



IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI COURT – VI

ITEM NO. 1

IA: 1514/ND/2023, 2824/ND/2023

IN CP (IB) 2115/ND/2019

IN THE MATTER OF:

M/s. DMI Finance Pvt. Ltd. V/s. M/s. Abloom Infotech Pvt. Ltd.

Order under Section U/s 60(5) of IBC, 2016.

Order delivered on 01.08.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS,

HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR,

HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open Court vide separate sheets.

IA 1514/ND/2023 stands allowed and IA 2824/ND/2023 stands dismissed.

SD/-

(Rahul Bhatnagar)

Member Technical

SD/-

(Bachu Venkat Balaram Das)

Member Judicial



IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH, COURT-VI

I.A. 1514/ND/2023, IA 2824/2023

IN

C.P. No. IB-2115/ND/2019

(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:

M/S DMI FINANCE PVT. LTD.

.... FINANCIAL CREDITOR

Vs.

M/S ABLOOM INFOTECH PVT. LTD

....CORPORATE DEBTOR

AND

AND IN THE MATTER OF IA 1514/2023:

MR. PARVEEN BANSAL
RESOLUTION PROFESSIONAL OF
M/s. ABLOOM INFOTECH PVT. LTD

.... APPLICANT

AND IN THE MATTER OF IA 2824/2023

SANDEEP GARG
RP OF NINEX DEVELOPERS LIMITED

.... APPLICANT

Vs.

PRAVEEN BANSAL
RESOLUTION PROFESSIONAL OF
M/s. ABLOOM INFOTECH PVT. LTD

.... RESPONDENT

CORAM:

**SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

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



PRESENT

For the Resolution Professional: Mr. Mohit Jolly, Adv. with Ms. Veenu Drall, Adv. for the RP along with Mr. Parveen Bansal (RP in person)

For Shareholder: Mr. Manish Paliwal and Ms. Megha Yadav, Advs.

For the SRA: Mr. Karan Bharihoke and Mr. Madhur Dhingra, Advs

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

ORDER DELIVERED ON: 01.08.2023

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. Praveen Bansal Resolution Professional (RP) of M/s. Abloom Infotech Private Limited ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by M/s Exotica Housing Private Limited ('Successful Resolution Applicant') and approved by the Committee of Creditors ('CoC') in its 16th CoC Meeting held on 11.03.2023.

2. Briefly stated, the facts as averred by the applicant in the application are as follows:
- a) That the Corporate Insolvency Resolution Process against the Corporate Debtor was initiated vide order dated 11.03.2021 and the applicant was appointed as IRP in the matter.
 - b) That the Applicant prepared a list of Creditors after verification of claim received pursuant to the Public Announcement within 7 days from the last date of receipt of the claims and constituted Committee of Creditors.



- c) That the Applicant convened the first Meeting of Committee of Creditors ("COC") on 12.04.2021. In the said meeting, the COC resolved to appoint the Applicant i.e., Interim Resolution Professional as Resolution Professional.
- d) That Form G (Round 1) to invite prospective resolution applicants for submission of Expression of Interest ("EOI") was published on 25-05-2021 and the last date for submission of EOI was 09.06.2021.
- e) The RP received seven EOI(s) in the first round along with the request from nine parties for extension of the last date for submission of EOI.
- f) That considering the fact that there was a request for extension of the date of EOI, COC unanimously approved the resolution of re-publication of Form G (Round 2) in the 3rd COC meeting held on 19-06-2021. Form G (Round 2) to invite prospective resolution applicants for submission of EOI was published on 20-06-2021 and the last date for submission of EOI was 27-06-2021.
- g) That the RP received 11 EOI(s) along with the participation money deposit of Rs. 10 Lakhs from the interested parties. Final list with 11 prospective resolution applicants was issued.
- h) That prospective resolution applicants were requested for submission of resolution plan by 30.08.2021.
- i) That out of the 11, only 5 prospective resolution applicants submitted the resolution plan through password protected file followed by submission of physical copy of the resolution plan.
- j) That the password protected resolution plan of the prospective resolution applicant was opened in the presence of respective prospective resolution applicant and participants of CoC in 5th meeting of CoC held on 03-09-2021.
- k) That the resolution amount offered by each of prospective resolution applicant was announced. M/s Enticement Infrastructure Private Limited ("Enticement") submitted the resolution plan with highest resolution amount of Rs. 40.00 crores. Enticement is a group company and related party of Chandgiram Real Estate Consultants Private Limited). There was a round of discussions with all prospective resolution applicants regarding challenges for resolution of the Corporate Debtor.
- l) That in 6th meeting of Committee of Creditors held on 28.09.2021, Resolution Professional examined resolution plans and shared his observations with respective prospective resolution applicants. Resolution Professional had also shared his observations with CoC with respect to dues of NOIDA Authority and other common issues including contingent clauses.



