

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
20-07-2023 AT 10:30 AM

IA(IBC) 385 & 407/2023 in CP(IB) No. 329/7/HDB/2020
u/s. 7 of IBC, 2016

IN THE MATTER OF:

State Bank of India

...Financial Creditor

VS

Dharti Dredging and Infrastructure Ltd

...Corporate Debtor

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

ORDER

IA 385/2023

Orders in IA 385/2023 is allowed, Resolution Plan is approved subject to the conditions mentioned in the order.

IA 407/2023

Orders pronounced, recorded vide separate sheets. We have carefully examined the reasons that are given by the Resolution Professional for rejecting the plan without placing the same before the CoC and we are convinced that the reasons are tenable and sustainable under law. Moreover, the Applicant is not a stakeholder and there is no vested right in favour of the Applicant to claim that the resolution plan be approved.

We are of the considered view that the Application sans merit and deserves to be dismissed. Accordingly, the same is hereby dismissed. However, no costs.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

**I.A. NO. 385/2023
IN
CP (IB) NO. 329/7/HDB/2020**

*APPLICATION UNDER SECTIONS 30(6) AND 31(1) OF THE IBC, 2016, R/w
REGULATION 39(4) OF THE IBBI (IRPCP) REGULATIONS, 2016,*

IN THE MATTER OF:

**STATE BANK OF INDIA
Versus
DHARTI DREDGING AND INFRASTRUCTURE LIMITED**

Filed by

Mr. MADHUSUDHAN RAO GONUGUNTA
(Resolution Professional for Dharti Dredging and Infrastructure Limited)
Having office at 7-1-285, Flat No. 103,
Sri Sai Swapnasampada Apartments,
Balkampet, Sanjeev Reddy Nagar,
Hyderabad, Telangana – 500038.
Email: ddailirp@gmail.com

... Applicant

Date of order: 20.07.2023

Coram

Dr N. Venkata Ramakrishna Badarinath, Hon'ble Member Judicial
Shri Charan Singh, Hon'ble Member Technical

Appearance

For Applicant: Shri Yashvardhan, Advocate

**PER: BENCH
ORDER**

1. The present Application is filed by Mr. Madhusudhan Rao Gonugunta (“**Resolution Professional**” / “**Applicant**”), the Resolution Professional of Dharti Dredging and Infrastructure Limited (“**Corporate Debtor**”), under Sections 30(6) and 31(1) of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”), seeking the approval of the resolution plan dated 10.01.2023 of Consortium of Yogayatan Ports Private Limited and Dr. Rajendra Raja Bali Singh (“**Successful Resolution Applicant**”).
- 2.1 To put precisely, the Company Petition CP (IB) No. 329/7/HDB/2020 filed by State Bank of India (“**SBI**”) under Section 7 of the Code for initiation of the underlying corporate insolvency resolution process (“**CIR Process**”), was admitted by this Hon’ble Adjudicating Authority *vide* order dated 05.04.2022 (“**Admission Order**”, and such date, “**Insolvency Commencement Date**”). Accordingly, the Applicant was appointed as the Interim Resolution Professional (“**IRP**”). A copy of the Admission Order dated 05.04.2022 is annexed as **Annexure A-1**.
- 2.2 Pursuant to the 1st Meeting of the Committee of Creditors (“**CoC**”) held on 04.05.2022, the CoC confirmed the appointment of the Applicant as the Resolution Professional of the Corporate Debtor.
- 2.3 Pursuant to public announcement by the Applicant (“**Public Announcement**” in Mana Telangana (Telugu in Telangana) and Financial Express (English Edition – All India) on 13.04.2022, inviting claimants to

submit their claims with proof by 24.04.2022, the Resolution Professional after collating and verifying the claims constituted Committee of Creditors (CoC) as under:-.

