
(2023) 12 NCLT CK 0053

In the National Company Law Appellate Tribunal

Case No : CA/1636/PB/2019 In CP IB-170/PB/2018???

IDBI Bank Limited

APPELLANT

Vs

M/s ACIL Limited

RESPONDENT

Date of Decision : 22-12-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 7, 14, 21(2), 25(1), 25(2)(b), 29A, 30, 30(2)(a), 30(2)(b), 30(2)(c), 30(2)(d), 30(2)(f), 30(4), 30(6), 31(1), 31(2), 43, 45, 50, 53, 53(1), 60(5), 61, 62, 66, 188, 196
Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 — Regulation 38, 38(1)(a), 38(1A), 38(1B), 39(1)(a), 39(4)

Citation : (2023) 12 NCLT CK 0053

Hon'ble Judges : Mahendra Khandelwal, Member (J); Dr. Sanjeev Ranjan, Member (T)

Bench : Division Bench

Advocate : Krishnendu Datta, Prateek Kumar, Raveena Rai, Smriti Nair, Sumant Batra, Abhishek Sharma, Kritya Sinha, Raghav Mittal, Kushagra Kaul, Ravindra Loonkar, Rajive R. Raj

Final Decision : Disposed Of

Judgement

Mahendra Khandelwal, Member (Judicial)

1. The Present application CA/1636/2019 has been filed under Section 30(6) read with section 31(1) of the Insolvency and Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations') on behalf of Mr. Ravindra Loonkar, Resolution Professional ('Applicant') of M/s ACIL Limited ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by M/s Ramkrishna Forgings Limited ('Successful Resolution Applicant') and approved by the Committee of Creditors ('CoC') in its 22nd meeting held on 05.08.2019 with 88.56% voting in favor.

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

stated are as follows:

- a) The Applicant submits that the Corporate Insolvency Resolution Process was initiated against M/s ACIL Limited ('Corporate Debtor') by this Adjudicating Authority vide order dated 08.08.2018 in C.P. IB-170/PB/2018, an application filed by the IDBI Bank Limited under Section 7 of the Code and Mr. Ravindra Loonkar was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor and the IRP was later confirmed as the Resolution Professional by the CoC in its first CoC meeting held on 07.09.2018.
- b) That as per the Plan, the M/s Ramkrishna Forgings Limited may elect to implement the Resolution Plan through its subsidiary, M/s Ramkrishna Aeronautics Private Limited. Therefore, the term "SRA" shall be deemed to include M/s Ramkrishna Forgings Limited and M/s Ramkrishna Aeronautics Private Limited.
- c) That the Applicant had made the public announcement in Form-A in newspapers on 15.08.2018 inviting the claims of creditors and the last date for submission of the claims was 27.08.2018.
- d) That the average fair value and liquidation value of Corporate Debtor is Rs. 130.5 crores and Rs. 101.70 crores, respectively.
- e) That the CoC in its 2nd meeting held on 05.10.2018 had resolved to appoint Deloitte Touche Tohmatsu India LLP (Deloitte) for the purpose of verification/ audit of preferential, undervalued, extortionate and fraudulent transactions of the Corporate Debtor as per Section 43,45,50 and 66 of the Code. Deloitte, in order to conduct the transactions review audit, requisitioned for certain documents from the personnel/ex-management/directors of the Corporate Debtor. However, the personnel/ex-management/directors of the Corporate Debtor had failed to cooperate in sharing the required information. Therefore, the Applicant had filed the company application bearing CA/1282/2018 to obtain some information from the respondents to carry out the transaction audit and on the basis of the information provided in the said company application, the transaction audit was finalized on 22.05.2019 and an application was filed under Section 43 in respect of certain preferential transactions.
- f) That the Applicant published the Expression of Interest (EoI) in Form G on 15.10.2018 which was subsequently revised on 31.10.2018, 28.01.2019 and 13.02.2019, wherein, the Applicant had received EoIs from certain entities and released the final list. Thereafter, the Applicant had issued the Request for Resolution Plan (the "RFRP") on 02.03.2019 requiring the Prospective Resolution Applicants to submit their respective resolution plans by 01.04.2019 which was later extended till 11.04.2019.
- g) That the Successful Resolution Applicant (SRA herein), submitted its first Resolution Plan on 11.04.2019 which was revised multiple times and the final Resolution Plan was submitted by the SRA on 05.08.2019.

