IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH COURT-III

I. A. No.3104 of 2022
IN
C. P. No. 4374/IB/C-III/2018

Under Section 30(1) & (6) and Order under Section 31 of Insolvency & Bankruptcy Code 2016

Filed by

Mr. Vijendra Kumar Jain,

Resolution Professional of the Television Network Limited, Corporate Debtor

.....Applicant/Resolution Professional

Vs.

M/s Sab Events & Governance Now Media Ltd & Ors.

...Respondents

In the matter of

Central Bank of India

...Financial Creditor

Vs.

Sri Adhikari Brothers Television Network Limited.

....Corporate Debtor

Order delivered on: 08.12.2023

Coram:

MS. LAKSHMI GURUNG, HON'BLE MEMBER (J)
SH. CHARANJEET SINGH GULATI, HON'BLE MEMBER (T)

For the Resolution Professional: Adv. Kunal Kanungo a/w Adv. Manish Jha.

For the Resolution Applicant: Adv. Shyam Kapadia

Per: LAKSHMI GURUNG, MEMBER (J)

1. The present application is filed by Mr. Vijendra Kumar Jain, Resolution Professional of Corporate Debtor, Shri Adhikari Brothers Television Network ("**Applicant**") under section 30(6) of the Insolvency and Bankruptcy Code, 2016 (**"Code"**) seeking approval of the resolution plan submitted by consortium of (i) SAB Events & Governance Now Media Ltd, (ii) Marvel Media Pvt. Ltd., (iii) Ravi Adhikari, (iv) Kailasnath Adhikari, (collectively referred as **"Successful Resolution Applicants**") under the provisions of section 31(1).

2. On an application filed by Central Bank of India **("Financial Creditor"),** against Corporate Debtor under Section 7 of the Code, the Corporate Debtor was admitted into CIRP vide order dated 20.12.2019 and the Applicant was appointed as Interim Resolution Professional.

3. The Applicant published the Public Announcement for inviting claims on 22.12.2019 in Form 'A' and the last date for receipt of claims was 04.01.2020. Pursuant to receipt of claims, the IRP constituted a Committee of Creditors consisting of five (5) Financial Creditors in accordance with Section 21(1) of the Code and the first COC meeting held on 15.01.2020. Later, the COC was reconstituted to include Union Bank of India as a secured Financial Creditor. The new COC consisted of six members whose claims were admitted. The details as follows:-

A) Claims of Financial Creditors received and admitted of with voting share:

Sr. No.	Lenders	(Rs. In Crores)		In %
		Total Claim Received	Total Claim Admitted	Voting Share
1	Central Bank of India	32.71	32.71	6.49

2	Canara Bank	204.36	204.36	40.55
3	Dhanlaxmi Bank	11.15	11.15	2.21
4	Indian Overseas Bank	56.31	56.31	11.17
5	State Bank of India	102.20	102.03	20.24
6	Union Bank of India	97.44	97.44	19.33
	Total	**504.22**	**504.03**	**100.00**

4. In accordance with Regulation 27 & 35 of the IBBI (CIRP), Regulations 2016, two registered valuers have been appointed for each category of the assets i.e. Land and Building, Plant and Machinery and Financial Assets to determine the fair value and liquidation value of the Corporate Debtor. The appointed registered valuer have determined the fair value and liquidation value as per the Regulation 35 of the CIRP Regulations and submitted the report.

5. In terms of provisions of Section 25(2)(h) of the Code, Expression of Interest (hereinafter referred as "**EoI**") was called from potential resolution applicants for the purpose of submission of resolution plans for the Corporate Debtor. The applicant published three Form-G dated 28.02.2020, 20.05.2020 and 01.07.2020. Thereafter, the COC approved the publication of fresh Form-G (Fourth). Accordingly, the Applicant published the Form-G dated 15.10.2020 calling prospective resolution applicants to submit their EoI by 30.10.2020. In response to the said Form-G, the Applicant received EoI from 9 entities.

6. In total, there were 21 COC meetings held on different dates. In the 13th COC meeting held on 17.12.2020, the Applicant apprised the COC members that out of 9 EoI, 2 Applicants; (1) M/s Pen India Limited and (ii) Marvel Media Pvt. Ltd with M/s SAB Events & Governance Now Media Limited (jointly), submitted their resolution plan on 14.12.2020.

7. During the meeting, the Applicant presented his observations on the resolution plans submitted by the Resolution Applicants and apprised the COC that he would seek a legal opinion on Net Worth of M/s Marvel Media Private Limited and M/s SAB Events & Governance Now Media Limited (jointly). Thereafter, the Applicant sought an opinion from M/s Vinod Kumar Jain & Co., Chartered Accountants, on the net worth calculation submitted by (i) M/s Marvel Media Private Limited and (ii) M/s SAB Events & Governance Now Media Limited (jointly).

8. As per the opinion, it is clear that the combined net worth of M/s Marvel Media Private Limited and M/s SAB Events & Governance Now Media Limited (jointly) is at the best 6 crores odd amount which is significantly lower than the required net worth of Rs. 10 crores as laid down in the detailed invitation for expression of interest. Therefore, they did not meet the eligibility criteria of financial capacity as laid down in the invitation of expression of interest.

9. In the 17th meeting of COC held on 17.03.2021, eligibility of M/s Marvel Media Private Limited and M/s SAB Events & Governance Now Media Limited (jointly) were discussed and it was concluded that RFRP issued to the Resolution Applicant, M/s Marvel Media Private Limited and M/s SAB Events & Governance Now Media Limited (jointly) will be withdrawn.

10. In the 18th meeting of the COC held on 11.05.2021, the Applicant apprised the COC that keeping in view the events that have transpired and considering that currently only one Resolution Plan is available namely M/s Pen India Ltd, the COC has following options:

    i. To negotiate with the eligible Resolution Applicant or
    ii. To float a fresh Form G or
    iii. To consider Liquidation of the Corporate Debtor

11. In the 19th meeting of COC held on 25.06.2021, the Applicant invited representatives of M/s Pen India Limited for discussing the Resolution Plan with the COC members. After discussion on the Resolution Plan, the Resolution Applicant was asked to revise the offer in the Resolution Plan.

12. In the 20th meeting of COC meeting held on 23.07.2021, the applicant apprised the COC that Resolution Applicant has sent email dated 20.07.2021 stating that they are not considering to revise their resolution plan.

13. The applicant filed application for exclusion of 165 days from CIRP period. Further, an additional affidavit was filed on 05.07.2021 for the exclusion of CIRP period from 15.03.2020 to 14.03.2021 as per the order of Hon'ble NCLAT dated 18.03.2021 and Hon'ble Supreme Court dated 08.03.2021 and 27.04.2021. This tribunal allowed the application granting exclusion of 165 days from 10.03.2021 to 22.08.2021 and extension of 90 days and the CIRP period was ending on 15.09.2021.

14. In the 21st COC meeting held on 24.08.2021, the Applicant apprised the COC that the Resolution Placed in the last COC meeting has been rejected by the COC by 100% votes. Therefore, the Applicant requested the COC to discuss and pass necessary resolution for liquidation of the Corporate Debtor. Accordingly, the COC approved the liquidation of the CD by 100% of votes. The Applicant filed an application for liquidation of the Corporate Debtor as per section 33 of the Code before this bench on 15.09.2021 bearing I.A. No. 2179 of 2021.

15. This bench vide its order dated 16.12.2021 allowed the liquidation application filed by the Applicant and the said order was subsequently modified/clarified by the order dated 04.01.2022 appointing Mr. Ashish Vyash as liquidator. Similarly, by order dated 16.12.2021 this Bench dismissed I.A. 1721/2021 which was filed by Marvel Media Pvt. Ltd. &

SAB Events & Governance Now Media Ltd. and Ors. to consider the plan of the resolution applicant by allowing them to add the networth of Kailasnath Adhikar and Ravi Adhikari to the total net worth submitted by Marvel Media Pvt. Ltd & SAB Events & Governance Now Media Ltd. to meet the eligibility criteria.

