
(2020) 01 NCLT CK 0064

In the National Company Law Appellate Tribunal

Case No : Company Application No. 1569 (PB) Of 2019 In Company Petition No. (IB)- 1126 (PB) Of 2018

Deepak Maini

APPELLANT

Vs

Era T & D Limited

RESPONDENT

Date of Decision : 02-01-2020

Acts Referred:

Competition Act, 2002 — Section 5
Insolvency And Bankruptcy Code, 2016 — Section 7, 12(2), 12(3), 14, 18(1)(c), 25(2) (h), 29, 29A, 30, 30(2), 30(2)(a), 30(2)(b), 30(2)(c), 30(2)(e), 30(2)(f), 30(3), 30(4), 30(6), 31, 31(1), 32(2)(d), 43, 45, 50, 53, 53(1), 60(5), 61, 62, 66
Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process Of Corporate Persons) Regulations, 2016 — Regulation 6(1), 6(2)(c), 27, 35, 36, 36(A) (1), 36B(4A), 39, 39(1), 39(3)

Citation : (2020) 01 NCLT CK 0064

Hon'ble Judges : M.M. Kumar, CJ; Santanu Kumar Mohapatra, Member (Technical)

Bench : Division Bench

Advocate : Abhishek Anand, Sandeep Bajaj, Aakanksha Nehra, Shrivalli Kataria, G.P. Madan, Utkarsh Mishra, Kartik Rathi, Reema Khorana

Final Decision : Disposed Of

Judgement

Santanu Kumar Mohapatra, Member (T)

1. This is an application filed by the Resolution Professional under Section 30(6) read with Section 60(5) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") seeking approval of the Resolution Plan under Section 31 of the Code read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 in respect of the corporate debtor M/s. Era T & D Limited.

2. The facts in brief necessary for disposal of the present application are that Central Bank of India Financial Creditors had preferred an application under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process

against M/s. Era T & D Limited ("Corporate Debtor"). The application being C.P. NO. (IB)-1126 (PB) of 2018 was admitted on 03.12.2018 imposing moratorium under Section 14 of the Code and the applicant, Mr. Deepak Maini was appointed as an Interim Resolution Professional for the Corporate Insolvency Resolution Process of the Corporate Debtor, M/s. Era T & D Limited.

3. Thereafter, in terms of Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 ("CIRP Regulations"), the Interim Resolution Professional made a public announcement in FORM-A dated 06.12.2018 in Financial Express (in Delhi), Jansatta (in Delhi), Indian Express (in Nagpur) and Navrashtra (in Nagpur). In terms of Regulation 6 (2) (c), the last date for submission of proof of claim was specified as 17.12.2018. A copy of the public announcement was also uploaded on the website of the Insolvency and Bankruptcy Board of India (IBBI).

4. In terms of the provisions of Section 18(1)(c) of the Code, the Interim Resolution Professional constituted the Committee of Creditors of one financial creditor namely Central Bank of India and a report certifying the same was filed before this Hon'ble Adjudicating Authority on 26.12.2018.

5. The first meeting of the Committee of Creditors ("CoC") was convened on 02.01.2019, wherein the IRP (applicant) was appointed to act as the Resolution Professional for the Corporate Debtor by the sole financial creditor with 100% voting share.

6. In terms of the Regulation 27 of the CIRP Regulations, 2016, the Applicant appointed two registered valuers namely, Crest Capital Group Private Limited and Sapient Services Private Limited for determination of the Fair Value and Liquidation Value of the Corporate Debtor in accordance with Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016 ("CIRP Regulations, 2016").

7. It is submitted that the Committee of Creditors approved the contents and terms of the Expression of Interest (Form G), Request for Resolution Plan and Evaluation Matrix. That apart, as required by Section 29 of the Code, the Resolution Professional prepared an Information Memorandum (hereinafter the "IM") of the Corporate Debtor, which was shared with the CoC members as per the timelines under Regulation 36 of the CIRP Regulations.

8. Thereafter in terms of Section 25(2) (h) of the Code, the Resolution Professional invited prospective lenders, investors and other persons to submit resolution plan for the Corporate Debtor. In terms of Regulation 36A (1) of the CIRP Regulations, 2016 and as directed by the CoC the Applicant Resolution Professional published the invitation for Expression of Interest on 01.02.2019 in 'Financial Express' English, 'Jansatta' Hindi (Delhi Edition) and 'Indian Express' English, 'Navrashtra' Hindi (Nagpur Edition) on 01.02.2019.