- m) That in 7th meeting of CoC held on 16.10.2021, Resolution Professional informed about amendment in Regulation 39(1A) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") with effect from 30.09.2021. It provides that resolution plan will be allowed to be modified, but the same cannot be more than once. It also provides for use of challenge mechanism to enable prospective resolution applicants to improve their plans.
- n) That in 8th meeting of CoC held on 01.11.2021, CoC debated on mode for improvement of the resolution amount. It was decided that prospective resolution applicants be informed for submission of revised resolution plan by 12.11.2021 with the best they can offer. Accordingly, all the prospective resolution applicants were notified.
- o) That out of the 5, only 3 prospective resolution applicants submitted the resolution plan. The resolution amount offered by each of prospective resolution applicant was announced in the 9th meeting of CoC held on 18.11.2021. M/s Exotica Housing Private Limited submitted the revised resolution plan with highest resolution amount of Rs. 44.51 crores.
- p) The resolution professional examined resolution plans and shared his observations with respective prospective resolution applicant and requested for letter of amendment. Only two prospective resolution applicants submitted the letter of amendment to make their resolution plan compliant. Accordingly, two compliant resolution plans submitted by M/s Enticement Infrastructure Private Limited ("Enticement") and Exotica Housing Private Limited ("Exotica") were presented for discussion and voting before CoC.
- q) That in the 10th meeting of CoC held on 07.12.2021, both the revised resolution plans were considered by CoC included for its feasibility and viability and decided to vote physically on two resolutions — resolution 1 for resolution plan submitted by Enticement and resolution 2 for resolution plan submitted by Exotica. The Resolution Plan submitted by Exotica was approved by members of CoC with 68.1% voting share.
- r) That the applicant had filed an application bearing I.A. no. 5940 of 2021 before this Tribunal for approval of resolution plan submitted by Successful Resolution Applicant i.e., Exotica. However, subsequently this Tribunal changed the status of one CoC member i.e., Chandgiram Real Estate Consultants Private Limited (hereinafter refer to as "CRC") from "Financial Creditor" to "Other Creditor" vide IA 2435 of 2021.



- s) This Tribunal disposed off IA 5940 of 2021 for approval of the resolution plan vide order dated 01.03.2023 and have observed and directed as follows:

"In the light of the order passed by this Adjudicating Authority in IA/2435/2021 & 1A/5980/2022 by which one of the Creditors namely CRC has been held to be 'Other Creditor' rather than a 'Financial Creditor' consequentially entails change in the composition of the CoC which had approved the 'Resolution Plan'. Therefore, the re-structured CoC is directed to be convened and the Resolution Plan may be examined by this CoC in the light of the order passed in the above 2 IAs. The IA/5940/2021 is accordingly disposed off."

- t) Accordingly, the Successful Resolution Applicant submitted the revised pay out vide letter dated 07.03.2023 which is reproduced as under: -

Sr.	Category	Rs. Crores		Terms of payment
		Admitted amount	Allocated amount	
1	CIRP Cost	0.55	0.55	Closing date
2	Financial Creditors – DMI Finance	12.11	12.11	Upfront*
3	Operational Creditors	12.38	12.38	Upfront*
4	Other Creditors - Pardos	20.57	15.27	Two quarterly instalments
5	Other Creditors – CRC	5.66	4.20	
	Total Resolution Amount	51.27	44.51	
	* Upfront payment shall be made within 90 days of the Effective Date			