S. No.	Name of the CoC member	Voting share
1.	State Bank of India	50.064
2.	Federal Bank	15.485
3.	ICICI Bank	34.451
Total		100%

The Resolution Professional filed a report before this Adjudicating Authority on 29.04.2022 as required under Section 21 of the Code read with Regulation 17(1) of the CIRP Regulations, certifying the constitution of the CoC, based on verification of claims received till 29.04.2022. The list of creditors was updated from time to time and published on the website of the Corporate Debtor.

2.4 It is also submitted that at the 2nd CoC Meeting held on 21.05.2022, in accordance with Regulation 35 of the CIRP Regulations, two registered valuers were appointed by the Resolution Professional with the concurrence of the CoC, viz. GAA Advisory LLP and Gtech Valuers Private Limited to provide the Liquidation Value and Fair Value of the Corporate Debtor.

- 2.5 The Resolution Professional published invitation for Expression of Interest (“**EoI**”) for submitting resolution plans, in terms of Form G in newspapers, viz. Economic Times (English edition), Eenadu (Telegu edition), Deshabimani (Malayalam edition) on 25.05.2022, whereby PRAs which met the eligibility criteria, were invited to submit their EoI to the Resolution Professional latest by 08.06.2022. The minutes of the 2nd CoC meeting held on 21.05.2022 is annexed as **Annexure A-4**. Form G dated 25.05.2022 is annexed as **Annexure A-5 (Colly.)**.
- 2.6 In response to Form G publication, the Resolution Professional received nine EOIs from Prospective Resolution Applicants. Out of nine EOIs, only one EOI was compliant, namely M/s.Megha Engineering and Infrastructure Limited, and the information memorandum (“**IM**”) was issued by the Resolution Professional. Consequently Resolution Professional issued the Request for Resolution Plan (“**RFRP**”) to M/s.Megha Engineering and Infrastructure Limited. However, no resolution plan was received from M/s. Megha Engineering and Infrastructure Limited.
- 2.7 Thereafter as per the decision taken in the 5th CoC meeting on 25.07.2022, fresh Form G (Invitation for Expression of Interest) was issued on 27.07.2022 in Business Standard (English edition), Mana Telangana

(Telugu edition) on 27.07.2022, whereby PRAs which met the eligibility criteria, were invited to submit their EoI to the Resolution Professional latest by 11.08.2022. The Form G dated 27.07.2022 is annexed as **Annexure A-6 (Colly.)**. The final list of PRAs included the names of 4 (four) applicants viz., (i) Adani Ports and Special Economic Zone Limited; (ii) Consortium of Yogayatan Ports Private Limited and Dr. Rajendra Raja Bali Singh; (iii) Nalwa Steel and Power Limited; (iv) Ramalingam Construction Private Limited.

2.8 At the request of the PRAs, in the interest of value maximization, the CoC members passed a resolution to extend the last date of submission of the Resolution Plan till 10.10.2022. A copy of the minutes of the 7th Meeting of CoC held on 19.09.2022 is annexed as **Annexure A-8**.

2.9 In the 8th CoC Meeting held on 13.10.2022, the Resolution Professional informed the CoC members that two resolution plans from M/s. Ramalingam Construction Private Limited and Consortium of Yogayatan Ports Private Limited and Dr. Rajendra Raja Bali Singh the Resolution Applicants were received on 10.10.2022 with EMD of Rs.5 Crores each. Subsequently, in the 9th CoC meeting held on 09.11.2022, the Representatives of the concerned RA also presented a summary to the

members of the CoC and the PRAs were once again requested to improve their resolution plans, to which one of the PRAs i.e. Ramalingam Construction Private Limited expressed their inability to revise the Resolution Plan and sought for refund of the EMD.

2.10 The Consortium of Yogayatan Ports Private Limited and Dr. Rajendra Raja Bali Singh submitted their revised Resolution Plan on 09.12.2022 which was deliberated in the 11th CoC Meeting held on 15.12.2022. The revised resolution plan submitted by Consortium of Yogayatan Ports Private Limited and Dr. Rajendra Raja Bali Singh was put up for e-voting from 17.12.2022 till 25.12.2022. The Consortium of Yogayatan Ports Private Limited and Dr. Rajendra Raja Bali Singh was once again instructed to revise / improvise their Resolution Plan.