9. Subsequently, as no Expression of Interest were received, in terms of direction

of the sole CoC member to extend timelines of submission of the EOI the Applicant Resolution Professional published a revised Form G on 17.02.2019 in the newspapers 'Financial Express' English, 'Jansatta' Hindi, 'Indian Express' English and 'Navrashtra' Hindi.

10. It has been submitted that the fourth meeting of the Committee of Creditors was convened on 08.03.2019 wherein, the resolution professional apprised the CoC that in terms of the provisions of the Code and the CIRP Regulations, 2016 it is the duty of the Interim Resolution Professional /Resolution Professional to examine the financials of the Corporate Debtor and the transactions entered into by the Corporate Debtor preceding commencement of insolvency proceedings under Section 43, 45, 50 and 66 of the Code to determine whether the Corporate Debtor has entered into such transactions as bona fide or as to defraud its creditors and thus the Applicant presented the details of all the three professionals for conducting the Transaction Review Audit. The CoC after discussion and deliberation appointed M/s. Kumar Pramod and Associates to conduct the Transaction Review Audit for two years. In the said fourth meeting the Applicant apprised the CoC that the following Expression of Interest were received till March 8 2019:

1. Team Universal Infratech Private Limited
2. PNC Infratech Limited
3. Priudent ARC Limited
4. Fraitful Commosale Private Limited
5. Aakriti Hospitality Private Limited
6. Shree Metals (Mujbi) Private Limited
7. Pheonix ARC Private Limited

11. Thereafter the fifth meeting of the Committee of Creditors was convened on 06.04.2019, wherein, the Applicant apprised the CoC about the appointment of the Statutory Auditor for the Financial Year 2018-19 and the CoC after discussions and deliberations approved the appointment of J. Madan and associates as the Statutory Auditor.

12. In the sixth meeting of the Committee of Creditors held on 09.05.2019, the Resolution professional apprised the CoC that three resolution plans were received till 27.04.2019 which were placed before the CoC for discussion and seeking guidance on the way forward for the examination and evaluation of the plans. That the Applicant apprised the CoC that the Applicant informed the Prospective Resolution Applicants and communicated to them the short coming and deficiencies in compliances in the documentation and undertaking as per the requirements of the Code. One of the Prospective Resolution Applicants namely M/s. PNC Infratech Limited has sought further time for preparation of list of connected persons. That the draft evaluation matrix drawn on the basis of

financials given in the three plans were discussed. After discussions and deliberations, the CoC directed that all the three Prospective Resolution Applicants be called by the Applicant exclusively for discussions on clarifications, negotiations and compliances in the next CoC meeting and the Prospective Resolution Applicants may further be asked to show their preparedness for a Letter of Comfort/BG for upfront cash payments as provided in the evaluation matrix and performance bank guarantee of Rs. 5 Cr. as provided in the request of resolution plan process, in case CoC decides to accept their plan.

13. The Resolution professional in the 6th meeting apprised the CoC that 180th day of CIRP is coming to an end on 31st May 2019 and recommended extension of CIRP period beyond 180 days. With the approval of CoC the Resolution professional filed an application under Section 12(2) & (3) of the Insolvency and Bankruptcy Code, 2016 for extension of 90 days of the CIRP, which was allowed vide order dated 21.05.2019.

14. The seventh meeting of the Committee of Creditors was convened on 31.05.2019, wherein the complete revised set of all the three resolution plans received from M/s. Shree Metals (Mujbi) Private Limited, M/s. Team Universal Infratech Private Limited and M/s. PNC Infratech Limited were opened in presence of all the three Prospective Resolution Applicants. The Applicant sought time for the examining and then putting up compliant plans before the CoC for their perusal.

15. In the eighth meeting of the Committee of Creditors held on 01.07.2019 and in the presence of all three resolution applicants the Resolution Professional again sought time for examining the resolution plans and putting up compliant plans before the CoC for their perusal. The CoC also permitted the Resolution Professional to rely on the documents submitted by the resolution applicants for compliance purpose as only commercials have been revised in 2nd and 3rd round of negotiations.