- u) That the average fair value and liquidation value of Corporate Debtor is Rs. 58.22 crores and Rs. 46.19 crores respectively
- v) That the RP placed the resolution for approval of Resolution Plan before the reconstituted CoC. In the 16th CoC meeting held on 11.03.2023, the said resolution was approved by CoC with 100% voting share.
- w) That during the hearing on 23.12.2022, the Resolution Applicant has submitted that 20 Crores will be infused by Resolution Applicant in addition to the Resolution Amount offered in the Resolution Plan. Accordingly, the RP filed one Affidavit dated 12.06.2023 annexing undertaking cum conformation by the Resolution Applicant for infusing Rs. 20 Cr for the Resolution of the Corporate Debtor
- x) That transaction auditor has reported that there are avoidable transactions for Rs. 2.24 crores, which are covered within the ambit of section 66 of the Insolvency and Bankruptcy Code, 2016. Application has been filed by the Resolution professional. Resolution plan provides that any amount realised on account of transaction application will be paid to the account of Corporate Debtor.
- y) That the RP prayed for various Reliefs and Concessions as mentioned in page 31 and 32 of the plan.
- z) That Successful Resolution Applicant has submitted three performance bank guarantees aggregating to Rs. 4,45,10,000/- dated 15.12.2021 to CoC/ Resolution Professional. Successful Resolution Applicant has extended the validity of these bank guarantees up to 14.12.2023.

3. While the applicant sought approval of the Resolution Plan so approved by the CoC in its 16th COC meeting held on 11.03.2023 with 100% votes, one of the shareholders of the Corporate Debtor i.e., Mr. Sandeep Garg filed objections against the approval of the Resolution Plan through IA No 2824/ND/2023. The objections are as follows: -

- i. It is submitted that fraud vitiates everything and any resolution plan prepared on basis of fraudulent transactions cannot be held as legal. In fact, the resolution plan is purely land purchase agreement which avoids payment of stamp duty, transfer charges. The resolution applicant gets deep discount for payment of inflated



and illegal claims admitted by the Resolution Professional of sole financial creditor DMI Finance and its sister company Pardos.

- ii. It is submitted that Mr. Sandeep Garg, being a shareholder and director of the corporate debtor, has had his authority suspended in accordance with the provisions of the Code. It is worth emphasizing that the corporate debtor has no business operations or employees and possesses only one asset, which was acquired using funds from the shareholders and utilized as collateral. The sole financial creditor extended loans to the corporate debtor's sister companies, with the corporate debtor acting as a co-borrower. The property under scrutiny, situated in Noida, holds a circle rate of approximately Rs. 63 Crores and a market value surpassing Rs. 70 Crores.
- iii. Currently, the license granted by the Noida Authority remains valid, and there is an ongoing legal dispute regarding the land in question before the Hon'ble Allahabad High Court. However, the resolution professional is attempting to sell the property at a significantly lower value than its market value and the applicable circle rate.
- iv. It is submitted that the corporate debtor was prompt in informing the resolution professional that after two years of signing the loan agreement with DMI, the Financial Creditor transferred amounts to the extent of Rs. 5,52,52,843/- for evergreening the loans taken by Ninex Developers Limited in the account of Corporate Debtor. However, within few hours of deposit, the amount (after rounding off) was again and immediately transferred to an account controlled by the DMI Finance. These transactions were not disbursed as per the loan agreement. Resolution professional is maliciously treating the same amount as 'financial debt' under the loan agreement. These are illegal transaction for creating false entries in the books of accounts of the Financial Creditor and other companies. Any amount which is part of such round tripping



transaction, hence avoidable transaction, cannot be treated as financial debt for the purpose of initiation of CIRP.

- v. It is submitted that The Financial Creditor has time and again provided incorrect account statement without proper bifurcation of different loan accounts with sole intention to defraud the Corporate Debtor.
- vi. It is submitted that the resolution professional has a duty to act in the best interest of the corporate debtor. However, the resolution professional has chosen to proceed with selling the property below circle rate. This will lead to financial losses for the stakeholders involved.
- vii. It is submitted that shareholders play a vital role within the framework of the Code. The Code's scheme provides that if shareholders are unable to manage the company, control is transferred from shareholders to creditors. However, this does not imply that shareholders forfeit all their rights under the Corporate Insolvency Resolution Proceedings. The rights of shareholders are explicitly recognized in various provisions, including Section 53 of the Code, which establishes a waterfall mechanism. Section 53 stipulates that if the liquidator has surplus funds after making payments to creditors, those funds must be distributed to the shareholders. Therefore, the assertion made by the resolution professional, suggesting that shareholders have no rights, lacks merit.
- viii. It is submitted that the resolution professional has been involved in multiple legal proceedings, and it has been explicitly highlighted by the applicant on numerous occasions that the financial calculations provided by the resolution professional are inaccurate. The applicant has made these submissions before this Hon'ble Tribunal and the Appellate Tribunal. Furthermore, specific communications were sent to the resolution professional pointing out erroneous calculations and claims admitted by various creditors, including the financial creditor. It is submitted that the



corporate debtor provided all this information to the resolution professional owing its duty under Section 70(1)(d) of the Code but the resolution professional intentionally ignored these facts and willfully contravened his duties violating Section 70(2) of the Code. In this case, the resolution professional has failed to fulfill his duties. Resolution Professional disregarded various pleadings and communications from the applicant.

