

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

I.A. No. 1339 of 2021

IN

C.P. No. 2706 of 2019

In the matter of an Application under
Section 30(6) and Section 31 of the
Insolvency and Bankruptcy Code, 2016.

Mr. Mayank Rameshchandra Jain
(Resolution professional of MSM Steels
Pvt. Ltd.)

...Applicant/Resolution Professional

In the matter of

Rashmi Realty Builders Pvt. Ltd.

... Financial Creditor

V/s.

MSM Steels Pvt. Ltd.

... Corporate Debtor

Order Dated : 10.11.2023

Coram:

Hon'ble Ms. Reeta Kohli, Member (Judicial)

Hon'ble Ms. Madhu Sinha, Member (Technical)

Appearance (Physically):

For the Applicant: Sr. Counsel Pradeep Sancheti and Adv. Ayush J
Rajani a/w Adv Khushboo Shah Rajani I/b AKR Legal

For the Committee of Creditors: Adv. Nidhi Mistry

ORDER

Per: Ms. Madhu Sinha, Member (Technical)

1. The above captioned Application was filed under Section 30(6) and Section 31, of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**”) by the Resolution Professional (hereinafter referred as (“**Applicant**”), seeking approval of the Resolution Plan, submitted by the Resolution Applicant - Mr. Kedar Rasure, Kedar Abhimanyu Rasure (HUF) and Mr. Rahul Thobde (Jointly), which was approved unanimously by the members of the Committee of Creditors. (hereinafter referred to as ‘**COC**’).
2. The facts leading to the Application are as under:
 - a. Corporate Insolvency Resolution Process (**CIRP**) of the Corporate Debtor was initiated, vide an order dated 17.09.2019, under Section 9 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as ‘**the Code**’) (**Admission Order**) and Mr. Mayank Rameshchandra Jain, was appointed as Interim Resolution Professional. The IRP, constituted the Committee of Creditors. The COC in its 1st meeting held on 25.10.2019 appointed (**the present Applicant**) as the Resolution Professional (**RP**). The IRP published a public announcement as per Section 13 & 15 of the Code, inviting claims from the creditors of the Corporate Debtor.
 - b. The Applicant published a Public Announcement in Form A in accordance with Section 15 of the Code, on 06.10.2019, in English Newspaper Times of India and one in Marathi Newspaper Pudhari,

inviting claims from the creditors of the Corporate Debtor. The last date of submission of claims was 20.10.2019.

c. The claims **received** and **accepted** by Interim Resolution Professional are as under:

Sr. No.	Name of Financial Creditors	Amount claimed (Rs.)	Amount accepted (Rs.)
1.	State Bank of India	126,61,16,261.00	126,61,16,261.00
2.	Phoenix ARC Pvt. Ltd.	13,92,18305.00	13,92,18305.00
	Total	140,53,34,566.00	140,53,34,566.00

Sr. No.	Name of Operational Creditors	Amount claimed (Rs.)	Amount accepted (Rs.)
1.	Star Ads (Praveen Kumar Sahni)	18,07,330.00	18,07,330.00
2.	Minera Steel & Power Private Limited	1,71,23,482.00	1,71,23,482.00
3.	L.R. INDUSTRIES	14,47,189.00	14,47,189.00
4.	Rashmi Realty Builders Private Limited	2,54,49,071.00	2,54,49,071.00

5.	Deputy Commissioner State Tax (GST Dept)	4,36,67,972.00	4,36,67,972.00
6.	District Industries Centre, Latur	1,19,54,070.00	1,19,54,070.00
	Total	10,14,49,114.00	10,14,49,114.00

3. After receiving the claims, the Committee of Creditors was constituted. The constitution of COC is as under:

Sr. No.	Name of the Member	Amount of Claim as per Form C (Rs.)	Percentage
1	State Bank of India	126,61,16,261.00	90.09%
2	Phoenix ARC Pvt. Ltd.	13,92,18305.00	9.91%
Total			100%

