



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – II, CHENNAI

IA(IBC)/199/(CHE)/2023

In

CP(IB)/38/(CHE)/2021

(filed under Section 30(6) of the Insolvency & Bankruptcy Code, 2016)

In the matter of C P S Steel India Private Limited

(Approval of Resolution Plan)

Mr. P. Eswaramoorthy

Resolution Professional

C P S Steel India Private Limited

No. 44,44/1, 5th Street, Ramalinga Jothi Nagar,

Near Corporation Office, Nanjundapuram Road,

Ramanathapuram, Coimbatore – 641 045

Tamil Nadu, India

... Applicant/Resolution Professional

Order Pronounced on 31st August 2023

CORAM

SHRI SANJIV JAIIN, MEMBER (JUDICIAL)

SHRI SAMEER KAKAR, MEMEBR (TECHNICAL)

Appearances:

For Applicant

: Ms. Ananda Gomathy,

Ms. K. Jayaganga, Advocates

Resolution Professional

: P. Eswaramoorthy

ORDER

Per: SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

(Heard through Physical Hearing)

IA(IBC)/199(CHE)/2023 is an application moved on 26.01.2023 by

the Resolution Professional of the Corporate Debtor viz., C P S Steel

India Private Limited under Section 30(6) r/w Section 31 of the

Insolvency & Bankruptcy Code, 2016 (hereinafter 'IBC, 2016') read with



Regulation 39 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter 'CIRP Regulations, 2016') seeking reliefs as follows:

- a) *The applicant prays that the Resolution Plan submitted by Mr. P. Adeep, Managing Partner of Sun Steel, Palakkad, Kerala may be considered by this Hon'ble Tribunal*
- b) *And to pass any other relief as may deem fit and proper in the circumstances of the case by this Hon'ble Tribunal.*

2. CIRP OF C P C STEEL INDIA PRIVATE LIMITED

2.1 The Corporate Insolvency Resolution Process in respect of the Corporate Debtor viz., C P S Steel India Private Limited was initiated by this Adjudicating Authority vide its order dated 25.04.2022 based on an Application moved by City Union Bank Limited, in the capacity of a Financial Creditor under Section 7 of IBC, 2016 in CP(IB)/38(CHE)/2021, and the applicant herein Mr. P. Eswaramoorthy was appointed as the 'Interim Resolution Professional'. The dates and events during the Corporate Insolvency Resolution Process period are tabulated as hereunder,

S.No.	DATE	EVENTS
1.	25.04.2022	Public Announcement regarding initiation of CIRP in "Business Standard" (English), "Hindu" (Tamil) and "Dipika"(Malayalam) with last date of submission of claim as 08.05.2022.



2.	14.05.2022	The Committee of Creditors was constituted by the IRP based on the claims received.
3.	25.05.2022	<i>1st CoC Meeting</i> - IRP Mr. P. Eswaramoorthy was confirmed as the RP by the CoC. Deliberation on Information Memorandum was made.
4.	04.07.2022	<i>2nd CoC Meeting</i> – Updated List of Creditors was placed before the CoC. The members of the CoC Unanimously approved publication of the draft Form G prepared by the Resolution professional.
5.	06.07.2022	Form G (Invitation of Resolution Plan) with last date for submission of EoI as 22.07.2022 and last date of submission of Resolution Plan as 05.09.2022 were published.
6.	07.09.2022	<i>3rd CoC Meeting</i> – 2 nd Updated List of Creditors was placed before the CoC. The members of the CoC Unanimously extended the time for submission of Resolution Plan for all the prospective Applicants up to 15.09.2022. The CoC concurred for issuance of fresh Form -G in the absence of receipt of Resolution Plan on or before 15.09.2022.
7.	23.09.2022	<i>4th CoC Meeting</i> - The Resolution Plan submitted by Mr. P. Adeep, SUN Steel was put to discussion. The same was rejected by the CoC for the reasons that the plan value is limited as compared to the total dues pending. Hence, Resolution professional was directed to issue fresh Form G. The members of the CoC unanimously approved publication of the draft Form G prepared by the Resolution professional. The members of the CoC unanimously approved extension of Corporate Insolvency Resolution Process Period for another 90 days from 21.10.2022. Resolution to that effect was passed.



