

FREE OF COST COPY

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, COURT-V

I.A. 6322/ND/2023

IN

C.P. No. IB- 262/PB/2022

(Under Section 30 (6) and 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016))

IN THE MATTER OF:

RACONTEUR GRANITE LIMITED

.... Financial Creditor

Vs.

OMANSH ENTERPRISES LIMITED

.... Corporate Debtor

AND

AND IN THE MATTER OF:

MR. GAGAN GULATI

RESOLUTION PROFESSIONAL OF

OMANSH ENTERPRISED LIMITED

.... Applicant

ORDER DELIVERED ON: 29.02.2024

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

PRESENT

For the Applicant: Mr. Rakesh Kumar, Ms. Pooeti Kashyap, Mr. Ankit Sharma,
Mr. Yash Dhawan, Adv.



I.A. 6322/ND/2023

IN

C.P. I.B-262/PB/2022

Order Delivered On: 29.02.2024

For the IT Dept. : Adv. Puneet Rai, Sr. Standing Counsel, Adv. Rishabh Nangia, Jr. Standing Counsel, Adv. Ashvini Kumar, Jr. Standing Counsel, Adv. Nikhil Jain

For the RP : Mr. Gagan Gulati, Adv Rakesh Kumar, Adv Preeti Kashyap, Adv Ankit Sharma, Adv Varun Pandit, Adv Yash Dhawan

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. The present application has been filed under Section 30(6) read with Section 31(1) of the Insolvency & Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') by Mr. Gagan Gulati, Resolution Professional (RP), on behalf of Omansh Enterprises Limited ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by M/s Raconteur Granite Limited ('Successful Resolution Applicant') and approved by the Committee of Creditors ('CoC') in its 11th CoC Meeting held on 21.10.2023.
2. Briefly stated, the facts as averred by the applicant in the application are stated are as follows:
 - a) That by an order dated 31.01.2023, this Adjudicating Authority had initiated Corporate Insolvency Resolution Process against the Corporate Debtor (Omansh Enterprises Limited) and the applicant was appointed as IRP in the matter.
 - b) That Public Announcement in the matter for inviting the claims from the creditors of Corporate Debtor was made on 23.02.2023 by the IRP in Form-A in "Financial Express (English language), in Jansatta (Hindi language) in New Delhi Edition.
 - c) The 1st CoC meeting was held on 21.03.2023, wherein CoC discussed and passed a Resolution for the appointment of IRP as the Resolution Professional. That in the second meeting of the CoC which was convened on 12.04.2023. In

I.A. 6322/ND/2023
IN
C.P I.B-262/PB/2022
Order Delivered On: 29.02.2024



the said meeting, the ratification for appointment of Registered Valuers has been made, details of which are mentioned herein below:

S. No.	Name of Registered Valuer	Asset Class	Date of Appointment
1	Devender Kumar Malhotra	Plant and Machinery	08.04.2023
2	Value Edge Professionals Private Limited	Plant and Machinery	08.04.2023
3	Manish Manvani	Securities and Financial Asset	08.04.2023
4	Swati Chaturvedi	Securities and Financial Asset	08.04.2023

- d) Further, the Applicant had proposed a new agenda in "any other Matter" wherein the Applicant informed the CoC members that he has formed an opinion for conducting of transaction audit of the CD for determination of PUFFE Transactions (ie. Preferential Undervalued Fraudulent, Extortionate Transaction) and thereafter, based on the quotes received from the different professional services firms as quoted for discussions, the RP, appointed M/s GR & Company as a Transaction Auditor for the said assignment. The Said resolution was thereby put for e voting through Ballot Sheet and the Resolution was duly approved by the 100% votes in favor of the appointment of the Transaction Audit of the Omansh Enterprises Limited. Further, an application bearing LA No 2039/2023 was filed by the RP on 24.03.2023, which was listed on 19.04.2023 for confirmation of IRP as the RP, and this Adjudicating Authority was pleased to confirm the IRP as RP of the CD vide order dated 19.04.2023.
- e) The Applicant filed another application bearing I.A. No. 2407/2023 under section 19(2) and 19(3) of 1&B Code against the suspended board of directors of the CD for non-compliance in providing required information. This Adjudicating Authority issued notice on the same. The said application bearing L.A. No. 2407/2023 is sub judice before this Adjudicating Authority.
- f) The 3rd CoC Meeting was held on 09.05.2023. The Applicant in the 3rd CoC meeting informed the CoC that the Information Memorandum has been





prepared by him in terms of the duty enlisted under Section 25(2)(g) i.e. preparing the Information Memorandum (IM) in accordance with Section 29 of the IBC, 2016 read with Regulation 36 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, containing information on matters stated under Regulation 36(2)(a) to (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