- ix. The resolution professional appears to be in a rush to approve the resolution plan, potentially facilitating underhand transactions for personal gain. The timeline indicates that the resolution plan was hastily approved by the CoC, controlled by the sole financial creditor, before resolving disputes between stakeholders. The resolution professional was aware of these illicit activities and is still attempting to facilitate a land grab under the guise of the resolution plan. It is crucial to note that the resolution professional is charging exorbitant fees for favoring financial creditors and other parties in the resolution plan. With only one financial creditor and two additional creditors apart from the Noida Authority, the resolution professional charges Rs. 4,00,000/- per month to manage the company since 23.09.2019. This indicates that the Resolution Professional has been handsomely compensated for illegal favors, while the resolution applicant has earned a substantial amount without undertaking actual work for the company's revival. The sole purpose of this resolution plan is to acquire the land at a distressed price, and the resolution professional is employing various tactics, including misinterpreting tribunal orders and withholding information, to expedite the process.
- x. It is submitted that during the approval of the resolution plan, the Committee of Creditors (CoC) consisted of two members, CRC and DMI. The Hon'ble tribunal previously instructed the reclassification of CRC from financial creditors to other creditors, resulting in significant changes to the information memorandum, particularly



regarding the claims of financial creditors. As per the IBC, the resolution professional should have invited a fresh resolution plan by issuing Form G. However, the resolution professional did not request the submission of a new plan from the resolution applicant. Instead, through some communication, the resolution professional presented the same old resolution plan to the CoC. Exploiting its position as the sole financial creditor, DMI favored its sister company, Pardos, by approving the identical resolution plan. It is submitted that the applicant cannot make facts evident as the records have been submitted to the tribunal by the resolution professional in the sealed cover and relevant evidences of the fraudulent transactions are contained in those very records. The applicant could have made more submissions if he had the benefit of those documents.

- xi. It is submitted that the filing of an affidavit from the successful resolution applicant, proposing an additional infusion of Rs. 20 crores, is occurring subsequent to the approval of the resolution plan by CoC and at a stage where the plan has been presented before the adjudicatory authority. This action appears to be an intentional effort to deceive the adjudicating authority, particularly in light of the decision rendered by the Hon'ble Supreme Court in the case of *Ebix Singapore Private Ltd. v. Committee of Creditors of Educomp Solutions Ltd.*, (2002) 2 SCC 401. In the said case, the Hon'ble Supreme Court clearly established that no withdrawals or modifications shall be permitted once a resolution plan has been approved by the CoC. Despite this legal precedent, the resolution professional persists in attempting to mislead this Hon'ble tribunal by filing an affidavit for the additional infusion of funds
- xii. It is also submitted above that the CIRP has been initiated only for the purpose of grabbing the land belonging to the corporate debtor.
- xiii. In the light of above point submissions, it is submitted from this Tribunal to reject the resolution plan submitted by the resolution



applicant in collusion with the financial creditor and the resolution professional.

4. The submissions of the Resolution Professions are as under: -
- i. That shareholders have not been provided with any participation in the insolvency resolution process in the insolvency law. As per provisions of section 24 of the Code, they have no right to participate in the meeting of CoC. There is a provision for deemed approval, where any approval of shareholders is required under the Companies Act 2013 or any other Law for the time being in force for the implementation of the action under the Resolution Plan under Explanation to section 30(2) of the Code.
 - ii. That it has been held in the matter of *Ravi Shankar Vedam Versus Udhyaman Investments Private Limited and Others decided by NCLT, Chennai vide order dated 09-07-2019* that Hon'ble NCLT is not legally required to entertain any kind of objection pertaining to the Resolution Plan approved by the CoC.
 - iii. That the applicant/shareholder had the knowledge of admission of all the claims of all the CoC members. However, no objection of admission of the claims of DMI Finance, CRC, Noida Authority and/or Pardos was ever raised by any shareholder or Director at any stage. That the sole intention of filing the present application is to delay the approval of resolution plan in order to extort the SRA and other creditors of the Corporate Debtor.
 - iv. That Mr. Sandeep Garg had filed three applications (IA 5980/22, 5981/22, 5982/22) together with delay of more than one year on behalf of Dauphin Cables Private Limited, another shareholder of the Corporate Debtor on frivolous grounds with an objective to delay the adjudication of the application for approval of the resolution plan. All the applications have been dismissed. He filed another application (22/2023) and appeal (CA 634-636/2023) and the same has also been dismissed. The details of the same are stated as under: -



