(7)

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

IA (IBC)/42/CHE/2022 in CP/1258/IB/2018

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

IN THE MATTER OF:

Mahalingam Suresh Kumar,
Resolution Professional of
M/s. Srivari Alloys India Private Limited
M/s. SPP & Co., Chartered Accountants,
No. 27/9, Nivedh Vikas, Pankaja Mill Road,
Puliyakulam,
Coimbatore – 641 045

... Applicant

Along with

IA/353/2020 in CP/1258/IB/2018

(filed under Section 60 (5) of IBC, 2016)

Prashanant Bansal
Proprietor
M/s Pashupati Engineering
Factory Address
R.S. No. 99/2,
Suthukeni Village
Mannadipet Commune,
Pondicherry-605 502
Residing at D 161
DLF Commanders Court
49 EthirajSalai
Egmore, Chennai- 600 008.

...Applicant

-Vs-

Mahalingam Suresh Kumar,
Resolution Professional of
M/s. Srivari Alloys India Private Limited
M/s. SPP & Co., Chartered Accountants,
No. 27/9, Nivedh Vikas, Pankaja Mill Road,

Puliyakulam,
Coimbatore – 641 045.

... Respondent

Present:

For RP : Rohan Rajasekaran, Advocate

CORAM

JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)

*Order Pronounced on **09th November 2022***

ORDER

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

I. IA/IBC/42/CHE/2022

This is an Application which is moved by the Resolution Professional of the Corporate Debtor viz., **Srivari Alloys India Private Limited (SVAIPL)**under Section 30(6) & 31 of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC, 2016') read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short, 'Regulation') seeking the approval of the Resolution Plan submitted by the successful Resolution Applicant viz., **Ferrosco Industries Private Limited (FIPL).**

2. CIRP IN BRIEF

2.1 In an Application filed under Section 9 of IBC, 2016 by a Operational Creditor viz. TCP Limited, this Adjudicating Authority vide order dated 16.07.2019 passed in CP/1258/IB/2018 initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor viz. Srivari Alloys India Private Limited (SVAIPL), by one Mr. M.S. Sankar as the Interim Resolution Professional (IRP). Thereafter, the IRP has caused public announcement on 22.07.2019 and based on the claims received from the stakeholders, the IRP constituted the Committee of Creditors (CoC) with Union Bank of India as a sole Financial Creditor with 100% voting rights. The 1st CoC meeting was convened on 21.08.2019 wherein the Applicant herein was recommended by the CoC to be appointed as the Resolution Professional (RP) of the Corporate Debtor and accordingly the CoC has moved MA/908/2019 and this Tribunal vide its order dated 28.08.2019 has appointed the Applicant herein as the RP in relation to the Corporate Debtor.

2.2 It is seen from the averments made in the Application that the Applicant has appointed two IBBI Registered valuers on 02.09.2019 for valuation of the Plant & Machinery and land & Building and the

valuers have submitted their report before the Applicant on 10.09.2019 and 12.09.2019. Thereafter, the 2nd CoC meeting was convened on 05.10.2019 and based on the valuation report, the RP has prepared the Information Memorandum and circulated to the CoC and based on the approval being granted by the CoC, the Applicant has issued Form – G on 09.10.2019 in "New Indian Express" English and "Dinamani" Tamil, and in pursuance of the same, the Applicant received interest from three prospective Resolution Applicants. It was submitted that all the three (3) prospective Resolution Applicants have requested additional time for submission of the Resolution Plan and accordingly, the CoC in its 3rd Meeting has resolved to extend the last date for the submission of the Resolution Plan by 15 days. The said extension of Form-G and mail communication to all the PR's are placed as 'Annexure- 7 & 8' of the Application typeset.

2.3 The Learned Counsel for the Applicant submitted that, in response to the extension of time granted, one prospective Resolution Applicant viz. Ferresco Industries Private Limited (FIPL) has shown interest and has filed the Resolution Plan with the Applicant on 24.12.2019 and thereafter the Applicant has paced the Resolution Plan before the CoC for consideration. Thereafter, in the 5th CoC meeting held on 10.01.2020, after having a detailed discussion on the

Resolution Plan, by considering the proposal offered by the prospective Resolution Applicant, the CoC suggested modifications and also requested the prospective Resolution Applicant to submit the revised Resolution Plan on or before 24.01.2020.