4. The CoC in the 1st meeting dated 25.10.2019 decided to appoint valuers. The Resolution Professional accordingly appointed the following registered valuers, for Plant & Machinery and Land & Building to determine the fair value and liquidation value of the Plant & Machinery and Land & Building, as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016. These

valuers submitted their reports. The Liquidation and fair value is stated as under:

Sr. No.	Name of Valuer	Fair value	Liquidation Value
		(Rs. In lakhs)	(Rs. In lakhs)
1	Sunil Pant	1126.99	713.61
	Land and Building		
	Karn Rajendra Mody	529.20	291.07
	Plant and Machinery		1004.67
2	Sujit Joglekar	1982.95	1009.70
	Land and Building and Plant and Machinery		

The Average liquidation Value from Valuation Report of both the Valuers works out to Rs. 1007.18 Lakhs.

- The Applicant states that in the 2nd COC meeting, dated 06.11.2019, the COC approved with minimum eligibility criteria, Request for Resolution Plan (**RFRP**) and Form G for inviting Expression of Interest ("**EOI**") from Prospective Resolution Applicants as per section 25(2)(h) of the Code. Accordingly, Public announcement for inviting EOI was issued. Form G, inviting EOI, was published on 09.12.2019. However, in the 3rd COC meeting dated 11.12.2019, the members of the COC suggested changes in the Request for Resolution Plan (**RFRP**) and Evaluation matrix. Accordingly, in the 4th COC meeting dated 09.01.2020, the Applicant published a fresh invitation for EOI in Form G (1st Extension) dated 11.01.2020, calling for prospective resolution applicants to submit their EOI by 26.01.2020. However in 5th COC meeting dated 04.02.2020, the detailed EOI along with relevant

documents and undertakings were not received and the Applicant published invitation for EOI in Form G (2nd Extension) dated 05.02.2020. The last date for submission of Expression of Interest (EOI) from Prospective Resolution Applicants was by 20.02.2020 and last date for submission of Resolution Plan was 21.03.2020.

6. The Applicant further states that in furtherance of the Form-G issued by Applicant, he received EOI from the three Prospective Resolution Applicant (PRA), however the detailed EOI along with relevant documents and undertakings were not received. Below are the names of the prospective resolution applicant:
 - a) Rajuri Steels & Alloys Private Limited, Chandrapur
 - b) Mr. Anirudh Tapuriah, an advisor to steel company in Kolkata
 - c) Motilal Associates, CA on behalf of their client.
7. In pursuance of the above, the Applicant in the 7th COC meeting dated 07.03.2020, informed the COC that one Expression of Interest (EOI) has been received from one of the Prospective Resolution Applicant after the last date of submission of EOI from Siddhi Associates (Proprietor Mr. Kedar Rasur) who will be applying jointly with Mr. Rahul Thobde and have submitted a Demand Draft of Rs.10,00,000/- to the Applicant.
8. **The COC, in its 12th meeting held on 15.05.2021, approved and voted on 21.03.2021 for the Resolution Plan along with the addendum dated 27.03.2021 submitted by Mr. Kedar Rasure, Kedar Abhimanyu Rasure (HUF) and Mr. Rahul Thobde (Jointly) with a voting share of 100%. Thereafter, the Applicant has issued compliance certificate in Form “H”.**

9. **The Salient Features of the Resolution Plan are as under:**

A. Brief Background of the Company / Corporate debtor

- i. The company was initially formed as a partnership firm under the name of Bhagya Lakshmi Steel Industries and subsequently it was converted into a Private Limited company on 09.08.2011. In the process of formation of the Company, its name was changed to **MSM Steels Pvt. Ltd.** (CIN No-U27100 MH 2009 PTC 196847).
- ii. The Corporate Debtor was engaged in the business of producing TMX steel bars of different diameters and started business with a Re-rolling Mill at plot No. A-110, Additional MIDC, Latur, with installed capacity of 180 MTs per day.
- iii. The Corporate Insolvency Resolution Process ("**CIRP**") of MSM STEELS PVT. LTD. has been initiated as per the provisions of the Insolvency and Bankruptcy Code ("**IBC**") under Section 9. The application was moved before the Hon'ble National Company Law Tribunal, Mumbai Bench ("**NCLT**") and was admitted vide its order dated 17.09.2019 ("**CIRP Order**"). Pursuant to such order, Mr. Mayank Rameshchandra Jain, (having IP Registration no. IBBI/IPA-001/IP-P01055/2017-2018/11748), Insolvency Professional, was appointed as the Interim Resolution Professional (**IRP**).

