

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

IA 1131/MB-V/2023

In

CP (IB) No.648/MB-V/2021

Under Section 30 of IBC, 2016

Mr. Shreyansh Jain

Resolution Professional of

M/s Slogan Infotech Private Limited

.... Applicant

In the matter of:

Luhariwala Finance & Investment Private Limited

...Financial Creditor

V/s

Slogan Infotech Private Limited

...Corporate Debtor

Order Dated: 12.07.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via videoconferencing):

For the Applicant (RP) : Adv. Kunal Kanungo, Adv.
Tanushree Sogani and Adv. Atishay
Jain.

ORDER

Per: Kuldip Kumar Kareer, Member (Judicial)

1. This is an application being IA No. 1131/MB-V/2023 filed by **Mr. Shreyansh Jain**, the Applicant, under Section **30 (6) & 31** of IBC, 2016

(hereinafter called as “**the Code**”), for approval of the Resolution Plan submitted by consortium of **MKS Flexituff Limited and Anamika Infracon Private Limited** (hereinafter called as the “**Resolution Applicant**”) for an amount of Rs.1,02,69,429/-, for the Corporate Debtor, **Slogan Infotech Private Limited** (hereinafter called as the “**Corporate Debtor**”) and approved by 100% voting shares of the Committee of Creditors (hereinafter “**the CoC**”) members.

2. The brief submissions on behalf of the Applicant are as under:
 - 2.1 This Tribunal vide its order dated 15.07.2022 admitted the Petition filed by the Financial Creditor under section 7 of the Code against the Corporate Debtor and Mr. Shreyansh Jain, (hereinafter referred to as “**the Applicant**”) was appointed as an Insolvency Resolution Professional (hereinafter “**IRP**”) in the matter.
 - 2.2 Thereafter, in compliance of Regulation 6 (1) (b) (i) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter called as the “**CIRP Regulations**”), the Applicant carried out the public announcement in Form A on the IBBI website on 20.07.2022 and published the same on 21.07.2022 in the newspapers i.e. Financial Express and Navarashtra, covering the region where the registered office of the Corporate Debtor was located, thereby calling upon the creditors to submit their claims on or before 02.08.2022.
 - 2.3 Pursuant to public announcement, the Applicant received only one claim from Luhariwala Finance and Investment Private Limited i.e.

the Financial Creditor in CP No. 648 of 2021 and constituted the Committee of Creditors (hereinafter called as the “**CoC**”) and convened the first meeting on 18.08.2022. In the said meeting, the CoC approved the appointment of the Applicant as the Resolution Professional of the Corporate Debtor with 100% votes and further ratified the expenses and fees of the Applicant during the CIRP.

2.4 Thereafter, in the 2nd CoC meeting dated 15.09.2022, the Applicant informed the CoC members that he had requested the suspended Board of Directors for provisional financials, financials of companies, list of debtors/customers containing contact details, details of corporate guarantees etc. Furthermore, it was also discussed that since the Corporate Debtor did not have any Land and Building and Plant and Machinery, the Applicant had called for quotation from registered Valuers only in respect of Securities and Financial Assets. The CoC had also approved the appointment of Mr. Ashutosh Dwivedi and Mr. S.P Das as registered Valuers for conducting valuation. Similarly, Ms. Namrata Randeri from Chaturvedi & Chaturvedi was appointed as the Transaction Auditor for conducting audit covering the transactions under Sections 43, 45, 50 and 66 of the Code.

2.5 In the 3rd CoC meeting dated 19.11.2022, the Applicant informed the CoC members that on 01.10.2022, the Applicant had published Form G (Inviting Expression of Interest (hereinafter called as the “**EOI**”) for submission of Resolution Plan in Business Line (English) and Pratahkal (Marathi) newspapers and had also uploaded the same on the IBBI website. Pertinently, as per the

published Form G, the last date for submission of EOI was 15.10.2022. However, after receiving requests from the interested parties for extension of last date of submission of EOI, the Applicant with the approval of the CoC and in view of maximizing the value of assets of the Corporate Debtor had published the 1st Corrigendum to Form G wherein the last date for submission of EOI was 28.10.2022.

2.6 Consequently, the Applicant was in receipt of one EOI from Nakshatra Corporate Advisors Limited along with Earnest Money Deposit (hereinafter called as the “**EMD**”) of Rs.10,00,000/- (Rupees ten lakh only). However, with a view to maximize the value of the assets of the Corporate Debtor and with the approval of the CoC, the Applicant once again published the 2nd Corrigendum to Form G wherein the last date for submission of EOI was 15.11.2022.