2.4 Meanwhile it can be seen that, 180 days of the CIRP was about to end on 18.01.2020 and pursuant to the same the Applicant had moved MA/57/2020 before this Tribunal seeking an extension of the CIRP period for sabout 60 days from 18.01.2020. This Tribunal, in order dated 20.01.2020 has allowed the said extension of CIRP period for 60 days.

2.5 In the 6th CoC meeting on 16.03.2020 much discussions and deliberations were made in regard to the revised plan and the repayment timelines, however from the averments made in para 12 of the Application it can be seen that due to non-availability of the CoC member, the CoC was adjourned to 24.03.2020. Further, due to COVID – 19 pandemic coupled with lockdowns imposed by the Central / State Governments, the CoC meeting was subsequently adjourned to 04.04.2020, 15.04.2020, 05.05.2020, 06.05.2020 and 19.05.2020. Finally, the 6th CoC meeting was convened on 21.05.2020 and in the said meeting the CoC directed the prospective Resolution Applicant to

deposit a sum of Rs.75,00,000/- (Rupees Seventy Five Lakh) in the 1st week of June 2020. In pursuance of the same, it is seen that the prospective Resolution Applicant has deposited a sum of Rs.75 Lakh on 25.07.2020 in the ESCROW account of the Corporate Debtor. Further, it is seen from the averments made in para 14 that the 7th CoC meeting was adjourned from 12.08.2020 to 20.08.2020, 31.08.2020, 04.09.2020, 09.09.2020 due to COVID-19 lockdowns and finally the same was convened on 15.09.2020.

2.6 It is submitted that the CoC approved the Resolution Plan submitted by the Resolution Applicant viz., Ferresco Industries Private Limited (FIPL) on 29.07.2020 'unanimously' in its 7th CoC meeting held on 15.09.2020 and passed a Resolution to the effect and the same is as follows;

> "RESOLVED THAT the resolution plan dt.29.07.2020 submitted by M/s. Ferrosco Industries Private Limited is hereby approved and confirmed by this committee u/s. 30(4) of the Insolvency and Bankruptcy Code, 2016"

The minutes of the 7th CoC meeting dated 15.09.2020 is placed as Annexure 13 of the Application typeset.

2.7 The Applicant has filed IA/895/2020 before this Tribunal for the Approval of the Resolution plan; however, the same was reserved for

orders and further reopened for clarification by this Tribunal on 30.07.2021 with regard to the payment of the unsecured Financial Creditor's. This Tribunal vide order dated 20.12.2021 disposed of the said Application with liberty to file afresh, as the COC in the 8th meeting held on 02.09.2021 has modified the resolution plan and approved the same unanimously. The said resolution is extracted hereunder:-

"Resolution:

> Based on the above facts and the Receipt of the rectified page of the resolution plan, the COC hereby approves the rectification in the resolution plan (Page 23) and directs the Resolution Professional to submit the updated Resolution Plan along with an appropriate affidavit for necessary approval of the Hon'ble Adjudicating Authority.
>
> The above resolution is unanimously approved by COC."

2.8 The Applicant has also filed Form – H in accordance with the IBBI (Corporate Insolvency Resolution Process for Corporate Persons) Regulations, 2016 along with this Application. The said Form-H is placed as 'Annexure- 20' of the Application typeset.

2.9 Further it can be seen from point 9 of Form-H filed with the Application that there are 'NIL' PUFE transactions pending with relation to the Corporate Debtor under Sections 43,45,50 or 66.