B. Background of the Resolution Applicant

Mr. Kedar Rasure, a sole proprietor of Siddhi Associates and through his HUF known as Kedar Abhimanyu Rasure HUF is the first- generation entrepreneur. He is in the business of fabrication of sheet metal components and also ventured into sub-contracting for fabrication of railway bridges, maintenance of sugar mills.

Mr. Rahul Thobde is engaged in the business of selling of products related to medical instruments to the Hospital Industries. He is a partner in Critical Care Systems- a Surgical Disposable Dealer in the city of Pune.

The said Prospective Resolution Applicant is eligible to act as a Resolution Applicant of the Corporate Debtor and is not ineligible under section 29A of Insolvency and Bankruptcy Code and also satisfies the eligibility criterion as mentioned in clause (h) of sub-section (2) of section 25 of the Code.

10. Summary of Payments under the Resolution Plan

Sr. No.	Particulars	Amount (Rs. In Lakhs)
1.	Insolvency Resolution Process Cost (Estimated till 31stMarch,2021)	50.00
2.	Workmen & Employee claims	0.00

3.	Secured Financial Creditors	875.00
4.	Operational Creditors	25.00
5.	Unsecured Financial Creditors	0.00
	Total	950.00

*Any incremental CIRP Cost till the date of approval of Plan by AA will be paid in priority to before making any payments to other creditors.

11. **Sources of Funds:**

The RA proposes to infuse Rs. 425 Lakhs towards new equity to be issued by CD within 30 days of approval from AA. RA will be further infusing funds to the tune of Rs. 525 Lakhs by way of loans from bank/friends/relatives/associates within 120 days towards the Settlement of Claims in the Escrow Account.

Narration	Amount Rs. In Lakhs
RA / New Promoters' Contribution	425.00
Term Loan from Bank by CD*	525.00
Total	950.00

*In-principle sanction from Osmanabad Janata Sahakari Bank Limited.

12. **Payments proposals of the various stakeholders under the Resolution Plan:**

A. CIRP Cost

Actual outstanding dues towards Insolvency Resolution Process Cost will be paid by RA in priority of all other creditors. The same have been assumed by the RA approximately Rs.50 Lakhs in this Resolution Plan. RA has assumed the estimated cost of Insolvency Resolution Process Cost, till 31st March, 2021. Further, RA undertakes that any incremental CIRP Cost till the date of approval of Plan by AA will be paid in full and in priority to before making any payments to other creditors.

B. Settlement proposal for Secured FC (Bank)- Rs.875Lakhs.

The RA proposes to pay Rs. 875.00 lakhs against full and final settlement of the entire financial debt recoverable by secured FC (excluding other financial creditors as separately dealt and mentioned in clause 10.2 and 10.3 of the Resolution Plan) under the terms of the financial facilities extended to the CD. The accrued and contingent liability/ies if any, due by CD towards FC shall stand fully and completely discharged on release of an amount of Rs. 875.00 lakhs, and shall be accompanied with, (a) release of all security interest created by CD to secure such financial debt to CD; (b) release of all security interest or other obligations, including the corporate guarantees issued by CD with respect to debt(s) of subsidiaries, affiliates, associates and holding company of CD.

The RA propose to deposit Rs.350Lakhs (after adjusting for CIRP cost and amount payable to operational creditors) in an escrow account at the end of 30 days from the approval of Plan towards the claim of Secured Financial Creditor viz. SBI and Phoenix.

On Credit of Rs.350 Lakhs to account of secured financial creditors(after adjusting for CIRP cost and amount payable to operational creditors), the secured financial creditors shall (a) release of all security interest created by CD to secure such financial debt to CD on plot no. A-110, Additional MIDC, Latur; (b) release of all security interest or other obligations, including the corporate guarantees issued by CD with respect to debt(s) of CD pertaining to the said plot. On payment of said sum, the RA will be free to carry out business activity from the said plot.

