

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

**I.A. 423/2023**

**in**

**C.P. (IB) No. 769/ND/2021**

An application under Section 30 (6) read with Section 31 and Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

**IN THE MAIN MATTER OF:**

M/s NAMAN INFRADEVELOPERS PRIVATE LIMITED

[CIN: U7010UR2010PTC033254]

*Having its Registered Office at:*

56, Rajpur Road, Behind HDFC Bank, Dehradun, Uttarakhand - 248001

.... PETITIONER/FINANCIAL CREDITOR

**VERSUS**

M/s SADHNA MEDIA PRIVATE LIMITED (Undergoing CIRP)

[CIN: U92111DL2002PTC118164]

*Having its Registered Office at:*

38, Rani Jhansi Road, Jhandewalan, New Delhi – 110034

.... CORPORATE DEBTOR/RESPONDENT

**AND IN THE PRESENT MATTER OF:**

MR. PRADEEP KUMAR RAY, RESOLUTION PROFESSIONAL

[IBBI/IPA-002/IP-N-01100/2021-2022/13648]

Address: WZ-108, First Floor, Shadipur Main Bazar, Chhoti Choupal, New Delhi-110008

...APPLICANT/RESOLUTION PROFESSIONAL

**I.A. 423/2023**

**in**

**C.P. (IB) No. 769/ND/2021**

*Versus*

1. ARPAN GUPTA

[Suspended Director of the Corporate Debtor]

[DIN: 03498884]

Address: 5/6, 2<sup>nd</sup> Floor, Left Side West Patel Nagar, Delhi – 110008

Email: [arpan.sadhna@gmail.com](mailto:arpan.sadhna@gmail.com)

... Respondent No. 1

2. SATYABRATA MUKHERJEE

[Suspended Director of the Corporate Debtor]

[DIN: 01635601]

Address: 40/77, Chittaranjan Park, Delhi – 110019.

Email: [smukherjee@sadhna.com](mailto:smukherjee@sadhna.com)

... Respondent No. 2

**CORAM:**

**SH. MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)**

**SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

**For the Petitioner/Financial Creditor:**

**For the RP:** Ms. Eshna Kumar, Mr. Lakshmikant Srivastava and Ms.  
Jasleen Singh Sandhe, Advocates.

**For the SRA:** Mr. Pulkit Deora and Ms. Maitrayee Mishra, Advocates

**ORDER**

**PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)**

**ORDER DELIVERED ON: 17.09.2024**

1. The present application has been filed under Section 30(6) read with Section 31 and Section 60(5) of the Insolvency & Bankruptcy Code, 2016 and Regulation

Page 2 of 19

**I.A. 423/2023**

**in**

**C.P. (IB) No. 769/ND/2021**

39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 by Mr. Pradeep Kumar Ray (Resolution Professional of M/s Sadhna Media Private Limited), seeking approval of the Resolution Plan submitted by M/s Vigyashree Infrastructure Private Limited [CIN: U45203MP2006PTC018445] as approved by the Committee of Creditors ('CoC') in its 9<sup>th</sup> CoC Meeting held and concluded on 17.12.2022 with 100% voting share.

2. That an application under Section 7 was filed by M/s Naman Infradevelopers Private Limited bearing CP.(IB)-769/ND/2021. This Adjudicating Authority vide its order dated 30.03.2022 admitted the petition and initiated CIRP against the respondent (M/s Sadhna Media Private Limited). Vide the said order, the applicant herein was appointed as Interim Resolution Professional (IRP).
3. This Adjudicating Authority vide its order dated 31.01.2023 had directed the applicant herein to file a memo indicating the names of the Suspended Directors and had accordingly issued notice to them. Accordingly, the RP had filed an amended memo of parties vide affidavit dated 03.02.2023, in pursuance of which ex-directors of the Corporate Debtor have been impleaded as respondents in the present application. The applicant has further contended that in compliance of directions by this Adjudicating Authority, the RP has served notice of the present application upon the ex-directors of the Corporate Debtor through registered post on 06.02.2023.
4. Thereafter, the IRP constituted the Committee of Creditors (CoC) which held their 1<sup>st</sup> CoC Meeting on 17.05.2022 and approved the confirmation of Mr. Pradeep Kumar Ray (then IRP) as the Resolution Professional in the matter. This Adjudicating Authority vide its order dated 01.06.2022 in IA/2531/2022 approved the appointment of Mr. Pradeep Kumar Ray as the Resolution Professional.