3. In proceeding with this Application the Fair Value and Liquidation value of the Corporate Debtor as stated in FORM- H filed by the Applicant is extracted hereunder: -

FAIR VALUE	RS. 3.56 CR
LIQUIDATION VALUE	RS. 3.16 CR

4. The list of Financial Creditor's and Operational creditors along with their respective voting share as per the revised FORM-H filed along with the Application is listed hereunder: -

FINANCIAL CREDITORS **(AMOUNT IN CR)**

S.NO	NAME	AMOUNT CLAIMED	AMOUNT ADMITTED	% OF REALIZATION
1.	UNION BANK OF INDIA (SECURED FINANCIAL CREDITOR)	16.06	16.06	20.24 %
2.	UNSECURED FINANCIAL CREDITOR	NIL	NIL	NIL

OPERATIONAL CREDITORS **(AMOUNT IN CR)**

S.NO	NAME	AMOUNT CLAIMED	AMOUNT ADMITTED	% OF REALIZATION
3.	RELATED PARTY TO THE CORPORATE DEBTOR	NIL	NIL	NIL
4	STRIDE STEELS PRIVATE LIMITED	0.32	0.32	5.0 %
5.	TCP LIMITED	0.26	0.27	5.0 %
6.	PASUPATHI ENGINEERING	0.20	0.05	5.0 %
7.	INCOME TAX DEPARTMENT	0.94	0.94	5.0 %
8.	WORKMEN AND EMPLOYEES	NIL	NIL	NIL

5. MANAGEMENT AND CONTROL OF BUSINESS OF THE CORPORATE DEBTOR:

5.1 In regard to the management and control of business of the Corporate Debtor after approval of the Resolution plan as envisaged in clause 5 of the plan is extracted hereunder:-

> "FIPL would be having its nominees on the Board to manage the company. FIPL shall identify and appoint suitable professionals to manage the affairs of the company on a day-to-day basis, with the support of the Key Managerial Personnel of the Company and with guidance from the Board of Directors of RA.
>
> FIPL will ensure that the resolution plan shall be implemented in accordance with the compliance of all applicable laws and regulations governing the terms and conditions of this resolution plan and shall not contravene any of the provisions of the law for the time being in force.
>
> The company will be transferred as a "going concern" to the resolution applicant / its associates post the complete implementation of the resolution plan. After the entire payment is made to the Secured Creditor, the Resolution Applicant will be given clear title on land, building, and other assets as mentioned above, free from all encumbrances and charges and has clear marketable title on such assets as reflected in the books of accounts of the CD. Further upon the completion of payment as per the Resolution Plan approved by the AA, In the meanwhile, on approval of the Resolution Plan, the Resolution Applicant have 6 months time period to pay the entire consideration to Financial Creditor, the possession of the all such land, building, shed, vehicles, cranes and other assets of the CD shall be duly handed over to the RA by the RP and in case of such assets if used by any entity the same shall be

restored back to the CD/RA within a period of 7 days from the effective date of this Resolution Plan, and an agreement shall be entered between the FC and RA for the interim period of 6 months for handing over the CD's property possession to the Resolution Applicant.

The Resolution Applicant / its associates, proposes to acquire 100% of the equity of the company, through restructuring the capital of the Corporate Debtor. And retain the option of hiving off the entity to separate SPV. Further with the CD being made as a "going concern" the other stakeholders who have been associated with the CD shall be getting their benefits as usual and hence the interest of the all stakeholders of the CD having been taken care by the RA accordingly."

5.2 **CAPITAL RESTRUCTURING AND REVISED SHAREHOLDING PATTERN:**

The capital restructuring and revised shareholding pattern as envisaged under the plan in clause 2.2.2 and 2.2.2.1 in the plan are as follows:

"**2.2.2 CAPITAL RESTRUCTURING (EQUITY)**

The existing capital of the company would be restructured by- The existing Rs.10 paid up face value of the equity shares form will be wiped off against the accumulated loss off the company and new equity shares of Rs.10 per share shall be issued for Rs.100 lacs."

"**2.2.2.1 REVISED SHAREHOLDING PATTERN**"

PARTICULARS	NO OF EQUITY SHARES OF RS. 10/- EACH	PAID UP VALUE OF NEW EQUITY SHARES (RS.LAKH)	%
FIPL & ITS ASSOCIATES	10,00,000	100.00	100.00%
ORIGINAL	0.00	0.00	0.00%

EQUITY SHAREHOLDERS-SVAIPL			
TOTAL	10,00,000	100.00	100%

6. MONITORING COMMITTEE

6.1 In regard to the implementation and supervision of the plan clause 6 of the Resolution plan proposes a committee comprising of the following persons

(i) Authorised representative appointed by FIPL

(ii) Resolution professional

(iii) Authorized representative from the Financial Creditor along with the support from the Key management personnel from the Company.