16. Bearing aggrieved by the order of this Bench, The Resolution Applicant preferred appeals before Hon'ble NCLAT bearing Company Appeal (Ins) Nos. 72 of 2022 and 109 of 2022. Vide order dated 31.01.2022, the Hon'ble NCLAT directed the applicant to place Resolution Plan, submitted by M/s Marvel Media Pvt. Ltd. and SAB Events & Governance Now Media Ltd. along with Mr. Ravi Adhikari and Mr. Kailashnath Adhiakri, before the COC. The Hon'ble NCLAT further passed an order to stay the liquidation proceedings.

17. Pursuant to the order dated 31.01.2022, the Applicant has called 10 Special Meeting of the COC to consider the Resolution Plan submitted by M/s Marvel Media Pvt. Ltd and M/s SAB Events & Governance Now Media Ltd along with Mr. Ravi Adhikari and Mr. Kailashnath Adhikari which are as follows:

Particulars	**Date of COC Meeting (Pursuant to NCLAT order dated 31.01.2022).**
1st Special COC meeting held on	17.02.2022
2nd Special COC meeting held on	09.03.2022
3rd Special COC meeting held on	20.05.2022
4th Special COC meeting held on	17.06.2022
5th Special COC meeting held on	24.06.2022
6th Special COC meeting held on	06.07.2022
7th Special COC meeting held on	27.06.2022
8th Special COC meeting held on	06.08.2022

9th Special COC meeting held on	17.08.2022
10th Special COC meeting held on	10.10.2022

18. The Resolution Plan submitted by the Resolution Applicant dated 17.08.2022 read with the clarification letter dated 14.09.2022 was discussed by COC in its 9th Special COC meeting and was put for e-voting and the same was approved by majority vote of 93.50%.

19. The Applicant hereby disclosed that pursuant to discussion on transaction audit in 9th to 12th COC meeting held on 14.08.2020 to 26.11.2020 and pursuant to the final transaction audit report dated 7.12.2020, the Applicant filed I.A. 1895/2020, I.A. 2520/2020 and I.A. 567/2021 under Section 43, 45, 47, 49, 50 and 66 of the IBC. The said applications have disposed of vide order dated 05.01.2023 based on partial information given by the erstwhile management to the transaction auditor with the liberty to the RP to file fresh application in case so required. No fresh application is filed.

20. **Details of the Corporate Debtor**

Name of the Company	Shri Adhikari Brothers Television Network Ltd.
Date of Incorporation	19.12.1994
Registered Office	6th floor, Adhikari Chambers, Oberoi Complex, Andheri (West), Mumbai, Maharashtra- 400053
Whether Listed Company	Listed at NSE & BSE
Website	www.adhikaribrother.com
Directors (as per MCA Website)	1. Markand Navnitlal Adhikari 2. Mariappandar Soundara Pandian 3. Ganesh Prasad Raut

	4. Umakanth Bhayravjoshyulu 5. Latsha Laxmanjadhav
Business of the Corporate Debtor	The company is amedia company and operates in the field of content production and syndication of content to various broadcasters, aggregators and satellite networks is being run by RP as going concern
Related Parties	1. M/s SAB Media Network Pvt. Ltd. 2. M/s Westwind Realtors (P) Ltd. 3. M/s TV Visioni Limited 4. M/s SAB Events and Governance Now Media Ltd. 5. M/s Global Showbiz Media (P) Ltd. 6. M/s Prime Global Media (P) Ltd.

21. **Brief Background of the Resolution Applicant**

21.1. The Resolution Applicant is a consortium of 2 companies and 2 individuals who are related parties of promoters / directors as follows:-

- SAB Events & Governance Now Media Ltd. (lead members)
- Marvel Media Private limited (Member)
- Ravi Adhikari (Member)
- Kailasnath Adhikari (Member)

21.2. The Resolution Applicant M/s SAB Events & Governance Now Media Limited and Marvel Media Private Limited along with Mr. Kailasnath Adhikari and Mr. Ravi Adhikari are all part of Shri Adhikari Brothers Group (**SAB GROUP**) which was promoted by

Late Mr. Gautam Adhikari & Mr. Markand Adhikari who were also the suspended board of the Corporate Debtor.

21.3. About the lead member – M/s SAB Events & Governance Now Media Ltd is a multi-media initiative for participatory reportage and analyses related to governance of all institutions and processes that are vital to public life in India. Currently, we are available as www.governancenow.com. The Company has organized different 'On Ground Conferences' and Virtual Conferences,' 'Technology Masterclasses' for government and public sector and 'Visionary Talk' series with some of the renowned personalities of our country. The Company despite of facing all the odds and fluctuations in the market, has taken its digital magazine and conferences to the new milestone engaging the Centre and State Government and public sector actively involved with us.

22. **Synopsis of the Resolution Plan**

1A	Name of the Resolution Applicant	Consortium of:- M/s SAB Events & Governance Now Media Ltd. M/s Marvel Media (P) Ltd. Mr. Ravi Adhikari Mr. Kailashnath Adhikari
1B	Net worth	Rs. 17.58 Cr. (combined networth of the members of the Consortium)
1C	Experience	The applicants related parties of the Suspended Directors of the Corporate Debtor. They are pineers in the Indian Broadcast Content Industry and have a huge experience of the media industry.

2	Fund Infusion by the Resolution Applicant	Rs. 14.10 cr.
3A	Resolution of Financial Creditors (Secured)	Rs. 55.00 cr. Payable within 30 months of the effective date
3B	Resolution of Financial Creditor (Un-Secured)/Other Creditors	Rs. 10 Lakh payable within 3 months of the effective date
4	Resolution of Statutory Dues & Contingent Liabilities	Rs. 0.10 cr. To be paid upfront within 90 days of the effective date as per section 8 of this resolution plan
5	Resolution of Workmen & Employees	
6	Resolution of Operational Creditor	
7	Resolution of Related Parties	NIL
8	Resolution of Share Holders of CD	Restructuring by way of "reduction" of existing shareholding and issue of fresh 30 lakh equity shares to the resolution applicant
9	Payment of CIRP Cost	Rs. 1.60 crore
10	Contingency	Rs. 1 Cr
11	Disposal of Non-Core Assets of the Corporate Debtor	Within 18 months
12	Timeline of Implementation of Plan	T + 30 months

23. SALIENT FEATURES OF THE RESOLUTION PLAN

23.1. The Resolution Applicant undertakes to pay Insolvency Resolution Process Costs that is unpaid and funded by COC, till the effective date, in priority repayment to Financial

Creditors, Operational Creditors, or settlement of any other creditor's claim) within 90 days of the effective date.

23.2. Financial Proposals are given in Form-H discussed elsesewhere in the order.

23.3. Dissenting Financial Creditors, who do not vote in favor of the resolution plan shall receive payment that is not less than the amount to be paid to such creditors in accordance with sub section (1) of Section 53 of the Insolvency & Bankruptcy Code-2016 in the event of a liquidation of the Corporate Debtor. However, for ample clarity it is stated that the sum total of the resolution amount proposed to the financial creditors in this resolution plan shall not increase or change or be different under any circumstance and the total resolution amount for the financial creditors will remain same even if there are one or more dissenting financial creditor. The total resolution amount for the settlement of financial creditor as proposed in section 7 and section 8 of this plan shall remain same under any condition whatsoever.

23.4. On deposit of the PGD (Performance Guarantee Deposit) of Rs 6.10 crores by the Resolution Applicant, the financial creditors will put in abeyance all the recovery proceedings presently being initiated by them against the corporate debtor and its personal guarantors.

23.5. In regard to performance guarantee, the applicant submits that in compliance with the RFRP, Regulations, 2016 and the letter of intent dated 12.10.2022, the successful resolution applicant has submitted the Performance Bank Guarantee for a sum of

Rs. 6,10,00,000/- in favour of State Bank of India. A copy of the bank guarantee is enclosed to the Application.

