

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

IA-1384/2023

IN

Company Petition No. IB- 259(ND)/2021

(Under Section 30 (6) and 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016))

IN THE MATTER OF:-

Mr. Prabhjit Singh Soni
(Resolution Professional of
M/s. MHG Land Stockist Private Limited)

..... Applicant

AND IN THE MATTER OF:

M/s. Remotebullion and Jewels Private Limited

... Financial Creditor

VERSUS

M/s. MHG Land Stockist Private Limited

... Corporate Debtor

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on:12.12.2023

PRESENT:

**For the RP in IA No.1348 : Ms. Swarnika Aggarwal, Adv. along with Mr.
Prabhjit Singh Soni, RP**

ORDER

PER: SH. MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

The present application has been filed under Section 30(6) read with Section 31(1) of the Insolvency & Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') on behalf of Mr. Prabhjit Singh Soni, applicant herein and Resolution Professional (RP) of M/s. MHG Land Stockist Private Limited ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by M/s. Garg Builders ('Successful Resolution Applicant') and approved by the Committee of Creditors ('CoC') in its 9th CoC Meeting with 100% voting in favor in terms of Section 30(4) of I&B Code, 2016.

2. Briefly stated, the facts as averred by the applicant in the application are as follows:

- a) The Corporate Insolvency Resolution Process against M/s. MHG Land Stockist Private Limited ('Corporate Debtor') had been initiated by this Hon'ble Adjudicating Authority vide its order dated 10.06.2022 in C.P.(IB) No.259/2021, an application under Section 7 of the Code, 2016 filed by M/s. Remote Bullion and Jewels Private Limited ('Financial Creditor') and the applicant Mr. Prabhjit Singh Soni was appointed as the Resolution Professional of the Corporate Debtor vide this Hon'ble Adjudicating Authority order dated 02.09.2022.
- b) The Corporate Debtor is engaged in the business of construction and building completion which includes activities that contribute to the completion or finishing of a construction.
- c) The Public Announcement in Form A dated 26.06.2022 was made in the newspaper wherein all the creditors were invited to submit their claim and the last date for submission of proof of claim was 08.07.2022. The Interim Resolution Professional had received only seven (7) claims from unsecured financial creditors and one (1) claim from the operational creditor. Pursuant to the receipt of the claims from the creditors, a Committee of Creditors was constituted wherein M/s. Remote Bullion and Jewels Private Limited ('Financial Creditor'), on whose application, CIRP was initiated against the Corporate Debtor was not included in

the CoC on the account that the said Financial Creditor is the Related Party of the Corporate Debtor. The Composition of the CoC constituted of the Corporate Debtor are as follows:-

S.no.	Name of the Claimants	Total Amount of the Claim	Voting Share%
01	Saraswati Securities Private Limited	11,755,659	19%
02	Supertech Financial Services Private Limited	20,684,056	32%
03	Starlight Holdings Private Limited	19,676,726	30%
04	M/s Safeguard finance limited	12,165,192	19%
TOTAL		6,42,81,633	100%

List of CoC enclosed at Annexure - I

(Corporate Debtor's CoC composition)

- d) The Applicant submitted that the applicant being the Resolution Professional has to perform various duties and in compliance of the same, the applicant had took the control of the Bank Accounts of the Corporate Debtor, visited the properties of the Corporate Debtor and taken over all the documents, completing the pending registry of the land, arranging interim finance for running the Corporate Debtor, with the prior approval of the Committee of Creditors.

The Applicant has appointed the Transaction auditor to ascertain the existence of the transactions covered under Section 43, 45, 50 and 66 of the Code, 2016 ('avoidance transactions') and the appointed transaction auditor had submitted its report on 20.12.2022. The applicant had thoroughly perused the transaction auditor report and formed an opinion that there is nothing serious or grave objectionable transaction in the accounts of the Corporate Debtor.