2.11 Accordingly, the Consortium of Yogayatan Ports Private Limited and Dr. Rajendra Raja Bali Singh submitted their revised Resolution Plan on 10.01.2023, which has been deliberated in the 12th CoC Meeting held on 17.01.2023. After due deliberations on the feasibility and viability of the resolution plans, the Resolution Professional informed the CoC members that the voting agenda *qua* approval of the revised resolution plan submitted by Consortium of Yogayatan Ports Private Limited and Dr. Rajendra Raja

Bali Singh will be put up for e-voting and e-voting lines will be open from 19.01.2023 to 10.02.2023. The minutes of the 12th CoC meeting held on 17.01.2023 is annexed as **Annexure A-11**.

2.12 Meanwhile on 13.01.2023, Consortium of Mr. Akumulla Rajendra, Mr. Rajeshkumar Jhunjunwala and SKH Impex Private Limited sent their Resolution Plan through email to resolution professional and cc to all the CoC lenders. The Resolution Professional had not accepted the resolution plan of Consortium of Mr. Akumulla Rajendra, Mr. Rajeshkumar Jhunjunwala and SKH Impex Private Limited stating plan is in complete violation under the IBC. However, the Consortium of Mr. Akumulla Rajendra, Mr. Rajeshkumar Jhunjunwala and SKH Impex Private Limited approached this Tribunal by moving I.A. No. 177 of 2023. On 10.02.2023, the Hon'ble National Company Law Tribunal in I.A. No. 177 of 2023 passed an order to re-examine the Resolution Plan of Consortium of Mr. Akumulla Rajendra, Mr. Rajeshkumar Jhunjunwala and SKH Impex Private Limited and thereafter place the same before the COC if the same meets the criterion laid down in RFRP and statutory requirements under the Code. This Tribunal held that there would be no stay on the voting of the Resolution Plan of Consortium of Yogayatan Ports Private Limited and Dr. Rajendra Raja Bali Singh, but the outcome would be kept in abeyance until

the Resolution Professional takes a decision on the Resolution Plan of the Applicant in IA 177/2023. The Order passed by this Tribunal dated 10.02.2023 is annexed and marked as **Annexure A-12**.

2.13 Subsequently, the voting on the Resolution Plan of Consortium of Yogayatan Ports Private Limited and Dr. Rajendra Raja Bali Singh got over on 23.02.2023, but in compliance with the orders of this Tribunal in I.A. No. 177 of 2023, the outcome of the meeting was kept in abeyance and opened on 24.02.2023.

2.14 Further complying with the orders of this Tribunal dated 10.02.2023, the Resolution Professional re-examined the Resolution Plan submitted by Consortium of Mr. Akumulla Rajendra, Mr. Rajeshkumar Jhunjunwala and SKH Impex Private Limited. The Resolution Professional had also engaged reputed legal firm to check the eligibility under Section 29A and the Code. On 23.02.2023, the legal firm to the Resolution Professional submitted a Report substantiating the ineligibility of Consortium of Mr. Akumulla Rajendra, Mr. Rajeshkumar Jhunjunwala and SKH Impex Private Limited under the IBC. Therefore, the Resolution Professional sent a letter on 24.02.2023 informing the Consortium of Mr. Akumulla Rajendra, Mr. Rajeshkumar Jhunjunwala and SKH Impex Private Limited

that the resolution plan is non-compliant with the requirements under the IBC. The copy of the Letter dated 24.02.2023 to the Consortium of Mr. Akumulla Rajendra, Mr. Rajeshkumar Jhunjhunwala and SKH Impex Private Limited is annexed as **Annexure A-13**.

