

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

IA 1301/MB-V/2023

In

CP (IB) No.3823/MB-V/2019

Under Section 30 of IBC, 2016

Mr. Kumar Rajan

Resolution Professional of
M/s RPA Ferro Industries Private Limited
.... Applicant

In the matter of:

State Bank of India
...Financial Creditor

V/s

RPA Ferro Industries Private Limited
...Corporate Debtor

Order Dated: 12.07.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via videoconferencing):

For the Applicant (RP) : Mr. Rakesh Gupta, Advocate.

ORDER

Per: Anuradha Sanjay Bhatia, Member (Technical)

1. This is an application, being IA No. 1301/MB-V/2023, filed by **Mr. Kumar Rajan**, the Applicant, under Section **30 (6)** of IBC, 2016 (hereinafter "**the Code**"), for approval of the Resolution Plan filed by **Shree Padmanabh Ispat Pvt. Ltd.** (hereinafter as the "**Resolution**

Applicant) for an amount of Rs.24,82,96,000/-, and approved by 100% voting shares of the Committee of Creditors (hereinafter **“COC”**) members.

SUBMISSIONS OF THE APPLICANT:

2. The brief submissions on behalf of the Applicant is as under:

2.1 This Tribunal vide its order dated 15.03.2022, admitted the Petition filed by the Financial Creditor, under Section 7 of the Code against the Corporate Debtor and the Applicant was appointed as an Insolvency Resolution Professional (hereinafter **“IRP”**) of the Corporate Debtor.

2.2 Thereafter, in compliance with Section 13 and Section 15 read with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the Applicant published a public announcement on 28th March 2022 in Financial Express (English, All India Edition); Kannada Prabha (Kannada, Dharwad Edition); Navshakti (Marathi, Maharashtra Edition) and invited claims from all the stakeholders of the Corporate Debtor. The Applicant had received 14 claims of the creditors, out of which, 4 are Financial Creditors and 10 are Operational Creditors. The constitution of COC consisted of the following Financial Creditor:

Sr. No.	Name of Creditor	Amount Claimed	Amount Provisionally Admitted	Voting rights (%)	Secured/ Unsecured
1	State Bank of India	83,49,62,022	83,49,62,022	98.33	Secured
2	Parikh Metal	43,21,004	35,82,461	0.42	Unsecured

	Industries				
3	All India Metal Supply	51,36,892	42.86.799	0.50	Unsecured
4	Bharat Metals Manufactures Works	76,65,224	63,49,695	0.75	Unsecured
Total		85,20,85,142	84,91,80,977	100	

- 2.3 The first meeting of COC was convened on 25th April 2022 wherein the Applicant was approved to be Resolution Professional (hereinafter called as "**RP**") of the Corporate Debtor with 100% vote.
- 2.4 The Second (2nd) COC meeting was held on 06th June 2022, wherein at Agenda C (1), the agenda for inviting of Expression of Interest (EOIs) for the Corporate Debtor and publication of Form-G (Form for Invitation of Expression of Interest) were deliberated upon and resolution thereof was put for e-voting of COC members. Pertinently, the time period for submission of EOI was resolved to be kept open for 20 days as against standard 14 days, in order to attract maximum bidders. Subsequently, the resolution qua inviting EOIs and publication of Form G was approved with 100% vote in favour.
- 2.5 In pursuance to the aforesaid resolution, the Applicant made a public announcement on 10th June 2022 in Form G, under Regulation 36A (1) of the CIRP Regulations, which was published in Times of India (English, Hubli Edition), Navshakti (Marathi, Maharashtra Edition), Vijay Karnataka (Kannada, Gangavathi Edition), Financial Express (English, All India Edition). Subsequent to the publication of Form G, the Applicant received 10 EOIs by 30th June 2022, the last date for submission of EOIs.