- e) The Applicant submitted that the Corporate Insolvency Resolution Process period of the Corporate Debtor was expiring on 20.12.2022, which was extended for further 90 days from 21.12.2022 by this Hon'ble Adjudicating Authority vide its order dated 20.03.2023.

f) The details of the claims received from the Creditors of the Corporate Debtor are extracted below:-

LIST OF FINANCIAL CREDITORS In the matter of MHG Land Stockist Private Limited						
S.N o.	Name OF Creditors	Amount Claimed (In Rs.)	Amount Admitted(In Rs.)	Security Interest If Any	Status Of The Claim	
1.	M/s Saraswati Securities Private Limited	1,17,55,659	1,17,55,659	NIL	Claim admitted	
2.	M/s Supertech Financial Services Private Limited	2,06,84,056	2,06,84,056	NIL	Claim admitted	
3.	M/s Starlight Holdings Private Limited	1,96,76,726	1,96,76,726	NIL	Claim admitted	
4.	M/s Safeguard Finance Limited	1,21,65,192	1,21,65,192	NIL	Claim admitted	
5.	Remotebullion&Je wels Private Limited	2,75,97,800	2,75,97,800	NIL	Claim admitted (Related Party)	
6.	Ashok Gupta Kumar	83,90,991	83,90,991	NIL	Claim admitted (Related Party)	
		10,02,70,424	10,02,70,424			

LIST OF OPERATIONAL CREDITORS In the matter of MHG Land Stockist Private Limited					
S.N.	Name	Type (FC/OC/FC in a Class)	Total Claimed Amount (Rs.)	Total Admitted Amount (Rs.)	Remarks
1.	DCG & Co, Chartered Accountants	OC	4,52,800.00	4,52,800.00	Admitted
2.	Income Tax Department	OC	8,78,190.00	Pending for want of documents from the claimant	Claim not received so far
Total			13,30,990.00	4,52,800.00	

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- g) The Invitation for Expression of Interest in Form –G was published on 14.10.2022, wherein the last date of submission of EoI was 01.11.2022 and the last date for submission of Resolution Plan was 20.12.2022. Consequent to publication of Form-G, three (3) Expression of Interest were received and the applicant had done due diligence based on the records submitted by the Prospective Resolution Applicants (PRAs).
- h) The provisional list of eligible Prospective resolution Applicants was issued by the applicant within the timelines specified in Form-G, and since, no objection were received by the Applicant till the last date of receiving the objections, Final list of Prospective Resolution Applicants containing the name of all the Three (3) Prospective Resolution Applicants was published. Also, all the three Prospective Resolution Applicants were provided the copy of the Information Memorandum, Request for Resolution Plan and E-Matrix on 15.11.2022.
- i) The Resolution Plan(s) from two (2) Prospective Resolution Applicants were received by the Applicant till the last date of submission of the Resolution Plan and both the plans were placed before the CoC for discussion and deliberation in the 7th and 8th CoC Meeting conducted on 03.01.2023 and 21.01.2023 respectively. The Applicant, consequent to the comments received from the CoC had sought certain clarifications from the PRAs to establish that the Resolution Plan submitted is compliant with the requirements under IBC, 2016 and also sought certain alterations/ modifications in the Resolution Plan(s) submitted by the PRAs.
- j) Further, the Applicant has examined the Resolution Plans submitted by the PRAs and verified that both the plans provides for all the mandatory contents and complies with sub regulation (a) to (c) of Regulation 38 of IBBI (CIRP) Regulations, 2016.
- k) The Committee of Creditors in its 9th CoC Meeting held on 06.02.2023 after deliberations and considering the feasibility, viability and manner of distribution of the proposed Resolutions Plan(s) had voted on both the Resolution Plan(s). The CoC with 100% voting in favour had approved the Resolution Plan submitted by M/s. Garg Builders ('Successful Resolution Applicant') in the 9th CoC Meeting held on 06.02.2023. The Applicant had issued a Letter of Intent to the Successful Resolution Applicant and the Successful Resolution Applicant had conveyed his unconditional acceptance and further furnished the Performance Bank Guarantee to the tune of Rs.80,00,000/- in the form of Demand Draft.
3. We have heard the submissions made by the Ld. Counsel for the Applicant and have meticulously gone through the documents produced on record. The copy of the Resolution Plan submitted by the Successful Resolution Applicant and approved by the CoC is annexed as Annexure A-14 (pg. 247 – 314) to the present application. The

salient features of the Resolution Plan as submitted by M/s. Garg Builders was approved by the CoC in its 09th CoC Meeting held on 06.02.2023 with 100% voting in favor are reproduced herein below:

I. BACKGROUND OF THE RESOLUTION APPLICANT:

The Successful Resolution Applicant namely M/s. Garg Builders is a Sole Proprietorship concern of Shri Ram Karan Gupta located at J023, RBI Enclave, Paschim Vihar, New Delhi – 110063 and is engaged in the business of roadwork, earthwork, dewatering work, finishing work, building work and other civil work for the last 30 years.