23.6. The Operational Creditors (including Employees, Workmen, Contractors, Suppliers, Statutory Dues, contingent liabilities, litigations) shall be settled lumpsum as under:

	Claim Type	**Admitted claims**	**Settlement amount to be paid within 90 days of the**
1	Claims of litigation	Nil	4,00,000
2	Statutory Dues	Nil	4,00,000
3	Employees, workmen, contractors	59,334	2,00,000
4	Operational Creditors (Apart from 1-3 above)	17,89,838	
	Total		**10,00,000**

23.7. Apart from the claims resolved and settled in this resolution plan, upon the approval of this Resolution Plan by the NCLT, all the liabilities, deficiencies, assessments, demands, damages, penalties, cause of actions, obligations, loss, claims of any nature whatsoever (whether admitted/verified/submitted/rejected or not, due or contingent, asserted or un-asserted, crystallized or not-crystallized, known or unknown, disputed or undisputed, present or future or whether or not set out in the balance sheet or profit & loss account of the Corporate Debtor or the list of the creditors) including any liabilities, losses, penalties or damages arising out of Non-Compliances, to which the Corporate Debtor or any future shareholder, director,

employees or officers of the Corporate Debtor is or may be subject to and which pertains to the period on or before the Effective Date, including but not limited to the following, shall stand extinguished, abated and settled in perpetuity without any further act or deed and such extinguishment shall form an integral part of the order passed by the NCLT approving this Resolution Plan and shall accordingly, be binding on all stakeholders including the Corporate Debtor, its present and future shareholders, directors, employees, workmen, creditors, guarantors, and other stakeholders.

23.8. Sources of Funds & Timeline for Mobilization of funds for implementation of the Resolution Plan:

	Source of funds	Amount (Rs)	Timeline Infusion (days from the effective date)
A	From the Resolution Applicant		
1	Infusion as Equity in the Corporate Debtor by Resolution Applicants	4,00,00,000	Within 90 days
2	Amount deposited as "Performance Guarantee Deposit" (to be released / adjusted with the last tranche of payment proposed to the financial creditors to be treated as Quasi-Equity usion by Resolution Applicants, if adjusted)	6,10,00,000	Before effective date

3	Infusion as debt in the corporate debtor by resolution applicant	4,00,00,000	Between 7-18 months
B	Funds Raised from AIF / NBFC	2,00,00,000	Between 7-18 months
C	Internal Accruals of the Corporate	2,00,00,000	Between 7-18 months
D	Internal Accruals of the Corporate	8,00,00,000	Between 19-30 months
E	Infusion of Funds from AIF/NBFC as equity/quasi	8,00,00,000	Between 19-30 months
F	Sale of NON CORE Assets of the Corporate Debtor	27,00,00,000	Rs. 6.00 crores within 4-6 months Rs. 21.00 crores within 7-18 months
	Total Funds being Mobilized	61,10,00,000	
	Total	**61,10,00,000**	Within 30 months

23.9. Abeyance of all actions initiated or suits filed by the Financial Creditors of all classes.

- Payment to the Financial Creditors as contemplated in the Resolution Plan shall be considered as a full and final settlement of all dues whatsoever of the Financial Creditors against the Corporate Debtor. Upon deposit of the upfront payment by the Resolution Applicant all the Financial Creditors shall put in abeyance all action, suits, cases initiated or filed by them against the Corporate Debtor or promoters/directors (past, present or suspended) in respect of their admitted/un-admitted claims.

- For abundant clarity upon acceptance of this plan by COC, the Financial Creditors will suspend all its actions (whatsoever taken) including filing application under IBC to enforce the Realization of the Personal Guarantees of the promoters/Directors (past, present or suspended) of the corporate debtor.

24. The Applicant has filed Form – H in accordance with the IBBI (Corporate Insolvency Resolution Process for Corporate Persons) Regulations, 2016 along with this Application.

Form-H

"1. The details of the CIRP are as under:

Sr. No.	Particulars	Description
1.	Name of the CD	Sri Adhikari Brothers Television Network Limited
2.	Date of initiation of CIRP	20.12.2019
3.	Date of Appointment of IRP	20.12.2019
4.	Date of Publication of Public Announcement	22.12.2019
5.	Date of constitution of COC	10.01.2020
6.	Date of first meeting of COC	15.01.2020
7.	Date of appointment of RP	15.01.2020
8.	Date of appointment of registered valuers	28.02.2020
9.	Date of issue of invitation for EOI	28.02.2020, 20.05.2020, 01.07.2020, 15.10.2020
10.	Date of final list of eligible prospective resolution applicants	14.11.2020
11.	Date of Invitation of Resolution Plan	14.11.2020

12.	Last Date of Submission of Resolution Plan	14.12.2020 In response to the Invitation for EOI, interest was received from 9 entities. Out of these 9 entities, 2 Applicants- m/s Pen India Limited and M/s Marvel media Pvt. Ltd. with Sab Events & Governance submitted a Resolution Plan. However, in the 17th COC meeting dated 17.03.2021, request for resolution plan (RFRP) issued to M/s Marvel Media Private Limited and M/s SAB Events & Governance Now Media Limited (jointly) was withdrawn due to non-compliance of eligibility criteria prescribed in the invitation for expression of interest. Thereafter, the only resolution plan received from M/s Pen India Limited.
13.	Date of order extending the period of CIRP	10.12.2020
14.	RFFP withdrawn from ineligible RA (M/s Marvel Media Private Limited and M/s SAB Events & Governance Now Media Limited (jointly))	17.03.2021 (17th COC meeting). Request for resolution plan (RFRP) issued to M/s Marvel Media Private Limited and M/s SAB Events & Governance Now Media Limited (jointly) was withdrawn due to non-compliance of eligibility criteria prescribed in the Invitation for Expression of Interest
15.	Date of Expiry 180 days of CRIP	17.06.2021 (after considering the COVID Exclusion period allowed by NCLT)
16.	Date of rejection of plan submitted by Pen India Limited (only Resolution Plan)	23.07.2021 (20th COC) meeting
17.	Liquidation of the CD approved by COC	24.08.2021 (21st COC meeting)

18.	Liquidation application filed for the CD	15.09.2021
19.	Date of Expiry of Extended period of CIRP	15.09.2021
20.	Date of approval of Liquidation Application by Hon'ble NCLT	16.12.2021 Thereafter, M/s Marvel Media Pvt. Ltd.& Ors. two appeals before the Hon'ble NCLAT: 1. Company Appeal (Ins) No. 72 of 2022 with the prayer to direct the Resolution Professional to present the Resolution Plan submitted by M/s SAB Events & Governance Now Media Ltd along with Mr. Ravi Adhikari and Mr. Kailashnath Adhikari and 2. Company Appeal (ins.) No. 109 of 2022 with the prayer to stay the liquidation order passed in IA. 2179/2021
21.	Receipt of Hon'ble NCLAT Order directing: 1. To place before COC, the Resolution Plan submitted by the M/s Marvel Media Pvt. Ltd. and SAB Events & Governance Now Media Ltd. along with Two additional directors Ravi Adhikari and Kailashnath Adhikari 2. An order to stay the liquidation order passed in I.A. 2179 of 2021	31.01.2021

22.	Final Resolution Plan received from M/s SAB Events & Governance Now Media Ltd. along with M/s Marvel Media Pvt. Ltd., Ravi Adhikari and Mr. Kailashnath Adhikari (pursuant to Hon'ble NCLAT order)	16.08.2022 (along with clarification letter dated 14.09.2022)
23.	Date of Approval of Resolution Plan by COC	9th COC meeting held pursuant to NCLAT order dated 17.08.2022 through e-voting declared on 03.10.2022
24.	Fair Value	Rs. 35,50,69,460.00
25.	Liquidation Value	Rs. 27,89,29,993.00
26.	Number of meeting of COC held	21st COC meetings were held before filing for liquidation application and 10th COC meetings were held pursuant to the order of the NCLAT dated 31.01.2022

2. The Resolution Professional has certified as follows:-

"(i) the said resolution plan complies with all the provisions of the Insolvency and Bankruptcy Code, 2016 the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.