2.15 Meanwhile, Consortium of Yogayatan Ports Private Limited and Dr. Rajendra Raja Bali Singh had preferred an Appeal against the order passed by this Hon'ble Tribunal in I.A. No. 177 of 2023. The same is pending for hearing before the Hon'ble NCLAT as on date of filing of the instant Application and posted to 28.02.2023.

2.16 The Members of the Committee of Creditors evaluated the said Resolution Plan strictly as per the evaluation matrix and Section 29A. After evaluating in terms of both qualitative and quantitative criteria and aggregate, the said resolution plan was put for e-voting from 19.01.2023 to 10.02.2023. The Resolution Plan submitted by the Successful Resolution Applicant / Consortium of Yogayatan Ports Private Limited and Dr. Rajendra Raja Bali Singh was approved by members having 100% voting share in the CoC and thereby was approved by the requisite majority as stipulated under the Code, pursuant to which Letter of Intent (LoI) was issued on 24.02.2023 which was accepted by the Successful Resolution Applicant on 24.02.2023.

As per the Letter of Intent, the Resolution Professional sought the successful Resolution Applicant to furnish an unconditional performance security of the required Bank Guarantee or funds 10% of the resolution plan along with acceptance of LOI. The successful Resolution Applicant requested the Resolution Professional to adjust the EMD amount of Rs. 5 Crores with the Performance Security and further transferred a sum of Rs. 95 lakhs (shortfall) vide Cheque No. 874167. A copy of the Letter of Intent dated 24.02.2023 (as accepted by the Successful Resolution Applicant on 24.02.2023) is annexed as **Annexure A-14**. A copy of the Bank Receipt indicating the receipt of Rs. 95 lakhs is annexed as **Annexure A-15**.

2.17 Thus submitting, prayed the Tribunal to approve the Resolution plan submitted by Consortium of Yogayatan Ports Private Limited and Dr. Rajendra Raja Bali Singh. Form H as per the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations 2016 is annexed and marked as Annexure A-17.

3. CONTOUR OF THE RESOLUTION PLAN APPROVED BY THE COC

(a) **CONSORTIUM OF YOGAYATAN PORTS PRIVATE LIMITED (YPPL) AND DR. RAJENDRA RAJA BALI SINGH/ SRA).**

Consortium of Yogayatan Ports Private Limited (YPPL) is a Private Company established in the year 2002. The Company is a part of the Yogayatan Group which has a diverse business conglomerate that has considerable investments in Industries like construction and real estate, townships, petroleum and natural resources, ports, power etc. It also boast to be Mumbai's first private dry cargo port having 4.5 MTPA cargo handling capacity.

Dr. Rajendra Raja Bali Singh is the Chairman of Yogayatan Group who leads one of the region's most diverse conglomerates and he is credited with key business promotion initiatives in industries like textile, handloom, automobile and allied industries in the country. A copy of the Resolution Plan of the Successful Resolution Applicant i.e. Consortium of Yogayatan Ports Private Limited and Dr. Rajendra Raja Bali Singh is annexed as Annexure A-16.

- (b) The CoC comprised of the following Financial creditors and the distribution of voting share among them is as under:-

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	State Bank of India	50.064%	Voted for
2	ICICI Bank Limited	15.485%	Voted for
3	The Federal Bank Ltd	34.451%	Voted for
	Total	100.000%	

- (C) **FINANCIAL PROPOSALS**: The amount provided to the stakeholders of the Corporate Debtor is tabulated below:-

Amount in Lakhs

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 sub-section (2) of section 21				
		(b) Other than (a) above: (Andhra Pradesh Maritime Board & State tax officer Jamnagar)	192.16	152.60	16.37	16.60