8.	24.09.2022	Form G (Invitation for Expression of Interest) with last submission of EoI as 08.10.2022 was published.
9.	21.10.2022	End of 180 days of Corporate Insolvency Resolution Process Period.
10.	04.11.2022	An order extending further period of 90 days of CIRP period was passed by this Adjudicating Authority in IA/(IBC)/1124/(CHE)/2022 in CP(IB)/38(CHE)/2021.
11.	02.01.2023	5 th CoC Meeting – 3 rd Updated List of Creditors was placed before the CoC. The Resolution professional had informed the members of the CoC about the application filed under section 66 of the Code against the erstwhile Promoters of the Company. Final List of Prospective Resolution Applicants was placed before the members of the CoC. The Resolution Plan submitted by Mr. P. Adeep, SUN Steel was put to discussion, since the other PRA did not revert back. That after due deliberation, the Resolution Plan submitted by Mr. P. Adeep, SUN Steel was unanimously approved by the CoC. Resolution to that effect was passed.
12.	26.01.2023	Application for Approval of Resolution Plan in IA(IBC)/199(CHE)/2023 was filed.
13.	13.07.2023	Direction to file Additional Affidavit on certain aspects relating to the Resolution Plan was issued.
14.	19.07.2023	6 th CoC Meeting – Addendum to the Resolution Plan was approved by the CoC unanimously. Additional Affidavit as directed was filed.



3. DETAILS OF THE SUCCESSFUL RESOLUTION APPLICANT

NAME	ADDRESS	CATEGORY	ELIGIBILITY OF RA
M/s. Sun Steel	Pannivelli Building, 16/248 Menonpara, Kanjikode Post, Palakkad, Kerala - 678 621	Partnership Firm	Eligible - An Affidavit & Declaration to that effect is submitted.

It is submitted that the SRA has proven footprints for about 25 years in iron & steel scrap dealings in around the State of Kerala & Tamil Nadu and thus has sufficient years of experience to continue the business of the Corporate Debtor.

4. DELIBERATION OF THE COC ON THE FEASIBILITY OF THE PLAN:

During the 5th CoC Meeting held on 02.01.2023 deliberations were made by the members of the CoC on the Resolution Plan submitted by the SRA and decision was made to vote the same. Accordingly, the Resolution Plan was approved unanimously during the voting. The Voting sheet showing the voting result is as hereunder,

VOTING SHEET
VOTING SHEET OF THE 05TH MEETING OF COMMITTEE OF CREDITORS OF C P S STEEL INDIA PRIVATE LIMITED HELD ON 02/01/2023 (MONDAY) AT 05.00 PM VIA ZOOM (VC MEETING).

S.No.	Particulars	Details
1.	Name of the Creditor (In block letters)	City Union Bank Ltd (CUB)
2.	Postal Address	No 26, 27, Sarojini St, Ram Nagar, Coimbatore, Tamil Nadu 641009
3.	Nature of Creditor	Secured Creditor
4.	Amount Admitted Claim	10,73,90493
5.	% of Voting Share in the Committee	100%

Thereby exercise my vote in respect of the following proposal made before the Committee of Creditors

Item No.	Item Particulars	I assent to the resolution	I dissent to the resolution
1	To Consider the Resolution plan submitted by The Resolution Applicant Mr P Adeep, Sunsteel	✓	

For City Union Bank Limited



5. NATURE OF BUSINESS OF THE CORPORATE DEBTOR

5.1 The executive summary of the Corporate Debtor is as hereunder,

Name of the Corporate Debtor	C P S Steel India Private Limited
CIN	U27104TZ2003PTC010552
Date of Incorporation	11.04.2023
Address	102, P N Palayam Road K.R. Puram Ganapathy, Coimbatore, Tamil Nadu – 641 006.

5.2 Objects of the Corporate Debtor –

- a) *To carry on the business of steel melters, iron melters, steel founders, iron founders, steel rolling and forging and to melt, pour, clean, fettle, draw forge, hammer machine and finish steel castings. Mild steel rods, steel rods, mild steel flats, mild steel angles, steel angles from steel scrap, steel billets, steel ingots, pig iron and other iron and steel materials and their alloy metals and to forgo process, draw and finish heavy coatings, steel forgings, medium and light castings billets, ingots, mild steel rods, mild steel angles and mild steel girders of all shapes and sizes and to deal in all or any of these products.*
- b) *To carry on the business of manufacturers of, deals in, imports and exports of all varieties of alloy steel castings, special steel, carbon steel and the rods flats, girders and angles made out of such metals and their alloys.*
- c) *To manufacture, deal, import and export pig iron, sponge iron, ferro-silicon, ferro-chrome and other ferrous substances of every description and grades.*

6. SOURCE OF FUND

6.1 On a perusal of page 2 of the proposed Resolution Plan along with its Addendum, it is seen that the Successful Resolution



Applicant, through its lender has obtained principal sanction letter for a sum of Rs. 1.00 crore, which shall be utilized for infusion of cash portion.