(ii) the resolution applicant, M/s SAB Events & Governance Now Media Ltd along with M/s Marvel Media Pvt. Ltd., Ravi Adhikari and Mr. Kailashnath Adhikari has submitted an affidavit pursuant to section 30(1) of the code confirming its eligibility under Section 29A of the code to submit the resolution plan. The contents of the said affidavit are in order.

(iii) The said Resolution Plan has been approved by the COC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 93.50% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

(iv) I sought vote of members of the COC by electronic voting system which was kept open at least for 24 hours as per the regulation 26.

3. *The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made thereunder.*

4. *The amounts provided for the stakeholders under the Resolution Plan is under:*

Sl. No.	***Category of Stakeholder***	***Sub-Category of Stakeholder***	***Amount Claimed (Amount in Rs.)***	***Amount Admitted (Amount in Rs.)***	***Amount Provided under the Plan (Amount in Res.***	***Amount Provided to the amount claimed (%)***

1	*Secured Financial Creditor*	*(a) Creditors not having a right to vote under sub-section (2) of section 21*	-	-	-	-
		(b) Other than (a) above: *(i) Who did not vote in favour of the Resolution Plan*	*32,71,38,222*	*32,71,38,222*	*2,43,13,188*	*7.43*
		(ii) Who voted in favour of the resolution plan	*4,71,50,78,606*	*4,71,31,22,345*	*52,56,86,812*	*11.15*
		Total (a)+(b)	*504,22,16,828*	*504,02,60,566*	*55,00,00,000*	*10.91*

2	*Unsecured Financial Creditor*	*(a) Creditors not having a right to vote under sub-section (2) of section 21*	-	-	-	-
		(b) Other than (a) above: *(i) Who did not vote in favour of the resolution plan*	-	-	-	-
		(ii) Who voted in favour of the resolution plan	-	-	-	-
		Total (a)+(b)	-	-	-	-
3	*Operational Creditor*	*(a) Related party of corporate debtor*	-	-	-	-

		(b) Other than (a) above:				-
		(i) Government			*4,00,000*	-
		(ii) Workmen	-	-	-	-
		(iii) Employees and other operational creditor	*18,49,182*	*18,49,182*	*2,00,000*	*10.82*
		Total (a)+(b)	*18,49,182*	*18,49,182*	*6,00,000*	*31.45*
5	*Other debts and dues*	*(a) Claims of litigations*	-	-	*4,00,000*	
		(b) Mortgage given by CD to bank	*136,07,97,232*	*136,07,97,232*	*10,00,000*	*0.07*
		Total (a)+(b)	*136,07,97,232*	*136,07,97,232*	*14,00,000*	*0.10*
Grand Total			*6,40,48,63,242*	*6,40,29,06,980*	*55,20,00,000*	*8.62*

6. *The interest of existing shareholders have been altered by the Resolution Plan as under:*

Sl. No.	*Category of Share Holder*	*No. of shares held before CIRP*	*No. of Shares held after the CIRP*

1	*Equity and Preference shares*	*3,73,05,568 (equity shares: 3,49,44,500, Preference shares: 23,61,068)*	*43,73,056*

6. *Compliance of Plan with mandatory provisions of the Insolvency and Bankruptcy Code:*

Section of the code/Regulation No.	***Requirement with respect to Resolution plan***	***Clauses 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*
Section 30(2)	*Whether the Resolution Plan-* *(a) Provides for the payment of insolvency resolution process costs?* *(b) Provides for the payment to the operational creditors?* *(c) Provides for the payment to the Financial Creditors who*	*Annexure 1 page 55-57 of the Resolution Plan*	*Yes*

	did not vote in favour of the resolution plan? *(d) Provides for the management of the affairs of the corporate debtor?* *(e) Provides for the implementation and supervision of the resolution plan?* *(f) Contravenes any of the provisions of the law for the time being in force?*		
Section 30(4)	*Whether the Resolution Plan* *(a) Is feasible and viable, according to the COC?* *(b) Has been approved by the COC with 66% voting share?*		*Yes*
Section 31(1)	*Whether the Resolution Plan has provisions for its effective implementation plan, according to the COC?*	*Page 33-35 clause 13 of the Resolution Plan*	*Yes*
Regulation 35A	*Where the resolution professional 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 fifteen day of the insolvency commencement date, under intimation to be Board?*	*IA filed before NCLT under section 66.* *The RA has dealt with the same in Clause 15 of the Resolution Plan (pg. 41)*	*Yes*
Regulation 38 (1)	*Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?*	*Clause 8 page 20 of the Resolution Plan*	*Yes*
Regulation 38(1A)	*Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?*	*Resolution Applicant proposes to make payment to*	*Yes*

		various creditors (financial & operational) as per the provisions of section 4,5,6,7,8,9 of the resolution plan and undertakes to implement the same as per the provisions of section 10,11,12,13,14,15, 16 of the resolution plan.	
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?*	*Annexure 1 page 58*	*Yes, the RA has made a declaration that it has not failed to implement any plan in the past*
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?*	*Page 33-38 clause 13 and 14 of the Resolution Plan*	*Yes*

	(c) Adequate means for supervising its implementation?		
Regulation 38(3)	*Whether the resolution plan demonstrates that-* *(a) It address the cause of default?* *(b) It is feasible and viable?* *(c) It has provisions for its effective implementation?* *(d) It has provisions for approvals required and the timeline for the same?* *(e) The resolution applicant has the capability to implement the resolution plan?*	*Annexure 1 page no.59*	*Yes*
Regulation 39(2)	*Whether the RP has filed applications in respect of transaction observed, found or determined by him?*	*Application under section 43, 45, and 66 of the IBC is filed and disposed of.*	*Yes*
Regulation 39(4)	*Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B*	*Annexure 22 of the petition*	*Yes*

7. The CIRP has been conducted as per the timeline indicated as under:

Section of the Code/Regulation No.	*Description of Activity*	*Latest Timeline under regulation 40A*	*Actual Date*
Section 16(1)	*Commencement of CIRP and appointment of IRP*	*T*	*20.12.2019*
Regulation 6(1)	*Publication of Public Announcement*	*T+3*	*22.12.2019*
Section 15(1)(c)/Regulation 12(1)	*Submission of Claims*	*T+14*	*4.01.2020*

Regulation 13(1)	*Verification of claims*	*T+21*	*9.01.2020*
Section 26(6A)/Regulation 15A	*Application for Appointment of Authorised Representative, if necessary*	*T+23*	*NA*
Regulation 17(1)	*Filing of Report Certifying Constitution of COC*	*T+23*	*10.01.2020*
Section 22(1) and regulation 17(2)	*First meeting of the COC*	*T+30*	*15.01.2020*
Regulation 35A	*Determination of fraudulent and other transactions*	*T+115*	*07.12.2020*
Regulation 27	*Appointment of two registered valuers*	*T+47*	*28.02.2020*
Regulation 36(1)	*Submission of information memorandum to COC*	*T+54*	*15.04.2020*
Regulation 36A	*Invitation of EOI*	*T+75*	*28.02.2020 (amended on 19.03.2020)*
	Publication of form G	*T-75*	*28.02.2020, 20.05.2020, 01.07.2020, 15.10.2020*
	Provisional list of Resolution Applicants	*T+100*	*09.11.2020*
	Final List of Resolution Applicants	*T+115*	*14.11.2020*
Regulation 36B	*Issue of Request for resolution plan,*	*T+105*	*14.11.2020*

	which includes evaluation matrix and information memorandum to Resolution Applicants		
Section 30(6)/Regulation 39(4)	*Submission of COC approved Resolution Plan*	*T+165*	*Pursuant to Hon'ble NCLAT order, a Resolution Plan was submitted by M/s SAB Events & Governance Now Media Ltd along with M/s Marvel Media Pvt. Ltd, Mr. Ravi Adhikari and Mr. Kailashnath Adhikari on 28.02.2022 and final plan on 16.08.2022*
Section 31(1)	*Approval of Resolution plan*	*T+180*	*9th Special COC meeting held pursuant to NCLAT order dated 17.08.2022 through e-voting declared on 03.10.2022*

8. *The time framed proposed for obtaining relevant approvals is as under:*

The Resolution Plan at Clause 17(d), states that "The resolution applicants hereby declared and undertakes that apart from the reliefs and concession (as mentioned in this resolution plan) requested by the resolution applicant from the adjudicating authority there are no approval or permission needed from any other authority, public department or ministry to implement the resolution plan in the committee timeline."