6.2 The plan also proposes Rs.5000/- as the remuneration of the committee members for one sitting and the committee shall meet every quarter to monitor the effective implementation of the plan.

7. In regard to the source of funds proposed by the successful resolution applicant viz., FIPL clause 1.1.6 of the plan provides in detail the manner of sourcing the funds. Further a memo dated 20.07.2022 has been filed by the Applicant stating that the Successful Resolution Applicant Viz., FIPL has the requisite financial strength to

implement the plan as per the timelines provided and the same was discussed in detail in the CoC meeting held on 29.04.2022.

8. SALIENT FEATURES OF THE RESOLUTION PLAN

(i) The Resolution Applicant proposes to pay a sum of Rs.3.25 Cr to the Secured Financial Creditor, which is 20.24% of the admitted claim amount, of which a sum of Rs.0.75 Cr has already been paid and the balance sum of Rs.2.50 Cr will be paid over a period of 6 months after the approval of the Resolution Plan by this Adjudicating Authority.

(ii) The Resolution Applicant proposes to pay a sum of Rs 0.79 Cr (inclusive of IT dues), to all the Operational Creditor's which is 5% of the admitted claim, to the Operational Creditors.

(iii) The Resolution Applicant has also proposed to pay a sum of Rs.0.05 Cr to the Income Tax department, which is 5% of the admitted claim. Further the plan proposes that the Resolution Applicant will pay any additional CIRP costs within 1 month of the approval of this Resolution plan by this AA.

(iv) The Resolution plan envisages payment of Rs. 0.10 Cr as CIRP costs. The same is proposed at point 4 of the Resolution plan at page no 118 of the Application typeset.

(v) The Resolution Plan amount is distributed as under;

(₹ in Cr)

S. No.	CREDITOR OF SUB-CLASS OF CREDITORS	AMOUNT ADMITTED IN CIRP	ALLOCATION OF AMOUNT UNDER THE RESOLUTION PLAN	% OF REALIZATION
1	Secured Financial Creditors	16.05	3.25	20.24%
2	Unsecured Financial Creditor	Nil	-	-
3	Operational Creditor (inclusive of IT	1.73	0.08	5%

	dues)			
	P.F. & ESI	Nil	Nil	-
	Employees	Nil	Nil	-
	TDS	Nil	Nil	-
	TOTAL	**17.79**	**3.33**	

9. MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS

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

MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS	COMPLIANCE UNDER RESOLUTION PLAN
S. 30(1) - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	Clause 1.2 of the Resolution Plan states that the prospective Resolution Applicant has already submitted the Affidavit under Section 29A of IBC, 2016 to the Resolution Professional and that the Resolution Applicant is not disqualified in terms of Section 29A of IBC, 2016.
S. 30(2)(a) -Payment of Insolvency and Resolution cost in the manner specified by the Board	Clause 2.1 of the Resolution Plan provides payment of the CIRP costs in priority. The CIRP Cost is arrived at ₹10 Lakh, to be paid within a period of 1 month from the date of approval of the Plan by this Tribunal.