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- 2.6 The Applicant thereafter prepared provisional list of eligible Prospective Resolution Applicants (hereinafter call as “**PRAs**”); inviting objection to Provisional List; issuance of final list of PRAs. Thereafter, the Applicant called for the third (3rd) COC meeting on 12th July 2022. However, the same was adjourned and re-convened on 14th July 2022, wherein Agenda pertaining to the issuance of request for Resolution Plan, including evaluation matrix and Information Memorandum was discussed and deliberated upon by the Applicant and COC members. As per the Form G, the last date for submission of Resolution Plans by PRAs was 14th August 2022 and as such, till the said date, the Applicant received Six (6) Resolution Plans from the PRAs.
- 2.7 The Applicant thereafter called the fourth (4th) COC meeting on 9th September 2022 wherein, the agenda for extension of CIRP period by ninety (90) days was placed and deliberated upon at Agenda Item No. B (1) as the statutory time period of 180 days’ time stipulated for completion of CIRP was set to expire on 11th September 2022. The COC members unanimously voted in favour of extension the CIRP period of the Corporate Debtor by a further period of 90 days and directed the Applicant for filing of necessary application for approval of the same from the Adjudicating Authority.
- 2.8 Pursuant to the resolution as passed in the fourth (4th) COC meeting of the Corporate Debtor, the Applicant filed an Interlocutory Application bearing I.A. No. 2531 of 2022 before this Tribunal seeking extension of the CIRP period of the Corporate Debtor by a further period of 90 days w.e.f. 12th September 2022 i.e., from 180 days to 270 days. The said application was duly heard by this

Tribunal and vide its order dated 18th November 2022, this Tribunal extended the CIRP period of the Corporate Debtor by a further period of 90 days w.e.f. 12th September 2022.

- 2.9 In the meantime, the Applicant had called the fifth (5th) COC meeting on 15th November 2022, wherein, Resolution Applicants presented their Resolution Plans before the COC and after detailed discussions and deliberation on the Resolution Plans as presented by the Resolution Applicants, the COC had called for further Negotiations with the Resolution Applicants.
- 2.10 The Applicant thereafter called the Sixth (6th) COC meeting on 6th December 2022 wherein, the Applicant duly apprised all the members that last date of CIRP of the Corporate Debtor was of 8th December 2022 and the Revised Resolution Plan from the Resolution Applicants were still awaited. Thus, after detailed discussion and deliberation, the members of the COC passed a resolution for extending the CIRP by a further period of sixty days, w.e.f. 9th December 2022 and the same was approved unanimously.
- 2.11 Pursuant to the resolution as passed in the Sixth (6th) COC meeting of the Corporate Debtor, the Applicant filed an Interlocutory Application bearing I.A. No. 3768 of 2022 before this Tribunal seeking further extension of the CIRP period of the Corporate Debtor, by a period of 60 days, w.e.f. 9th December 2022. The said application was duly heard by this Tribunal and vide its order dated 14th December 2022 this Tribunal extended the CIRP period of the Corporate Debtor by a further period of 60 days w.e.f. 9th December 2022.

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- 2.12 The Applicant thereafter called the Seventh (7th) COC meeting on 8th December 2022, wherein the Applicant apprised all the COC members about receiving of the Revised Resolution Plans from the 5 (five) Resolution Applicants. The members of the COC also invited the Authorized Representative of the Resolution Applicants so that they could explain the nitty-gritty of the proposed Resolution Plan (s) clearly. It is also pertinent to state that the Promoter and members of Suspended Board of Directors of the Corporate Debtor, Mr. Sushant Agarwal also submitted his Resolution Plan, the Corporate Debtor being an MSME entity. The members of the COC duly discussed and deliberated on all the Five (5) Resolution Plans, as received from the Resolution Applicants.
- 2.13 Thereafter, the Applicant called for Eight (8th) COC meeting on 21st December 2022, wherein the COC members duly apprised that the Resolution Plan, as submitted by the Promoter and Suspended Director, Mr. Sushant Agarwal, cannot be considered on the ground of his disqualification U/s. 29A Insolvency and Bankruptcy Code, 2016 (being a wilful defaulter) and resultantly passed a resolution for not considering his Resolution Plan for voting. Further, the Resolution Plans of other Four (4) Resolution Applicants would be evaluated on the basis of the Evaluation Matrix as prepared by the Applicant and the said COC meeting was adjourned to 23rd December 2022.
- 2.14 That the Adjourned Eight (8th) COC meeting of the Corporate Debtor was convened on 23rd December 2022, wherein the COC members duly took up the Resolution Plan (s) as submitted by the other Four (4) Resolution Applicants and evaluated the Resolution

Plans based on Evaluation Matrix for analysing the feasibility & viability and other incidental issues. The COC after deliberating upon Resolution Plan (s) upon the various parameters of feasibility and viability, it was unanimously resolved to put forth all the four (4) Resolution Plans for voting and the voting line kept opened till 18th January 2023.