9. The Resolution Plan is not subject to any contingency."

25. We have heard the Applicant and perused the Resolution Plan and related documents submitted along with Application.

26. In compliance of Section 30(2) of IBC, 2016, the Resolution Professional has examined the Resolution plan of the Successful Resolution Applicant and confirms that this Resolution Plan:

    a. Provides for payment of Insolvency Resolution Process cost in a manner specified by the Board in the priority to the payment of other debts of the corporate debtor;
    b. Provides for payment of debts of operational creditor 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 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 distribute in accordance with sub-section (1) of Section 53 in the event of liquidation of the corporate debtor.

c. Provides for management of the affairs of the Corporate Debtor after approval of Resolution Plan;
d. The implementation and supervision of Resolution Plan;
e. Does not prima facie contravene any of the provisions of the law for time being in force;
f. Confirms to such other requirements as may be specified by the Board.
g. As per the Affidavit, the Resolution Applicant is not covered under 29A.

27. In compliance of Regulation 38 of CIRP Regulations, the Resolution Professional confirms that the Resolution plan provides that

a. The amount due to the Operational Creditors under resolution plan shall be given priority in payment over Financial Creditors.
b. It has dealt with the interest of all Stakeholders including Financial Creditors and Operational Creditors of the CD
c. A statement that neither the Resolution Applicants nor any related parties have failed to implement nor have contributed to the failure of implementation of any other Resolution Plan approved by the AA in the past.
d. The terms of the plan and its implementation schedule.
e. The management and control of the business of the CD during its term.
f. Adequate means of Supervising its implementation
g. The Resolution Plan Demonstrate that it addresses
    i. The cause of the Default
    ii. It is feasible and viable
    iii. Provision for effective implementation

iv. Provisions for approvals required and the time lines for the same
v. Capability to Implement the Resolution Plan

28. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority. Section 31 of the Code deals with the approval of the Resolution Plan by the Authority if it is satisfied that the Resolution Plan as approved by the CoC under section 30(4) meets the requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan as approved by the CoC meets the above requirements.

29. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:

a. Payment of CIRP Cost as specified u/s 30(2)(a) of the Code
b. Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
c. For Management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified u/s 30(2)(c) of the Code.
a. The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.

30. In view of the above, 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. We note that though the resolution plan value has been shown as Rs. 61.10 crore but in effect the Successful Resolution Applicant is infusing funds into Corporate Debtor to the tune of Rs. 14.10 crores only and rest of the

funds are proposed to be arranged either from (i) NBFC loan or (ii) internal accruals of the Corporate Debtor or (iii) sale of non-core assets of the Corporate Debtor.

31. In ***K Sashidhar v. Indian Overseas Bank & Others (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 Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex 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.

32. In ***Committee of Creditors of Essar Steel India Limited through Authorised Signatory Vs. Satish Kumar Gupta & Ors (2020) 8 SCC 531*** the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom has approved.

33. In view of the law laid down by Hon'ble Supreme Court, the commercial wisdom of the COC is to be given paramount importance for approval / rejection of the resolution plan. As the resolution plan meets the requirements of section 30(2), Regulations 37, 38 and 39 and is not in contravention of section 29A as held by us in separate order passed today

in IA No. 3352/2022, the same needs to be approved, Accordingly, the **resolution plan is approved**.

34. Hence, we allow the Application in the following

ORDER

i. The Application IA No. 3104 of 2022 in CP (IB) No. 4374 of 2018 is **allowed**. The Resolution Plan submitted by M/s SAB Events & Governance Now Media Ltd, M/s Marvel Media Pvt. Ltd., Mr. Ravi Adhikari, Mr. Kailasnath Adhikari 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 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. No person will be entitled to initiate or continue any proceedings in respect to a claim prior to CIRP which is not a part of the Resolution Plan.

iii. The monitoring committee as proposed in clause 6.17 of the Resolution Plan shall be constituted for supervising the effective implementation of the Resolution Plan.

iv. As per the Resolution Plan, extinguishment of existing shares of the Corporate Debtor, allotment of shares to the Resolution Applicant and reduction of share capital do not require the consent of shareholders as required under the Companies Act

or any other authority for implementation of the Resolution Plan.

v. 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 by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.

vi. This Tribunal will not deter such authorities to deal with any of the issues arising after effecting the Resolution Plan.

vii. Any amount out of the action taken against other persons for Preferential/ Fraudulent Transactions u/s. 43 and 66 of the IBC, 2016 as found in the Audit Report and also Unauthorized Transaction post CIRP order, shall be appropriated towards the unsatisfied claims of Secured Financial Creditors.

viii. As regards the other reliefs and concessions as sought for which exempts the Corporate Debtor from holding them liable for any offences committed prior to the commencement of CIRP as stipulated under Section 32A of the Code, is granted to the Resolution Applicants. With regard to other concessions and reliefs, most of them shall stand subsumed in the reliefs granted above.

ix. The exemptions, if any, sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted.

x. Further, in terms of the Judgment of Hon'ble Supreme Court in the matter of ***Ghanshyam Mishra and Sons Private Limited***

Vs. Edelweiss Asset Reconstruction Company Limited, [(2021) 9 SCC 657] the Hon'ble Apex Court on the date of the approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of the Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which are not a part of the Resolution Plan.

xi. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the concerned Registrar of Companies (RoC), 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.

xii. The moratorium under Section 14 of the Code shall cease to have effect from this date.

xiii. 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.

xiv. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

Sd/-

CHARANJEET SINGH GULATI
MEMBER (TECHNICAL)

Sd/-

MS. LAKSHMI GURUNG
MEMBER (JUDICIAL)

/rks/

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH COURT-III

I. A. No.3352 of 2022
IN
C. P. No. 4374/IB/C-III/2018

Under Section **60(5)** and of Insolvency & Bankruptcy Code 2016

Filed by
Central Bank of India, Asset Recovery
Branch, 346, Standard Building
Dr. D.N. Road, Fort, Mumbai- 400001

.....**Applicant/Dissenting Financial Creditor**

Vs.

1. Mr. Virendra Kumar Jain (**Resolution Professional**),
   401/402, Sai Trishul, Raviraj Oberoi Complex Of
   New Link Road, Andheri (West), Mumbai- 400053

2. SAB Events & Governance Now Media Ltd.
   with Marvel Media Pvt. Ltd. and Mr. Ravi Adhikari
   and Mr. Kailasnath Adhikari (**Resolution Applicant**)

...Respondents

In the matter of

Central Bank of India

Financial Creditor

Vs.