		(i) who did not vote in favour of the resolution Plan	Nil	Nil	Not Applicable	Not Applicable
		(ii) who voted in favour of the resolution plan	29521.21	29521.21	3167.50	16.60
		Total[(a) + (b)]	29717.40	29673.81	4926.87	16.60
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	4805.91	4778.93	0	0
		(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				
		Total[(a) + (b)]	4805.91	4778.93	0	0
3	Operational Creditors	(a) Related Party of Corporate Debtor	1338.32	629.81	6.27	0.99
		(b) Other than (a) above:	3715.49	3258.46	32.44	0.99
		(i)Government	8398.33	8333.60	10.67	0.13
		(ii)Workmen	122.66	95.12	6.16	6.47
		(iii)Employees	889.21	793.90	7.87	0.99
		(iv)				
		Total[(a) + (b)]	14464.01	13110.89	63.41	
4	Other debts and dues					
	Provident Fund		701.03	701.03	701.03	100
	Contingent claims					

	RBJ Blue Star Enterprises & Dredging and Desiltation Co (P) Ltd and Deputy commission of Central tax Ameerpet		8556.58	0	7.20	0.084
Grand Total			58244.95	48264.64	5698.51	

(D) Amounts payable under the Resolution Plan to various classes of creditors of the Corporate Debtor.

The Total Resolution Amount is deemed to have the effect of a full and final settlement and discharge of all claims against the Corporate Debtor of all stakeholders in the CIR Process and the amounts payable under the Resolution Plan to various classes of creditors of the Corporate Debtor is as under:-

- (i) The Successful Resolution Applicant *viz.* Consortium of Yogayatan Ports Private Limited and Dr. Rajendra Raja Bali Singh, proposes to make a total payment not exceeding INR **₹59,50,00,000/- (Rupees Fifty-Nine Crores and Fifty Lakhs Only)** as Upfront and Deferred Cash Payment (“**Total Resolution Amount**”) with simple yearly interest on outstanding Deferred cash payment, for the resolution of the insolvency of the Corporate Debtor.
- (ii) The Resolution Plan proposes full payment of CIRP Costs, in priority to all other stakeholders in the CIR Process, as set out in Section 3.4 (Payment of Outstanding CIRP costs). Towards this purpose, INR **2,51,48,772/- (Rupees Two Crore Fifty-One Lakhs Forty-Eight**

Thousand Seven Hundred and Seventy-Two Only) is provided for in the Resolution Plan apart from the CIRP Costs already paid.

- (iii) For payment towards Financial Creditors, INR 49,26,87,494/- (**“Distribution of Proceeds to Secured Creditors”**) is the amount stipulated for settlement of secured Financial Creditors Debt.
- (iv) For payment towards Workmen and Employees, the Resolution Plan proposes to pay Rs. **14,03,084/- (Rupees Fourteen Lakhs Three Thousand and Eighty-Four Only)**.
- (v) For payment of **Rs. 10,67,051/- (Rupees Ten Lakhs Sixty-Seven Thousand and Fifty-One Only)** towards statutory dues (Except Employee Provident Fund Organisation & State Tax Officer, Unit 99, **Jamnagar**)
- (vi) For payment towards Operational creditors other than workmen, employees and Statutory dues and Andhra Pradesh Maritime Board, the Resolution Plan proposes to pay Rs. 38,71,208/- (Rupees Thirty-Eight Lakhs Seventy-One Thousand and Two Hundred and Eight) Only.
- (vii) **Amounts Payable to Workmen and Employees**

For payment towards Workmen and Employees, the Resolution Plan proposes to pay Rs. **14,03,084/- (Rupees Fourteen Lakhs Three Thousand and Eighty-Four Only)** in compliance with Applicable Law including Section 30(2)(b) of the Code, being the Workmen and Employees Payments (*defined in the Resolution Plan*), towards full

and final satisfaction and discharge of Admitted Workmen and Employees Debt.