h) That as per the Resolution Plan, the Resolution Applicant shall pass-through any amount to the Financial Creditors, in accordance with the terms of this Plan which could be realized in respect of land bearing Plot/Site No. GH-38, Sector 1, IMT Manesar allotted by Haryana State Industrial & Infrastructure Development Corporation (HSIIDC) to ACIL Limited in 2007 against payment of Rs. 4,66,56,000.

i) That this Adjudicating authority vide its order dated 11.12.2023 directed the Resolution Professional to furnish details with respect to the status of any outstanding dues/demands against the Corporate Debtor from the HSIIDC. The Resolution Professional, in compliance of the order dated 11.12.2023 stated that a Demand Notice dated 07.01.2022 was sent to the Corporate Debtor by HSIIDC in regard to the Manesar Properties for payment of outstanding maintenance charges to the tune of Rs. 3,77,370 for the FY 2020-21. The Resolution Professional, in compliance of the demand notice dated 07.01.2022, made payment on behalf of the Corporate Debtor on 02.02.2022. That, as on date, there are no outstanding demands against the Corporate Debtor from HSIIDC regarding the Manesar properties.

j) The applicant further submits that the Resolution Plan approved by the CoC meets all requirements envisaged under the Code and hence, placed on record Compliance Certificate dated 16.08.2019 in Form H, as required under Regulation 39(4) of the CIRP Regulations.

k) Hence, the Applicant seeks before this Adjudicating Authority the approval of the Resolution Plan submitted by M/s Ramkrishna Forgings Limited which was approved by the CoC on 05.08.2019.

3. Earlier Orders of this Adjudicating Authority, Hon'ble NCLAT and the Hon'ble Supreme Court

It is pertinent to mention that pursuant to the submission of the final resolution plan dated 05.05.2019, the Applicant had got two reports prepared by the registered valuers. The first report was prepared by BDO India LLP dated 11.02.2019 with regard to assets of ACIL which indicated fair market value to be Rs. 135 crores and liquidation value as Rs. One Hundred Eight crores and Fifty-Seven Lacs, whereas, the second report prepared by Adroit Technical Services Limited dated 14.02.2019 indicated fair market value of Rs. 125 crores and liquidation value of Rs. Ninety-Four Crores and Eighty-Seven Lacs. It is submitted that on the basis of such reports and proper examination of the materials on record, the CoC, by exercising its commercial wisdom had approved the Resolution Plan and the same was presented for approval before this Adjudicating Authority. However, this Adjudicating Authority vide its order dated 01.09.2021 directed the Official Liquidator to conduct re-valuation of the assets of the Corporate Debtor. The Resolution Professional (Appellant) filed an appeal against the decision of this Adjudicating Authority before the Hon'ble NCLAT and the decision passed by this Adjudicating Authority was upheld by the Hon'ble

NCLAT vide its order dated 19.01.2022. Thereafter, the Appellant approached the Hon'ble Supreme Court and the Hon'ble Supreme Court vide its order dated 21.11.2023 in the case of Ramkrishna Forgings Limited Vs Ravindra Loonkar, Resolution Professional of ACIL Limited & Anr. in Civil Appeal No. 1527/2022 allowed the appeal filed by the Appellant and set aside the order dated 01.09.2021 passed by this Adjudicating Authority as well as the order dated 19.01.2022 passed by the Hon'ble NCLAT. The relevant extract of the decision of the Hon'ble Supreme Court is reproduced hereunder as: -