S. 30(2)(b) - Payment of debts of Operational Creditors in such manner as may be specified by the Board, which shall not be less that the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under Sec. 53	The Resolution Plan states that the amount available to Operational Creditors in the event of liquidation is NIL and since the Resolution Plan amount is much less than the admitted claims of the secured creditors who have priority payment, as per Clause 2.2.4, the Operational Creditor has been proposed to pay 5% of their admitted claim amount. The same would be paid within a period of 1 month from the date of approval of the Plan by this Tribunal.
Reg. 38(1) - Resolution Plan identifies specific source of funds that will be used to pay the (a) Insolvency Resolution Process cost? (b)Liquidation value due to Operational Creditors? (c) Liquidation value due to dissenting financial creditors	Clause 1.1.6 and Clause 8 of the Resolution Plan deals with the Source of Fund from the Investor, Promoter / Directors Net worth. Further, the Liquidation value to the Operational Creditor is NIL however as per Clause 2.2.4, the Operational Creditor has been proposed to pay 5% of their admitted claim amount. The same would be paid within a period of 1 month from the date of approval of the Plan by this Tribunal.
Reg. 38(1A) - Resolution Plan shall include a statement as to how it has dealt with the interest of all the stakeholders, including financial creditors and operational creditors of the Corporate Debtor	Clause 2.2 and sub clauses thereunder enumerates how the interest of all the stakeholders including operational and financial creditors has been dealt with under the Resolution Plan.
S. 30(2)(c) - Management of the affairs of the Corporate Debtor after approval of the Resolution Plan	Clause 5 of the Resolution Plan deals with the Management of the affairs of the Corporate Debtor and it states that the Company will be transferred as a "going concern" to the Resolution Applicantss post implementation of the Resolution Plan.
S. 30(2)(d) - Implementation and Supervision of the Resolution Plan **and** **Reg. 38(2)** – Resolution Plan shall provide: a) term of plan and its	Clause 6 of the Resolution Plan deals with the Implementation and supervision of the Resolution Plan and it shall comprise of (i) Professional appointed by the Resolution Applicant (ii) Resolution Professional (iii) A authorized representative from the

<table>
<tr><td>implementation schedule
b) management and control of the business of the Corporate Debtor during its term;
c) it has provisions for effective implementation
d) it has provisions for approval required and the timeline for the same; and
e) the Resolution applicant has the capability to implement the Resolution Plan.</td><td>Financial Creditor.</td></tr>
<tr><td><u>Reg. 38(3)</u> - Resolution Plan shall demonstrate:
a) it address the cause of default
b) it is feasible and viable
c) it has provisions for effective implementation
d) it has provisions for approval required and the timeline for the same
e) the resolution applicant has the capability to implement the resolution plan</td><td>Clause 1.3.5 of the Resolution Plan address the cause of default and Clause 2 and the sub-clauses therein of the Resolution Plan deals with the operational Viability of the project by the Resolution Applicant.</td></tr>
<tr><td><u>S. 30(2)(e)</u> - Does not contravene any of the provisions of the law for the time being in force</td><td>The Resolution Professional in Form H has confirmed that the Resolution Plan is not in contravention with the provisions of any Applicable Law.</td></tr>
<tr><td><u>S. 30(4)</u> - Committee of Creditors approve the Resolution Plan by not less than 66% of voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by the Board</td><td>The CoC, in its 7th meeting has approved the Resolution Plan in the following voting pattern;

<table><tr><th>S.No</th><th>Name of Creditor</th><th>Assent (%)</th><th>Dissent (%)</th></tr><tr><td>1.</td><td>Union Bank of India</td><td>100%</td><td>-</td></tr><tr><td></td><td>TOTAL</td><td>100%</td><td>-</td></tr></table></td></tr>
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10. **RELIEF / CONCESSIONS :**

10.1 The Resolution Applicant in Clause 5 of Section – 1 of the Resolution Plan has sought for a total of 11 Reliefs and concessions from this Adjudicating Authority so as to implement the Resolution Plan. These are ordered as follows;

SL. No.	RELIEF / CONCESSIONS SOUGHT FOR	ORDERS THEREON
1	Other than Persons receiving settlements under this Resolution Plan, no other payments or settlements (of any kind) shall be made to any other Person in respect of claims filed under the CIRP (including, for avoidance of doubt, any unverified portion of their claims) and all Claims against the Corporate Debtor, its Promoters, Directors, Officers or any Associates affiliates along with any related legal proceedings, including criminal proceedings and other penal proceedings, shall stand irrevocably and unconditionally abated, settled and extinguished in perpetuity on the Effective Date.	**Granted, subject to the provisions of IBC, 2016 and other applicable laws.**
2	The payment of persons contemplated in this Resolution Plan shall be the Corporate Debtor's and Resolution Applicant's full and final performance and satisfaction of all its obligations to such Persons and all Claims (including, for the avoidance of doubt, any unverified portion of their Claims) of such Persons against the Corporate Debtor and Affiliates shall stand irrevocably and unconditionally settled and extinguished in perpetuity on the Effective Date.	**Granted in terms of the judgment of the Hon'ble Supreme Court in *Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.***
3	The Resolution Professional issued a notice inviting all potential claimants to submit their proofs of claims. This was published in the newspapers in accordance with the applicable law. The said Resolution Plan is being proposed in order to revive the stressed corporate debtor entity by way of rearranging/re-organizing the assets and liabilities of the corporate debtor and in the best interest of stakeholders of the	**Granted in terms of the judgment of the Hon'ble Supreme Court in *Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction***