- 2.15 In the meantime, the Writ Petition bearing WP/12736/2022 as filed by the Promoter and Suspended Director, Mr. Sushant Agarwal before the Hon'ble High Court of Karnataka inter alia challenging the classification of Mr. Sushant Agarwal as a Wilful Defaulter was taken up on 18th January 2023, wherein the Counsel of Mr. Sushant Agarwal submitted that they are in the process of settlement. Pursuant to which, the Hon'ble High Court of Karnataka in its Interim Order dated 18th January 2023 observed that the Petitioner would approach Respondent Bank and shall strike a dialogue for settlement of dispute between the Petitioner and Bank. The Hon'ble High Court of Karnataka also directed that any proceedings initiated by the Bank, would be remain subject to the outcome of the Writ Petition
- 2.16 In response to the aforesaid directions passed by the Hon'ble High Court, the majority COC member of the Corporate Debtor, State Bank of India (holding 98.33% vote share) vide email dated 27th January 2023 requested the Applicant for calling upon a COC meeting urgently as the CIRP of the Corporate Debtor was expiring on 6th February 2023.
- 2.17 The Applicant called upon Ninth (9th) COC meeting of the Corporate Debtor on 31st January 2023, wherein the Applicant

apprised the members that this Tribunal vide Order dated 14th December 2022 had extended the CIRP Period of the Corporate Debtor to 6th February 2023 and the prescribed Statutory CIRP Period of 330 days was to expire on 6th February 2023. The Applicant also apprised that he is in receipt of the email dated 19th January 2023 from Promoter and Suspended Director, Mr. Sushant Agarwal intimating the interim orders as passed by the Hon'ble High Court of Karnataka and email dated 27th January 2023 from the majority COC member, State Bank of India on the similar lines.

- 2.18 Thereafter, the members of the COC after much deliberations, unanimously approved the resolution of extension of CIRP period by another 60 days beyond 6th February 2023, subject to approval by this Tribunal and authorized the Applicant to file necessary application with this Tribunal.
- 2.19 Pursuant to the resolution as passed in the Ninth (9th) COC meeting of the Corporate Debtor, the Applicant filed an Interlocutory Application bearing I.A. No. 470 of 2023 before this Tribunal seeking further extension of the CIRP period of the Corporate Debtor by a period of 60 days w.e.f. 7th February 2023. The said application was duly heard by this Tribunal and vide its order dated 8th February 2023 this Tribunal extended the CIRP period of the Corporate Debtor by a further period of 60 days w.e.f. 7th February 2023.
- 2.20 That the Applicant called upon the tenth (10th) COC Meeting on 9th March 2023, wherein the Applicant apprised the COC Members about the voting results of the 8th COC Meeting of the Corporate Debtor which was held on 23rd December 2022 during which the

members of the COC unanimously concluded that Four Resolution Plans which were feasible and viable and were kept for e-voting. Accordingly, the e-voting platform was kept open for e-voting from 11th January 2023 till 7th March 2023. The Applicant tabled a report / result with respect to the e-votes casted by the members of the COC as generated at 6 p.m. on 6th March 2023.

- 2.21 **In line with Regulation 26(4) and 26(5) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the copy of the e-voting results obtained from the website of HK E solution (E-voting Agency) was circulated to COC Members on 6th March 2023 declaring Shree Padmanabh Ispat Pvt. Ltd. (SPIPL) as the Successful Resolution Applicant (hereinafter referred to as “Successful Resolution Applicant / SRA / SPIPL”) subject to approval of this Tribunal. The members of the CoC unanimously approved the Resolution Plan as submitted by Shree Padmanabh Ispat Pvt. Ltd. and the following resolution:**

“RESOLVED THAT CoC with 100% voting share approved the Resolution Pan submitted by from Shree Padmanabh Ispat Pvt Ltd (SPIPL) for RPA Ferro Industries Private Limited”.

- 2.22 **It is submitted that the Resolution Applicant has provided an Affidavit as mandated under Section 29A of the IBC 2016 in terms of its eligibility to submit a Resolution Plan.**
- 2.23 The Applicant submits that as per the RFRP dated 15th July 2022, the Successful Resolution Applicant shall, within a period of 2 (two) Business Days from the acceptance of issuance of the Letter of Intent (hereinafter called as the “LoI”) provide an irrevocable and

unconditional Performance Bank Guarantee of an amount aggregating to Rs.2,48,29,600 /- (Rupees two crore forty eight lakhs twenty nine thousand six hundred only) in favour of the lead member of the COC. The Applicant had issued Letter of Intent dated 9th March 2023 to the Resolution Applicant.