Shri Adhikari Brothers Television Network

Corporate Debtor

Order pronounced on: 08.12.2023

Coram:
MS. LAKSHMI GURUNG, HON'BLE MEMBER (J)
SH. CHARANJEET SINGH GULATI, HON'BLE MEMBER (T)

Appearance

For the Applicant: Adv. Rathina Maravarman

For the Resolution Professional: Adv. Kunal Kanungo a/w Adv. Manish Jha

For the Resolution Applicant: Adv. Shyam Kapadia

Per: LAKSHMI GURUNG, MEMBER (J)

ORDER

1. This application has been filed by Central Bank of India (hereinafter referred as **"Applicant"/Financial Creditor**) under Section 60(5) of the Insolvency and Bankruptcy Code (hereinafter referred as "Code") opposing the application for approval of resolution plan.

Brief facts:

2. Shri Adhirkari Brothers Television Network ("**Corporate Debtor/CD**") was admitted into Corporate Insolvency Resolution Process ("**CIRP**") on 12.12.2019 on an application filed by Central Bank of India (the **Applicant/Financial Creditor**) under Section 7 of the Insolvency and Bankruptcy Code 2016 (**the Code**).

3. Respondent No.1 was appointed as Interim Resolution Professional (IRP) and later confirmed as RP. First meeting of Committee of Creditors (CoC) was held on 15.01.2020. Summary of Creditors and claims admitted by the RP is as follows:

A) Summary of Creditors:

Sr. No.	Particulars	No. of claims received	Claims submitted	Claims admitted	Claims rejected
1.	Financial Creditors	6	504,22,16,828	504,02,60,566	19,56,262

2.	Operational Creditors	6	17,89,838	17,89,838	Nil
3.	Employees	1	59,344	59,344	Nil
4.	Other Creditors (Mortgage given by CD to Bank)	1	139,07,97,232	136,07,97,232	Nil
	Total		**640,48,63,242**	**640,29,06,980**	

B) Claims of Financial Creditors received and admitted of with voting share:

Sr. No.	**Lenders**	**FC Admitted Claim (Rs. In Crores)**		
		Total Claim Received	**Total Claim Admitted**	**Voting Share (%)**
1	Central Bank of India	32.71	32.71	6.49
2	Canara Bank	204.36	204.36	40.55
3	Dhanlaxmi Bank	11.15	11.15	2.21
4	Indian Overseas Bank	56.31	56.31	11.17
5	State Bank of India	102.20	102.03	20.24
6	Union Bank of India	97.44	97.44	19.33
	Total	**504.22**	**504.03**	**100.00**

4. The Resolution Professional published Form-G dated 28.02.2020, 20.05.2020, 01.07.2020 and 15.10.2020. Though nine (9) Expression of Interests were received but only two resolution plans were received on 14.12.2020 from Prospective Resolution Applicants:

   (i) Pen India Limited;

   (ii) Marvel Media Pvt. Ltd. with SAB Events & Governance Now Media Limited (jointly)

5. Resolution by Marvel Media Pvt. Ltd. With SAB Events & Governance Now Media Ltd. was not considered, being non RFPF compliant. Revised plan was called from Pen India but it refused to increase resolution plan value hence the sole resolution plan was also rejected by 100% voting by COC as the plan was not upto the expectation of the CoC.

6. As both plans were not approved by the COC, decision was taken for initiation of liquidation of the CD. Accordingly, liquidation application bearing I.A. No. 2179/2021 was filed on 15.09.2021 and was allowed by order dated 16.12.2021 and the Corporate Debtor was ordered for liquidation. In the meantime, another I.A. bearing No. 1721/2021 was filed by the ex-promoter Mr. Markand Adhirkari and Mr. Kailashnath Adhikari stating that their net worth be also considered along with Marvel Media Ltd. and SAB Events & Governance Now Media Ltd. and a fresh "Form-G" and fresh "EOI" be issued. The said application was also rejected by this Tribunal vide order dated 16.12.2021.

7. Aggrieved by the above two orders of the Tribunal, the Resolution Applicant, Marvel Media Pvt. Ltd. with SAB Events & Governance Now Media Limited preferred two appeals before Hon'ble NCLAT (i) Company Appeal (Ins). No. 72 of 2022 with the prayer to direct the RP to present the resolution plan submitted by SAB Events & Governance Now Media Ltd and Marvel Media Pvt. Ltd. along with Mr. Ravi Adhikari and Mr. Kailashnath Adhikari and (ii) Company Appeal (Ins). No. 109 of 2022 with the prayer to stay the liquidation order passed by the Adjudicating Authority.

8. Vide order dated **31.01.2022** Hon'ble NCLAT directed the COC to consider the plan submitted by the Consortium of Resolution Applicants who were appellants before NCLAT.

9. Pursuant to the said order dated 31.01.2022, the plan submitted by consortium of Marvel Media Pvt. Ltd. with SAB Events & Governance Now Media Limited along with Mr. Ravi Adhikari and Mr. Kailash Ahdikari were placed before the COC meeting held on 17.02.2022. Certain modifications were suggested in the said COC meeting and the sole revised resolution plan was submitted to the COC on 17.08.2022 and the same was approved by CoC by 93.51% voting share. The Applicant Bank holding 6.49% of voting rights in COC casted dissenting vote.

LEGAL SUBMISSIONS

10. The Applicant is objecting the Resolution Plan on various grounds which can be summarized as follows:

i. The resolution plan cannot provide for extinguishment of Personal Guarantees. Applicant refers to clause 7 C (D) which reads as under:

"Withdrawal of all action initiated or suits filed by the financial Creditors of all clauses

- *Payment to the Financial Creditors as contemplated in the Resolution Plan shall be considered as a full and final settlement of all dues whatsoever of the Financial Creditors against the Corporate Debtor. Upon deposit of the upfront payment by the Resolution Applicant all the Financial Creditors shall put in abeyance al action, suits, cases initiated or filed by them against the Corporate Debtor or Promoters/Directors (past, present*

or suspended) in respect of their admitted/unadmitted claims.

- *For abundant clarity upon acceptance of this Plan by COC, the Financial Creditors will suspend all its actions (whatsoever taken) including filing Application under IBC to enforce the realization of the personal Guarantees of the Promoters/Directors (past, present or suspended) of the Corporate Debtor."*

Reliance was placed on ***Lalit Kumar Jain.***

ii. According to Applicant, CD cannot take benefit of Section 240A because of following reasons:

a. The admission was passed by NCLT, Mumbai on 20.12.2019. The MSME Registration was done on 13.10.2020. Corporate Debtor was not MSME on the date when CIRP was initiated.

b. Corporate Debtor is a media company and is in the business of entertainment. Therefore, it can never be treated as MSME.

c. Mr. Ravi Adhikari and Mr. Kailashnath Adhikari who have jointly submitted the Resolution Plan. Along with M/s Sab Events & Governance Now Media Ltd. and M/s Marvel Media Pvt. Ltd. are not shown as Directors of the Corporate Debtor.

iii. The plan is hit by Section 29A(b) & (d) as the account of CD has been declared as fraud under RBI Master Circular dated 01.07.2016 by State Bank of India and Canara Bank.

iv. The plan is also hit by Section 29A(j) because the resolution applicants, Mr. Ravi Adhikari and Mr. Kailashnath Adhikari

are sons of the Ex-directors of Corporate Debtor. Hence, they are related parties.

v. The claims of the Applicant admitted by the IRP is Rs. 504.03 crores whereas the plan value offered to the Applicant is only Rs. 54 crores and the haircut for the applicant is 89.28%. Such plan which is only to give benefit to the promoters should not be allowed.

11. Per contra, the Ld. Counsel for the Resolution Professional submitted that the objections raised by the Applicant in the present application were also raised by the Applicant before Hon'ble NCLAT in the appeal filed by the Respondents No.2 and Hon'ble NCLAT had taken cognizance of the facts with regard to the MSME status of the Corporate Debtor and the Net Worth of the Respondent No. 2 in the Comp. App. (AT) (Ins) No. 72 of 2022. Thus, the present application is barred by virtue of res judicata. Further the resolution plan has been approved by the COC during 10th Special meeting held on 10.10.2022 with of 93.5% votes.