	corporate debtor to the extent possible. With this objective, The Resolution applicant assumes that all the creditors of the Corporate Debtor that have any claims against the Corporate debtor have filed their claims and the verifiable claims have been admitted by the Resolution Professional and disclosed in the Information Memorandum and its schedule. Accordingly the Resolution Applicant and the Corporate Debtor shall have no responsibility or liability in respect of any claims against the Corporate Debtor along with its Promoters, directors, Officers or any associates attributable to the prior period to the Effective Date other than any payment to be made under this Resolution Plan and all Claims along with any related legal proceedings, including criminal proceedings and other penal proceedings, shall stand irrevocably and unconditionally abated, settled and extinguished in perpetuity. .	***Company Limited.***
4	Upon the approval of the Plan by the NCLT under Section 31 of the Code, all pending proceedings relating to the winding up/claims of the Corporate Debtor, if any shall stand irrevocably and unconditionally abated in perpetuity and all violation or breach of any agreement of the Corporate Debtor shall stand condoned or waived and such agreements shall be treated as if no violation or breach has ever been committed.	**Granted, subject to the provisions of IBC, 2016 and other applicable laws.**
5	On the Effective Date, the guarantors that have provided guarantees for and on behalf of and in order to secure the Debt availed by the Corporate Debtor shall not be entitled to exercise any subordinate rights in respect of such guarantees.	**Granted, subject to the provisions of IBC, 2016 and other applicable laws.**
6	On the Effective Date, all the outstanding negotiable instruments issued by the Corporate Debtor or by an person acting on behalf of the Corporate Debtor including demand promissory notes, post-dated cheques and letter of credit, shall stand terminated and the Corporate Debtor's liability under such instruments shall stand extinguished.	**Granted, subject to the provisions of IBC, 2016 and other applicable laws.**
7	On the Effective Date, the rights of any person whether exercisable now or in the future and whether contingent or not to call for the allotment, issue, sale or transfer of shares or loan capital of the Corporate Debtor, whether on	**Granted, subject to the provisions of IBC, 2016 and other applicable laws.**

	a change of control, or otherwise, shall stand unconditionally and irrevocably extinguished.	
8	All dues under the provisions of Income Tax Act 1961 (IT Act) including taxes, duty, penalties, interest, fines, cesses, unpaid TDS/TCS, whether admitted or not due or contingent, whether part of the above claim of income-tax authorities or not, whether part of Tax due diligence finding or now, asserted or un-asserted, crystallized or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the Effective Date pursuant to this Plan, shall stand extinguished by virtue of the order of the NCLT approving this Plan and the Corporate debtor and Resolution Applicant shall not be liable to pay any amount against such demand. All assessments/appellate or other proceedings pending in case of the Corporate Debtor on the effective date relating to the period prior to that date shall stand terminated and all the consequential liabilities, if any shall be deleted and shall be considered to be not payable to the Corporate Debtor by virtue of the order of the NCLT. All notices proposing to initiate any proceedings against the Corporate Debtor in relation to the period prior to the Effective Date and pending on that date shall be considered deleted and shall not be proceeded against. Post the order of the NCLT no reassessment/revision or any other proceedings under the provisions of the IT Act shall be initiated on the Corporate Debtor or Resolution Applicant in relation to prior period to the Effective Date and any consequential demand shall be considered non existing and as not payable by the Corporate Debtor. Any proceedings which were kept in abeyance in view of the insolvency process or otherwise shall not be revived post the order of the NCLT.	**This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016**
9	All dues under the provisions of all the indirect taxes, including but not limited to, the Central Excise Act, 1944, Service Tax, Goods and Service Tax, the Customs Act 1962, any other applicable indirect tax law, including taxes, duty, penalties, interest, fines, cesses, charges unpaid TDS/TCS (to the extent applicable) whether admitted or not, due or contingent, whether part of the above mentioned contingent liability schedule dues or not, whether claimed by the	**This is for the CBIC and other appropriate authorities to consider keeping in view the object of IBC, 2016**