- g) The 4th CoC Meeting was held on 25.05.2023. In the 4th CoC meeting, it was informed by the applicant to the members of the CoC that an application with this Tribunal has been filed for placing on record the updated list of Creditors of the CD, the reconstituted list of CoC under Regulation 17 of the CIRP Regulations and also apprised that he has finalized the Information Memorandum also. The Applicant further apprised and requested the CoC to submit the confidentiality undertaking before sharing the draft Information Memorandum. In addition to the above, the Applicant discussed and approved the Expression of Interest for publishing Form G inviting the resolution applicants for revival of the CD along with timeline of issuance of Form G. That in terms of the Regulation 36A (1) of the CIRP Regulations, the Applicant invited prospective resolution applicants for submission of Expression of Interest for the purpose of submission of Resolution Plan in Form-G dated 26.05.2023.
- h) In the 5th CoC meeting, the Applicant discussed and approved the Information Memorandum, Bid Evaluation Matrix and RFRP to provide the prospective resolution applicants a brief about submission of the resolution plan of the CD. That subsequent to the above, in the 6th CoC Meeting held on 24.06.2023, the Applicant informed the CoC members that there are few organizations which are interested in submitting the EOI in this matter therefore, the Applicant proposed the agenda regarding re-issuance of the Form G before the CoC members. The same was approved by 100% voting share. Further, the Applicant also proposed the revised timelines for issuance of Form-G as approved by the CoC. That thereafter, the revised Form Ge was published by the Applicant on 25.06.2023 in terms of the approved revised timeline by the CoC in the 6th CoC meeting.

I.A. 6322/ND/2023
IN
C.P I.B-262/PB/2022
Order Delivered On: 29.02.2024





- i) The CoC meeting was held on 26.07.2023, the agenda regarding approval of filing an application proposed to be filed for seeking exclusion of 20 (twenty) days which was discussed and approved by the members of the CoC as the Order dated 31.01.2023 was received on 20.02.2023 after 20 days from the pronouncement of the said Order. The Expression of Interest submitted by one PRA i.e. "Krishna Ventures Limited" was also discussed as an agenda regarding the delay in submission of EMD by the prospective resolution applicant. The same was allowed by the CoC members through 100% voting share. In addition to the above, the agenda for filing an application before this Adjudicating Authority for extension of CIRP for 90 days beyond 180 days after 31.07.2023 was also discussed and approved by the CoC members through 100% voting share. Further, this Adjudicating Authority vide its order dated 11.08.2023 allowed the said application
- j) The 9th CoC Meeting was held on 01.09.2023, the agenda was put before the Applicant to discuss the 4 (four) Resolution plans received by the Applicant, the name of the prospective resolution applicants submitted the resolution plan are as follows:

SNO.	PROSPECTIVE RESOLUTION APPLICANTS
1.	String Metaverse Limited
2.	Tatkal Loan India Private Limited
3.	Raconteur Granite Limited
4.	SPSS Infrastructure Private Limited

- k) Thereafter, in the 10th CoC Meeting held on 14.09.2023, the Applicant proposed the Swiss Challenge Mechanism via Physical mode and therein, all the PRAs had actively participated for discussion over the resolution plans received by the prospective resolution applicants. Wherein all the PRAS actively participated in the Swiss Challenge Mechanism and therein the winner of the Swiss Challenge Mechanism who quoted the highest bid out of all was "Raconteur Granite Limited". All the PRAs had duly marked their presence and also confirm the authenticity of the mechanism. That subsequently, out of 4 PRAS, three PRAs had withdrawn from the proposal of submitting the Resolution Plan in the matter of Omansh Enterprises Limited. Therefore, the Applicant had refunded the EMD amount as submitted by



those PRAs and the Applicant also requested the PRA who won the Swiss challenge mechanism to submit the modified compliant resolution Plan.