II. PAYMENT OF CIRP COST

The RA proposed to pay the CIRP cost in actuals in full and in priority to claim of other creditors.

III. SUMMARY OF CLAIMS

S. No	Particulars	Unpaid Cost/Amount of Claim admitted (In Rs.)	Amount Proposed (In Rs.)	Timeline for Payment
1.	Estimated CIRP Cost The Resolution Applicant proposes that outstanding CIRP Costs be paid at actual in full and in priority to any Claim / Creditor as mentioned in the Proposal.	53,58,218	53,58,218	The entire amount of the unpaid CIRP Cost will be paid within 30 Days from the Effective date.
2.	Payment to Financial Creditors ("FC's")			
	I. Secured Financial Creditors	NIL	NIL	
	II. Un-Secured Financial Creditors	6,42,81,633	48,00,000	The entire proposed amount will be paid in different Tranches as: 1. First Tranche of Rs. 40,00,000 will be paid



				days from the Effective Date 2. Second & the final Tranche of the remaining amount of Rs. 8,00,000 will be paid within 360 days from the Effective Date.
	III. Secured /Un-Secured Financial Creditors (RELATED PARTY)	3,59,88,791	NIL	
	Payment to Operational Creditors ("OC's")			
3.	I. Supplier of Goods & Services	4,52,800	1,11,782	Will be paid within 30 Days from the Effective Date on Pro rata basis.
	II. Statutory & Government Dues	NIL (A claim of Rs. 8,78,190 was admitted from Income Tax Department.)		
	III. Workmen & Employees	NIL	NIL	
4.	Payment to Other Creditors (Whether Related or Non-Related Party)	NIL	NIL	
5.	Payment for liabilities on account of any contingencies		2,00,000	As per the requirement.
	TOTAL	10,60,81,442	1,04,70,000	

VI. TIMELINE FOR THE IMPLEMENTATION OF THE RESOLUTION PLAN

Step	Action	Timeline (in days)
Step 1	Approval of the Resolution Plan by the Adjudicating Authority or the receipt of the Approval Order, whichever is later.	T
Step 2	Intimation to all the Creditors, existing shareholders and Other Stakeholder of the CD	T+7
Step 3	Appointment of the monitoring committee	T+10
Step 4	Infusion of funds by way of equity and debt for payment of a portion of the CIRP Costs & other Upfront Payment.	T+ 30
Step 5	Change in Management of the Corporate Debtor, by appointment of Directors nominated by RA on the Board of the Corporate Debtor.	T+ 30
Step 6	Restructuring of share capital as proposed under the Resolution Plan and infusion of the fund in the form of Debt & equity.	T+ 45
Step 7	Infusion of funds and payment of the Tranche of Financial Creditors Settlement Amount according to the timeline.	T+360
Step 8	Transfer of all the Assets along with clear & undisputed possession of the Land of area equal to 627.31 Sq Mtrs at Bhupatwala kalan, Haridwar of the CD to the RA and Receipt of NOC other documents from the Financial Creditors for satisfaction/modification of charges.	T+360

4. In view of Section 31 of the Code, the Adjudicating Authority, before approving the Resolution Plan, is required to examine that a Resolution Plan which is approved by the CoC under Section 30 (4) of the Code meets the requirements as referred under Section 30 (2) of the Code.

Section 30 (2) 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.]”

5. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in Chapter V & VI pg no. 19-20 of the Resolution Plan provides that CIRP costs shall be paid on actuals, as approved by the members of the CoC for the period up to the effective date. Further, the outstanding CIRP costs shall firstly be met out if cash available with the Corporate Debtor in its bank account and in case of any shortfall, the same will be used from the proposed amount as earmarked in the financial proposal/offer.
6. In respect of compliance of Section 30(2)(b) of the Code, it is seen that there is a provision in Pt.(ii) of Chapter VI at pg no. 21 of the Resolution Plan. The Resolution Professional had not received any claims from the workmen and Employees. The tabular representation of the payment to Operational Creditor (Statutory Dues) and Operational Creditor (other than Statutory Dues) is represented below:-

S. No.	Name of Operational Creditor	Amount Claimed	Claim Admitted (In Rs.)	Amount Proposed for payment (In Rs.)
1.	DCG & Co. Chartered Accountants	4,58,000	4,58,000	An amount of Rs. 1,11,782 is proposed for