"27. Having considered the matter in depth, the Court is unable to uphold the decisions rendered by the Adjudicating Authority-NCLT as also the NCLAT. The moot question involved is the extent of the jurisdiction and powers of the Adjudicating Authority to go on the issue of revaluation in the background of the admitted and undisputed factual position that no objection was raised by any quarter with regard to any deficiency/irregularity, either by the RP or the appellant or the CoC, in finally approving the Resolution Plan which was sent to the Adjudicating Authority-NCLT for approval. Further, the statutory requirement of the RP involving two approved valuers for giving reports apropos fair market value and liquidation value was duly complied with and the figures in both reports were not at great variance. Significantly, the same were then put up before the CoC, which is the decision-maker and in the driver's seat, so to say, of the Corporate Debtor. K Sashidhar (supra) and Committee of Creditors of Essar Steel India Ltd. (supra) are clear authorities that the CoC's decision is not to be subjected to unnecessary judicial scrutiny and intervention. This came to be reiterated in Maharashtra Seamless Limited (supra), which also emphasised that the CoC's commercial analysis ought not to be qualitatively examined and the direction therein of the NCLAT to direct the successful Resolution Applicant to enhance its fund flow was disapproved of by this Court. Thus, if the coc, including the FC(s) to whom money is due from the Corporate Debtor, had undertaken repeated negotiations with the appellant with regard to the Resolution Plan and thereafter, with a majority of 88.56% votes, approved the final negotiated Resolution Plan of the appellant, which the RP, in turn, presented to the Adjudicating Authority-NCLT for approval, unless the same was failing the tests of the provisions of the Code, especially Sections 30 & 31, no interference was warranted. In Kalpraj Dharamshi v Kotak Investment Advisors Limited, (2021) 10 SCC 401, the Court concluded that in view of the paramount importance given to the decision of CoC, which is to be taken on the basis of "commercial wisdom", NCLAT was not correct in law in interfering with the commercial decision taken by CoC by a thumping majority of 84.36%.

29. In the case at hand, we find that there was no occasion before the Adjudicating Authority-NCLT to be swayed only on the per se ground that the hair-cut would be about 94.25% and that it was not convinced that the fair value of the assets have been projected in proper manner as the bid of the appellant was very close to the fair value of the assets of ACIL. Ordering revaluation of the assets, by the OL, Ministry of Corporate Affairs, Government of India, in-charge

of the particular area, cannot be justified. As explained in *Innoventive Industries Ltd. v ICICI Bank*, (2018) 1 SCC 407 and *Swiss Ribbons Private Limited v Union of India*, (2019) 4 SCC 17, the Code was specifically introduced by Parliament for ensuring quick and time-bound resolution of insolvency of corporate entities in financial trouble, by first attempting to revive the Corporate Debtor, failure whereof would entail liquidation of the Corporate Debtor's assets, and no unnecessary impediment should be created to delay or derail the CIRP. In the present case, both the NCLT and NCLAT erred to fully recognise that under the Resolution Plan, the Corporate Debtor was set to be revived and not liquidated. Thus, the minimum mandatory component in the Resolution Plan was only a reflection of the actual money, including upfront payment, which would go towards the FC(s). As discussed previously, the final Resolution Plan provided for the monetization proceeds of the land as also the avoidance amounts to go to the FC(s) of the Corporate Debtor.

30. At this juncture, it also cannot be lost sight of that it is for the FC(s) who constitute the CoC to take a call, one way or the other. *Stricto sensu*, it is now well-settled that it is well within the CoC's domain as to how to deal with the entire debt of the Corporate Debtor. In this background, if after repeated negotiations, a Resolution Plan is submitted, as was done by the appellant (Resolution Applicant), including the financial component which includes the actual and minimum upfront payments, and has been approved by the CoC with a majority vote of 88.56%, such commercial wisdom was not required to be called into question or casually interfered with. Surprisingly, the discussion in both orders is wanting, except for the difference in the figure of the total outstanding dues and the amount of money which the appellant was to put up initially for taking over the Corporate Debtor, for this Court to understand as to what other reasons, grounded in the Code's provisions, compelled the Adjudicating Authority-NCLT to embark upon the novel path of ordering revaluation by the OL. At the cost of repetition, nobody had moved before the NCLT or raised any objection challenging the Resolution Plan pending approval. Even the NCLAT has only indicated that when "figures of crores" are emerging stage-wise, "then there is no harm to look at the Expert opinion", which the Adjudicating Authority-NCLT in this case has asked for.

