

7 to 18

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – I, CHENNAI**

**IA/150/CHE/2021 in IBA/1459/2019**

*(filed under Section 30 of IBC, 2016 read with Regulation 39(4) of the IBBI  
(Insolvency Resolution for Corporate Persons) Regulations, 2016)*

In the matter of **M/s. Appu Hotels Limited**

**Mr. Radhakrishnan Dharmarajan,**

Resolution Professional,  
Appu Hotels Limited,  
D-3 Triumph Apartments,  
Jawaharlal Nehru Salai,  
Arumbakkam, Chennai – 600 106

*... Applicant*

*Along with*

**MA/13/CHE/2021 in IBA/1459/2019**

*(filed under Section 60(5) of IBC, 2016 read with Regulation 36(A) of the IBBI  
(Insolvency Resolution for Corporate Persons) Regulations, 2016)*

In the matter of **M/s. Appu Hotels Limited**

**Dr. Periyasamy Palani Gounder**

(Promoter & Erstwhile Director)  
Appu Hotels Limited,  
4A, Dugar Apartments, Raja Rengasamy Road,  
Off 4<sup>th</sup> Seaward Valmiki Nagar,  
Thiruvanmiyur,  
Chennai – 600 041

*... Applicant*

*-Vs-*

**Mr. Radhakrishnan Dharmarajan,**

Resolution Professional,  
Appu Hotels Limited,  
D-3 Triumph Apartments,  
Jawaharlal Nehru Salai,  
Arumbakkam, Chennai – 600 106

*... Respondent*

*Along with*

**MA/18/CHE/2021 in IBA/1459/2019**  
**And**  
**MA/48/CHE/2021 in IBA/1459/2019**

*(filed under Section 60(5) of IBC, 2016 read with Regulation 12(2) of the IBBI  
(Insolvency Resolution for Corporate Persons) Regulations, 2016)*

In the matter of ***M/s. Appu Hotels Limited***

**M/s. Dharani Finance Limited**

Represented by its Chief Financial Officer  
No.59, Sterling Road, Nungambakkam,  
Chennai – 600 034

*... Applicant*

*-Vs-*

**Mr. Radhakrishnan Dharmarajan,**

Resolution Professional,  
Appu Hotels Limited,  
D-3 Triumph Apartments,  
Jawaharlal Nehru Salai,  
Arumbakkam, Chennai – 600 106

*... Respondent*

*Along with*

**IA/181/CHE/2021 in IBA/1459/2019**

*(filed under Section 60(5) of IBC, 2016)*

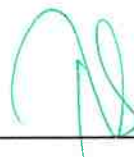
In the matter of ***M/s. Appu Hotels Limited***

**M/s. RSM Industries Private Limited**

Represented by its Managing Director  
Module No. 4, RMG Complex,  
SIDCO Industrial Estate, Guindy,  
Chennai – 600 032

*... Applicant*

*-Vs-*



**Mr. Radhakrishnan Dharmarajan,**  
Resolution Professional,  
Appu Hotels Limited,  
D-3 Triumph Apartments,  
Jawaharlal Nehru Salai,  
Arumbakkam, Chennai – 600 106

... Respondent

*Along with*

**IA/183/CHE/2021 in IBA/1459/2019**

*(filed under Section 60(5) of IBC, 2016)*

In the matter of **M/s. Appu Hotels Limited**

**M/s. Sunbright Industries Private Limited**  
Represented by its Managing Director  
Module No. 6, RMG Complex,  
SIDCO Industrial Estate, Guindy,  
Chennai – 600 032

... Applicant

-Vs-

**Mr. Radhakrishnan Dharmarajan,**  
Resolution Professional,  
Appu Hotels Limited,  
D-3 Triumph Apartments,  
Jawaharlal Nehru Salai,  
Arumbakkam, Chennai – 600 106

... Respondent

*Along with*

**IA/192/CHE/2021 in IBA/1459/2019**

**And**

**IA/217/CHE/2021 in IBA/1459/2019**

*(filed under Section 60(5) of IBC, 2016)*

In the matter of **M/s. Appu Hotels Limited**

**M/s. Aryav Exports Private Limited**

Represented by its Director  
Unit 104, 1<sup>st</sup> Floor, Merlin Chambers,  
18, British India Street,  
Kolkatta – 700 069

... Applicant

-Vs-

**Mr. Radhakrishnan Dharmarajan,**

Resolution Professional,  
Appu Hotels Limited,  
D-3 Triumph Apartments,  
Jawaharlal Nehru Salai,  
Arumbakkam, Chennai – 600 106

... Respondent

*Along with*

**IA/172/CHE/2021 in IBA/1459/2019**

*(filed under Section 60(5) of IBC, 2016)*

In the matter of **M/s. Appu Hotels Limited**

**M/s. Sree Provision Stores**

No. 50, 4<sup>th</sup> Cross Street,  
MKB Nagar, Chennai – 600 039  
Represented by Mr. Haresh Kumar  
**& 5 Others**