	tax authorities or not, asserted or un-asserted crystallized or un crystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this plan shall stand extinguished by virtue of the order of the NCLT approving this Plan and the Corporate Debtor or Resolution Applicant shall not be liable to pay any amount against such demand. All outstanding litigations/demands, assessments/appellate or other proceedings, including but not limited to any audits, investigations, search and seizure, pending in case of the Corporate Debtor, on the effective date relating to the period prior to that date, shall stand terminated and all consequential liabilities, if any, shall be deleted and shall be considered to be not payable by the Corporate Debtor by virtue of the order of the NCLT, no re-assessment/revision or any other proceedings under the provisions of any of the indirect Tax laws shall be initiated on the Corporate Debtor or Resolution Applicant and any consequential demand shall be considered non-existing and as not payable by the Corporate Debtor. Any proceedings which were kept in abeyance in view of insolvency process or otherwise shall not be revived post the order of the NCLT.	
10.	All liabilities (whether contingent or crystallized) in relation to any corporate guarantees, indemnities and all other forms of credit support provided by the Corporate Debtor prior to the Effective date shall stand extinguished and discharged on the Effective Date.	**Granted in terms of the judgment of the Hon'ble Supreme Court in *Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.***
11.	The payment to all persons contemplated in this Resolution Plan shall be Corporate Debtor's and Resolution Applicant's full and final performance and satisfaction of all its obligations towards any dues or outstanding against the Corporate Debtor and all remaining claims, dues, outstanding amount shall be waived by whatever name called like interest, penal interest, compound interest, damages other commitment charges and any other amount whatsoever nature in terms of Clause No.37 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)	**Granted, subject to the provisions of IBC, 2016 and other applicable laws.**

	Regulations 2016.	

11. RELEVANT JUDGEMENTS OF THE HON'BLE SUPREME COURT

11.1 In so far as the approval of the Resolution Plan is concerned, this Authority is not sitting on an appeal against the decision of the Committee of Creditors and this Authority is duty bound to follow the much celebrated Judgment of the Supreme Court in the matter of **K. Sashidhar –Vs– Indian Overseas Bank***(2019) 12 SCC 150,* wherein in para 19 and 62 it is held as follows;

> "19.....In the present case, however, our focus must be on the dispensation governing the process of approval or rejection of resolution plan by the CoC. The CoC is called upon to consider the resolution plan under Section 30(4) of the I&B Code after it is verified and vetted by the resolution professional as being compliant with all the statutory requirements specified in Section 30(2).
>
> 62. .....In the present case, however, we are concerned with the provisions of I&B Code dealing with the resolution process. The dispensation provided in the I&B Code is entirely different. In terms of Section 30 of the I&B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC and they express their opinion on the proposed resolution plan in the form of votes, as per their voting share. In the meeting of the CoC, the proposed resolution plan is placed for discussion and after full interaction in the presence of all concerned and the Resolution Professional, the constituents of the CoC finally proceed to exercise their option (business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, non-recording of reasons would not per-se vitiate the collective decision of the financial creditors. The legislature has not envisaged challenge to the "commercial/business

decision" of the financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count."

11.2 Further, the Hon'ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steels –Vs– Satish Kumar Gupta &Ors. in** *Civil Appeal No. 8766 – 67 of 2019*at para 42 has held as follows;

> 42. .....Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of Section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and Section 32 read with Section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra).

11.3 Further the Supreme Court in the matter of **K. Sashidhar v. Indian Overseas Bank and Ors**. *(2019) 12 SCC 150* has lucidly delineated the scope and interference of the Adjudicating Authority in the process of approval of the Resolution Plan and held as follows;

> "55. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite per cent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides: (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in

prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.

58. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with Section 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters "other than" enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers."