It is also seen that the Successful Resolution Applicant has deposited Rs. 1.00 crore by way of RTGS in an Escrow Account No- 510909010218113 in City Union Bank. The details of the deposits are as follows,

<i>Sl No.</i>	<i>Date of Deposit</i>	<i>Amount (in Rs.)</i>
1	29.11.2022	50,00,000
2	18.01.2023	25,00,000
3	03.02.2023	15,00,000
4	06.02.2023	10,00,000
<i>Total</i>		<i>1,00,00,000</i>

6.2 The balance amount of Rs. 1,15,00,000 is said to be brought in within 60 days from the date of approval of the Resolution Plan by this Adjudicating Authority. The SRA by way of the proposed resolution plan has proposed to induct Mr. Noushad (AWRPN6402G) as director, who will bring in the balance portion as fresh equity or as unsecured loan for payment of the agreed consideration as proposed in the plan. A joint affidavit by Mr. P. Adeep & Mr. M. Noushad undertaking to bring in the balance Rs.



1,15,00,000/- within 60 days of approval of the Resolution Plan by this Adjudicating Authority has been filed.

The net worth certificate of the investor & the incoming director are placed in the Addendum to the Resolution Plan.

7. SALIENT FEATURES OF THE RESOLUTION PLAN

8.1 The solution for revival of the company lies in bringing down the level of debt to a sustainable level, coupled with restarting and growing the business by infusion of necessary funds for capex and working capital. Considering the current and projected market scenario, and upon considering the interest of all stakeholders of the Corporate Debtor to the possible extend, the SRA has envisaged its interest to take over the Corporate Debtor and continue its business with effective use of its existing plan 7 machinery.

8. PAY-OUT TO STAKEHOLDERS AS PROPOSER IN THE PLAN

8.1 The SRA has proposed to pay the sum as tabulated against the admitted amount by virtue of the plan proposed, the table as tabulated in the Addendum to the Resolution Plan is as extracted hereunder,



Sl. No.	Particulars	Amount Claimed	Amount Admitted	Amount Proposed to be settled
1	CIRP Cost	NIL	NIL	20,00,000.00
2	Secured Financial Creditor	10,73,90,493.00	10,73,90,493.00	1,70,00,000.00
	1. M/s. City Union Bank (Term Loan & Working Capital)			
3	Operational Creditors			
	1. Central Tax & Central Excise, Palakkad Division, Kerala	16,41,86,668.00	16,41,86,668	14,30,000.00
	2. State GST Department, Special Circle, Palakkad, Kerala	4,55,69,309.00	4,55,69,309.00	3,97,000.00
	3. Income Tax Department, Central Circle – 2, Mananchira Kozhikode, Palakkad, Kerala	5,52,896.00	5,52,896.00	4,800.00
	4. The Assistant Officer, ESI Corporation Regional Office, Panch Deep Bhavan, Thrissur, Kerala	26,448.00	26,448.00	200.00
	5. The Special Officer (Revenue), Vydhuthi Bhavanam, 3 rd Floor, Kerala State Electricity Board Ltd, Pattom, Thiruvananthapuram.	1,92,81,442.00	1,92,81,442.00	1,68,000.00
	Total	22,96,16,763.00	22,96,16,763.00	20,00,000.00
4	Contingent Claim. If any	NIL	NIL	5,00,000.00
	Grand Total	33,70,07,256.00	33,70,07,256.00	2,15,00,000.00

8.2 It is submitted that the Resolution Professional did not receive any claims from workmen or employees. It is also submitted that there were dues as per the financials of the



Corporate Debtor. Thus, no settlement against such dues has been proposed under the Resolution plan.