16. Thereafter the 9th meeting of the Committee of Creditors was convened on 26.07.2019, wherein the applicant Resolution Professional apprised about the three compliant plans, evaluation matrix and comments/ observation of the Applicant to the Central Bank of India (sole member of the CoC) for identifying the best resolution plan in terms of Regulation 39(3) of CIRP Regulations, 2016. The Committee of Creditors was requested to convey its formal decision during the meeting on the best resolution plan, with reason for selection/rejection of the plan and its deliberations on feasibility & viability. The Sole CoC Member has provided final scores on the basis of evaluation matrix used for the purpose of comparing plans and has given following marks:

17. The Resolution Plan submitted by Team Universal was not found eligible for consideration by CoC as they propose Rs. 1 Cr as against Rs. 5 Crore provided for in the request of resolution plan process. As per the evaluation matrix approved by CoC, M/s. Shree Metals (Mujbi) Private Limited has obtained the

highest marks and is considered the best Resolution Plan.

18. The Committee of Creditors provided their reasoning for the selection of the resolution plan of Shree Metals (Mujbi) Private Limited as under: -

"The Resolution Plan addresses the interest of all the stakeholders and provides for a time-bound resolution, of corporate debtor in a very short period of time. There is no layoff of workmen and employees of the Corporate Debtor and no change in their employment terms or conditions.

Comments on feasibility and viability of CoC: The Resolution Applicant has progressive figures in their revenue generation in Balance Sheet for the year 2015-16 Rs. 135.70 crores, 2016-17 Rs. 228.28 cr. and for 2017-18 Rs. 301.51 Cr. Besides they have strong net-worth of 2015-16 Rs 8.11 cr., 2016-17 Rs. 11.71 Cr. and for 2017-18 Rs. 18.17 Cr. They are supplying zinc metal to the Corporate Debtor for the last many years and are well-acquainted with function of Era T& D Limited.

As deliberated in the Resolution Plan under the head 'Mobilization of Equity' the financials of Companies from which funds are to be arranged looks to be strong and convincing. Similarly, mobilization off debt of Rs 808 lacs looks quite possible given the strength of the Resolution Applicant. Thus, CoC observes no challenge for the Resolution Applicant in mobilizing the required funds.

CoC opined that the Resolution Plan in totality is feasible and viable."

19. It is pertinent to mention here that C.A. 1791 (PB)/2019 has been filed by M/s. PNC Infratech Limited, raising objection against the approved resolution plan with a prayer to quash the present Evaluation Matrix prepared by the Sole member of CoC and to direct the CoC to convene another meeting and to provide a chance to the applicant M/s. PNC Infratech Limited.

20. It is seen that the representation of the applicant dated 25.07.2019 has been duly considered in the CoC meeting held on 26.07.2019. The resolution professional had informed the Committee of Creditors that vide mail dated July 25, 2019, M/s. PNC Infratech Limited had submitted their revised Resolution Plan. The CoC was of the view that the said revised Resolution Plan is not to be considered. Further after calculations it was found that even if the figures of their revised resolution plan are put in the evaluation matrix the said Resolution Applicant (M/s. PNC Infratech Limited) continue to be H2. Moreover, the CIRP has time constraints and sufficient time is not left for examining the revised plans. The Committee of Creditors decided that the Applicant may convey the decision of the Committee of Creditors to M/s. PNC Infratech Limited on the above lines.

21. It is thus seen from the minutes of 9th CoC meeting that resolution plan given by the applicant M/s. PNC Infratech Limited was considered and after calculations it was found by the Committee of Creditors that even if the figures of their revised resolution plan are put in the evaluation matrix, the said Resolution Applicant (M/s. PNC Infratech Limited) continue to remain as H2. During final

hearing also it could not be specifically shown as to how the offer of the applicant M/s. PNC Infratech Limited was better than the offer of successful resolution applicant (H1). Moreover, the Committee of Creditors has given sufficient reasoning for selection of resolution plan of the successful resolution applicant (H1) by identifying and approving it as the best resolution plan. We find no good ground to interfere with the commercial decision of Committee of Creditors. Needless to say, that the legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the Committee of Creditors. In the facts C.A. 1791 (PR)/2019 filed by M/s. PNC Infratech Limited is dismissed as not maintainable at this stage.

22. The Resolution Professional has submitted its Compliance Certificate under Section 30(2) of the Code along with the resolution plan under Section 30(3) for approval before the Committee of Creditors.