5. Subsequently, Public Announcement in Form-A of the CIRP Regulations was carried out on 14.04.2022 in the Delhi edition of the following newspapers: -
- (i) The Pioneer (English Version).
  - (ii) The Pioneer (Hindi Version).
6. That pursuant to the aforesaid public announcement, following claims have been received from various stakeholders as mentioned below: -

<b>S. No.</b>	<b>Type of Creditor</b>	<b>Amount Claimed</b>	<b>Amount admitted</b>
1	Secured Financial Creditor	NIL	NIL
2	Unsecured Financial Creditor (other than related party)	162773257	135780146
3	Unsecured Financial Creditor (related party)	NIL	NIL
3	Operational Creditor	2826824	2826824
4	Claimed Statutory Dues	1100977430	1100977430
5	Contingent Liability towards Statutory Dues	NIL	NIL
6	Employees	NIL	NIL
7	Workers	NIL	NIL
	<b>Total</b>	<b>1,266,577,511</b>	<b>1,239,584,400</b>

7. That a total of 9 CoC meetings were convened as per the following schedule: -

Sr. No.	Meeting No.	Date
1.	First Meeting of COC	17th May, 2022
2.	Second Meeting of COC	24th June, 2022
3.	Third Meeting of COC	13th July, 2022
4.	Fourth Meeting of COC	23rd July, 2022

5.	Fifth Meeting of COC	5th August, 2022
6.	Sixth Meeting of COC	12th September, 2022
7.	Seventh Meeting of COC	03rd October, 2022
8.	Eighth Meeting of COC	09th November, 2022
9.	Ninth Meeting of COC	17th December, 2022

8. That a total of 4 progress reports had been filed by the RP from time to time through various Interlocutory Applications, which were taken on record by this Adjudicating Authority vide its respective orders, as is a part of record.

9. Subsequently, Form-G was published 3 times as per the following schedule: -

<b>Date of Publication</b>	<b>Newspapers</b>
26.06.2022	The Pioneer English and Hindi in Wider circulation in Delhi
14.07.2022	The Pioneer English and Hindi in Wider circulation in Delhi
08.08.2022	The Pioneer English and Hindi in Wider circulation in Delhi

10. It is contended that pursuant to the publication of Form-G as described above, four (4) Expression of Interest's ("EOI") were received by the RP and their names had accordingly been included in the final list of Prospective Resolution Applicant ("PRAs") issued on 15.09.2022. Further, Information Memorandum and Request for Resolution Plan (RFRP) were shared with all the four PRA's on 15.09.2022 and the said PRA's were requested to submit their resolution plan on or before 06.10.2022.

11. On Request of the PRA's for extension of last date for submission of resolution plan by 30 days, followed by ratification of CoC at their sixth CoC meeting held on 12th September 2022, the deadline of submission of Resolution Plans was extended by the RP, which then stood revised upto 05.11.2022.
12. That till the last date for submission of resolution plan i.e. 05.11.2022, the Applicant RP submitted that he had received only two resolution plans from the following PRA's: -
  - (i) M/s S.K Jain Infrastructure Private Limited ("Resolution Applicant No. 1)
  - (ii) M/s Vigyashree Infrastructure Private ("Resolution Applicant No. 2).
13. The RP had appointed CS Lovkesh Batra to ascertain the eligibility of the resolution applicant(s) under the Section 29A of the Code, who after examination confirmed the eligibility of the resolution applicants under Section 29A of the Code.
14. The RP had also appointed Mr. Vijender Jain, an Insolvency Professional to scrutinize and vet the resolution plans to check compliance with provisions under Section 30(2) of the Code and Regulation 37, 38 and 39(1) of the CIRP Regulations as well as the Request for Resolution Plan ("RFRP") issued by the Applicant. Those certain deficiencies/anomalies were noticed in the resolution plans for which clarifications were sought from the Resolution Applicant(s).
15. As per the information and documents received from the Corporate Debtor, there are assets in all the three categories (Land & Building, Plant & Machinery, Securities & Financial Assets) in the Corporate Debtor. Therefore, Resolution Professional has appointed two set of registered valuers for each class of assets i.e. Land & Building, Plant & Machinery, Securities & Financial Assets who have submitted the valuation report, summary of which is reproduced below: -