ANALYSIS AND FINDINGS

12. Heard the Counsel for the parties and examined the record and various orders and judgments relied upon by the parties. We now deal with the grounds raised by Applicant objecting to the approval of the resolution plan one by one.

Extinguishment of personal guarantees

13. In this connection, it would be apposite to refer to the judgment of the Hon'ble NCLAT in ***in Puro Naturals JV Vs. Warana Sahakari***

Bank & Ors (2023) ibclaw.in 750 NCLAT) in which Hon'ble NCLAT has considered the question whether Resolution Plan providing for extinguishment of security interest and the guarantees of the Financial Creditors including dissenting Financial Creditors is contrary to the provision of Section 30, sub-section (2) and the CIRP Regulations? The Hon'ble NCLAT referred to its own judgment in the matter of ***SVA Family Welfare Trust & Anr vs Ujaas Energy Limited And Ors in Company Appeal (AT) (Insolvency) No. 266 of 2023.*** The relevant paragraphs are reproduced below:

> *"13. ..... This Tribunal held in the aforesaid judgment that security interest of the dissenting Financial Creditors by virtue of personal guarantee of the ex-director of the Corporate Debtor could have been very well dealt in the Resolution Plan. After considering all relevant judgments, this Tribunal laid down following in paragraph 28 and 29:*
>
> > *"28. The above judgment fully supports the submissions of the Appellant that security interest of dissenting Financial Creditor by virtue of personal guarantee of the ex-director of the Corporate Debtor could have been very well dealt in the Resolution Plan. It is further relevant to notice that each Financial Creditor has personal guarantee in their favour to secure the loan extended by them. All Financial Creditors has assented for relinquishment of such security except Bank of Baroda which had only 5.83% vote share. The decision of the CoC to accept the value for relinquishment of personal guarantee was a commercial decision of the CoC which cannot be allowed to be impugned at the instance of dissenting Financial Creditor.*
> >
> > *29. In view of the foregoing discussions, we are of the view that the Adjudicating Authority committed error in rejecting the Application for approval of the Resolution Plan on the ground that plan could not have contained*

a provision for extinguishment of personal guarantee of the personal guarantors. Plan allocates a plan value for extinguishment of personal guarantee which has been accepted by the Financial Creditors by a vote share of 78.04%. We, thus, are of the view that the order of the Adjudicating Authority dated 06.01.2023 is unsustainable. In result, we allow the Appeal and set aside the order dated 06.01.2023 passed by the Adjudicating Authority. We hold that the Resolution Plan submitted by the Appellant did not contravene any of the provisions of Section 30(2)(e) of the Code. The Adjudicating Authority shall proceed to pass a fresh order in IA 190 of 2021 praying for approval of the Resolution Plan along with necessary directions. Adjudicating Authority shall endeavour to pass fresh order on IA 190 of 2021 within a period of three months from the date when copy of this order is produced before it."

14. This Tribunal took the view that ***Resolution Plan providing for extinguishment of personal guarantee as approved by the CoC, did not contravene any provisions of Section 30(2)(e) of the Code.*** *It is also relevant to notice that against the order of this Tribunal in Company Appeal (AT) (Ins.) No.266 of 2023, Bank of Baroda filed Civil Appeal No.6602 of 2023, which Appeal has been dismissed by the Hon'ble Supreme Court vide its order dated November 06, 2023.*

(emphasis provided)

14. After above discussions, the Hon'ble NCLAT reiterated its earlier view and answered the question that the Resolution Plan providing for extinguishment of security interest and the guarantees of the Financial Creditors including dissenting Financial Creditors is not contrary to the provision of Section 30, sub-section (2) and the CIRP Regulations.

15. Reliance by the applicant on the judgment of ***Lalit Kumar Jain*** (supra) is misplaced in the facts of the present case. We are supported in our view by the judgment of Hon'ble NCLAT in ***SVA Family Welfare Trust & Anr vs Ujaas Energy Limited And Ors in Company Appeal (AT) (Insolvency) No. 266 of 2023*** where it has referred to the judgment of Lalit Kumar Jain (supra) in following terms:

> *15. The Hon'ble Supreme Court again in "Lalit Kumar Jain v. Union of India- (2021) 9 SCC 321" had occasion to consider the provisions of the Code as well as the law pertaining to personal guarantor and the consequence of approval of the Resolution Plan on the rights of the personal guarantors. In the said judgment, the Hon'ble Supreme Court held that sanction of a resolution plan does not per se operate as a discharge of the guarantor's liability. It was held that approval of a resolution plan does not ipso facto discharge a personal guarantor ……*
>
> *16. The use of expressions 'per se' and 'ipso facto' clearly indicate that by approval of the Resolution Plan, personal guarantors are not per se and ipso facto discharge from its obligation which may arise of the guarantee given to the Financial Creditor. The use of above expressions conversely indicates that there may be situations and circumstances, for example, relevant clauses in the Resolution Plan by which personal guarantors may be discharged. The judgment of the Hon'ble Supreme Court in Lalit Kumar's case cannot be read to mean as laying down law that personal guarantee never can be discharged in a Resolution Plan.*

16. In view of the above judgement of Hon'ble NCLAT, it is clear that when COC has passed a resolution plan with 93.5% votes after deliberating on the plan and such plan provides for extinguishment of personal guarantee, the Adjudicating Authority cannot interfere

with the commercial wisdom of COC. Hence, this ground of objection of the Applicant is rejected.

17. As regard to the objection on the ground of registration of Corporate Debtor as MSME post CIRP date, we note that in Company Appeal (Ins.) No. 72 of 2022, in which the Applicant was regularly appearing as Respondent No.2, the Hon'ble NCLAT had already considered and allowed the resolution plan of the Resolution Applicants to be placed before the CoC for their consideration. The relevant portion of the order of NCLAT dated 31.01.2022 is as under:

> *"Let the Resolution Plan of the Appellants along with two Additional Directors Mr. Ravi Adhikari and Mr. Kailashnath Adhikari be placed by the RP before COC. We make it clear that its for the COC to consider the merits of the plan and we are not expressing any opinion on the Plan and claim of the Appellants. The decision taken by the COC will be brought on record".*

18. The said Company Appeal (Ins.) No. 72 of 2022 was finally dismissed as infructuous on 12.10.2022 in following terms:

> *"Learned Counsel for the Appellant submits that in pursuance of the Order passed by this Court in these Appeals on 31st -2- Company Appeal (AT) (Insolvency) No. 72, 109/2022 January, 2022, the Resolution Plans were considered by the Committee of Creditors and has been approved on 17th August, 2022. 2. In view of the approval of the Resolution Plan, the issues raised in these Appeals have become infructuous. Both these Appeals are dismissed as infructuous."*

19. Therefore, this issue has already been considered by Hon'ble NCLAT and the resolution plan of the Resolutions Applicants was allowed

to be placed before COC for their consideration, the Applicant cannot, at this stage, agitate the same issue before the Adjudicating Authority. Further, there is no bar under the Code in obtaining MSME registration certificate by the Corporate Debtor after the initiation of CIRP.

20. The Applicant has relied on the judgment of ***Harkirat Singh Bedi Vs. Oriental Bank of Commerce in Company Appeal (AT) (Ins.) no. 40 of 2020*** dated 12.01.2021 to contend that the resolution plan was rejected by Hon'ble NCLAT as the date of the registration of the Corporate Debtor as MSME was dated 05.06.2019 much after CIRP admission order dated 29.03.2019. However, we note that in the case of Harkirat Singh Bedi (supra) the Resolution Plan was primarily rejected on the ground of bar under clause (b) of Section 29A of the IBC. Further, the plan was rejected by COC itself. Therefore, the facts of Harkirat Singh Bedi (supra) are distinguishable.