Authority	Application No	Brief remarks
NCLT	IA 5980/22	Application for reclassification of CRC as promoter / equity share holder was rejected vide order dated 14-02-2023.
NCLAT	CA 634-636/2023	Appeal filed against order dated 14-02-2023 for CRC claim and order dated 01-03-2023 for approval of resolution plan by reconstituted COC was rejected vide order dated 18-05-2023.
NCLT	IA 5981/22	Application to give documents and calculations for claims of financial creditors was rejected vide order dated 14-02-2023.
NCLT	IA 5982/22	Application for objections to the resolution plan was dismissed vide order dated 14-02-2023 because application became infructuous.
NCLT	IA 22/2023	Application for contempt of court by resolution professional was dismissed vide order dated 08-05-2023.

- v. That the Applicant has claimed that liquidation value of the leasehold land should be more than value calculated with reference to circle rate. This is a misleading statement because circle rate is the rate declared for valuation of land and building declared under Registration Act, 1908 for limited purpose of payment of stamp duty. The circle rate is not sacrosanct and the market value of the property may be substantially lower than the circle rate. Further, there is no rule, which states that liquidation value, which is calculated below the circle rate is illegal.
- vi. That circle rate is one of the factors for calculation of liquidation value. Other factors considered for calculation of liquidation value includes reduction in value of the property due the period of lease, which have already expired, cost to be incurred in future to get permission for extension of construction period, discount factor to



be applied for liquidation of the property over a short period. Liquidation value of the Corporate Debtor has been assessed by two registered valuers engaged by the resolution professional in accordance with Regulation 35 of CIRP Regulations, 2016.

- vii. Further, given that resolution plans are complex financial structures that require analysis by commercial minds in order to maximise the value of the assets, they cannot be treated at par with a sale or auction where the only measure for value is the monetary value. Reference in this regard is made to the decision of the Hon'ble Appellate Tribunal in *Binani Industries vs. Bank of Baroda reported as MANU/NL/0284/2018*.
- viii. It is well settled that 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. The scope of interference by the Adjudicating Authority is very limited. Reference in this regard may be made to the decision of the Supreme Court in the case of *Essar Steel (at Para 34)* as well as in the case of *Maharashtra Seamless Limited vs. Padmanabhan Venkatesh and Ors. Reported as MANU/SC/0066/ 2020*.
- ix. That in the case of *India Resurgence Arc Private Limited vs. Amit Metaliks Limited and Ors. reported as MANU/SC/0367/2021*, the Hon'ble Supreme Court held that the process of consideration and approval of resolution plan is essentially within the commercial wisdom of Committee of Creditors (CoC). The scope of judicial review remains limited under Section 30(2) of the Insolvency and Bankruptcy Code by which the court would examine that the resolution plan does not contravene any statutory provisions and it conforms to such other requirements as may be specified by the Board. The court held that the process of judicial review cannot be stretched if all the above-mentioned requirements have been duly complied with and that dissenting financial creditor, expressing dissent over the value of security interest held by it, cannot seek to



challenge an approved Resolution Plan. Lastly, it was held that Section 30 of the IBC, 2016 only amplified the considerations for the CoC while exercising its commercial wisdom so as to take an informed decision in regard to the viability and feasibility of resolution plan, with fairness of distribution amongst similarly situated creditors; and that the business decision taken in exercise of the commercial wisdom of CoC does not call for interference unless creditors belonging to a class being similarly situated are denied fair and equitable treatment

- x. The Applicant is trying to expand the scope of judicial review, which is specifically restricted in law.
- xi. That the Applicant has claimed that DMI had filed the application under section 7 in order to gain unlawful advantage over the Corporate Debtor for their claim of Rs. 7,94,47,080/-. Shareholders have sent legal notice dated 24-07-2020 from DMI and its directors to seek essential information about the case. The application filed by DMI was admitted on 11-03-2021 and was decided against the Corporate Debtor by NCLAT and Hon'ble Supreme Court. Hence, it can be said that these issues are being raised again to mislead Adjudicating Authority.
- xii. That the Applicant have claimed that the resolution professional has categorised CRC as a financial creditor to give the benefit to DMI Finance / Pardos Realtor. This is a misleading statement because CRC was classified as financial creditor in compliance of the order dated 01.09.2021 of this Tribunal.
- xiii. That the application has been filed based on misleading statements. Audited financial statement for financial year 31-03-2020 shows that the company is not a positive net worth company. Value of the leasehold land has to calculated not only with reference to prevailing circle rate but also with costs associated with expired lease period, non-availability of construction time, acquisition uncertainty etc. Claims of all the creditors are being disputed. The claim of DMI Finance is disputed on same grounds,



which has already been rejected by Hon'ble Supreme Court to decide on section 7 application.