(viii) Amounts Payable to Operational Creditors (other than Workmen and Employees)

From the Total Resolution Amount, the Resolution Applicant proposes to discharge the Other Operational Creditors Debt, in the manner specified in Section 3.5 (*Payment of Operational Creditors*) and by making the following payment:

- (ix) The Financial Creditors who do not vote in favour of this Resolution Plan (“**Dissenting Financial Creditors**”) will be entitled to receive, out of the Upfront FC Debt Settlement Amount, the amount that they would have received in accordance with Section 53(1) of the Code in the event of a liquidation, in compliance with the terms of Section 30(2) of the Code, in priority to the payments being made to those Financial Creditors who vote in favour of the Resolution Plan. Therefore, Section 30 of the Code and Regulation 38 of the CIRP Regulations shall be complied with in the present case, with respect to any Financial Creditors who do not vote in favour of the Resolution Plan.

- (E) THE TIMELINES FOR IMPLEMENTATION OF THE RESOLUTION PLAN UPON BECOMING EFFECTIVE IS SET OUT IN THE TABLE BELOW:

Sr. No.	Activity	Time Line (days)
PHASE-1- APPROVAL PROCESS FOR THE PROPOSED RESOLUTION PLAN		

1.	receipt of Certified copy of Hon'ble NCLT and Possession of the CD.	E (Effective Date)
2.	Notice on the Company's Website.	E+14
3.	Intimation to MCA, RBI, Tax authorities, BSE, NSE, SEBI and various other statutory authorities (as applicable).	
4.	Intimation to all Creditors, and other stakeholders of the Company.	
PHASE-II-SETTLEMENT OF CREDITORS		
5.	Payment of CIRP Costs as approved by CoC	E+75
6.	Payment to Operational Creditors	E+75
7.	Payment of the proportionate amount to the Dissenting Financial Creditors from the Upfront Cash	E+75
8.	Upfront Payment to Secured Creditors, Employee Provident Fund Organization First Tranche Second Tranche	E+75 E+150
PHASE III-IMPLEMENTATION OF PROPOSED RESOLUTION PLAN		
9	Management of Company <ul style="list-style-type: none"> • Re-constitution of Board of Directors • Setting up of management team and control systems • Completion of Definitive Documents • Identification of contractors and execution of documents 	E+75
10.	Change in Memorandum and Articles of Association and other documentation as required under the proposed plan Obtaining requisite approvals, wherever required.	E+120
11.	Restarting the operations of the Corporate Debtor	E+75
12	Improvement in operations	At the earliest

13.	The balance deferred payment as per 3.2.1 will be paid latest at the end of 5 year along with yearly Simple Interest (As per SBI Base). The timelines shall stand adjusted in case of prepayment of the Deferred Cash at the option of the Resolution Applicant in its sole discretion as per the terms of the Resolution Plan.	Latest E+ 5 year
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(F) MONITORING COMMITTEE

The Monitoring Committee shall comprise of Resolution Professional Mr. Madhusudhan Rao Gonugunta, One representatives of the COC and one member nominated by the Resolution Applicant. The Monitoring Committee shall oversee the management of the affairs of the Corporate Debtor, including carrying out duties set out, *inter alia*, under Section 6.2 of the Resolution Plan. The Monitoring Committee shall supervise the implementation of the Resolution Plan, as approved by this Adjudicating Authority in accordance *with the terms mentioned under Section 6.2 of the Resolution Plan.*

(G) Compliance of mandatory contents of Resolution Plan under the Code and CIRP Regulations:-

The Applicant has conducted a thorough compliance check of the Resolution Plan in terms of the Code as well as Regulations 38 & 39 of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016 (herein after referred to as Regulation) and has submitted his Form-H under Regulation 39 (4). It is submitted that Resolution Applicant has filed an Affidavit declaring that

they are eligible to submit the plan under Section 29A of the Code and that the contents of the said affidavit are in order. The fair value and Liquidation value as submitted in Form-H is Rs.97.10 Crores and Rs. 58.55 crores respectively.