2.	Income Tax Department	8,78,190	Under Verification	payment on Pro rata basis
	Total	13,30,990	4,58,000	1,11,782

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7. Further, it is seen that the provision relating to dissenting Financial Creditor shall not be applicable, since there is only one Financial Creditor in the Corporate Debtor and is a part of the CoC of the Corporate Debtor, who had approved the Resolution Plan with 100% voting in favor.
8. In respect of compliance of Section 30(2)(c) and 30(2)(d) of the Code, it is seen that Chapter -X at Pg no. 43- 44 of the Resolution Plan provides in detail the manner of the management of the affairs and control of the business of the Corporate Debtor stating that a monitoring committee comprises of a representative of the CoC, Resolution Applicant along with the Resolution Professional Mr. Prabhjit Soni for supervision and monitoring of implementation of the Resolution Plan. The Resolution Plan envisages duration of 360 days from the date of approval of the resolution plan, for the payment to all the creditors of the Corporate Debtor.
9. In respect of compliance of 30(2)(e) and 30(2)(f) of the Code, it is seen that the Chapter -X at Pg no. 44 - 445 of the Resolution Plan provides that the Resolution Applicant has taken into account the interests of all the stakeholders of the Corporate Debtor.
10. In respect of compliance regarding Regulation 38 (1A) of the CIRP Regulations, it is seen that Chapter X at pg no. 44- 45 of the Resolution Plan provides how it will deal with the interest of all the stakeholders including secured and unsecured financial creditors, operational creditors of the corporate debtor, statutory dues and interests of the employees and workmen, as per the requirement of Regulation 38(1A) of the CIRP Regulations.
11. In respect of compliance regarding Regulation 39(4) of the CIRP Regulations, the applicant has filed compliance certificate in Form-H certifying that the Resolution Plan submitted by the Successful Resolution Applicant meets the requirements as laid down in various sections of the Code and the CIRP Regulations and there are sufficient provisions in the Plan for its effective implementation as required under the

Code. The copy of Form-H (Compliance Certificate) is annexed as Annexure B (Pg no. 33-35) to the present application.

12. On perusal of Form-H annexed as Annexure-B at page no.33 - 35 of the present application, we observe that the Average Fair Market Value of the Corporate Debtor as provided in Form- H is Rs.4,52,60,416/- and Average Liquidation Value is Rs.3,62,13,333/-. We further observe that no Application under Section 43,45,50 and 66 of the IBC, 2016 is pending before this Adjudicating Authority for adjudication.

13. This Adjudicating Authority has noted that the Liquidation Value i.e., Rs. 3,62,13,333/- of the Corporate Debtor is more than the value of the Resolution Plan i.e., Rs. 1,04,70,000/- submitted by the Successful Resolution Applicant. From the records available, this Adjudicating Authority observed that the CoC after detailed deliberation, discussions and negotiations on the proposed Resolution Plan(s) had in its 7th and 8th CoC Meeting had voted on the proposed Resolution Plan(s) and in the 9th CoC Meeting had unanimously approved the resolution plan submitted by the Successful Resolution Applicant. At this juncture it is relevant to refer the judgement of the Hon'ble Supreme Court in **Maharashtra Seamless Steel Ltd. v. Padmanabhan Venkatesh & Ors. [Civil Appeal No. 4242 of 2019; Judgement dated 22.01.2020]**, wherein it was observed as follows:-

“25. Now the question arises as to whether, while approving a resolution plan, **the Adjudicating Authority could reassess a resolution plan approved by the Committee of Creditors, even if the same otherwise complies with the requirement of Section 31 of the Code.** Learned counsel appearing for the Indian Bank and the said erstwhile promoter of the corporate debtor have emphasized that there could be no reason to release property valued at Rs.597.54 crores to MSL for Rs.477 crores. Learned counsel appearing for these two respondents. have sought to strengthen their submission on this point referring to the other Resolution Applicant whose bid was for Rs.490 crores which is more than that of the appellant MSL.

26. **No provision in the Code or Regulations has been brought to our notice under which the bid of any Resolution Applicant has to match liquidation value arrived at in the manner provided in Clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution**

Process for Corporate Persons) Regulations, 2016. This point has been dealt with in the case of Essar Steel (supra). We have quoted above the relevant passages from this judgment.