31. It is worthwhile to note that the Adjudicating Authority has jurisdiction only under Section 31(2) of the Code, which gives power not to approve only when the Resolution Plan does not meet the requirement laid down under Section 31(1) of the Code, for which a reasoned order is required to be passed. We may state that the NCLT's jurisdiction and powers as the Adjudicating Authority under the Code, flow only from the Code and the Regulations thereunder. It has been held in *Jaypee Kensington Boulevard Apartments Welfare Association v NBCC (India) Limited*, (2022) 1 SCC 401:

'273.1. 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. 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 Committee of Creditors. If, within its limited jurisdiction, the adjudicating authority finds any shortcoming in the resolution plan vis-a-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 the Code and exposited by this Court.' (emphasis supplied)

32. From the assistance rendered and the judicial precedents brought to notice, it is clear that the order dated 01.09.2021 by the NCLT cannot withstand judicial scrutiny, either on facts or in law. There may have been a situation where due to glaring facts, an order of the nature impugned herein could be left untouched and this Court would have refrained from interference, but only if detailed reasoning, disclosing the facts for being persuaded to embark on such path, were discernible in the order dated 01.09.2021, which unfortunately is cryptic and bereft of detail. Recording of reasons, and not just reasons but cogent reasons, for orders is a duty on Courts and Tribunals. In the recent past, from *Kranti Associates Private Limited v. Masood Ahmed Khan*, (2010) 9 SCC 496 to *Manoj Kumar Khokhar v. State of Rajasthan*, (2022) 3 SCC 501, the clear position in law is that a Court or even a quasi-judicial authority has a duty to record reasons for its decision. Needless to add, 'Reason is the heartbeat of every conclusion. Without the same, it becomes life less.' That apart, the order of the NCLT dated 01.09.2021 suffers from a jurisdictional error, as in the facts that prevailed, it was not entitled to pass the direction that it did.

33. Under the circumstances, while this Court could have adopted the course of remanding the matter back to the NCLT for fresh/de novo consideration, but being conscious of the fact that such course would impede quick resolution as the CIRP is in a stalemate right from 01.09.2021 and after having applied our minds to the factual aspects also, we do not find that remand for consideration afresh, now, would serve the purpose of justice or aid the objects of the Code.

34. Accordingly, and for all the reasons afore-stated, this appeal stands allowed. The order dated 01.09.2021 of the NCLT and the Impugned Judgment dated 19.01.2022 of the NCLAT are set aside. The NCLT will pass appropriate orders in terms of this judgment, on the Approval Application, being I.A. No.1636 of 2019 in CP (IB) No.170(PB)/2018, within three weeks from the date of production of a copy of this judgment. Pending avoidance application(s) on the file of the NCLT in connection herewith shall proceed on their own merits, but with expedition. No order as to costs."

It is stated that on receiving the copy of the order of the Hon'ble Supreme Court, the matter has been heard and this Adjudicating Authority is considering the Resolution Plan in terms of the order passed by the Hon'ble Supreme Court.

4. It is observed that while the Applicant sought approval of the Resolution Plan submitted by M/s Ramkrishna Forgings Limited as approved by the CoC in its 22nd COC meeting held on 05.08.2019 with 88.56% voting, the Department of State Tax had filed an Interlocutory Application bearing I.A./5255/ND/2023 seeking condonation of delay in filing their claim and seeking admission of their claim worth Rs. 2,76,82,615 by the Resolution Professional. The Department of State Tax had filed its claim with the Resolution Professional in Form-B on 14.11.2018 and later on the Resolution Professional had revised the claim amount to the tune of Rs. 2,22,12,961 and the same was communicated by the Resolution Professional to the Department of State Tax vide email dated 01.06.2023. The Resolution Professional vide its affidavit dated 13.12.2023 filed before this Adjudicating Authority admitted the revised amount claimed by the State Tax Department and the Resolution Plan in para 6 contains the provision as to treatment of the admitted claim of the Operational Creditor, whereby, the SRA has agreed to pay 1% of the amount claimed by the Department of State Tax. It is further observed that in para 6 of the Resolution Plan, the claim of the Department of State Tax is shown as unverified, however, in view of the affidavit dated 13.12.2023 filed by the Resolution Professional, the same shall now be treated as verified to the extent of the amount admitted. In light of the aforesaid observation, the IA/5255/ND/2023 filed by the Department of State Tax stands disposed off by this Adjudicating Authority vide its order dated 15.12.2023.