9. APPROACH TO PUFE TRANSACTION'S UNDER THE PROPOSED PLAN

The Addendum to the Resolution Plan submitted has dealt with the fate of the Section 66 application filed by the Resolution Professional. It is submitted that during the 6th meeting of the Committee of Creditors, it was resolved that the pending application shall be pursued by the Resolution professional at such cost involved subject to the approval of the CoC. It was decided that any such proceeds as an outcome of the said application shall be distributed as under:

<i>Sl. No.</i>	<i>Particulars</i>	<i>Proposed share to be realised</i>
1	Secured Financial Creditor	90%
2	Operational Creditors	10%

10. MANAGEMENT OF THE CORPORATE DEBTOR

The term of the Plan is 6 months, as mentioned under clause 9 of the Resolution Plan, during which, all payments would be made to the creditors/stakeholders as proposed in the Scheme by the Resolution professional.

10.1 Board of Directors and Management team:



The board of directors of the Corporate Debtor on approval of the proposed Resolution Plan as mentioned in the addendum, to the Resolution Plan is as follows,

<i>Sl No.</i>	<i>Name of the Proposed Directors</i>	<i>DIN</i>
1	Mr. P. Adeep	10241565
2	Mr. M. Noushad	10242573

10.2 Equity Restructuring of the Corporate Debtor:

On perusal of the Resolution plan along with its addendum it is seen that all the existing shares of the Corporate Debtor shall stand cancelled and fresh equity shares will be issued. The existing shareholders are not entitled to any payment and all their rights shall stand extinguished as on date of Approval of the Resolution plan. It is seen that 21,50,000 fresh equity shares at a face value of Rs. 10/- each of the Corporate Debtor shall be issued to the Resolution Applicant.

11. IMPLEMENTATION & MONITORING COMMITTEE (IMC)

11.1 Implementation & Monitoring Committee shall be constituted to monitor the implementation of the Resolution Plan.

The members shall comprise -

1. Mr. P. Eswaramoorthy, Resolution Professional
2. A Representative of the Secured Financial Creditor (CUB)
3. Mr. P. Adeep – For the Resolution Applicant



11.2 The IMC shall continue at least Representing till all payments under the Resolution plan are made.

11.3 The Implementation and Monitoring Committee shall be constituted immediately on the approval of the proposed resolution plan by this Adjudicating Authority.

11.4 It is submitted that the SRA has agreed for payment of the Resolution professional during the course of implementation of the Resolution Plan i.e., for a period of 6 months at a remuneration mutually agreed on behalf of CoC .The SRA is also willing to bear the implementation cost for smooth transition. The Implementation and Monitoring Committee and the new Board shall be responsible for operating the Corporate Debtor as a going concern.

12. MANDATORY COMPLIANCES UNDER IBC & REGULATIONS

From the averments made in the application as well as on perusal of Form -H, as filed by the Resolution Professional in relation to the procedural aspects, the same seems to have been duly complied with, for which the Resolution Professional has issued a certificate and it is not necessary for this Authority to go into the

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same. However, this Authority is duty bound to examine the Resolution Plan within the contours of Section 30 (2) of the IBC, 2016. A Comparison vis-à-vis with the Mandatory compliance under the IBC and the compliance under the IBC and the Compliance made under the Resolution Plan is as hereunder,

MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS	COMPLIANCE UNDER RESOLUTION PLAN
S.30(2)(a)- Payment of Insolvency and Resolution cost in the manner specified by the Board	Clause 4 of the Resolution Plan along with undertaking at Pg. 47.
S.30(2)(b)- Payment of debts of Operational Creditors in such manner as may be specified by the Board, which shall not be less than the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under Sec. 53 Reg.38(1) -Resolution Plan identifies specific source of funds that will be used to pay the (a) Insolvency Resolution Process cost? (b)Liquidation value due to Operational Creditors? (c) Liquidation value due to dissenting financial creditors	Clause 4 of the Resolution Plan.
S.30(2)(f)- Conforms to such other requirements as may be specified by the Board.	Clause 13 of the Resolution Plan
Reg.38(1A) -Resolution Plan shall include a statement as to how it has dealt with the interest of all the stakeholders, including financial creditors and	Clause 6 of the Resolution Plan and the Addendum to Resolution Plan



e) the resolution applicant has the capability to implement the resolution plan	Clause 1 of the Resolution Plan
<u>S. 30(2)(e)</u> -Does not contravene any of the provisions of the law for the time being in force	Clause 1 of the Resolution Plan
<u>S. 30(4)</u> -Committee of Creditors approve the Resolution Plan by not less than 66% of voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by the Board	The CoC, in its 5 th meeting has approved the Resolution Plan unanimously.