<b>Class of Assets: Plant &amp; Machinery</b>					
<b>Sr. No.</b>	<b>Name of Registered Valuer</b>	<b>Fair Value (In Rs.)</b>	<b>Liquidation Value (In Rs.)</b>	<b>Average Fair Value (In Rs.)</b>	<b>Average Liquidation Value (In Rs.)</b>
1.	Ompal Singh	1,42,02,346	1,13,61,877	1,37,33,463	1,11,80,938.50
2.	Sushil Kumar	1,32,64,580	1,10,00,000		
<b>Class of Assets: Land &amp; Building</b>					
1.	Dhiraj Jaiswal	44,28,000	30,99,600	42,89,625	31,06,518.50
2.	Sudhir Kumar	41,51,250	31,13,437		
<b>Class of Assets: Securities &amp; Financial Assets</b>					
1.	Mukesh Jain	14,30,51,316	11,86,66,665	14,30,09,835	11,75,65,627
2.	Suman Verma	14,29,68,354	11,64,64,589		
<b>TOTAL</b>				<b>16,10,32,923</b>	<b>13,18,53,084</b>

16. Thereafter, the CoC in its 9<sup>th</sup> meeting held on 17.12.2022, extensively deliberated upon the resolution plan(s), the CoC in its commercial wisdom approved the Resolution Plan submitted by M/s Vigyashree Infrastructure Private Limited with a 100% voting share in its favour.

17. The brief contents of the Resolution Plan submitted by M/s Vigyashree Infrastructure Private Limited are summarised below: -

- (i) Total Plan Value – Rs 13.5 Crores.
- (ii) CIRP Cost (Actual) – Within 60 days from approval of the Resolution Plan.
- (iii) Financial Creditor: Rs. 13.25 Crores within 90 days from the approval of Resolution Plan, the classification of which is as under: -

<b>Class of Financial Creditors</b>	<b>Creditor</b>	<b>Amount Claimed</b>	<b>Amount Admitted</b>	<b>Consideration Proposed</b>
Unsecured Financial Creditor	Naman Infradevelopers Private Limited	1,14,13,764	1,14,13,764	<b>13,25,00,000</b>
Unsecured Financial Creditor	Pant Associates	8,02,690	8,02,690	
Unsecured Financial Creditor	Alok Gupta	29,81,518	29,81,518	
Unsecured Financial Creditor	Graphisads Private Limited	77,02,197	77,02,197	
Unsecured Financial Creditor	Sharpline Broadcast Limited	3,06,79,068	3,06,79,068	
Unsecured Financial Creditor	Vinod Kumar Chauhan, Prop, Saroj Construction Co.	10,91,18,568	8,21,25,457	
<b>Total</b>	<b>Financial Creditors</b>	<b>16,26,97,805</b>	<b>13,57,04,694</b>	

It is further provided that the Financial Creditors shall release their charges on security of corporate debtor held by them and provide NOC/Satisfaction Letter. Additionally, the financial creditors shall be given an option to subscribe share capital in the said company equivalent to the amount receivable by them as per the proposed consideration, post which their claim shall be considered settled.

- (iv) Operational Creditor: Rs. 5 Lakhs within 60 days from the approval of Resolution Plan, as against an admitted claim of Rs. 28,26,824/-.
- (v) Government Dues: Rs. 20 Lakhs within 60 days from the approval of Resolution Plan, as against an admitted claim of Rs. 1,10,09,77,430/-.