5. We have heard the submissions made by the Ld. Counsel for the applicant as well as respondent and have gone through the documents placed on record. Before, examining the Resolution Plan vis-à-vis the mandatory compliance under the Code and the Regulations made thereunder, the objections raised to the approval of resolution plan need to be considered
6. It is pertinent to refer to recent judgement of NCLAT, Chennai in the matter of *Ravi Shankar Vedam vs. Tiffins Barytes Asbestos and Paints Limited and Ors.* (13.06.2023 - NCLAT): MANU/NL/0581/2023 wherein the shareholders alleged that there was material irregularity in the exercise of power by the Resolution Professional and that the Corporate Debtor was sold at a throw away price of Rs. 89 Crores, despite the fact that the Company had assets to the tune of Rs. 150 Crores. The NCLAT held that the Legislature has curtailed the 'Rights of the Shareholders' based on the established 'Principles of Creditors' in the control framework. The Court provides the 'shareholders' right to file a 'Claim' only in the Liquidation Process as 'stakeholders' and the advances of stakeholders as stated in Regulation 2(k) includes shareholders only because unlike 'CIRP', in Liquidation, distribution to stakeholders is in accordance with the waterfall mechanism. The relevant paras are reproduced as under:

*18. At the outset, this Tribunal is of the earnest view that the question whether a shareholder of the Corporate Debtor has locus standi, to challenge the Resolution Plan, is to be adjudicated. In an Insolvency process, when an insolvency of Debtor is imminent, the fiduciary duty of the Directors and Managers, who are Agents of the Shareholders, shifts to the Creditors to preserve the value of the Enterprise for maximising the returns for Creditors. **The Legislature in its wisdom, has curtailed the 'Rights of the Shareholders' based on the established 'Principles of Creditors' in the control framework. The Court provides the 'shareholders' right to file a 'Claim' only in the Liquidation Process as 'stakeholders' and the advances***



of stakeholders as stated in Regulation 2(k) includes shareholders only because unlike 'CIRP', in Liquidation, distribution to stakeholders is in accordance with the waterfall mechanism. Shareholders are excluded from representation, participation or voting in the CoC and are represented in the CoC only through the Directors and can speak only through the Directors.

21. This Tribunal, is of the considered view that **once the 'CIRP' is triggered, the Management of the affairs of the Corporate Debtor lies with the Interim Resolution Professional and the shareholders do not have a Right to file any claim in the 'CIRP' but can only do so in the Liquidation Process. It is seen from the provisions of the Code that the Shareholders are excluded from 'representation', 'participation' or 'voting in the CoC' and are represented in the CoC only through the Directors.**

22. At this juncture, this Tribunal pertinently reproduces Section 30(2) of the Code which reads as herein:

30. Submission of resolution plan. -

(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) confirms 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."

*As can be seen from the Explanation to Section 30(2) of the 'I&B Code, 2016', **the Code contemplates for 'Deemed Approval' of the Shareholders of the Resolution Plan and its implementation and even a Shareholder, is deemed to have given its approval for implementation of the Resolution Plan, and such 'Deemed Approval' cannot be taken away or undone by objecting to the Resolution Plan. We are of the view that giving the shareholder a Right to challenge the Resolution Plan or raise objections against its Approval, would 'render the Explanation redundant'***

*25. The 'CIRP' proceedings are proceedings 'in rem', to the extent that once a Petition filed by a Financial Creditor/ Operational Creditor against the Corporate Debtor is admitted, it becomes a collective Creditors Proceedings and all Creditors, pool their Security Interest, in a common manner and the same is distributed as provided for, under Section 30(4) of the Code, subsequent to the approval of the 'plan' by the CoC. **The Provisions of the Code does not provide for the shareholders to seek 'representation', 'participation', or otherwise and to agitate their views only through the Directors.***

28. Keeping in view, the scope and intent of the Legislature, and that the 'I & B Code, 2016' is a distinct shift from 'Debtor in Possession' to 'Creditor in Control' Insolvency System, where the Shareholders have a limited role and are only confined to co-operate with the Resolution Professional as specified under Section 19 of the Code, are entitled to receive the Liquidation value of its equity, if any, in accordance with Section 53 of the Code, we are of the considered opinion that a 'Shareholder' has 'no locus standi' to challenge the Resolution Plan.