2.7 Pursuant thereto, the Applicant received a total of 3 EOIs along with EMD amount of Rs. 10 lakhs from each of the following Prospective Resolution Applicants (hereinafter called as the “**PRA**”):

- i. Nakshatra Corporate Advisors Limited;
- ii. Ashok Kumar P. Jain; and
- iii. Anamika Infracon Pvt. Ltd.

2.8 Subsequently, on 16.11.2022, the Applicant shared the Provisional List of PRAs and had further requested for a list of pending

documents and queries from all the PRAs. Thereafter, on 24.11.2022, the Applicant also shared the Final List of PRAs wherein the following PRAs were mentioned:

- a. Nakshatra Corporate Advisors Limited; and
- b. Anamika Infracon Pvt. Ltd. and its consortium member.

- 2.9 In the 4th CoC meeting dated 26.12.2022, the Applicant informed the members that Request for Resolution Plan (hereinafter called as the “**RFRP**”) and revised Information Memorandum was shared with all the PRAs. The Applicant further discussed that the last date of submission of Resolution Plan was 24.12.2022 and till then, the Applicant was in receipt of only one Resolution Plan from Consortium of MKS Flexituff Limited and Anamika Infracon Private Limited. Hence, with approval of the CoC members, the said Resolution Plan was opened.
- 2.10 Thereafter, in the 5th CoC meeting dated 29.12.2022, the Resolution Plan submitted by the Consortium of MKS Flexituff Limited and Anamika Infracon Private Limited was discussed. After discussions and deliberation, the CoC requested the PRA to revise its Resolution Plan and increase the amount proposed in the said Plan. Further, the Applicant also informed the CoC regarding the expenses incurred by him during CIRP.
- 2.11 Subsequently, in the 6th CoC meeting dated 06.01.2023, the Applicant discussed and informed the members about the Valuation and Transaction Audit Reports received from the Valuers and Auditor respectively. The members were further informed

about the status of the Resolution Plan wherein it was observed that based on the discussion and negotiations held in the 5th CoC meeting, the PRA had revised the Resolution Plan and had made certain changes. Hence, on recommendation of the CoC members, the agenda for approval of the Resolution Plan was put to vote. Pursuant to that, the CoC via voting through electronic means resolved to approve the Resolution Plan submitted by the Consortium of MKS Flexituff Limited and Anamika Infracon Private Limited with 100% votes. The relevant extract from the meeting is reproduced hereunder for ease of reference:

“To approve the resolution plan submitted by Consortium of MKS Flexituff Limited and Anamika Infracon Private Limited.

Resolved that the approval of CoC of Slogan Infotech Private Limited, be and is hereby accorded for approval of resolution plan submitted by Consortium of MKS Flexituff Limited and Anamika Infracon Private Limited.

That the CoC Member voted in favour of the resolution. Since the member representing 100% of voting rights assented to the matter, the decision on the time stands Accepted.”

BACKGROUND OF RESOLUTION APPLICANT:

2.12 The Applicant submits that MKS Flexituff Limited is a multi-product, multi-market, multi-location enterprise. With four manufacturing plants across India, a wholly-owned distribution company in United Kingdom, and a dedicated warehousing supply and technical services network in all continents, export to over 60 countries and employing over 7000 global citizens, MKS Flexituff Limited is an Indian multi-national company that has come of age.

Anamika Infracon Private Limited is involved in Building completion (including activities contributing to completion or finishing of a construction), has undertaken many projects, out of which major successful project is Bhagwat Vatika located in Rajasthan.

- 2.13 The Consortium of MKS Flexituff Limited and Anamika Infracon Private Limited (hereinafter called as the “**Successful Resolution Applicant**”) has signed an Undertaking/Declaration dated 06.12.2022 and 14.11.2022 respectively while submitting the EOI documents in compliance with Section 29A of the Code evidencing that they are eligible to submit the Resolution Plan.
- 2.14 The Applicant submits as per the Information Memorandum, there are no pending dues of Operational Creditors, Employees and Workmen and there are no dues pending on account of Statutory Dues. Hence, there is only one unsecured Financial Creditor in the list of creditors of the Corporate Debtor. The Applicant, therefore, submits that the salient terms and conditions of the Financial Proposal laid down in Resolution Plan are as follows:

Sr. No.	Particulars	Amount (in Rs.)
1.	Amount of upfront payment towards unpaid CIRP Costs and Financial Creditors	32,69,429/- (FC+CIRP Cost) (30,00,000 + 2,69,429)
2.	Balance repayment obligations to Financial Creditors (other than upfront payment)	70,00,000 that will be paid in 3 equal monthly instalments
3.	Contingency Fund	0
4.	Working Capital Infusion	-

2.15 The Applicant submits that the Resolution Applicant proposes the total resolution amount of Rs. 1,02,69,429/- (Rupees one crore two lakhs sixty-nine thousand four hundred twenty-nine only) towards resolution of the Corporate Debtor. The details for the same are reproduced hereunder for the ease of reference:

Sr. No.	Particulars	Amount claimed/costs incurred	Amount admitted	Proposed Resolution Amount	Tenor (in years) from (NCLT Approval Date)
1.	CIRP Costs (to the extent unpaid)			2,69,429/-	Upfront payment
2.	Financial Creditors	1,24,50,107/-	1,24,03,688/-	1,00,00,000/-	
3.	Operational Creditors	-	-	-	
	Total	1,24,50,107/-	1,24,03,688/-	1,02,69,429/-	

2.16 Further, the details of the Resolution Plan proposals and the source of funding are as under:

RESOLUTION PLAN PROPOSALS	
PARTICULARS	AMOUNT (IN INR)
CIRP Costs	2,69,429/-
Payment to Financial Creditors	1,00,00,000/-
Total	1,02,69,429/-
SOURCE OF FUNDS	
Upfront Capital Infusion (subscription to units to be issued by the Corporate Debtor)	25,00,000/-
Working Capital Infusion (through unsecured loan)	-
Capex Infusion (through unsecured loan)	-

Through unsecured loan	77,69,429/-
Total	1,02,69,429/-

2.17 The Applicant submits that the Resolution Applicant, in its Resolution Plan has, inter alia sought some concessions/reliefs in order to conduct the business operations smoothly after implementation of the Resolution Plan and has also laid down mandatory contents as per Section 30(2) of the Code read with Regulation 38 of CIRP Regulations.

2.18 The Applicant further submits that in compliance with Section 30(2) of the Code and Regulation 39(4) of CIRP Regulations, 2016, Compliance Certificate in Form H has also been submitted before the Insolvency and Bankruptcy Board of India.

TREATMENT FOR VARIOUS STAKEHOLDERS:

A. CIRP Costs:

The Resolution Applicant proposes to pay the unpaid CIRP costs of **Rs.2,69,429** as of 29th December 2022 under this Resolution Plan within 30 Days from the NCLT Approval Date. The payment towards unpaid CIRP costs shall be out of the upfront payment of Rs.32,69,429 (“Upfront Payment”) proposed under this Resolution Plan.

The Applicant submits that, CIRP cost may go above estimation of Rs.2,69,429 as on NCLT approval date and hence Resolution Applicant undertakes to pay any of increased cost towards the same upto Rs.5,00,000. If the CIRP cost goes above Rs.5,00,000 the

same would be adjusted against the payment proposed to be made to the Financial Creditor.

In the event there is any litigation against Resolution Professional ("RP") and/ or Committee of Creditors ("CoC") in relation to any matter pertaining to Corporate Insolvency Resolution Process ("CIRP") of Slogan Infotech Private Limited ("Corporate Debtor") after conclusion of CIRP, all legal expenses and any other incidental expenses related thereto will be borne out of operational cash flows of the Corporate Debtor or by the Resolution Applicant.

B. Proposal for employees and workmen:

There is no claim for employees and workmen as per Information Memorandum.

C. Proposal for Operational Creditors other than statutory dues and dues to employees and workmen

There are no claims for Operational Creditors (other than statutory dues and dues to employees and workmen)

D. Statutory dues

There are no dues pending on account of statutory dues of the corporate debtor.

E. Proposal for Financial Creditors

The Resolution Applicant proposes pay out to Financial Creditor (excluding related parties) a sum of Rs.1,00,00,000/- against their

aggregate admitted claims of INR 1,24,03,688 as per payment and other terms as per their voting share/ percentage detailed below:

Sr. No.	Name of Creditor	Amount Admitted (In Rs.)	Voting Rights (%)	Pay out under Resolution Plan
1	Luhariwala Finance and Investment Private Limited	1,24,03,688	100%	1,00,00,000

The Resolution Applicant proposes payment of settlement amount of INR 1,00,00,000 to financial creditors as under:

- i. It is proposed that the Upfront Payment (i.e., **Rs.32,69,429**) shall be brought in by the RA towards payment of unpaid CIRP Costs (Rs.2,69,429), and balance towards payment to the Financial Creditors (Rs.30 Lacs) within 30 days of the NCLT Approval Date. The constituents of the RA and entities owned by them have adequate funds available for making Upfront Payment.
- ii. The balance settlement amount of **Rs.70,00,000/-** shall be paid in three equal monthly instalments to the Financial Creditors towards dues within three months from NCLT Approval Date+30 Days.