**13. JUDICIAL PRONOUNCEMENTS OF THE HON'BLE SUPREME COURT
IN RELATION TO APPROVAL OF A RESOLUTION PLAN**

13.1 In so far as the approval of the Resolution Plan is concerned, this Authority is not sitting in appeal against the decision of the Committee of Creditors and this Authority is duty bound to follow the much-celebrated Judgment of the Hon'ble Supreme Court in the matter of **K. Sashidhar – Vs– Indian Overseas Bank (2019) 12 SCC 150**, wherein in para 19 and 62 it is held as under;

“19.....In the present case, however, our focus must be on the dispensation governing the process of approval or rejection of resolution plan by the CoC. The CoC is called upon to consider the resolution plan under Section 30(4) of the I&B Code after it is verified and vetted by the resolution professional as being compliant with all the statutory requirements specified in Section 30(2).



62.In the present case, however, we are concerned with the provisions of I&B Code dealing with the resolution process. The dispensation provided in the I&B Code is entirely different. In terms of Section 30 of the I&B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC and they express their opinion on the proposed resolution plan in the form of votes, as per their voting share. In the meeting of the CoC, the proposed resolution plan is placed for discussion and after full interaction in the presence of all concerned and the Resolution Professional, the constituents of the CoC finally proceed to exercise their option (business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, non-recording of reasons would not per-se vitiate the collective decision of the financial creditors. The legislature has not envisaged challenge to the "commercial/business decision" of the financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count."

13.2 Further, the Hon'ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steels –Vs– Satish Kumar Gupta &Ors. in Civil Appeal No. 8766 – 67 of 2019** at para 42 has held as under;

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)*.

13.3 Further the Hon'ble Supreme Court in the matter of **K. Sashidhar v. Indian Overseas Bank and Ors. (2019) 12 SCC 150** has lucidly delineated the scope and interference of the



Adjudicating Authority in the process of approval of the
Resolution Plan and held as under;

"55. 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 per cent 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.

58. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with Section 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters "other than" enquiry into the autonomy or commercial wisdom of the dissenting



financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers."

(emphasis supplied)

13.4 Also the Hon'ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Ors.** (2020) 8 SCC 531 after referring to the decision in *K. Sashidhar (supra)* has held as under;

"73. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or sub-class of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximizing the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal."

(emphasis supplied)



13.5 The Hon'ble Supreme Court in its recent decision in **Jaypee**

Kensington Boulevard Apartments Welfare Association

&ors. v. NBCC (India) Ltd. & Ors in *Civil Appeal no. 3395 of*

2020 dated 24.03.2021 has held as under;

76. The expositions aforesaid make it clear that the decision as to whether corporate debtor should continue as a going concern or should be liquidated is essentially a business decision; and in the scheme of IBC, this decision has been left to the Committee of Creditors, comprising of the financial creditors. Differently put, in regard to the insolvency resolution, the decision as to whether a particular resolution plan is to be accepted or not is ultimately in the hands of the Committee of Creditors; and even in such a decision-making process, a resolution plan cannot be taken as approved if the same is not approved by votes of at least 66% of the voting share of financial creditors. Thus, broadly put, a resolution plan is approved only when the collective commercial wisdom of the financial creditors, having at least 2/3rd majority of voting share in the Committee of Creditors, stands in its favour.

77. In the scheme of IBC, where approval of resolution plan is exclusively in the domain of the commercial wisdom of CoC, the scope of judicial review is correspondingly circumscribed by the provisions contained in Section 31 as regards approval of the Adjudicating Authority and in Section 32 read with Section 61 as regards the scope of appeal against the order of approval.

77.1. Such limitations on judicial review have been duly underscored by this Court in the decisions above-referred, where it has been laid down in explicit terms that the powers of the Adjudicating Authority dealing with the resolution plan do not extend to examine the correctness or otherwise of the commercial wisdom exercised by the CoC. The limited judicial review available to Adjudicating Authority lies within the four corners of Section 30(2) of the Code, which would essentially be to examine that the resolution plan does not contravene any of the provisions of law for the time being in force, it conforms to such other requirements as may be specified by the Board, and it provides for: (a) payment of insolvency resolution process costs in priority; (b) payment of debts of operational creditors; (c) payment of debts of dissenting financial creditors; (d) for management of affairs of corporate debtor after approval of the resolution plan; and (e) implementation and supervision of the resolution plan.