- 2.24 The Transaction Auditor has also submitted its Transaction Audit Report to the Applicant on 20th September 2023 with certain observations regarding the avoidance transactions as per the provisions of the Code. However, in regard to the said observations, the Applicant sought explanations from the Suspended Management / Creditors of the Corporate Debtor and the Suspended Management/ Creditors of the Corporate Debtor provided “satisfactory” response to the findings of the avoidance transactions as flagged by the Transaction Auditor. In view of the same, no Avoidance Application was filed by the Applicant reporting any Avoidance Transactions.

KEY FEATURES OF THE RESOLUTION PLAN

3. The key features of the resolution plan submitted by Shree Padmanabh Ispat Pvt Ltd (SPIPL), the Successful Resolution Applicant, are as follows:
- 3.1 The below table encapsulates the summary of payments proposed to be made to different classes of the creditors and stakeholders of the Corporate Debtor:

Sr. No.	Particulars	Category	Amount Admitted	Proposed Distribution	Upfront Payment made (as a % of Admitted Claims)
1	Secured Financial Creditors		83,49,62,022	20,01,00,000	23.97%
2	Unsecured Financial Creditors		1,42,18,955	26,00,000	18.29%
3	Operational Creditors		25,38,29,657	4,06,12,000	16%
4	Operational Creditors (Provision towards gratuity payable)	Workmen	N.A.	N.A.	N.A.
5	Statutory Authorities Employees Provident fund organization		77,63,643	77,63,643	100%
6	Unpaid CIRP Cost		31,23,000	31,23,000	100%
Total			111,38,97,277	25,41,98,643	

3.2 The said Resolution Applicant proposes a total cash consideration of Rs.25,41,98,643/- to all stakeholders.

3.3 It is submitted that the RA has provided an Affidavit as mandated under Section 29A of the Code, in terms of its eligibility, to submit a Resolution Plan.

3.4 The Applicant submits that as per RFRP dated 15.07.2022, the Successful Resolution Applicant shall, within a period of 2 (two) Business Days from the acceptance of issuance of the Letter of Intent, provide an irrevocable and unconditional Performance Bank Guarantee of an amount aggregating to Rs.2,48,29,600/- in favour of the lead member of the COC. The Applicant has issued Letter of Intent dated 09.03.2023 to the Resolution Applicant.

3.5 The Resolution Plan submitted by the Successful Resolution Applicant and as approved by the COC is viable and feasible for an effective resolution and rehabilitation of the Corporate Debtor.

THE DETAILS OF PROPOSED PAYMENTS IN THE RESOLUTION PLAN:

A. Corporate Insolvency Resolution Process (CIRP) Costs: (30 days)

- i. The unpaid CIRP cost as on date of passing of this Resolution Plan, as provided by RP, is Rs.31,23,000/- (Indian rupees thirty-one lakhs twenty-three thousand only). However, the Resolution Applicant understands that the final amount of CIRP costs shall be based on the actual Insolvency Resolution Process Costs (as defined in the Code) incurred in accordance with the provisions of the Code and the Resolution Applicant proposes to meet any shortfall in the CIRP Cost, in priority over other payments to other Stakeholders. The RA undertakes that the actual amount of CIRP Cost and pending as on the effective date shall be paid within 30 days from the Effective Date.

B. Settlement of the claims of Secured Financial Creditors: (455 days)

- i. The Resolution Applicant proposes to make payment of Rs.20,01,00,000/- (Indian rupees twenty crore one lakhs only) as full and final settlement of the claims filed by Secured Financial Creditor, subject to the other terms of this Resolution Plan. That the upfront amount of Rs.1001.00 Lakhs as proposed by the Resolution Applicant payable under the plan to the Secured Financial Creditors shall be paid within 30 days from the effective date and remaining amount will be paid in 4 (four) equal quarterly instalments (i.e. Rs.250,00,000/-

every quarter; the first instalment will start after 90 days from the effective date, without any interest).

C. Settlement of the claims of Unsecured Financial Creditors: (485 days)

- i. The Resolution Applicant proposes to make payment of INR 26,00,000/- (Rupees twenty-six lakhs only) as full and final settlement of the claims filed by Unsecured Financial Creditors, subject to the other terms of this Resolution Plan. The proposed amount shall be distributed among the Unsecured Financial Creditors, in the ratio of Voting share.
- ii. That the upfront amount of Rs.3 Lakhs as proposed by the Resolution Applicant, payable under the plan, to the Unsecured Financial Creditors shall be paid within 30 days from the effective date. The remaining amount of Rs.23 Lakhs will be paid in 4 (four) equal quarterly instalments, starting after 90 days from the date of upfront payment, without any interest.