23. The Committee of Creditors of the Corporate Debtor constitutes of the following sole financial creditor as on date:

24. After deliberations and discussions, the sole member of the Committee of Creditors with 100% voting share resolved as under.

"RESOLVED THAT in accordance with sections 30(4) & 30(6) of the Code read with regulations made thereunder, the approval of the members of Committee of Creditors be and is hereby accorded to the Resolution Plan submitted by Shree Metals Mujbi Private Limited for the CD, Era T&D Ltd. and for filing of the approved Resolution Plan with Hon'ble Adjudicating Authority i.e. NCLT by RP."

25. That brief contours of the Resolution Plan of Shree Metals (Mujbi) Private Limited as approved by the CoC is detailed herein below:

26. The resolution plan provides that the aforementioned amount of Rs. 11.5832 Crores will be paid in instalments as under:

27. A copy of the resolution plan of Shree Metals (Mujbi) Private Limited as approved by CoC has been placed on record.

28. Pursuant to approval of the Resolution Plan by the CoC the Applicant issued a Letter of Intent dated 29.07.2019 to the Resolution Applicant inter-alia informing the resolution applicant that the revised resolution plan as submitted before the CoC was approved and accordingly, the resolution applicant was requested to convey their unconditional acceptance. The resolution applicants duly submitted their unconditional acceptance and submitted a Performance Bank Guarantee of Rs. 5 Crores. Letter of Intent dated 29.07.2019, Unconditional Acceptance dated 02.08.2019 and performance bank guarantee dated 01.08.2019 have been placed on record.

29. The Resolution Applicant have also submitted undertaking and affidavits to the Applicant under Section 29A of the Code and Regulation 39(1) of CIRP Regulations, 2016 stating that the Resolution Applicant is eligible under Section

29A of the Code.

30. In terms of Section 30(6) of the Code read with Regulation 39 of the CIRP Regulations, 2016 the resolution professional has submitted the Resolution Plan for seeking an order under Section 31(1) of the Code for approval of the resolution plan passed by the committee of creditors under sub-section (4) of Section 30 with 100% voting share.

31. Section 31 of the Insolvency and Bankruptcy Code, deals with the approval or rejection of a resolution plan by the Adjudicating Authority. Approval of the resolution Plan is accorded under the provisions of Section 31(1) of the Code.

32. Section 31 of the Insolvency and Bankruptcy Code, 2016 is reproduced below for ready reference.

"Approval of Resolution Plan-

31. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

Provided that the Adjudicating Authority shall before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1),

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as

referred to in section 5 of the Competition Act, 2002 (12 of 2003), the resolution applicant shall obtain the approval of the Competition Commission of India under the Act prior to the approval of such resolution plan by the Committee of Creditors."

(Emphasis given)

33. Therefore, before approving the Resolution Plan, the Code mandates the Adjudicating Authority to ensure that,

- (1) the Resolution Plan meets the requirements of Section 30(2) of the Code and
- (2) the resolution plan has provisions for its effective implementation.

34. In respect of compliance of condition (1) above, it is necessary to refer to sub-section (2) of Section 30 of the Code which reads as follows:

"30. Submission of resolution plan. -(1).....

(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.

(3)....."

35. Sub-section 2 of Section 30 casts a duty on the Resolution Professional to examine the Resolution Plan received by him to confirm that such Resolution Plan provides for the payment of insolvency resolution process costs, provides for the payment of the debts of the operational creditors and financial creditors in such manner as specified, provides for the management of the affairs of the corporate debtor after approval of the Resolution Plan; the implementation and supervision of the Resolution Plan, that the Resolution Plan does not contravene any of the provisions of the law, and that the Resolution Plan conforms to such other requirements as may be specified by the Board.

36. The Resolution Professional has filed compliance certificate in Form H and inter alia has confirmed that he has examined and verified the Resolution Plan approved by the CoC of Era T & D Limited, in the light of the requirements of the Code and Regulations and that it is compliant to the relevant provisions of the Code and Regulations.

37. In terms of Section 31(1) of the Code, Adjudicating Authority has also to examine whether the requirements of sub-section (2) of Section 30 have been complied with or not.

38. It has been submitted in the application and in Form H duly certified by RP that the final Resolution Plan unanimously approved by the CoC meets the requirements as laid down in various clauses of Section 30(2) of the Code.

39. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in the resolution plan at Chapter-VI (4.01) which provides that the costs of the CIRP shall be in priority of all the claims under the resolution plan. The Resolution Professional has confirmed in the compliance certificate given in Form H that the Insolvency Resolution Process costs are being met from the operational expenses. It is submitted that there are no unpaid CIRP cost. Be that as it may it is made clear that unpaid Insolvency Resolution Process cost, if any, shall be paid in its entirety by the resolution applicant in priority to other debts of the corporate debtor.

40. As regards compliance of clause (b) of Section 30(2) of the Code, the Resolution Professional has certified that Chapter VI (4.13) of the resolution plan provide for the payment of the 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 Section 53.

41. During hearing it was placed before us that the resolution plan provides for full and final discharge of the dues of workmen of the corporate debtor for the period of 24 months preceding the insolvency commencement date. On behalf of resolution applicant, it was confirmed that workmen's dues for the period of 24 months preceding the insolvency commencement date shall be paid in its entirety in terms of water fall provisions of Section 53 of the Code. It is also submitted that in the resolution plan there is no lay off of workman employee of the corporate debtor and also no change in employment terms and conditions.

42. There appears to be no discrimination in the resolution plan in respective class of creditors, as same treatment is provided to similarly situated each class of creditors.

43. Besides the resolution plan provides for the payment of the 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 Section 53.

44. As a sequel to the aforesaid discussion it is seen that clause (b) of sub-section (2) of Section 30 of the Code stands satisfied.

45. In terms of Section 30(2)(c), the Resolution Plan provides for management of affairs of the corporate debtor after approval of the Resolution Plan. The management of the affairs and control of the business of the corporate debtor after approval of the Resolution Plan has been provided at Chapter VI (2) of the Resolution plan which inter alia provides that the Company shall continue as a going concern and operate in its normal course of business upon implementation of the Resolution Plan. The Resolution Professional has confirmed in the compliance certificate given in Form H that Chapter VI (3.04) of the Resolution Plan provides for the management and control of the business of the corporate debtor.

46. The fourth requirement envisaged by Section 32(2)(d) is that it must provide for the implementation and supervision of the resolution plan. The Resolution Professional has confirmed in the compliance certificate given in Form H that Chapter VII of the Resolution Plan provides for adequate means for supervising its implementation. It has been ensured that there shall be a monitoring committee comprising of two members constituting a representative of CoC and one representative of the resolution applicant.

47. The fifth and sixth conditions in terms of clause (e) & (f) of sub-section (2) of Section 30 of the Code provide to ensure that the Resolution Plan does not contravene any of the provisions of the law and conforms to such other requirements as may be specified by the Board.

48. In this regard the resolution professional has certified that the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016, the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and does not contravene any of the provisions of the law for the time being in force. Similarly, resolution applicant has undertaken at Chapter IX of the Resolution Plan that 'the resolution plan does not contravene any of the provisions of the law for the time being in force.' In terms of clause (e) & (f) of sub-section (2) of Section 30 of the Code, we make it clear that the Resolution Applicant shall comply with all applicable laws under the proposed Resolution Plan, whether or not specifically provided therein.

49. It is pertinent to state here that Section 29A of the Code prescribes certain eligibility criteria and disqualifications for persons who submit a resolution plan. Resolution applicant has given adequate declaration and undertaking on their eligibility to submit the Resolution Plan. Resolution Professional has also confirmed that the Resolution Applicant M/s. Shree Metals (Mujbi) Private Limited has submitted affidavit in this regard and are eligible to submit resolution plan and does not fall under any of the category as mentioned in Section 29A of the Code.

50. Regulation 36B (4A) of the CIRP Regulations requires that the Resolution Applicant shall provide a performance security. Resolution professional has certified that the Resolution Applicant has submitted Performance Guarantee of Rs. 5 Crores issued by ICICI Bank in compliance of Regulation 36B (4A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

51. As a sequel to aforesaid discussions we are satisfied that all the requirements of Section 30(2) are fulfilled and no provision of the law for the time being in force appears to have been contravened.

52. The Resolution Professional has further certified that the Resolution Plan has been approved unanimously by 100% of voting share of the sole financial creditor after considering its feasibility and viability and other requirements

specified by the Code and CIRP Regulations. There is thus no dissenting financial creditor who opposed the resolution plan.