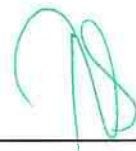
... Applicant

-Vs-

**Mr. Radhakrishnan Dharmarajan,**

Resolution Professional,  
Appu Hotels Limited,  
No.26, 'O'Block, 18<sup>th</sup> Avenue,  
Ashok Nagar, Chennai – 600 083

... Respondent



*Along with*

**IA/291/CHE/2021 in IBA/1459/2019**

*(filed under Section 60(5) of IBC, 2016)*

In the matter of **M/s. Appu Hotels Limited**

**M/s. N.K. Sanitations Private Limited**

No.1/27, Deivasigamani Street,  
Muthamizh Nagar,  
Pammal, Chennai – 600 075  
Represented by N. Subramanian  
**& 2 Others**

*... Applicant*

*-Vs-*

**Mr. Radhakrishnan Dharmarajan,**

Resolution Professional,  
Appu Hotels Limited,  
No.26, 'O'Block, 18<sup>th</sup> Avenue,  
Ashok Nagar, Chennai – 600 083

*... Respondent*

*Along with*

**IA/572/CHE/2021 in IBA/1459/2019**

**And**

**IA/571/CHE/2021 in IBA/1459/2019**

*(filed under Section 60(5) of IBC, 2016)*

In the matter of **M/s. Appu Hotels Limited**

**M/s. Apex Laboratories Private Limited**

Represented by its Director  
Mr. Murali Srinivasan  
Having Registered Office at  
3<sup>rd</sup> Floor,  
SIDCO Garment Complex, Guindy  
Chennai – 600 032

*... Applicant*



-Vs-

**Mr. Radhakrishnan Dharmarajan,**

Resolution Professional,  
Appu Hotels Limited,  
D-3 Triumph Apartments,  
Jawaharlal Nehru Salai,  
Arumbakkam, Chennai – 600 106

... Respondent

Order pronounced on 15<sup>th</sup> July 2021

CORAM :

**R. SUCHARITHA, MEMBER (JUDICIAL)**  
**ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Applicant* : *Mr. Vijay Narayan, Senior Advocate*  
*Mr. V. Ramakrishnan, Senior Advocate,*  
*For T. Ravichandran, Advocate*  
*For Applicants in IA/150/CHE/2021*

*Mr. P.S. Raman, Senior Advocate*  
*For RSN Law Chambers*  
*For Applicants in MA/13/CHE/2021*

*Mr. Satish Parasaran, Senior Advocate*  
*For R.D. Ashok Kumar, Advocate*  
*For Applicants in MA/18/CHE/2021 &*  
*MA/48/CHE/2021*

*Mr. S.R. Rajagopalan, Senior Advocate*  
*For Mr. Arvind Srevatsa, Advocate*  
*For Applicants in IA/572/CHE/2021 &*  
*IA/571/CHE/2021*

*Mr. S. Sathiyannarayanan, Advocate*  
*For IA/172/CHE/2021 & IA/291/CHE/2021*

*Mr. Venkatavaradhan, Advocate*  
*For Applicants in IA/181/CHE/2021 &*  
*IA/183/CHE/2021*

*Mr. Hemanth Kumar, Advocate*  
*For Applicant in IA/192/CHE/2021*

*Mr. Ravi Rajagopalan, Advocate*  
*For objector in IA/150/CHE/2021*

## **ORDER**

**Per: R. SUCHARITHA, MEMBER (JUDICIAL)**

1. Under consideration is an Application which is moved by the Resolution Professional of the Corporate Debtor viz., M/s. Appu Hotels Ltd. under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39 (4) of the IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016 seeking reliefs as follows:-

- (a) Pass an order approving the resolution plan submitted by the Resolution Applicant in respect of the Corporate Debtor under Section 31 (1) of the Code and declare that the same be binding on the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan;
- (b) Pass an order directing that, pending disposal of the present application by this Tribunal, the Resolution Professional shall continue to conduct his hold as Resolution Professional of the Corporate Debtor and during such period shall have all powers, duties and protections as available to him as a Resolution Professional under the Code and regulations thereunder;
- (c) Pass an order directing the Resolution Applicants to implement the Resolution Plan in the manner set out in the resolution plan;
- (d) Pass an order approving the appointment of Monitoring Agent (MA) and Monitoring Committee (MC) from the date of approval of resolution plan by this Hon'ble 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 respect to anything which is done or intended to be done or omitted in good faith and in compliance with the Code, CIRP Regulations or any other applicable law) to enable it to monitor the Corporate Debtor as a going concern;

- (e) Pass an appropriate order in relation to the grant of concessions, reliefs and dispensations sought in the resolution plan;
- (f) 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 a going concern and to implement the Resolution Plan in the manner approved by this Tribunal; and
- (g) Pass such other order / orders as it may deem fit and proper in the facts and circumstances of the case and thus render justice;

**BRIEF FACTS OF THE CASE :**

2. In an Application filed by the Financial Creditor viz., Tourism Finance Corporation of India Limited under Section 7 of IBC, 2016, this Tribunal vide its order dated 05.05.2020 has initiated the Corporate Insolvency Resolution Process (CIRP) in relation to the Corporate Debtor viz. M/s. Appu Hotels Limited and appointed one Mr. Mukesh Kumar Gupta as Interim Resolution Professional (IRP).