SOURCE OF FUNDING BY THE RESOLUTION APPLICANT AND GROUP COMPANIES:

The overall Resolution Plan is for a total amount of INR 1,02,69,429 (involving Upfront Payment of INR 32,69,429) by below manner:

Particular	No. of Unit	Amount
Equity Shares	2,50,000	25,00,000
Unsecured Loan		77,69,429
		1,02,69,429

Shares shall be issued by the CD to the RA within 15 days from the NCLT Approval Date.

The Equity Shares shall be issued by the Corporate Debtor and subscribed by the RA as per Applicable Laws.

The amount aggregating to Rs.25,00,000/- received from the RA towards subscription of units as mention above shall be treated as **Upfront Capital Infusion/Upfront Payment** for the purposes of this Resolution Plan.

The Upfront Capital Infusion shall be funded by the Resolution Applicant through themselves, their Group Companies, their Financial Sponsors includes business contacts, friends, and relatives (in case of Individuals) and through persons forming part of the special purpose vehicle to be floated by the RA. The Resolution Applicant has undertaken that all the parties mentioned will be compliant of section 29A of Insolvency and Bankruptcy Code, 2016 & RFRP.

The shareholder's approval required for said purpose shall be deemed to have been given as contemplated under explanation to Section 30 (2) (f) of the IBC.

IMPLEMENTATION OF THE PLAN:

The Corporate Debtor will continue to be managed and controlled by an Interim Monitoring Committee, comprising of 2 Independent Members one is appointed by the Secured Financial Creditor and one by the Resolution Applicant.

The Monitoring Committee shall continue to be in existence after the 30th day from NCLT Approval Date till the Term of this Resolution Plan or payment to Financial Creditors in full as proposed in this Resolution Plan.

COMPLIANCE WITH CODE AND REGULATIONS:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?		Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?		Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?		Yes

<p>Section 30(2)</p>	<p>Whether the Resolution Plan-</p> <p>(a) provides for the payment of insolvency resolution process costs?</p> <p>(b) provides for the payment to the operational creditors?</p> <p>(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?</p> <p>(d) provides for the management of the affairs of the corporate debtor?</p> <p>(e) provides for the implementation and supervision of the resolution plan?</p> <p>(f) contravenes any of the provisions of the law for the time being in force?]</p>	<p>(a) 7.4</p> <p>(b) 7.4</p> <p>(c) 7.4</p> <p>(d) Chapter X</p> <p>(e) 9.1 & 9.5</p>	<p>(a) Yes</p> <p>(b) Yes</p> <p>(c) Yes</p> <p>(d) Yes</p> <p>(e) Yes</p> <p>(f) No</p>
<p>Section 30(4)</p>	<p>Whether the Resolution Plan</p> <p>(a) is feasible and viable, according to the CoC?</p> <p>(b) has been approved by the CoC with 66% voting share?</p>		<p>(a) Yes</p> <p>(b) Yes</p>
<p>Section 31(1)</p>	<p>Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?</p>	<p>9.1</p>	<p>Yes</p>
<p>Regulation 38 (1)</p>	<p>Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?]</p>	<p>7.4</p>	<p>Yes</p>
<p>Regulation 38(1A)</p>	<p>Whether the resolution plan includes a statement as to how it has dealt with the</p>	<p>7.4</p>	<p>Yes</p>

	interests of all stakeholders?		
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?]		(i) No (ii) No
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	(a) 9.4 (b) 9.1 (c) 9.1	(a) Yes (b) Yes (c) Yes
38(3)	Whether the resolution plan demonstrates that - (a) it addresses 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?	(a) 6.1 (b) 6.2 (c) 9.8 (d) 9.4 (e) 6.2	(a) Yes (b) Yes (c) Yes (d) Yes (e) Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	NA	NA

Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]		Yes
------------------	---	--	-----

3. 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	T
Regulation 6)1(	Publication of Public Announcement	T+3	T+2
Section 15)1)c(/Regulation 12)1(	Submission of Claims	T+14	T+14
Regulation 13)1(	Verification of Claims	T+21	T+21
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	T+22
Section 22)1(and regulation 17)2(	First Meeting of the CoC	T+30	T+30
Regulation 35A	Determination of fraudulent and other transactions	T+115	T+170
Regulation 27	Appointment of two Registered Valuers	T+47	T+41
Regulation 36)1(	Submission of Information Memorandum to CoC	T+54	T+54