- l) In the 11th CoC Meeting, which was convened on 21.10.2023 wherein the RP had proposed the agenda to take note of the gist of the compliant resolution plan filed by one PRA i.e. Raconteur Granite Limited and to approve the compliant resolution plan as submitted by the aforesaid PRA under section 30 of the I&B Code and Regulation 39 of CIRP Regulations. The resolution plan filed by Raconteur Granite Limited was approved by the CoC Members with 100% voting share. Further, the Applicant had received a Final Transaction Audit Report on 15.10.2023 and thereby proposed another Agenda in the meeting for discussion about the Final Transaction Audit Report in the meeting.
- m) Further, Section 30(6) of the I&B Code mandates the Applicant as a resolution professional to submit the resolution plan as approved by the CoC to the Adjudicating Authority for approval under Section 31(1) of the I&B Code. Accordingly, as the resolution plan submitted by the resolution applicant has been duly approved by the 100% voting of the members of the CoC, which is more than the requisite voting share i.e. 66% as per the Code. Therefore, the Applicant, is filing the present application for approval of the resolution plan before this Adjudicating Authority.
- n) The resolution applicant has given the amount of INR 25,00,000/- (Rupees Twenty-Five Lakhs) in terms of the EOI dated 25.06.2023. Therefore, as per clause 3.7.3 (Submission of Performance Guarantee) of RFRP, the Resolution Applicant had submitted a RTGS of the balance amount of 10% of the total Resolution Plan as a performance Guarantee which amounting to Rs. 13,64,721 (Rupees Thirteen Lakhs Sixty-Four Thousand Seven Hundred Twenty-One Only).
- o) That the Applicant has also perused the resolution plan submitted by the resolution applicant and found the same in compliance with the provisions of Section 30 of I&B Code read with Regulation 36, 37, 38 and 39 of the CIRP Regulations. The necessary details with respect to the compliance of the said regulations have been appropriately mentioned in the Form H. Further, the resolution plan in Clause 7 also provides the provision for the Monitoring Committee. Further, Clause 9 provides for the implementation of the plan.

I.A. 6322/ND/2023
IN
C.P I.B-262/PB/2022
Order Delivered On: 29.02.2024





The Resolution Applicant has undertaken in the Resolution Plan that it will implement the resolution plan in accordance with the said resolution plan. Further, it has also been stated that the Fair Value and Liquidation value of the assets under the class Plant & Machinery of the CD as submitted by the Registered Valuer and the average Fair Value and Liquidation value of asset under class of Plant & Machinery as computed as per the requirement of the I&B Code is set out herein below: -

Plant & Machinery			
SNo.	Name of the Registered Valuer	Fair Value (INR)	Liquidation value (INR)
1.	Devender Kumar	4410	3969
2.	Value Edge Professionals Private Limited	4640	4176
	Average	4298.75	4072.5

p) Further, in addition to the above, it has also been stated that the Fair Value and Liquidation value of the assets under the class Securities & Financial Assets of the CD as submitted by the Registered Valuer and the average Fair Value and Liquidation value of asset under class of Securities & Financial Assets as computed as per the requirement of the I&B Code is set out herein below:

Securities & Financial Assets			
SNo	Name of the Registered Valuer	Fair Value (INR)	Liquidation value (INR)
1.	Manish Marvani	10,422,913	8,685,786
2.	Swati Chaturvedi	11,715,864	11,563,415
	Average	1,10,69,388	1,01,24,600.5

q) Further, the Applicant has also noted that in the resolution plan, there are appropriate provisions for the payment of the Operational Creditors, employees and other statutory dues and the CIRP cost as well. In view of the same, it seems that the resolution plan is complying with all the necessary provisions of the I&B Code. The CoC has also deliberate all the necessary issues with respect to the resolution plan and the resolution plan has been approved with the 100% majority. The Applicant has apprised the CoC with respect to all nitty and gritty of the resolution plan before its consideration.





r) That in the facts and circumstances as detailed above, the Applicant and the CoC members have taken guidance from the judgment passed by the Hon'ble Supreme Court in the case of "Arcellor Mittal India Limited vs Satish Kumar Gupta", wherein, it has been held that the only reasonable construction of the I&B Code is the balance to be maintained between timely completion of the CIRP and the CD otherwise, being put into liquidation and if, there is a resolution applicant who can continue to run the CD as a going concern, every effort must be made to try and see that this is made possible. In the facts and circumstances of the case, the Applicant has examined the resolution plan and has certified the resolution plan as being compliant of I&B Code, the Applicant is filing the present application under section 30(6) and 31 of the I&B Code read with regulation 39 of the CIRP Regulations for approval of resolution plan by this Adjudicating Authority.

3. We have heard the submissions made by the Ld. Counsel for the applicant and have gone through the documents produced on record.