77.2. The limitations on the scope of judicial review are reinforced by the limited ground provided for an appeal against an order approving a resolution plan, namely, if the plan is in contravention of the provisions of any law for the time being in force; or there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period; or the debts owed to the operational creditors have not been provided for; or the insolvency resolution process costs have not been provided for repayment in priority; or the resolution plan does not comply with any other criteria specified by the Board

77.6.1. The assessment about maximization of the value of assets, in the scheme of the Code, would always be subjective in nature and the question, as to whether a particular resolution plan and its propositions are leading to maximization of value of assets or not, would be the matter of enquiry and assessment of the Committee of Creditors alone. When the Committee of Creditors takes the decision in its commercial wisdom and by the requisite majority; and there is no valid reason in law to question the decision so taken by the Committee of Creditors, the adjudicatory process, whether by the Adjudicating Authority or the Appellate Authority, cannot enter into any quantitative analysis to adjudge as to whether the prescription of the resolution plan results in maximization of the value of assets or not. The generalised submissions and objections made in relation to this aspect of value maximisation do not, by themselves, make out a case of interference in the decision taken by the Committee of Creditors in its commercial wisdom

78. To put in a nutshell, the Adjudicating Authority has limited jurisdiction in the matter of approval of a resolution plan, which is well defined and circumscribed by Sections 30(2) and 31 of the Code read with the parameters delineated by this Court in the decisions above referred. The jurisdiction of the Appellate Authority is also circumscribed by the limited grounds of appeal provided in Section 61 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by the CoC. Within its limited jurisdiction, if the Adjudicating Authority or the Appellate Authority, as the case may be, would find any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by Code and expounded by this Court.



13.6 The Hon'ble Supreme Court in its recent decision in **Paschimanchal Vidyut Vitran Nigam Ltd. Verus Raman Ispat Private Limited & Ors. In Civil Appeal no. 7976 of 2029** dated 17.07.2023 has held as under;

49. Rainbow Papers (Supra) did not notice the 'waterfall mechanism' under Section 53 – the provision had not been adverted to or extracted in the Judgement. Furthermore, Rainbow Papers (Supra) was in the context of a resolution process and not during liquidation. Section 53, as held earlier, enacts the waterfall mechanism providing for the hierarchy or priority of claims of various classes of creditors. The careful design of Section 53, locates amounts payable to secured creditors and workmen at the second place, after the costs & expenses of the liquidator payable during the liquidation proceedings. However, the dues payable to the government are placed much below those of secured creditors and even unsecured creditors. This design was either not brought to the notice of the Court in Rainbow Papers (supra) or was missed altogether. In any event, the Judgment has not taken note of the provisions of the IBC which treat the dues payable to secured creditors at a higher footing than dues payable to central or state Government.
(emphasis supplied)

13.7 Thus, from the catena of judgments rendered by the Hon'ble Supreme Court on the scope of approval of the Resolution Plan, it is ample clear that only limited judicial review is available for the Adjudicating Authority under Section 30(2) and Section 31 of IBC, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the Committee of Creditors.



14. RELIEF & CONCESSIONS:

The Resolution Applicant has sought for various waivers and Concessions in Clause 9 of the Resolution Plan, which are as follows,

SL. No.	RELIEF / CONCESSIONS SOUGHT FOR	ORDERS THEREON
1.	Pass an order approving the resolution plan submitted by the Resolution Professional in respect of the Corporate Debtor under and declare that the same be binding on the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.	Granted, subject to the provisions of IBC, 2016 and other Applicable laws
2.	Pass an order directing the Resolution Applicant to implement the Resolution Plan in the manner set out in the resolution plan	Granted, subject to the provisions of IBC, 2016 and other Applicable laws
3.	Pass an order approving the appointment of Monitoring Agent (MA) and Monitoring Committee ("MC") from the date of approval of resolution plan Granted by this Tribunal until the date on which the Resolution Applicant acquire control of the Corporate Debtor i.e. closing date under the Resolution Plan, and during such period extend protection to the MC (including extension of the protection of the moratorium against any suit, legal proceedings and investigations or have any liability with	Granted, subject to the provisions of IBC, 2016 and other Applicable laws