27. It **appears to us that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Once, a resolution plan is approved by the CoC, the statutory mandate on the Adjudicating Authority under Section 31(1) of the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof.** We, per se, do not find any breach of the said provisions in the order of the Adjudicating Authority in approving the resolution plan.

28. The Appellate Authority has, in our opinion, proceeded on equitable perception rather than commercial wisdom. On the face of it, release of assets at a value 20% below its liquidation value arrived at by the valuers seems inequitable. Here, we feel the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis. Such is the scheme of the Code. Section 31(1) of the Code lays down in clear terms that for final approval of a resolution plan, the Adjudicating Authority has to be satisfied that the requirement of sub-section (2) of Section 30 of the Code has been complied with. The proviso to Section 31(1) of the Code stipulates the other point on which an Adjudicating Authority has to be satisfied. That factor is that the resolution plan has provisions for its implementation. The scope of interference by the Adjudicating Authority in limited judicial review has been laid down in the case of Essar Steel (supra), the relevant passage (para 54) of which we have reproduced in earlier part of this judgment. The case of MSL in their appeal is that they want to run the company and infuse more funds. In such circumstances, we do not think the Appellate Authority ought to have interfered with the order of the Adjudicating Authority in directing the successful Resolution Applicant to enhance their fund inflow upfront.”

14. Considering the conspectus of facts and the ratio laid down in the Judgement **Maharashtra Seamless Steel Ltd (supra)**, this Adjudicating Authority is prima facie satisfied that the possible endeavours are made by the Applicant and the CoC to maximize the value of assets of the Corporate Debtor. Further, this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the committee of the creditors

15. This Adjudicating Authority vide its order dated 09.06.2023 had directed the Successful Resolution Applicant to confirm by an affidavit dated that the SRA has duly verified the Resolution Plan and the same is in conformity with law. The Successful Resolution Applicant in compliance of this Adjudicating Authority's order dated 09.06.2023, had submitted the affidavit dated 17.07.2023 undertaking that the Resolution Plan submitted by M/s. Garg Builders and approved by the CoC in its 9th CoC Meeting dated 06.02.2023 is fully compliant and is also consistent with the obligations provided under the RFRP issued on 09.11.2022 issued by the Resolution Professional and approved by the Committee of Creditors. The Affidavit dated 17.07.2023 as submitted by the Successful Resolution Applicant is taken on record.

16. As to the relief and concessions sought in the Resolution Plan more specifically set out in Chapter XVI of the Resolution Plan, taking into consideration the decision of the Hon'ble Supreme Court in the matter of **Embassy Property Development Private Limited v. State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019,** this Adjudicating Authority direct the Successful Resolution Applicant to file necessary application before the necessary forum/ authority in order to avail the necessary relief and concessions, in accordance with respective laws. The relevant part of the 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.”

17. In so far as the approval of the resolution plan is concerned, this authority is not sitting on an appeal against the decision of the Committee of Creditors and 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 follow:-

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.

18. 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.”*
19. 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. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan dated 24.02.2023.
20. Accordingly, subject to the aforesaid observations, we hereby **approve the Resolution Plan Resolution Plan ('Approved Resolution Plan') submitted by M/s. Garg Builders ('Successful Resolution Applicant')**, 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. Resultantly, ***I.A.1348/ND/2023 stand allowed.***
21. 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.

22. We further reiterate that the Approved Resolution Plan shall not construe any 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 the Adjudicating Authority cannot grant any relief sought in the Approved Resolution Plan, except for what is provided in the Code, 2016 itself. The same view has been held by the Hon'ble Supreme Court in **Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Embassy Property Development case (supra).**
23. Accordingly, MoA and AoA of the Corporate Debtor shall be amended and filed with the RoC for information and record as prescribed. While approving the Approved Resolution Plan as mentioned above, it is clarified that the Successful 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.
24. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the Corporate Debtor and the Approved 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.
25. 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, subject to our observations regarding concessions, reliefs and waivers sought therein.
26. The Supervisory Committee/Monitoring Committee is directed to file the monthly status report with regard to the implementation of the approved plan before this Adjudicating Authority.

27. In view of the above, the **I.A./1348/ND/2023** stands allowed in terms of **aforesaid discussion.**

Let the copy of the order be served to the parties

Sd/-

**(DR. SANJEEV RANJAN)
MEMBER (T)**

Sd/-

**(MANNI SANKARIAHSHANMUGA SUNDARAM)
MEMBER (J)**