5. It is further observed that as to the claim of HSIIDC against the Corporate Debtor, the learned counsel on behalf of the Resolution Professional has submitted that, in terms of the order dated 11.12.2023, passed by this Adjudicating Authority, the Applicant herein, has filed an affidavit dated 13.12.2023 indicating that there are no dues of HSIIDC pending as on insolvency commencement date and nor any claim was filed during the CIR Process. However, a demand of Rs. 3,77,370 for the FY 2020-21 was raised and the same was paid by the Applicant on behalf of the Corporate Debtor.

6. On the perusal of the Resolution Plan as proposed by the SRA, it has come to our knowledge that the Resolution Plan contains certain take-away clauses as mentioned in Para 12.1.1 and Para 12.1.3 of Part 1 of the Plan. Para 12.1.1 and Para 12.1.3 of the Plan reads as under:

"12.1.1

xxxxx

xxxxx

Furthermore, in the event such financial impact exceeds an amount of INR 2,00,00,000 (Indian Rupees two crore), then no amount shall be deducted from the pay-out to the Financial Creditors and the Operational Creditors and in such an event the Resolution Applicant shall have no obligation to implement the Plan.

12.1.3

XXXXX

XXXXX

Furthermore, in the event such financial liability (in addition to the INR 50,00,000 (Indian Rupees fifty lakh) mentioned in Paragraph 2(xv) of Appendix III) exceeds an amount of INR 2,00,00,000 (Indian Rupees two crore), then no amount shall be deducted from the pay-out to the Financial Creditors and the Operational Creditors and in such an event the Resolution Applicant shall have no obligation to implement the Plan.”

7. It is further observed that the Learned Counsel on behalf of the SRA, in terms of the order dated 11.12.2023 passed by this Adjudicating Authority, has deleted certain take-away clauses as mentioned in Para 12.1.1 and Para 12.1.3 in Part-1 of the Resolution Plan vide affidavit dated 14.12.2023 and the said affidavit is also submitted to the Resolution Professional.

8. The Resolution Professional has filed some additional documents which were taken on record vide an order dated 21.12.2023 passed by this Adjudicating Authority. These documents include an affidavit dated 10.04.2019 and 26.04.2019 by the SRA & its subsidiary, in terms of Section 29A of the Code and a certificate dated 05.08.2019, in terms of Section 29A of the Code stating that the Resolution Applicant and its subsidiary are eligible in terms of Section 30(1) of the Code read with Regulation 39(1)(a) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Further, the Resolution Professional has also filed the renewed Performance Bank Guarantee (which is now valid up to 31.03.2024).

9. We have heard the submissions made by the Ld. Counsel for the applicant and have carefully gone through the documents produced on record. Before, examining the Resolution Plan vis-à-vis with the mandatory compliance it is pertinent to mention that the resolution plan as approved by the CoC in its 22nd COC Meeting held on 05.08.2019 and which has 88.56% voting by the members of CoC is placed before this Adjudicating Authority vide C.A./1636/PB/2019 for approval.

10. The salient features of the resolution plan submitted by M/s Ramkrishna Forgings Limited ('Successful Resolution Applicant') and approved by the Committee of Creditor ('CoC') in its 22nd meeting held on 05.08.2019 with 88.56% voting in favour, are as follows: -

i) That the Resolution Applicant's total resolution plan for the Corporate Debtor is for INR 129,50,00,000 (One Hundred Twenty-Nine Crores and Fifty Lacs) which is bifurcated in Part III of the Resolution Plan as follows:

ii) That the amount provided for stakeholders under resolution Plan is as under:

iii) That the final resolution plan submitted by M/s Ramkrishna Forgings Limited meets the requirements of Section 30(2) of the Code as under: -

Section

Provisions under Section 30(2) of the Code

Compliance under Resolution Plan

30(2)(a)

provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

YES

Part II, Clause (1) Page No. 25

30(2)(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

YES

Part II, Clause 2 Page No. 25

30(2)(c)

provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;