D. Payment to Dissenting Financial Creditors: (Not applicable as the Plan has approved with a unanimous vote)

E. Payment to Related Party Creditors:

- i. That the total dues claimed by the Related Party Creditors amounts to Nil. Therefore, the Resolution Applicant proposed Nil payments towards the related party dues.

F. Settlement of claims filed by Operational Creditors (excluding Statutory Authorities and Workmen & Employees): (30 days)

- i. The Resolution Applicant has proposed Rs.4,06,12,000/- (Rupees four crores six lakhs twelve thousand only) for the Operational Creditors to be distributed in the ratio of admitted amount on pro rata basis. The proposed amount shall be paid within 30 days of the effective date and such payments shall be given priority of payment over financial creditors.

G. Payment to Statutory Dues & Contingent Liabilities: (30 days)

- i. The Resolution Applicant has proposed to settle admitted claim of Rs.77,63,643/- (Rupees seventy-seven lakh sixty-three thousand six hundred and forty-three only) of Employees Provident Fund Organisation in full and the amount will be disbursed within 30 days of the effective date and such payments shall be given priority over the payment of any other creditors.

H. Management of Corporate Debtor:

- i. The Resolution Plan in its paragraph 13 of the Initial Plan has made provisions for management of the affairs of the Corporate Debtor by appointment of new directors and their names are mentioned as under:
 - a) Mr. Polisetty Venkata Srinivas Rao, (Chairman and Managing Director);
 - b) Mr. Chimakurthy Subba Rao.

I. The Implementation and supervision of the Resolution Plan:

i. The Resolution Plan in its paragraph 14 (Initial Plan) has made provisions supervision of the implementation of the Resolution Plan by appointment of the following persons:

- One representative of the Secured Financial Creditors;
- One representative of Resolution Applicant; and
- One Registered Insolvency Professional empanel with State Bank of India.

J. The Resolution Plan does not contravene any of the provisions of the law for the time being in force:

i. The Resolution Plan, in its paragraph 16 (ii) (Initial Plan), has stated that the Resolution Applicant shall obtain all requisite approvals and requirements of law required to give effect to the Resolution Plan. In light of this undertaking, in the assessment of the Resolution Professional, the Resolution Plan does not contravene any provisions of the applicable laws.

4. Compliance with Code and Regulations:

Section	/ Regulation	Requirement with respect to Resolution Plan	Relevant Clause of Resolution
25 (2) (h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Yes	Yes
Section 29A	Whether the Resolution	Yes, Affidavit	Yes

	Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Dated 28.06.2022	
Section 30 (1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Yes	Yes
Section 30 (2)	Whether the Resolution Plan-		
r/w Regulation 38(1)(a) of CIRP Regulation	a. Provides for the payment of insolvency resolution process costs.	Clause 8.2 (Addendum 1)	Yes
	b. Provides for the payment to the operational creditors.	Clause 3 (Addendum 2)	Yes
	c. Provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Clause 8.10 (iv) Page 28 of Initial Plan	Yes
	d. Provides for the management of the affairs of the corporate debtor.	Clause 13- Pg 33 of Initial Plan	Yes
	e. Provides for the implementation and supervision of the resolution plan.	Clause 14- Pg 36 of Initial Plan	Yes
	f. Contravenes any of the	Clause 7 -Pg 17 of	

	provisions of the law for the time being in force?	Initial Plan	Yes (No Contraventions specified in the Plan)
Section 30 (4)	Whether the Resolution Plan a. is feasible and viable, according to the CoC? b. has been approved by the CoC with 66 voting shares?	NA (forms Part of COC Minutes) Yes	Yes Yes
Section 31 (1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	NA (Already forms part of the CoC Minutes)	Yes
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Clause 4 and 5 of Addendum 2	Yes
Regulation 38 (1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Addendum 2	Yes
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the	Not Applicable	Not Applicable Not Applicable

	Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	Not Applicable	
Regulation 38 (2)	Whether the Resolution Plan provides a. the term of the plan and its implementation schedule? b. for the management and control of the business of the corporate debtor during its term? c. adequate means for supervising its implementation?	Addendum 2 and Mail dated 12 December 2022 Clause 13- Pg 33 of Initial Plan Clause 14- Pg 36 of Initial Plan	Yes Yes Yes
Regulation 38 (3)	Whether the resolution plan demonstrates that a. it addresses the cause of default? b. it is feasible and viable? c. it has provisions for its effective implementation?	Pg 52 of Initial Plan Clause 7- Pg 17-19 of Initial Plan Clause 14- Pg 36 of Initial Plan	Yes Yes Yes

	d. it has provisions for approvals required and the timeline for the same?	Clause 15.3 Pg 43 of Initial Resolution Plan	Yes
	e. the resolution applicant has the capability to implement the resolution plan?	Clause 4- Pg 6-9 of Initial Resolution Plan	Yes

OBSERVATIONS AND FINDINGS:

- i. As per IBC Code 30(2)(a) – A Resolution Plan provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor.
- ii. As per Section 30(2)(b), the Respondent has agreed to pay Operational Creditors an amount which shall not be less than liquidation value or the amount that would have been paid to such creditors if the amount to be distributed under the Resolution Plan is distributed in accordance with priority under Section 53(1), whichever is higher.
- iii. The Resolution Applicant has agreed to meet the cost of project from existing resources including infusion of equity/debt from the Resolution Applicant's own sources.
- iv. The Resolution Applicant has also agreed that dissenting financial creditors shall be paid in priority and not less than the value they

would have been paid in the event of liquidation of the Corporate Debtor.

- v. The plan provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan. Section 30(2)(c).
- vi. The plan provides for a term of the plan, implementation schedule and supervision of the Resolution Plan under Section 30 (2) (d) & Regulation 38(2)(c).
- vii. The Resolution Plan does not contravene any of the provisions of the law for the time being in force - Resolution Plan provides for the implementation and supervision of the resolution plan as per Section 30(2) (e)
- viii. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force as per Section 30(2)(f).
- ix. As per IBBI Guidelines 38(1)(b) - the amount payable under a Resolution Plan -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.
- x. The Resolution Applicant or any of its related parties has not failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.

- xi. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:
- a. The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors. Regulation 38(1).
 - b. The Resolution Plan has all the adequate means of supervising of the implementation of the Plan as required under Regulation 38(2) (c), of the IBBI, Insolvency resolution process for corporate persons, Regulation 2016.
 - c. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company (Regulation 38(1)(a)).
 - d. Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
 - e. The amount payable under a Resolution Plan to the Financial Creditors, who have 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.
 - f. The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.

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- g. The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a Resolution Plan under Section 29A of the Code and other provisions of the Code and any other Applicable Law.
- h. The plan provides for the management and control of the business of the Corporate Debtor during its term.
- i. All the above factors demonstrate that the plan addresses the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.
- j. That the Resolution Applicant or any of its related parties has never failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past. This is in compliance of Regulation 38(1)(b) of the Regulations.
- k. The interests of all stakeholders (including Financial Creditors, Operational Creditors and other creditors, guarantors, members, employees and other stakeholders of the Company, keeping in view the objectives of the Code (Regulation 38(1A)).
5. **The Resolution Plan has been approved with 100% voting in accordance with the provisions of the Code.**
6. In *K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150* the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share,

then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

7. The Hon'ble Apex Court at para 42 in *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC Online*, clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved.

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

8. In view of the above ruling of the Apex Court, the legislature has given paramount importance to the commercial wisdom of committee of

creditors (CoC) and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent provided under section 31 of Code and of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code, is no more an untouched-matter.

9. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved. Accordingly, the Plan is approved in term of the following:

ORDER

- a) **Application bearing IA No. 1301 of 2023 in CP 3823 of 2019 is Allowed.** The Resolution Plan submitted by Shree Padmanabh Ispat Pvt. Ltd. annexed to the Application is hereby approved. **It shall become effective from this date and shall form part of this order.** It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force is due.
- b) The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. It is seen that the Resolution Applicant sought several

dispensations, concessions and waivers. Any waiver sought in the Resolution plan shall be subject to approval by the Authority concerned in the light of the Judgment of Supreme Court in ***Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited***, the relevant paras of which are extracted herein below:

“on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in, respect to a claim, which is not part of the resolution plan.”

“95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;

(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”

- c) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- d) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- e) The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.
- f) The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- g) The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.

- h) The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- i) The Registry is directed to send copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

Sd/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)