(emphasis supplied)

11.4 Also the Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta**

and Ors. *(2020) 8 SCC 531* after referring to the decision in ***K. Sashidhar (supra)*** has held as follows;

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

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

76. The expositions aforesaid make it clear that the decision as to whether corporate debtor should continue as a going concern or should be liquidated is essentially a business decision; and in the scheme of IBC, this decision has been left to the Committee of Creditors, comprising of the financial creditors. Differently put, in regard to the insolvency resolution, the decision as to whether a particular resolution plan is to be accepted or not is ultimately in the hands of the Committee of Creditors; and even in such a decision making process, a resolution plan cannot be taken as approved if the same is not approved by votes of at least 66% of the voting share of financial creditors. Thus, broadly put, a resolution plan is approved only when the collective commercial wisdom of the financial creditors, having at least 2/3rd majority of voting share in the Committee of Creditors, stands in its favour.

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

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

77.2. The limitations on the scope of judicial review are reinforced by the limited ground provided for an appeal against an order approving a resolution plan, namely, if the plan is in contravention of the provisions of any law for the time being in force; or there has been material irregularity in exercise of the

powers by the resolution professional during the corporate insolvency resolution period; or the debts owed to the operational creditors have not been provided for; or the insolvency resolution process costs have not been provided for repayment in priority; or the resolution plan does not comply with any other criteria specified by the Board

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

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

12. Thus, from the catena of judgments rendered by the Supreme Court on the scope of approval of the Resolution Plan, it is amply

made clear that only limited judicial review is available for the Adjudicating Authority under Section 30(2) and Section 31 of IBC, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the Committee of Creditors.

13. The Resolution Applicant has sought for various waivers, reliefs and concessions some of which have been dealt with in point 10 of this order. Taking into consideration, the Judgments of the Hon'ble NCLAT and more particularly the decision of the Hon'ble Supreme Court of India in the matter of **Embassy Property Developments Pvt. Ltd. –Vs- State of Karnataka &Ors.** *(2020) 13 SCC 308*, we direct the Resolution Applicant to file necessary application before the necessary forum / authority in order to avail the Relief and Concessions, if it is in accordance with law.

14. Thus, the Resolution Plan is hereby **approved** and is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect and the "Moratorium" imposed under section 14 of IBC, 2016 shall not have any effect henceforth. The Resolution Professional shall submit the records collected during the commencement of the

Proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance. Liberty is hereby granted for moving any Miscellaneous Application, if required, in connection with implementation of this Resolution Plan. That in respect of stepping by the New Promoters/Resolution Applicant into the shoes of the erstwhile Company and taking over the business, the provisions of Companies Act, 2013 shall be applicable and because of this reason a copy of this Order is to be submitted in the Office of the Registrar of Companies, Coimbatore.

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

II. IA/353/2020:

16. In relation to IA/353/2020, filed by one Prashanant Bansal, Proprietor of M/s Pashupathi Engineering under Section 60 (5) of the IBC, 2016 against the Resolution professional of the Corporate Debtor viz., Srivari Alloy India Private Limited seeking the following reliefs:-

> "1. To direct the Resolution Professional to accept Rs. 20,43,690/- (Rupees Twenty lakh forty three thousand six hundred and ninety only) as claimed in Form- B dated 21.01.2020 by the Applicant.
>
> 2. To pass such other orders as this Hon'ble Tribunal may deem fit."

17. This Application has been filed on 03.03.2020 before this Tribunal. During the hearing of this Application the Ld. Counsel for the Applicant appeared and submitted that after reconciliation of accounts the Resolution Professional has admitted a claim amount of Rs. 7,62,233/-. In pursuance to the same the Applicant has filed a letter of communication from the Resolution Professional of the Corporate Debtor dated 22.02.2022.

18. However, on perusal of the Resolution plan filed in IA/42/CHE/2022 it can be seen that the claim amount admitted by the Resolution Professional remains Rs. 4,97,233/- only. As a consequence of the Resolution plan being approved in

IA/42/CHE/2022, the hands of this Adjudicating Authority is fettered by the Hon'ble Supreme Court Judgment in **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Ors.** *(2020) 8 SCC 531*which clearly lays down the principle that once the Resolution plan is *approved* by the Adjudicating Authority subsequent modifications shall not be entertained.

19. Therefore, this present IA/353/2020 is **dismissed** as infructuous.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT

Vinita Varshini.K