YES

Part II, Clause 4 Page No. 25

30(2)(d)

the implementation and supervision of the resolution plan;

YES

Part II, Clause 4.2 Page No. 27

30(2)(e)

does not contravene any of the provisions of the law for the time being in force

YES

Part II, Clause 6 Page No. 28

iv) That the Resolution Applicant has provided the provisions for implementation of the Resolution Plan in Schedule II of the Plan. As to the aspect of payment, the attention of the Adjudicating Authority is brought to the Step-5 of the Schedule II, which is reproduced hereunder as:

"Step 5: Payments

5.1 On the Payment Date, the proceeds of subscription of the New Equity Shares and the New Debt shall be utilised by the Corporate Debtor for making the payment of the following amounts strictly in the order set out in this Paragraph 5.1: (i) IRP Costs; (ii) OC Settlement Amount; and (iii) Unsecured FC Settlement Amount, in each case in accordance with Part III (Financial Proposal of the Resolution Applicant).

5.2. On the Payment Date, the RA Subsidiary shall pay the respective portions of the Debt Acquisition Amount to the respective Financial Creditors in the proportion discussed and agreed between the Committee of Creditors and Resolution Applicant, and as filed with the NCLT.

5.3. On the Payment Date, upon issuance of the FC Debentures, all obligations of the Resolution Applicant under this Plan in relation to the FC Debentures shall stand fulfilled.

The "Payment Date" as defined in Schedule I of the plan means, upon occurrence of the Effective Date, the 60th day following the date of receipt of the NCLT Order and such date may be extended upon mutual agreement of the Committee of Creditors and the Resolution Applicant.

v) Mandatory Contents as specified under Regulation 38 of IBBI CIRP Regulations 2016 are as under: -

Regulation

Provisions under Regulation 38 of IBBI CIRP Regulations 2016.

Compliance under Resolution Plan

38(1)(a)

The amount payable under a
resolution plan –

YES

Part II, Clause 2

(a) to the operational creditors shall be paid in priority over financial creditors; and

(b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.]

Page No. 25

38(1A)

A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.]

YES

Part II, Clause 5 Page No. 27

38(1B)

A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has 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.]

YES

Part II, Clause 9 Page No. 28

"The Resolution Applicant confirms that neither it nor any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the NCLT at any time in the past."

38(2)(a)

A resolution plan shall provide the term of the plan and its implementation schedule;

YES

Part II, Clause 3 Page No. 25

38(2)(b)

A resolution plan shall provide the management and control of the business of the corporate debtor during its term; and

YES

Part II, Clause 4.1 Page No. 25

38(2)(c)

A resolution plan shall provide adequate means for supervising its implementation

YES

Part II, Clause 4.2, 8

Page No. 27-28

38(3)(a)

A resolution plan shall demonstrate that –
it addresses the cause of default;

YES

Part II, Clause 10.1 Page No. 28

38(3)(b)

A resolution plan shall demonstrate that –
it is feasible and viable;

YES

Part II, Clause 10.2 Page No. 28

38(3)(c)

A resolution plan shall demonstrate that –
it has provisions for its effective implementation;

YES

Part II, Clause 10.3 Page No. 28

38(3)(d)

A resolution plan shall demonstrate that –
it has provisions for approvals required and the timeline for the same;
and

YES

Part II, Clause 10.4 Page No. 28

38(3)(e)

A resolution plan shall demonstrate that –
the resolution applicant has the capability to implement the
resolution plan.]

YES

Part II, Clause 10.5 Page No. 28

PLAN FOR REVIVAL:

vi) Post acquisition of the Corporate Debtor, the Resolution Applicant intends to focus on refurbishing the existing machinery and will strive to conduct production line balancing activities removing bottleneck and improving performance. The Resolution Applicant is further aiming to inject or arrange funds to improve its working capital condition enabling the Corporate Debtor to improve its working capital cycle and improve sales. This shall help in supplying to the existing customers to maintain their share of business and will strive to take necessary steps to increase the share of business with the existing client. Successful implementation of the Plan shall help in retaining and providing opportunities for jobs especially in the semi-skilled and unskilled segment.