7. The judgement as referred to above makes it very clear that shareholder' does not have locus to challenge a Resolution Plan which has already been approved. The Code recognizes 'stakeholders' only in the



Liquidation process; that both the Companies Act, 2013 and the Code does not envisage any 'Representative Capacity' for them; that the shareholders have no role to play, after the initiation of 'CIRP' against the Corporate Debtor.

8. As far as issue with respect to selling of Corporate Debtor to the Successful Resolution Applicant at an amount less than the fair value is concerned, the statute has not invested jurisdiction and authority either with NCLT or NCLAT, to review the commercial decision exercised by CoC of approving the resolution plan or rejecting the same. Reliance can be placed upon Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and Ors. (15.11.2019 - SC) : MANU/SC/1577/2019 wherein it was held that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of Section 30(2) of the Code. The Commercial Wisdom of the CoC has been given paramount importance and that there can be judicial intervention only when there is any material irregularity or if the Plan is not in adherence to Section 30(2) of the Code.
9. Further it is pertinent to refer to judgement of Hon'ble Supreme Court in the matter of *Maharashtra Seamless Steel Ltd. v. Padmanabhan Venkatesh & Ors Civil Appeal No. 4242 of 2019* in which it was held that it is not necessary for the Resolution Plans to match up to Liquidation Value of the Corporate Debtor. The relevant extract of the said judgement is reproduced below: -

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 emphasised 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.

10. The next objection is with respect to the wrongful admission of claim of Financial Creditor, i.e., DMI Finance Private Limited, this Tribunal had directed the Resolution Professional to submit the claim admitted of DMI Finance with all the supporting documents and calculations. In compliance of the above, the RP had submitted the details via additional affidavit. We have gone through the documents. We are satisfied with the calculations and supporting documents as provided by the Resolution Professional.

11. Hence, based on the above observations and after going through the facts and circumstances of the present case, we are of the considered view that the objections as raised by shareholders do not merit consideration Henceforth, this Adjudicating Authority **dismisses** IA 2824/ND/2023 and is proceeding with considering the resolution plan as approved by the CoC in its 16th COC Meeting.

12. That some key features of the Resolution Plan are as follows:



That the amount proposed to be paid towards the Corporate Insolvency Resolution of the Corporate Debtor pursuant to the implementation of the proposed Resolution Plan is as under: -

Sr.	Category	Rs. Crores		Terms of payment
		Admitted amount	Allocated amount	
1	CIRP Cost	0.55	0.55	Closing date
2	Financial Creditors – DMI Finance	12.11	12.11	Upfront*
3	Operational Creditors	12.38	12.38	Upfront*
4	Other Creditors - Pardos	20.57	15.27	Two quarterly instalments
5	Other Creditors – CRC	5.66	4.20	
	Total Resolution Amount	51.27	44.51	
* Upfront payment shall be made within 90 days of the Effective Date				

In addition to the above, the Resolution Applicant has submitted that 20 Crores will be infused by Resolution Applicant in addition to the Resolution Amount offered in the Resolution Plan.

- ii. That the average fair value and liquidation value of Corporate Debtor is Rs. 58.22 crores and Rs. 46.19 crores respectively
- iii. That the final resolution plan and its addendum submitted by M/s Exotica Housing Private Limited meets the requirements of Section 30(2) of the Code as under: -

Section	Provisions under Section 30(2) of the Code	Compliance under Resolution Plan
30(2)(a)	provides for the payment of insolvency resolution process costs in a manner specified by	YES Clause 13B (Page 26) & LOP.



	the Board in priority to the payment of other debts of the corporate debtor;	
30(2)(b)	<p>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-</p> <p>(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or</p> <p>(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</p>	<p>YES, the RA is paying 100% admitted amount.</p> <p>Clause 11 (iv) (Page 18), LOA & LOP of the plan</p>
30(2)(c)	provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;	<p>YES</p> <p>Clause 16 Page 38 of the plan</p>
30(2)(d)	the implementation and supervision of the resolution	<p>YES</p> <p>Clause 17 Page 39 and</p>



	plan;	40 of the plan
30(2)(e)	does not contravene any of the provisions of the law for the time being in force	YES Clause 11(A) (vii) (Page 21)
30(2)(f)	conforms to such other requirements as may be specified by the Board.	YES

iv. Mandatory Contents as specified under Regulation 38 of IBBI CIRP Regulations 2016 are as under: -