18. The Successful Resolution Applicant (M/s Vigyashree Infrastructure Private Limited) has submitted its affidavits as required under Regulation 39(1) of the CIRP Regulations confirming its eligibility in terms of Section 29A of the IBC.

19. That pursuant to the approval of the Resolution Plan by the COC, the RP issued a Letter of Intent to the Successful Resolution Applicant (M/s Vigyashree

Infrastructure Private Limited) who has accepted the letter of Intent unconditionally and further, has also submitted performance guarantee amount of Rs 50 lakhs by way of NEFT in favour of Corporate Debtor.

20. As per Regulation 39 (4) of the CIRP Regulations, the RP has filed the Compliance Certificate in 'Form H' of the schedule of CIRP Regulations with the present application.

21. **BRIEF BACKGROUND OF THE PARTIES**

**CORPORATE DEBTOR**

M/s SADHNA MEDIA PRIVATE LIMITED [CIN: U92111DL2002PTC118164] is a private company incorporated on 24.12.2002 and is engaged in the business of Telecommunication, Broadcasting and information supply services. It has its registered office at 38, Rani Jhansi Road, Jhandewalan, New Delhi – 110055.

**SUCCESSFUL RESOLUTION APPLICANT**

M/s Vigyashree Infrastructure Private Limited [CIN: U45203MP2006PTC018445] is a private company, incorporated on 01.03.2006 having its Registered Office at HIG-20, Shivaji Nagar, Bhopal, Madhya Pradesh – 462016. It has its primary business in real estate operations such as construction of civil projects, rehabilitation of civil structures, water proofing and rock-anchoring etc.

22. Some Key Features of the Resolution Plan are as follows: -

**A. TREATMENT OF AVOIDANCE TRANSACTIONS**

On perusal of record, it is observed that no avoidance transactions have been filed in the present matter.

However, the Successful Resolution Applicant in clause 7.2 of the proposed resolution plan has provided as follows: -

*“Recovery, if any, made pursuant to the avoidance applications of the Code, other applications filed by Resolution Professional or through any other means shall continue to be vested in the reconstituted corporate debtor with its new management as appointed upon approval of resolution plan and such recovered amount shall be used entirely for the benefit of the financial lenders/operational creditors/other creditors/Allottee and shall be a pass-through amount to them, to settle their pending dues/sacrifice made, on acceptance of Resolution Plan, in order of priority provided in IBC, 2016 read with relevant CIRP Regulations. If recoveries made during implementation period.”*

**B. SOURCES OF FUNDS**

Clause 10 of the Resolution Plan – The funds required to be infused by the Resolution Applicant to implement the resolution plan will be brought from internal sources and group companies.

**C. CAPEX INFUSION**

No Working Capital has been proposed to be infused by the SRA.

**D. MEASURES UNTILL EFFECTIVE DATE, BETWEEN EFFECTIVE DATE AND COMPLETION DATE AND SETTING UP MONITORING COMMITTEE**

Clause 15 – Briefly provides that a Monitoring Committee shall be constituted within 7 days of the effective date, comprising of the following members: -

- (i) One Representative of CoC
- (ii) One Representative of the SRA.
- (iii) One either third party professional or the RP, as the case may be.

The Monitoring Committee shall supervise the Corporate Debtor in trust during the implementation of resolution plan, while allowing the Board of Directors to be appointed by the SRA to manage the day-to-day affairs of the Corporate

Debtor, upon receipt of order from the Adjudicating Authority approving the Resolution plan, until the approved Resolution plan is fully implemented. The sale of any non-core asset of the Corporate Debtor during the interim period between the effective date and completion date would be in consultation with the Monitoring Committee. Post completion date, no intervening shall be done by or at the instance of RP/CoC/any member of CoC/Monitoring Professional/Monitoring Committee etc.