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

Section 30 (2) is quoted below: -

“(2) The resolution professional shall examine each Resolution Plan received by him to confirm that each Resolution Plan –

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the Resolution Plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor. Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code

(Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) where a Resolution Plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a Resolution Plan;]

(c) provides for the management of the affairs of the Corporate debtor after approval of the Resolution Plan;

(d) The implementation and supervision of the Resolution Plan;

(e) does not contravene any of the provisions of the law for the time being in force

(f) conforms to such other requirements as may be specified by the Board.
Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the Resolution Plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]”

12. In respect of compliance regarding Regulation 39(4) of the CIRP Regulations, the Applicant has filed a compliance certificate in Form-H annexed as Annexure A-8 at Page 135-144 of the application, certifying that the Resolution Plan submitted by the Successful Resolution Applicant meets the requirements as laid down in various sections of the Code and the CIRP Regulations and there are sufficient provisions in the Plan for its effective implementation as required under the Code. Further, an affidavit has been obtained from the Successful Resolution Applicant stating that he is eligible under the provisions of Section 29A of the Code, 2016.

13. The Applicant has prayed for number of waivers, Reliefs & Concessions in the Resolution Plan as mentioned in Clause 7.5 of Part-1, Page 20 of the Resolution Plan. At this juncture, it is pertinent to refer to the decision of the Hon’ble Supreme Court in the matter of Embassy Property Development Private Limited v. State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019, The relevant part of the judgment is reproduced herein below: -

“39. Another important aspect is that under Section 25 (2) (b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:

"25. Duties of resolution professional –

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions:-

(a).....

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings."

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right."

In the light of the decision of the Hon'ble Supreme Court in the Embassy Property Development Private Limited (Supra), as to the waiver, relief and concessions sought in the Resolution Plan, this Adjudicating Authority is not inclined towards granting any such relief prayed for except for what is provided in the Code itself. However, the Successful Resolution Applicant may approach and file the necessary application before the necessary forum/authority in order to avail the necessary relief and concessions, in accordance with respective laws.

14. In so far as the approval of the resolution plan is concerned, this Adjudicating Authority is not sitting on an appeal against the decision of the Committee of Creditors and this Adjudicating Authority is duty bound to follow the judgment of the Hon'ble Supreme Court in the matter of K. Sashidhar v. Indian Overseas Bank (2019) 12 CC 150, wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as follows: -

"35. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified

manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code."

15. Further, the Hon'ble Supreme Court of India in the matter of Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019, vide its judgment dated 15.11.2019 has observed as follows:

"38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants."

16. Thus, from the judgments cited supra, it is amply clear that only limited judicial review is available to the Adjudicating Authority under Section 30(2) read with Section 31 of the Code, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the committee of the creditors.

17. In view of the above discussion, this Adjudicating Authority is satisfied that the Resolution Plan (as filed, explained and mentioned in the affidavit of SRA dated 14.12.2023 and further on the basis of additional documents taken on record by this Adjudicating Authority on 21.12.2023) meets the requirement of Section 30(2) of IBC.

18. Therefore, in our considered view, there is no impediment to giving approval to the instant Resolution Plan. Accordingly, we hereby approve the Resolution Plan, which shall be binding on the corporate debtor and its employees,

shareholders of the corporate debtor, creditors including the Central Government, any State Government or any local authority to whom statutory dues are owed, Successful Resolution Applicant and other stakeholders involved.

19. It is declared that the moratorium order passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of pronouncement of this order.

20. While approving the resolution plan as mentioned above, it is clarified that the resolution applicant shall pursuant to the resolution plan approved under section 31(1) of the Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for in such law.

21. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the corporate debtor and the Resolution Plan to IBBI to be recorded in its database in terms of Section 31(3) (b) of the Code. The Resolution Professional is further directed to hand over all the records, premises, and properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.

22. The approved Resolution Plan shall become effective from the date of passing of this order. The Approved Resolution Plan shall be a part of this order, subject to our observations regarding concessions, reliefs and waivers sought therein.

23. The Monitoring Committee is directed to file the monthly status report with regard to the implementation of the approved plan before this Adjudicating Authority.

In view of the above, the C.A./1636/PB/2019 stands approved in terms of the aforesaid discussion.

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