	respect to anything which is done or intended to be done or omitted in good faith and in compliance with the Code, Regulations or any other applicable law) to enable it to monitor the Corporate Debtor as a going concern.	
4.	Pass an appropriate order in relation to the grant of reliefs and dispensations sought in the Resolution plan.	Granted, subject terms of the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited. 2021 SCC Online SC 313.
5.	Pass an order directing all stakeholders to cooperate with the Resolution Applicant, Monitoring Agent (MA) and the Monitoring Committee (MC) to keep the Corporate Debtor as a going concern and to implement the Resolution Plan in the manner approved by this Tribunal	Granted, subject to the provisions of IBC, 2016 and other Applicable laws
6.	Pass an order enabling the Resolution Professional to continue with the Application under sec 66 at such costs.	Granted, subject to the provisions of IBC, 2016 and other Applicable laws
7.	Pass an order for cancellation of the existing shareholding pattern and issue of fresh equity shares.	Granted, subject to the provisions of



		IBC, 2016 and other Applicable laws
8.	Pass an order for allotment of new CIN number to enable the Resolution Applicant to, start fresh filing and waive any additional fee/penalty to enable the Resolution Professional to file the previous year balance sheets and annual reports	Appropriate authorities to consider keeping in view the object of IBC, 2016
9.	Pass an order for waiver of any claims with respect to payment of PF/ESI/Gratuity pertaining to period prior to the date of Approval of Resolution Plan	Granted, subject to the provisions of IBC, 2016 and other Applicable laws

15. The Applicant has filed Form -H in accordance with the IBBI (CIRP Regulations, 2016) along with this Application and the same is placed along with the application. Further, it is observed from Form-H that the amount proposed in the plan is much higher than the Liquidation Value of the Corporate Debtor. The fair value and the Liquidation Value as mentioned in Form-H is as hereunder,

1.	<i>Fair Value</i>	Rs. 1,97,61,178.00/-
2.	<i>Liquidation Value</i>	Rs. 1,40,58,727.00/-
3.	<i>Plan Value</i>	Rs. 2,15,00,000.00/-

It is seen from Form-H, that the RP has filed an application under Sec. 66 of the code against fraudulent transaction. From the 6th CoC minutes it is seen that the RP shall continue the same and the proceeds of the



same upon realization shall be distributed among both the secured financial creditor and the operational creditors as 90% and 10% respectively.

16. It is seen that the resolution plan has been approved with 100% voting share. As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, all the compliances have been made by the RP and the Resolution Applicant for making the plan effective after approval by this Authority. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Section 30 & 31 of the IBC and also in compliance with regulations 38 & 39 of the IBBI (CIRP) Regulations, 2016.

17. In the light of the aforesaid, it is hereby ordered that payment to the members of the Monitoring Committee shall be made by the Corporate Debtor on such terms and conditions agreed between the parties for the entire period of implementation as mentioned in this resolution plan.

18. In case of non-compliance/non-implementation/ failure during implementation of this order or withdrawal of the Resolution Plan by the Successful Resolution Applicant, the RP shall forfeit the



EMD/Performance Guarantee or any further amount paid as per the terms of the resolution plan without any recourse to this Authority.

19. Subject to the observations made in this Order, the Resolution Plan is hereby **APPROVED** by this Adjudicating Authority. The Resolution Plan shall form part of this Order. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that the revival of the Debtor Company shall come into force with immediate effect. The Moratorium Imposed under section 14 shall cease to have effect from the date of this Order.

20. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for its record and also return to the Resolution Applicant. The Resolution Professional is further directed to hand over all records/premises/factories/documents to the Resolution Applicant to finalize the further line of action required for starting the operation of the Corporate Debtor under the control of the Resolution Applicant.

21. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.



22. Liberty is granted for moving any Application if required in connection with the implementation of this Resolution Plan.

23. A copy of this Order be submitted to the Office of the Registrar of Companies, Chennai.

24. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.

25. IA(IBC)/199/CHE/2023 stands **disposed of** accordingly.

26. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsel for information and for taking necessary steps.

27. File be consigned to the record.

-Sd-

SHRI SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SHRI SANJIV JAIN
MEMBER (JUDICIAL)

Order pronounced under Rule 151 of NCLT Rules 2016, by Shri Sanjiv Jain, Member (Judicial) on behalf of the Bench comprising of Shri Sanjiv Jain, Member (Judicial) and Shri Sameer Kakar, Member (Technical).

M. Nallachetty
Court Officer