23. Further, the SRA through its director Mr. Dhanendra Jain (authorised vide Board Resolution dated 28.02.2024) has filed an additional affidavit dated 30.08.2024 briefly outlining on how the SRA plans to manage the business in future of the Corporate Debtor, subject to approval of the proposed Resolution Plan. The summary of contents thereof are as follows: -

- (i) Under Clause 3.8 of the Resolution Plan, the SRA has proposed to takeover the Corporate Debtor as a going concern, while reserving their right to propose the takeover of the CD through a Special Purpose Vehicle (SPV) or through any other group company.
- (ii) Although, the SRA (M/s Vigyashree Infrastructure Private Limited) does not have any experience in the media sector per-se, however their directors possess the relevant experience as mentioned below: -
  - a. Mr. Mayank Jain has done his education in mass communication.
  - b. Mr. Dhanendra Jain has been involved in electronic media and has experience in organising various events for channels, anchoring and in depth reporting for special programmes.
- (iii) The SRA has attached its Articles of Association and Memorandum of Association, which it proposes to amend suitably in order to run the business of CD effectively.

- (iv) That the said affidavit is in the nature of a clarification and nothing concrete or material has been changed in the Resolution Plan.

### **ANALYSIS & FINDINGS**

24. We have heard the submissions made by the Ld. Counsel(s) for the parties appearing in the present matter, and upon perusal of documents placed on record to substantiate their respective claims, proceed to adjudicate the present application on merits.
25. In view of Section 31 of the Code, this Adjudicating Authority before approving the Resolution Plan is required to examine whether the Resolution Plan which is approved by the CoC under Section 30 (4) of the Code meets the requirements as referred to under Section 30 (2) of the Code. Section 30 (2) of IBC is quoted below:

*“(2) The resolution professional shall examine each Resolution Plan received by him to confirm that each Resolution Plan –*

*(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;*

*(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-*

*(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or*

*(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,*

*whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the Resolution Plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.*

Explanation 1 — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) where a Resolution Plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a Resolution Plan;]

(c) provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan;

(d) The implementation and supervision of the Resolution Plan;

(e) does not contravene any of the provisions of the law for the time being in force

(f) conforms to such other requirements as may be specified by the Board.

Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the Resolution Plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]”

26. The applicant has prayed for number of waivers in Clause 12 of the Resolution Plan. As to the relief and concessions sought in the resolution plan, by taking into consideration the judgement of the Hon’ble Supreme Court of India in the matter of “Embassy Property Development Private Limited versus State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019”, we direct the Successful Resolution Applicant to file necessary application before the appropriate forum/ authority in

order to avail the necessary relief and concessions, in accordance with respective laws. The relevant part of the said judgement is reproduced herein below: -

*“39. Another important aspect is that under Section 25 (2) (b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:*

*“25. Duties of resolution professional –*

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

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

*(a).....*

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

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

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

27. In so far as the approval of the resolution plan is concerned, this Adjudicating Authority is duty bound to follow the judgement of the **Hon’ble Supreme Court in**

**the matter of K. Sashidhar v. Indian Overseas Bank (2019) 12 CC 150,**

wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as follows: -

*“35. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who*

*are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.”*

28. Further, the Hon’ble Supreme Court in the matter of **Jaypee Kensington Boulevard Apartments Welfare Association v NBCC (India) Limited, (2022) 1 SCC 401** has held as under: -

*'273.1. The adjudicating authority has limited jurisdiction in the matter of approval of a resolution plan, which is well-defined and circumscribed by Sections 38(2) and 31 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by the Committee of Creditors. If, within its limited jurisdiction, the adjudicating authority finds any shortcoming in the resolution plan vis-a-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by the Code and exposted by this Court.'* (emphasis supplied)

The above view of the Hon’ble Supreme Court in **Jaypee Kensington Boulevard Apartments Welfare Association v NBCC (India) Limited (Supra)** was subsequently reaffirmed by the Hon’ble Supreme Court in its recent decision dated 21.11.2023 in the case of **Ramkrishna Forgings Limited Vs Ravindra Loonkar, Resolution Professional of ACIL Limited & Anr., Civil Appeal No. 1527/2022.**