4. That some key features of the Resolution Plan are as follows:

- i. That the amounts proposed to be paid towards the Corporate Insolvency Resolution of the Corporate Debtor pursuant to the implementation of the proposed Resolution Plan is as under: -



(Amount in Rs. lakh)

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under subsection (2) of section 21	NIL	NIL	NIL	NIL
		(b) Other than (a) above: (i) who did not vote in favour of the resolution plan (ii) who voted in favour of the resolution plan	NIL	NIL	NIL	NIL
		Total[(a)+(b)]	NIL	NIL	NIL	NIL
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under subsection (2) of section 21				
		(b) Other than (a) above: (i) who did not vote in favour of				





		the resolution Plan				
		(ii) who voted in favour of the resolution plan	Rs.29,404,703.12/-	Rs.28,665,019.39/-	Rs.28,665,019.39/-	97.5%
		Total[(a) + (b)]	Rs.29,404,703.12/-	Rs.28,665,019.39/-	Rs.28,665,019.39/-	97.5%
3	Operational Creditors	(a) Related Party of Corporate Debtor	nil	nil	nil	Nil
		(b) Other than (a) above:				
		(i) Government				
		(ii) Workmen				
		(iii) Employees				
		(iv) Operational Creditors other than above category	Rs. 8,479,161/-	Rs. 8,479,161/-	Rs. 424,110/-	5.01%
		Total[(a) + (b)]	Rs. 8,479,161/-	Rs. 8,479,161/-	Rs. 424,110/-	5.01%
4	Other debts and dues					
	Grand Total		Rs. 37,883,864.12	Rs. 37,144,180.39	Rs. 29,089,129.39	78.31%

ii. The Fair Value and Liquidation Value of Corporate Debtor is as follows:

Fair Value	
For Plant & Machinery	Rs. 4298.75/-
For Securities & Financial Asset	Rs. 10596994.5/-
Liquidation value	
For Plant & Machinery	Rs. 4072.5/-
For Securities & Financial Asset	Rs. 10124600.5/-



iii. That the final resolution plan and its addendum submitted by “Racontuer Granite Limited” meets the requirements of Section 30(2) of the Code as under:



Section	Provisions under Section 30(2) of the Code	Compliance under Resolution Plan
30(2)(a)	provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;	YES Clause 6.4 (a)
30(2)(b)	provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than- (i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority	YES Clause 6.4 (b)





	in sub-section (1) of section 53	
30(2)(c)	provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;	YES Clause 7.1
30(2)(d)	the implementation and supervision of the resolution plan;	YES Clause 7.1
30(2)(e)	does not contravene any of the provisions of the law for the time being in force	NO Clause 10.1.4

iv. That the RA has provided the indicative timeline of events for implementation of the Resolution Plan at page 190 which is reproduced as under: -

Sr. No.	Class of Creditor	Protection	Remarks
1) CIRP Cost	100%	Payment will be made within 30 days of approval of the Resolution Plan by the Hon'ble NCLT.	Full Payment (Shall be paid out of Bank Balance available with CD and/or amount shall be brought by the RA)
2) Financial Creditors	100%	Payment to unrelated Financial Creditor within 30 days from the date of approval of the Resolution Plan by the Hon'ble NCLT	100% No Hair Cut
3) Employee/workmen	N.A.	All the existing employees and workmen will be considered for re-employment	No Dues
4) Other Operational Creditors	100%	All claims from BSE/SEBI/Govt authorities etc considered.	3% of the amount admitted 95% hair cut
5) (Contingent claims)	NA	No claims have been admitted	200000/-





v. Mandatory Contents as specified under Regulation 38 of IBBI CIRP Regulations 2016 are as under: -

Regulation	Provisions under Regulation 38 of IBBI CIRP Regulations 2016.	Compliance under Resolution Plan
38(1)(a)	The amount payable under a resolution plan – (a) to the operational creditors shall be paid in priority over financial creditors; and (b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.]	YES Clause 6.4 (a)
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.]	YES Clause 8.4
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.	NO Clause 8.2
38(2)(a)	A resolution plan shall provide the term of the plan and its implementation schedule;	YES Clause 9.2
38(2)(b)	A resolution plan shall provide the management	YES Clause 9.3

I.A. 6322/ND/2023
IN
C.P I.B-262/PB/2022
Order Delivered On: 29.02.2024





	and control of the business of the corporate debtor during its term; and	
38(2)(c)	A resolution plan shall provide adequate means for supervising its implementation	YES Clause 9.4
38(2)(d)	provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed:	YES Clause 7.9.3
38(3)(a)	A resolution plan shall demonstrate that – it addresses the cause of default;	YES Clause 9.5
38(3)(b)	A resolution plan shall demonstrate that – it is feasible and viable;	YES Clause 10
38(3)(c)	A resolution plan shall demonstrate that – it has provisions for its effective implementation;	YES Clause 9.1
38(3)(d)	A resolution plan shall demonstrate that – it has provisions for approvals required and the timeline for the same; and	YES Clause 10.1
38(3)(e)	A resolution plan shall demonstrate that – the resolution applicant has the capability to implement the resolution plan.]	YES Clause 10.1.1

vi. There are no objections to the Resolution Plan by any of the stakeholders.

