and Paints Limited and Others*, pertinent to the issue of 'locus' of the Shareholder / Promoter in challenging the approval of the Plan are reproduced as hereunder:

"27. From the aforementioned observations, it is clear that once the affairs of the Corporate Debtor was handed over to the IRP, any action taken by Shareholder, even if a Majority shareholder, would not be maintainable. 28. Keeping in view, the scope and intent of the Legislature, and that the 'I & B Code, 2016' is a distinct shift from 'Debtor in Possession' to 'Creditor in Control' Insolvency System, where the Shareholders have a limited role and are only confined to co-operate with the Resolution Professional as specified under Section 19 of the Code, are entitled to receive the Liquidation value of its equity, if any, in accordance with Section 53 of the Code, we are of the considered opinion that a 'Shareholder' has 'no locus standi' to challenge the Resolution Plan."

7. Keeping in view the aforesaid judicial pronouncements, we have examined the present application which is filed by the Suspended Director who is also Personal Guarantor of the CD.
- a) The applicant has raised suspicions and made allegations about the 'nexus' between the Resolution Applicant and the CoC. It is alleged that "there are some underhand dealings going on between the Officers of the Bank and the Resolution Applicant" and has expressed suspicion on the "the manner and method the Respondent No.2 Bank and the Resolution Applicant" who is claims are "hand-in-glove".
- b) The Applicant has complained that, the CoC has been unduly favouring the Resolution Applicant and "the manner and method of approving the

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Resolution Application is highly suspicious". Also, the Applicant has expressed his surprise "as to how the CoC in its 'commercial wisdom' refused high amount of Rs.50 lakhs offered by him as compared to the amount offered by the Successful Resolution Applicant (SRA). Besides making these allegations, the Applicant has also complained about clubbing of properties of the CD along with those of the personal Guarantor's in the Resolution Plan.

- c) Other than raising suspicions, making allegations and expressing surprise at the conduct of CIRP and the role of CoC, the Applicant has only provided excerpts from various CoC meeting minutes.
- d) Going through the records including the minutes of the CoC meetings, we do not find any substance in the allegations made by the Applicant in the present Application.
- e) It is noted that, the Suspended Director of the CD have remained un-cooperative throughout the CIRP period and have also not complied with the Orders of this Tribunal. So much so, the application for initiating the contempt proceedings was filed against them. The matter was also referred to the Special Court by this Tribunal for trial of offences under Section 236 of the IBC. The present application also appears to be another attempt to derail the resolution process.
- f) We find that, there has been no legal or procedural infirmity in conduct of the CIRP and presenting of the Resolution Plan for the approval of this Tribunal. The Resolution Plan having been submitted for approval by the RP under Section 30(6) of the IBC is to be considered by this Tribunal under Section 31 of the IBC.

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g) The Applicant in the present application has no locus standi in the matter and this Application No. IA(IBC)/20/2023 is therefore, dismissed with costs of Rs.50,000/-.

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SANJAY PURI
MEMBER (TECHNICAL)

Sd/L

RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

Chandu (LRA)