29. The Hon’ble Supreme Court vide its order dated 21.11.2023 in the case of **Ramkrishna Forgings Limited Vs Ravindra Loonkar, Resolution Professional of ACIL Limited & Anr.** in **Civil Appeal No. 1527/2022** held as follows (relevant extract): -

*“30. At this juncture, it also cannot be lost sight of that it is for the FC(s) who constitute the CoC to take a call, one way or the other. Stricto sensu, it is now well-settled that it is well within the CoC's domain as to how to deal with the*

entire debt of the Corporate Debtor. In this background, if after repeated negotiations, a Resolution Plan is submitted, as was done by the appellant (Resolution Applicant), including the financial component which includes the actual and minimum upfront payments, and has been approved by the CoC with a majority vote of 88.56%, such commercial wisdom was not required to be called into question or casually interfered with. Surprisingly, the discussion in both orders is wanting, except for the difference in the figure of the total outstanding dues and the amount of money which the appellant was to put up initially for taking over the Corporate Debtor, for this Court to understand as to what other reasons, grounded in the Code's provisions, compelled the Adjudicating Authority-NCLT to embark upon the novel path of ordering revaluation by the OL. At the cost of repetition, nobody had moved before the NCLT or raised any objection challenging the Resolution Plan pending approval. Even the NCLAT has only indicated that when "figures of crores" are emerging stage-wise, "then there is no harm to look at the Expert opinion", which the Adjudicating Authority-NCLT in this case has asked for."

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

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

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

In the present case, it is observed that CoC had after conscious deliberation accorded approval to the Resolution Plan submitted by the SRA herein with 100% Voting Share.

32. For general context, it is observed that the following interlocutory application(s) filed by the Principal Commissioner of CGST & Central Tax, North Delhi seeking directions to the RP to admit the claim at belated stage and praying for condonation of delay were recently dismissed by this Adjudicating Authority as mentioned below: -

(i) I.A. No. 603/2023 which was dismissed vide order dated 11.09.2024 passed by this Adjudicating Authority.

(ii) I.A. No. 3504/2023 which was also dismissed vide order dated 11.09.2024 passed by this Adjudicating Authority.

33. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan. Accordingly, we hereby **approve the Resolution Plan**, which shall be binding on the corporate debtor and its employees, shareholders of corporate debtor, creditors including the Central Government, any State Government or any local authority to whom statutory dues are owed, guarantors, successful resolution applicant and other stakeholders involved. In view of the above, ***I.A. 423/2023 in C.P.(IB) No. 769 (ND) 2021 stands allowed*** with such directions prescribed below: -

a) It is declared that the moratorium order passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of pronouncement of this order.

b) However, the resolution plan shall not be construed as waiver to any statutory obligations/liabilities arising out of the approved resolution plan and the same shall be dealt in accordance with the appropriate authorities

concerned as per relevant laws. We are of the considered view that if any waiver is sought in the resolution plan, the same shall be subject to approval by the concerned authorities. The same view has been held by the Hon'ble Supreme Court in the case of "**Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Embassy Property Development.**"

- c) Accordingly, Memorandum of Association and Articles of Associations of the corporate debtor shall be amended and filed with the Registrar of Companies (NCT of Delhi & Haryana) for information and record as prescribed. While approving the 'resolution plan' as mentioned above, it is clarified that the resolution applicant shall pursuant to the resolution plan approved under section 31(1) of the Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for such in law.
- d) The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the corporate debtor and the Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code. The Resolution Professional is further directed to handover all the records, premises, properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.
- e) The approved 'Resolution Plan' shall become effective from the date of passing of this order. The Approved Resolution Plan shall be part of this order.

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

-SD/-

**(RAHUL BHATNAGAR)**  
**MEMBER (TECHNICAL)**

-SD/-

**(MAHENDRA KHANDELWAL)**  
**MEMBER (JUDICIAL)**

Page 19 of 19

**I.A. 423/2023**

**in**

**C.P. (IB) No. 769/ND/2021**