4. In the above backdrop we heard Shri Yash Vardhan, Learned Counsel for the Resolution Professional. He submits that the Resolution Plan meets the requirement of Section 30 (2) of the Code, as under:-
 - (a) Provides for payment of Rs. 2,51,48,772/- towards CIRP Cost on priority in terms of Section 30 (2) (a) of IBC. In the event the CIRP cost exceeds or is lower to Rs. 2,51,48,772/- the Resolution Applicant shall make the upward/downward adjustments from above payment made to and Workmen proportionately to keep the proposed plan amount intact.
 - (b) The Plan provides for payment of dues of the operational creditors on priority in terms of Section 30 (2)(b) (clause /Chapter 3 & page 35 to 39 of the Resolution Plan)
 - (c) The Resolution Plan also provide payment of Rs. 10,67,051/- towards statutory dues (except Employee Provident Fund Organization & State Tax Officer, Unit 99 Jamnagar on priority to Financial Creditors.
5. The Resolution Plan is in compliance of Regulation 38 of the Regulations in the following manner:
 - (a) The Plan provides for payment due to Operational Creditors to be paid in priority to any other creditors of the Corporate Debtor. (Clause 3.5 page 44 of the Resolution Plan).
 - (b) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor,

keeping in view the objectives of the Code (Regulation 38 (1A). {Clause 3 page nos. 35 to 53 }

- (c) Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of his related party has either failed or contributed to the failure of the implementation of any other approved Resolution Plan. (Regulation 38 (1B)){Clause 7.10.2 page 80}.

6. ***In K. Sashidhar v. Indian Overseas Bank & Others (in Civil Appeal No. 10673/2018) 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. On receipt of such proposal, the Adjudicating Authority (NCLT) is required to satisfy itself that the resolution plan as approved by CoC meets the requirements specified in Section 30(2). No more and no less*”.

7. The Hon’ble Supreme Court has further held at para 35 of the above judgement that ***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.***

8 The Hon’ble Supreme Court in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors**, held that “*the limited*

judicial review available to AA has to be within the four corners of section 30(2) of the Code. Such review can in no circumstance trespass upon a business decision of the majority of the CoC. As such the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved”.

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

*21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in the cases of **K. Sashidhar v. Indian Overseas Bank and Others**, **Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others**, **Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others**, **Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another**, and **Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others**.*

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

“95.However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency

and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.....”

10. Therefore, the resolution plan, when tested on the touch stone of the aforesaid facts and the rulings, we are of the view that the instant resolution plan satisfies the requirements of Section 30 (2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. We also found that the Resolution Applicant is eligible to submit the Resolution Plan under Section 29A of the Code.
11. We therefore, hereby approve the Resolution Plan submitted by Consortium of **Yogayatan Ports Private Limited and Dr. Rajendra Raja Bali Singh**, along with annexure, schedules forming part of the Resolution Plan annexed to the Application and order as under:
 - (i) The Resolution Plan along with annexures and schedules forming part of the plan 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 the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
 - (ii) All crystallized liabilities and unclaimed liabilities of the Corporate Debtor as on the date of this order shall stand extinguished on the approval of this Resolution Plan.

- (iii) The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/ liabilities of the Corporate Debtor and shall be dealt with by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned as held by Hon'ble Supreme Court in the matter of ***Ghanashyam Mishra And Sons Private Limited Versus Edelweiss Asset Reconstruction Company Limited in CIVIL APPEAL NO.8129 OF 2019 dated 13.04.2021.***
- (iv) It is hereby ordered that the deposit made by the Resolution Applicant shall remain as performance Guarantee till the amount proposed to be paid to the creditors under this plan is fully paid off and the plan is fully implemented.
- (v) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC) Hyderabad 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.
- (vi) Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to supra.
- (vii) The moratorium under Section 14 of the Code shall cease to have effect from this date.

- (viii). 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.
- (ix). The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.
- (x). The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.
- (xi) The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and also forward a copy to IBBI.
- (xii). Accordingly, IA 385/2023 stands disposed of.

SD/-

(Charan Singh)
MEMBER (TECHNICAL)

SD/-

(DR N.V. Ramakrishna Badarinath)
MEMBER (JUDICIAL)

Binnu