The Balance Rs.525 Lakhs will be paid in an Escrow Account within 120 days from the approval of the Plan from AA. On Credit of Rs.525 Lakhs to account of secured financial creditors, the secured financial creditors shall (a) release of all security interest created by CD to secure such financial debt to CD; (b) release of all security interest or other obligations, including the corporate guarantees issued by CD with respect to debt(s) of subsidiaries, affiliates, associates and holding company of CD.

C. Proposal for Operational Creditors

The admitted claims of OC's, which amount to Rs. 2415.63 lakhs as on date of the commencement of CIRP. The operational creditors who have not submitted their claims, however, are mentioned in the books of accounts is to the tune of Rs. 2161.70 lakhs. However, in light of the judgment delivered by the Hon'ble Supreme Court of India in the case of COC Essar Steel v. Satish Kumar Gupta, the operational creditors who do not appear in the list of admitted claims shall not be entitled to any sum, and the sums due to them shall be waived off and written off in full;

and it is expressly clarified that neither the RA nor the CD shall, at any point of time after approval of this Plan by the AA, be liable to make any payment towards such an operational creditor.

It is further clarified that **statutory dues owed by the CD** to any governmental body or authority are to be considered at par with other operational creditors and shall be dealt with as above. With respect to any proceeding relating to the levy of any tax or statutory dues pending as on date of insolvency commencement against the CD, or any adjudication for this purpose, it is expressly clarified that any such proceeding shall stand abated as on the date of approval of this Plan by the AA and neither the CD nor the RA shall ever bear any liability for the same. All statutory liabilities which have not been crystallized as on the insolvency commencement date shall stand abated upon the approval of this Plan as on the date of its approval by the AA.

The RA proposes to allot an amount of Rs. 25,00,000/- towards the operational creditors. As per the best estimates of the RA, this amount is higher than the liquidation value which would be available to the operational creditors in case the CD is liquidated. The amount of Rs. 25,00,000/- shall be distributed amongst the operational creditors on pro rata basis by the Steering Committee. This payment shall be made in priority to payment to any other creditor.

D. Settlement proposal for unsecured FC -NIL

The Directors and shareholders of the CD had provided unsecured loan (Ref Table under Liability Profile in Clause6). In the event of liquidation of CD, priority of payment available to the FC is as an unsecured creditor, and based on estimates of value of assets of CD, this unsecured FC is not likely to get any amount against its claim. The RA accordingly does not propose payment of any amount to this unsecured FC, and therefore, Zero amount is provided on this account.

E. Proposal for Workmen / Employees of Corporate Debtor

As per the Information Memorandum, total dues to the employees / workmen amounts to NIL.

13. Monitoring Committee

The Interim Monitoring Committee shall be constituted (which may be required to function for a likely period of 120 days from the date of approval of Plan by AA) and will comprise one person appointed by Secured FC of CD, i.e., (SBI & Phoenix) and one person appointed by RA. This Interim Monitoring Committee will reconstitute and be named as Monitoring Committee (see clause 9.1 of the Resolution plan) on Escrow Account being funded with the amount to be paid to FC, OC and disbursement of the same. In case both the party felt that RP to be a part of the Interim Monitoring Committee in new administrative capacity then he shall have a new position and new assignment for which RA will negotiate the terms and enter into a separate new agreement.