21. In our view, we are supported by the case of ***Govind Prasad Todi and anr. Vs. Satya Narayan Guddeti and others*** in ***Company Appeal (AT) (Insolvency) No. 1125 of 2022*** where the CIRP of the Corporate Debtor was initiated on 04.02.2020 and registration with MSME was obtained on 30.08.2021 i.e. after initiation of CIRP. However, the Hon'ble NCLAT held that opportunity should be given to the Corporate Debtor and the Resolution Plan filed by the promoter post MSME registration be considered by COC. Thereafter, Hon'ble NCLAT directed that liquidation of the Corporate Debtor be kept in abeyance. The facts of the present case are squarely covered by the facts of the above judgment. If section 240A provides benefit to the promoters to enable them to save the Corporate Debtor from its death, by submitting a resolution plan if the same is within four

corners of the law then the same should be allowed. We are unable to accept this ground of the Applicant and reject the same as untenable.

22. The submission of the Applicant that the Corporate Debtor is a media company and is in the business of entertainment, therefore, it can never be treated as MSME is not accepted. The classification of companies into MSME is governed by Micro, Small and Medium Enterprises Development Act, 2006 (MSME Act) and the Notification dated 01.06.2020 issued by Government of India. Accordingly, any company covered under the MSME Act has to be treated as MSME.

23. The submission of the Applicant is that Mr. Ravi Adhikari and Mr. Kailashnath Adhikari who have jointly submitted the Resolution Plan along with M/s Sab Events & Governance Now Media Ltd. and M/s Marvel Media Pvt. Ltd. whereas they are not shown as Directors of the Corporate Debtor, and hence cannot claim the benefit of Promoters of MSME eligible to submit the resolution plan. We do not find any force in this submission as there is no provision under Section 29A or under 240A to suggest that section 240A of the Code is applicable only in cases where the resolution applicants are themselves directors of the Corporate Debtor. We may refer to Section 240A.

> **240A. Application of this Code to micro, small and medium enterprises**
>
> (1) *Notwithstanding anything to the contrary contained in this code, the provisions of clauses (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process or pre-packaged insolvency resolution process of any micro, small and medium enterprises.*

The legislative language is abundantly clear that benefit of section 240A is given to any micro small and medium enterprises and ineligibility of resolution plan due to clauses (c) and (h) of 29A will not apply. Nothing more nothing less.

24. The Applicant has also submitted that the resolution plan is hit by Section 29A(b) & (d) as the account of **CD has been declared as fraud** under RBI Master Circular dated 01.07.2016 by State Bank of India and Canara Bank. We note that clause (b) of 29A creates bar on submitting the resolution plan, on any person who is a **willful defaulter** in accordance with the guidelines of the Reserve Bank of India. Going by the legislative language, it is clear, that bar is on the resolution applicant. In the present case the persons submitting the resolution plan have not been declared as willful defaulter. Any other interpretation of section 29A(b) will be a violence to the plain language of the statute. We further it was the Corporate Debtor which was declared as fraud by State Bank of India and by Canara Bank but we note that both State Bank of India and by Canara Bank, being part of the COC have casted assenting vote in favour of the resolution plan.

25. The next objection of the applicant is that resolution plan is hit by Section 29A(j) because the resolution applicants, Mr. Ravi Adhikari and Mr. Kailashnath Adhikari are sons of the Ex-directors of Corporate Debtor. Hence, they are related parties. According to Section 29A(j), a person shall not be eligible to submit resolution plan if such person or any other person acting jointly or in concert with such person who has a connected person not eligible under clause (a) to (i). In the present case, Mr. Ravi Adhikari and Mr. Kailashnath Adhikar are related to the promoters of the Corporate Debtor and therefore, they could be hit by clause (c) of Section 29A. However, due to exemption under Section 240A, they are not

ineligible to submit a resolution plan as the Corporate Debtor has been registered as MSME. Therefore, we reject this ground also.

26. The next of ground of objection is that Applicant has been offered mere Rs. 54 crores against admitted claims of Rs.504.03 crores and is subjected to haircut of 89.28%. This ground is patently untenable under the law. The Hon'ble Supreme Court has, in a catena of judgments, right from the judgments in ***K. Sashidhar Vs. Indian Oversea bank & Ors. (2019) 12 SCC 150, Committee of Creditors of Essar Steel India Limited Through Authorised Signatory Vs. Satish Kumar Gupta & Ors (2020) 8 SCC 531, Maharashtra Seamless Limited Vs. Padmanabhan Venkatesh & Ors. (2020) 11 SCC 467, Kalpraj Dharamshi & Anr. Vs. Kotak Investment Advisors Ltd. Anr (2021) 10 SCC 401*** repeatedly held that commercial wisdom of COC is supreme and the role of the Adjudicating Authority is to ensure that the decisions taken by the COC are in accordance with the provisions the Code. In a very recent judgment delivered on 21.11.2023 in ***Ramkrishna Forgings Limited vs. Ravindra Loonkar, Resolution Profession of ACIL Limited & Anr 2023 SCCOnline SC 1490*** the Hon'ble Supreme Court reiterated that the COC is a decision maker and in the driver seat of the Corporate Debtor. The relevant paras of the Judgment are reproduced as follows:

> *"29. In the case at hand, we find that there was no occasion before the Adjudicating Authority NCLT to be swayed only on the per-se ground that the hair-cut would be about 94.25% and that it was not convinced that the fair value of the assets have been projected in proper manner as the bid of the appellant was very close to the fair value of the assets of ACIL. Ordering revaluation of the assets, by the OL, Ministry of Corporate Affairs, Government of India, in-charge of the particular area,*

cannot be justified. As explained in ***Innovetive Industries Ltd. v ICICI Bank, (2018) 1 SCC 407 and Swiss Ribbons Private Limited v Union of India, (2019) 4 SCC 17****, the Code was specifically introduced by Parliament for ensuring quick and time-bound resolution of insolvency of corporate entities in financial trouble, by first attempting to revive the Corporate Debtor, failure whereof would entail liquidation of the Corporate Debtor's assets, and no unnecessary impediment should be created to delay or derail the CIRP. In the present case, both the NCLT and NCLAT erred to fully recognise that under the Resolution Plan, the Corporate Debtor was set to be revived and not liquidated.*

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.....

31. It is worthwhile to note that the Adjudicating Authority has jurisdiction only under Section 31(2) of the Code, which gives power not to approve only when the Resolution Plan does not meet the requirement laid down under Section 31(1) of the Code, for which a reasoned order is required to be passed. We may state that the NCLT's jurisdiction and powers as the Adjudicating Authority under the Code, flow only from the Code and the Regulations thereunder. It has been held in ***Jaypee Kensington Boulevard Apartments***

***Welfare Association v NBCC (India) Limited, (2022) 1 SCC 401**:*

> *'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 30(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 39 limited jurisdiction, the adjudicating authority finds any shortcoming in the resolution plan vis-à-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 exposited by this Court****.'*
>
> *(emphasis supplied)"*

27. Before parting with this judgment, we would like to mention that in the present case there are no other resolution plans with the COC and if the present resolution plan is not approved, the natural consequence would be the liquidation of the Corporate Debtor and that is what is also prayed by the Applicant. The Financial Creditor cannot push the Corporate Debtor to liquidation just to protect the personal guarantee from being extinguished. The objects of the Code as far as possible is "resolution not liquidation". The Adjudicating Authority must abide by the Objects of Insolvency and Bankruptcy Code, 2016, which has been arguably proved to be the most effective and game changing economic legislation in the recent era. Further, the data published by IBBI as on September, 2023 has suggested that amount recovered through resolution is 31.85%, whereas

amount recovered through liquidation process is less than 4%. Therefore, it is in the interest of the Corporate Debtor and ultimately in the larger interest of the nation's economy and growth that resolution is preferred over liquidation.

28. For all the reasons discussed above, we reject the objections of the Applicant hence the IA is **dismissed**.

Sd/-

CHARANJEET SINGH GULATI
MEMBER (TECHNICAL)
/rks/

Sd/-

MS. LAKSHMI GURUNG
MEMBER (JUDICIAL)