Regulation 36A	Invitation of EoI	T+75	T+75
	Publication of Form G	T+75	T+75
	Provisional List of Resolution Applicants	T+100	T+120
	Final List of Resolution Applicants	T+115	T+128
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	T+105	T+128
Section 30(6) / Regulation 39(4)	Submission of CoC approved Resolution Plan	T+165	T+180
Section 31(1)	Approval of Resolution Plan	T=180	

OBSERVATIONS AND FINDINGS:

- i. As per IBC Code 30(2)(a) – A Resolution Plan provides for the payment of Insolvency Resolution Process Costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor.
- ii. As per Section 30(2)(b), the RA has agreed to pay Operational Creditors (including workmen and employees) on priority basis to all other debts.
- iii. The Resolution Applicant has agreed to meet the cost of project from existing resources including infusion of equity/debt from the Resolution Applicant's own sources.

- iv. The Resolution Applicant has also agreed that dissenting financial creditors shall be paid in priority and not less than the value they would have been paid in the event of liquidation of the Corporate Debtor.
- v. The plan provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan under Section 30(2)(c).
- vi. The plan provides for a term of the plan, implementation schedule and supervision of the Resolution Plan under Section 30 (2) (d) & Regulation 38(2)(c).
- vii. The Resolution Plan does not contravene any of the provisions of the law for the time being in force - Resolution Plan provides for the implementation and supervision of the resolution plan as per Section 30(2) (e)
- viii. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force as per Section 30(2)(f).
- ix. As per IBBI Guidelines 38(1)(b) - the amount payable under a Resolution Plan -to the Financial Creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the Resolution Plan, shall be paid in priority over Financial Creditors who voted in favour of the plan.
- x. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:

- a. There is no Operational Creditors under the Resolution Plan. Therefore, no possibility of non-compliance of the Regulation 38 (1) exists in this case.
- b. The Resolution Plan has all the adequate means of supervising of the implementation of the Plan as required under Regulation 38(2) (c), of the IBBI, Insolvency resolution process for corporate persons, Regulation 2016.
- c. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company (Regulation 38(1)(a)).
- d. Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
- e. The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.
- f. The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a Resolution Plan under Section 29A of the Code and other provisions of the Code and any other Applicable Law.
- g. The plan provides for the management and control of the business of the Corporate Debtor during its term.

-
- h. All the above factors demonstrate that the plan addresses the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.
- i. That the Resolution Applicant or any of its related parties has never failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past. This is in compliance of Regulation 38(1)(b) of the Regulations.
- j. The interests of all stakeholders (including Financial Creditors, Operational Creditors and other creditors, guarantors, members, employees and other stakeholders of the Company, have been taken care of keeping in view the objectives of the Code (Regulation 38(1A)).
4. **The Resolution Plan has been approved with 100% voting in accordance with the provisions of the Code.**
5. In *K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150* the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is

circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan “as approved” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

6. The Hon’ble Apex Court at para 42 in *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC Online*, clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved.

“Para 42- Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra).”

7. In view of the above ruling of the Apex Court, the legislature has given paramount importance to the commercial wisdom of committee of creditors (CoC) and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent provided under section 31 of Code and of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code, is no more an untouched-matter.

8. In view of the discussions and the law thus settled, 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. Therefore, the Plan deserves to be approved. It is ordered accordingly in the following terms:

ORDER

- a) **Application bearing IA No. 1131 of 2023 in CP 648 of 2021 is Allowed.** The Resolution Plan submitted by consortium of **MKS Flexituff Limited and Anamika Infracon Private Limited**, annexed to the Application is hereby approved. **It shall become effective from this date and shall form part of this order.** It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force is due.
- b) The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. It is seen that the Resolution Applicant sought several dispensations, concessions and waivers. Any waiver sought in the Resolution plan shall be subject to approval by the Authority concerned in the light of the Judgment of Supreme Court in *Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited*, the relevant paras of which are extracted herein below:

“on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in, respect to a claim, which is not part of the resolution plan.”

“95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of 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 is not part of the resolution plan;

(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;

(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”

- c) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals under any law for the time being in force, within such period as may be prescribed.
- d) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- e) The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.
- f) 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.
- g) The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- h) The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- i) The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.

- j) The Registry is directed to send copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

Sd/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)