14. **The compliance of the Resolution Plan is as under:**

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
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
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?		YES
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?		YES

<p>Section 30(2)</p>	<p>Whether the Resolution Plan-</p> <p>(a) provides for the payment of insolvency resolution process costs?</p> <p>(b) provides for the payment to the operational creditors?</p> <p>(c) provides for the payment to the financial creditors who did not vote in favor of the resolution plan?</p> <p>(d) provides for the management of the affairs of the corporate debtor?</p> <p>(e) provides for the implementation and supervision of the resolution plan?</p> <p>(f) contravenes any of the provisions of the law for the time being in force?</p>	<p>Clause 11</p> <p>Clause 11</p> <p>Clause 11</p> <p>Clause 10</p> <p>Clause 9</p> <p>Clause 9</p>	<p>YES</p> <p>YES</p> <p>YES</p> <p>YES</p> <p>YES</p> <p>YES</p>
<p>Section 30(4)</p>	<p>Whether the Resolution Plan</p> <p>(a) is feasible and viable, according to the CoC?</p> <p>(b) has been approved by the CoC with 66% voting share?</p>	<p>Clause 8.7</p>	<p>YES</p> <p>YES</p>
<p>Section 31(1)</p>	<p>Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?</p>	<p>Clause 9</p>	<p>YES</p>
<p>Regulation 35A</p>	<p>Where the resolution profesional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the</p>		<p>NO</p>

	insolvency commencement date, under intimation to the Board?		
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 11	YES
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause 10	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 Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?		NO NA
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?	Clause 9	YES YES YES

38(3)	<p>Whether the resolution plan demonstrates that –</p> <p>(a) it addresses the cause of default?</p> <p>(b) it is feasible and viable?</p> <p>(c) it has provisions for its effective implementation?</p> <p>(d) it has provisions for approvals required and the timeline for the same?</p> <p>(e) the resolution applicant has the capability to implement the resolution plan?</p>	Clause 9	<p>YES</p> <p>YES</p> <p>YES</p> <p>YES</p> <p>YES</p>
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		NO
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.		

15. 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 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.
- iv. The plan provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan. Section 30(2)(c).
- v. 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).
- vi. 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)

- vii. 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).
- viii. 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.
- ix. 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.
- x. 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 favor 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.
- 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 address as 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)).

16. The Resolution Plan has been approved in the 12th COC meeting held on 15.05.2021 with 100% voting in accordance with the provisions of the Code.
17. 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.
18. In ***India Resurgence Arc Private Limited vs. Amit Metaliks Limited and Ors. (2021)*** the Hon'ble Apex Court held that the process of consideration and approval of resolution plan is essentially within the commercial wisdom of Committee of Creditors (CoC). The scope of judicial review remains limited under Section 30(2) of the Insolvency and Bankruptcy Code (IBC), 2016 by which the court would examine that the resolution plan does not contravene any statutory provisions and it conforms to such other requirements as may be specified by the

Board. The court held that the process of judicial review cannot be stretched if all the above-mentioned requirements have been duly complied with and that dissenting financial creditor, expressing dissent over the value of security interest held by it, cannot seek to challenge an approved Resolution Plan. Lastly, it was held that Section 30 of the IBC, 2016 only amplified the considerations for the CoC while exercising its commercial wisdom so as to take an informed decision in regard to the viability and feasibility of resolution plan, with fairness of distribution amongst similarly situated creditors; and that the business decision taken in exercise of the commercial wisdom of CoC does not call for interference unless creditors belonging to a class being similarly situated are denied fair and equitable treatment.

19. 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**, has 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).”*

20. In view of the above cited case law, 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 of scrutiny provided under section 31 of Code and the direction of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code.
21. In view of the discussions, this Bench is of the considered view that 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 Resolution Plan is feasible and viable. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.

ORDER

- a) The Interlocutory Application No. 1339 of 2021 is **allowed**. The Resolution Plan submitted by **Mr. Kedar Rasure, Kedar Abhimanyu Rasure (HUF) and Mr. Rahul Thobde (Jointly)**, 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 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.
- c) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- d) The interim monitoring committee shall supervise the implementation of the Resolution Plan and shall file status of its implementation before this Authority from time to time, preferably every quarter.
- e) 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.
- f) The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- g) The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- h) The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except

those duties that are enjoined upon him for implementation of the approved Resolution Plan.

- 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.

- j) The Interlocutory Application **No. 1339 of 2021** is accordingly **allowed.**

SD/-

MADHU SINHA

MEMBER (TECHNICAL)

/Abhay/

SD/-

REETA KOHLI

MEMBER (JUDICIAL)