Regulation	Provisions under Regulation 38 of IBBI CIRP Regulations 2016.	Compliance under Resolution Plan
38(1)(a)	The amount payable under a resolution plan – (a) to the operational creditors shall be paid in priority over financial creditors; and (b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.]	YES Clause 13(D) (iv) (Page 30)
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.]	YES Clause 18 Page 41 of the plan
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to	YES Clause 11(C) (iv) (PAGE 20 of the plan



	implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.]	
38(2)(a)	A resolution plan shall provide the term of the plan and its implementation schedule;	YES Clause 17(A) (Page 39 of the plan)
38(2)(b)	A resolution plan shall provide the management and control of the business of the corporate debtor during its term; and	Clause 16 Page 38 of the plan
38(2)(c)	A resolution plan shall provide adequate means for supervising its implementation	Clause 17(c) Page 40 of the plan
38(3)(a)	A resolution plan shall demonstrate that – it addresses the cause of default;	Yes Clause 10(B) Page 16 of the plan
38(3)(b)	A resolution plan shall demonstrate that – it is feasible and viable;	Yes Clause 11(C) (ix) (Page 21 & LOA
38(3)(c)	A resolution plan shall demonstrate that – it has provisions for its effective implementation;	Yes Clause 11(C) (x) (Page 21 & LOA
38(3)(d)	A resolution plan shall demonstrate that – it has provisions for approvals required and the timeline for the same; and	Yes Clause 11(C) (xi) (Page 21 & LOA
38(3)(e)	A resolution plan shall demonstrate that – the resolution applicant has the capability to implement the resolution plan.]	YES Clause 6(C) Page 10 of the plan

PLAN FOR REVIVAL:



- v. As soon as the Resolution Plan is approved and the management and control of the CD is transferred to the RA, the RA shall ensure that adequate funds are made available to the CD to meet its obligations under the plan, to meet day to day expenses of the CD and to start work on the project.
- vi. The RA will deploy separate teams lead by a senior qualified and experienced professional
- A. to ensure timely fulfillment of its obligations under the plan,
 - B. to start working on preparing building plans, architecture /structure/ other designs and drawings
 - C. to start work on preparing/ filling the applications for various approvals required to start the construction on the Land.
- The RA is confident that it will successfully implement and complete the Resolution Plan within the proposed timelines and further endeavors to complete the construction on the Land within 5years from the effective date,
- vii. With 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. Further, an affidavit has been obtained from the Successful Resolution Applicant stating that he is not ineligible under the provisions of Section 29A of the Code, 2016.
- viii. As far as the avoidance application is concerned, any amount realized will be to the account of the Corporate Debtor.
- ix. The applicant has prayed for number of waivers in the Resolution Plan. As to the relief and concessions sought in the resolution plan, by 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**, we direct the Successful Resolution Applicant to file necessary application before the concerned 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.”

13. In so far as the approval of the resolution plan is concerned, this Adjudicating Authority follows 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.

14. Also the Hon'ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta &**



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.”

15. 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.
16. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan. Accordingly, we hereby **approve the Resolution Plan**, which shall be binding on the corporate debtor and its employees, shareholders of corporate debtor, creditors including the Central Government, any State Government or any local authority to whom statutory dues are owed, guarantors, successful resolution applicant and other stakeholders involved. In view of the above, **I.A. 1514/ND/2022 stands allowed.**
17. 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.
18. However, the 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 if any waiver is sought in the resolution plan, the same shall be subject to approval by the concerned authorities. The same view has



been held by the Hon'ble Supreme Court in **Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Embassy Property Development case (supra).**

19. 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 'resolution plan' as mentioned above, it is clarified that the resolution applicant shall pursuant to the resolution plan approved under section 31(1) of the Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for such in law.
20. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the corporate debtor and the Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code. The Resolution Professional is further directed to handover all the records, premises, properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.
21. 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.
22. Let the copy of the order be served to the parties

SD/-

(RAHUL BHATNAGAR)
MEMBER TECHNICAL

SD/-

(BACHU VENKAT BALARAM DAS)
MEMBER JUDICIAL