53. Adjudicating Authority is not expected to substitute its view with the commercial wisdom of the CoC nor should it deal with the technical complexity and merits of Resolution Plan, unless it is found contrary to express provision of law and goes against the public interest. The object of the Code is to promote resolution and every effort must be made to try and see that resolution is made possible.

54. Accepting the Resolution Plan is advantageous to all the stake holders and amounts to maximisation of the assets of the Corporate Debtor and promotes entrepreneurship and to ensure that the Company continue to function as a going concern. The right of rejection or approval of a plan is with the CoC. In a particular case, what should be the percentage of claim amount payable to one or other 'Financial Creditor' or 'Operational Creditor' or 'Secured Creditor' or 'Unsecured Creditor' can be decided by the Committee of Creditors based on facts and circumstances of each case. What can be screened by this Bench is that whether the plan approved by Committee of Creditors meets the requirements as referred to in sub-section (2) of Section 30 of the Code.

55. Hon'ble NCLAT in the case of Darshak Enterprise Pvt. Ltd. Chhaparia Industries Pvt. Ltd. & Ors. Passed in Civil Appeal (AT) (Ins) No. 327 of 2017 has held that:

"In absence of any discrimination or perverse decision, it is not open to the Adjudicating Authority or the Appellate Tribunal to modify the plan."

56. In the present case the resolution plan has been unanimously approved with 100 % voting share much above the statutory requirement of 66 % in terms of Section 30(4) of the Code and has the requisite statutory voting share. Besides the decision of Committee of Creditors is a reasoned and self-speaking one as required under proviso to Regulation 39(3) of the CIRP Regulations, 2016. Needless to state here that the Resolution Plan cannot take care of total outstanding dues of the creditors in its entirety. It is however seen that the resolution applicant proposes to pay the total consideration amount of Rs. 11.5832 Crores in various instalments within twelve months from the date of approval of the resolution plan, which is higher than the liquidation value.

57. It is well settled proposition of law that commercial and business decisions of Committee of Creditors are not open to judicial review. Adjudicating Authority cannot enquire into the commercial wisdom of Committee of Creditors. The ground for rejection is limited to the matter specified under Section 30(2). It is however reiterated that the resolution plan in question meets the requirements specified in Section 30(2) of the Code and the reasoned commercial decision of Committee of Creditors is neither discriminatory nor perverse.

58. In the facts we are satisfied that the requirements as per the Code and

regulations have been complied with. Moreover, the Resolution Plan has been unanimously approved by 100 % voting share of the members of Committee of Creditors and has been submitted in compliance of Section 30 of the Code for approval. In view of the aforesaid discussions and as no infirmity have been brought out upon screening of the Resolution Plan; we hereby approve the Resolution Plan under sub-section (1) of Section 31 of the Code,

59. We also approve appointment of 'Monitoring Committee' as agreed between the parties to monitor and supervise the implementation of the Resolution Plan. We also grant Liberty to the monitoring Committee to apply to the Tribunal for any further direction in order to ensure effective implementation of the plan, if such a necessity arises.

60. In respect of reliefs and concession sought for in the Plan which are beyond the jurisdiction of this Tribunal. Monitoring committee along with the Resolution Applicant can make such claim before the authorities which shall be considered in accordance with law.

61. The resolution applicant shall obtain the necessary approval required under any law for the time being in force within a period of one year from the date of this order or within such period as provided for in such law, whichever is later.

62. It is clarified that Section 30(2) (f) of the Code mandates that the resolution plan should not be against any provisions of the existing law. The Resolution applicant therefore, shall adhere to all the applicable laws for the time being in force under the proposed Resolution Plan, whether or not specifically provided therein.

63. We hereby exclude the period spent under adjudication and it is declared that the moratorium order passed by this Bench under Section 14 of the Code shall cease to have effect from the date of this order.

64. The Resolution Professional shall forward all records relating to the CIR Process and the Resolution Plan to IBBI to be recorded at its data base.

65. The approved 'Resolution Plan' shall become effective from the date of passing of this order.

66. C.A. 1569 (PB) / 2019, C.A. 1791 (PB)/2019 and CP No. (IB) 1126 (PB)/2018 are disposed of in the aforesaid terms.

Let the copy of the order be served to the parties.