I.A. 6322/ND/2023
IN
C.P.I.B-262/PB/2022
Order Delivered On: 29.02.2024



Plan for revival

- vii. The Resolution Applicant shall introduce the funds as committed in terms of this resolution plan for smooth functioning and operations of the Corporate Debtor. As the Corporate Debtor is undergoing the insolvency process, it must have lost its credibility in the market/industry. Resolution Applicant who has the credibility in the market shall facilitate the creditworthiness of the Corporate Debtor by taking the credit in market and by infusion of funds, if required, which shall help the Corporate Debtor in revival process. After introduction of the fresh fund for working capital by the Resolution Applicant, the Resolution Plan will become feasible and viable. The Resolution Plan has a unique likelihood of resolving insolvency and its sustainability.
- viii. With respect of compliance regarding Regulation 39(4) of the CIRP Regulations, the applicant has filed compliance certificate in Form-H certifying that the Resolution Plan submitted by the successful resolution applicant meets the requirements as laid down in various sections of the Code and the CIRP Regulations and there are sufficient provisions in the Plan for its effective implementation as required under the Code. Further, an affidavit has been obtained from the Successful Resolution Applicant stating that he is not ineligible under the provisions of Section 29A of the Code, 2016.
- ix. The applicant has prayed for number of waivers, reliefs and concessions in the Resolution Plan as mentioned in Clause 11, Page 65 of the Resolution Plan. As to the relief and concessions sought in the resolution plan, by taking into consideration the decision of the Hon'ble Supreme Court in the matter of **Embassy Property Development Private Limited v. State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019**, we direct the Successful Resolution Applicant to file necessary application before the necessary forum/ authority in order to avail the necessary relief and concessions, in accordance with respective laws. The relevant part of the judgement is reproduced herein below:

39. Another important aspect is that under Section 25 (2) (b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights





for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:

“25. Duties of resolution professional –

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions:

(a).....

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings.”

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”

5. In so far as the approval of the resolution plan is concerned, this Adjudicating Authority is duty bound to follow the judgement of the **Hon'ble Supreme Court in the matter of K. Sashidhar v. Indian Overseas Bank (2019) 12 CC 150,** wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as follow: -

35. 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 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. 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.

6. Also the Hon'ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019, vid its judgement dated 15.11.2019** has observed as follows:

"38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants."

I.A. 6322/ND/2023
IN
C.P I.B-262/PB/2022
Order Delivered On: 29.02.2024





Thus, from the judgements cited supra, it is amply clear that only limited judicial review is available to the Adjudicating Authority under Section 30(2) read with Section 31 of the Code, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the committee of the creditors.

8. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan. Accordingly, we hereby **approve the Resolution Plan**, which shall be binding on the corporate debtor and its employees, shareholders of corporate debtor, creditors including the Central Government, any State Government or any local authority to whom statutory dues are owed, guarantors, successful resolution applicant and other stakeholders involved. In view of the above, ***I.A. 6322/ND/2023 stands allowed.***
9. It is declared that the moratorium order passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of pronouncement of this order.
10. However, the resolution plan shall not construe any waiver to any statutory obligations/liabilities arising out of the approved resolution plan and the same shall be dealt in accordance with the appropriate authorities concerned as per relevant laws. We are of the considered view that if any waiver is sought in the resolution plan, the same shall be subject to approval by the concerned authorities. The same view has been held by the Hon'ble Supreme Court in **Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Embassy Property Development case (supra).**
11. Accordingly, MoA and AoA of the corporate debtor shall be amended and filed with the RoC for information and record as prescribed. While approving the 'resolution plan' as mentioned above, it is clarified that the resolution applicant shall pursuant to the resolution plan approved under section 31(1) of the Code,

I.A. 6322/ND/2023
IN
C.P I.B-262/PB/2022
Order Delivered On: 29.02.2024



FREE OF COST COPY

2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for such in law.

The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the corporate debtor and the Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code. The Resolution Professional is further directed to handover all the records, premises, properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.

13. The approved 'Resolution Plan' shall become effective from the date of passing of this order. The Approved Resolution Plan shall be part of this order.

14. Let the copy of the order be served to the parties

Sd/-
DR. SANJEEV RANJAN
MEMBER (TECHNICAL)



Sd/-
MAHENDRA KHANDELWAL
MEMBER (JUDICIAL)

Prashant Kumar
08.3.2024
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003

Prashant Kumar
08.3.24