3. Pursuant to the same, the IRP had caused a public announcement in Form-A dated 08.05.2020 in three newspapers viz., Economic Times (All India English Edition), Business Standard (All India English Edition) and Hindu Tamil (Chennai and Coimbatore Edition) and invited claims to be filed by the stakeholders.



4. Based on the claims having been received, the IRP had constituted the Committee of Creditors (CoC). The claim of the Creditors as on 14.12.2020 as well as the list of Creditors comprising the Committee of Creditors are extracted hereunder:-

(Amount in ₹)

S. No.	NAME OF CREDITOR	AMOUNT ADMITTED	VOTING SHARE (%)
<b>SECURED CREDITORS</b>			
1.	State Bank of India	1,028,813,900	26.41
2.	IDBI Debentures Trusteeship Limited	765,288,159	19.64
3.	Indian Bank	693,354,538	17.80
4.	Bank of India (Tokyo)	522,361,980	13.41
5.	TFCI	218,796,084	5.62
6.	IDBI	118,103,307	3.03
7.	Edelweiss ARC	41,315,506	1.06
8.	Allium Finance (P) Ltd.	16,294,149	0.42
<b>SECURED CREDITORS AMOUNT</b>		<b>3,404,327,622</b>	<b>87.39%</b>

<b>UNSECURED CREDITORS</b>			
9.	Prabhat Resources Limited	166,612,427	4.28
10.	Sub Bright Industries	165,568,956	4.25
11.	M/S RSM Industries	55,854,738	1.43
12.	Aryav Exports (P) Ltd.	48,749,914	1.25
13.	Modern Constructions	33,440,000	0.86
14.	URC Builders	15,000,000	0.39
15.	M. Chandrasekaran	6,060,082	0.16
<b>UNSECURED CREDITORS AMOUNT</b>		<b>491,286,117</b>	<b>12.61%</b>
<b>TOTAL AMOUNT</b>		<b>3,895,613,739.40</b>	<b>100%</b>

5. The list of persons who have been categorized as related parties both in relation to the Financial Creditors and Operational Creditors are as under:-

LIST OF FINANCIAL CREDITORS WHO ARE RELATED PARTIES

S. No.	NAME OF CREDITOR	AMOUNT CLAIMED	AMOUNT ADMITTED
1.	A. Sennimalai	2,38,91,366	2,38,91,366
2.	K. Mandasamy	84,02,760	81,19,345
3.	Palani G. Periasamy	3,21,67,184	3,21,67,184
4.	Dharani Finance Limited	4,81,62,175	4,81,14,422
5.	Dharani Developers (P) Ltd.	4,79,33,528	4,79,33,503
<b>TOTAL AMOUNT</b>		<b>45,08,03,605</b>	<b>44,99,52,717</b>

LIST OF OPERATIONAL CREDITORS WHO ARE RELATED PARTIES

SL. No.	NAME OF OPERATIONAL CREDITOR	AMOUNT CLAIMED	AMOUNT ADMITTED
1.	Dharani Finance Limited (Related Party)	1,94,14,025	1,94,14,025
2.	Palani G. Periasamy (Related party)	42,94,487	42,77,927
3.	URC Construction (P) Ltd.	2,57,54,696	1,62,57,512
4.	K. Arul Prakash	26,34,207	24,56,948
<b>TOTAL AMOUNT</b>		<b>5,21,07,654</b>	<b>4,24,56,312</b>

6. Thereafter, it is seen that the IRP, as per Regulation 27 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 had appointed two Registered Valuers to determine the Fair value and Liquidation value of the Corporate Debtor in accordance with the Regulation 35 of the IBBI (IRCP) Regulations, 2016. The Fair value and the Liquidation value as evident from Form - H is stated to be as Rs. 730.885 Crore and Rs.569.33 Crore respectively. However, one of the major objections to the Resolution Plan is on valuation arrived at in

relation to the assets of the Corporate Debtor. The said objections are dealt with in detail in the latter portion of this order.

7. It is seen that the 3<sup>rd</sup> CoC meeting was held on 04.09.2020, wherein it was resolved to appoint the Applicant herein as the Resolution Professional in relation to the Corporate Debtor and accordingly the CoC has filed IA/726/2020 before this Tribunal under Section 22(3) of IBC, 2016 and this Tribunal vide its order dated 02.11.2020 has appointed the Applicant herein as the Resolution Professional in relation to the Corporate Debtor.

8. It is evident from Form – H filed by the Applicant that a total of 9 CoC meetings were conducted in relation to the Corporate Debtor and the Applicant herein has conducted a total of five meetings and the first four CoC meetings were conducted by the erstwhile IRP.

9. It is also seen that the IRP, while discharging his functions under the Code had prepared the Information Memorandum with necessary eligibility criteria for the prospective Resolution Applicants and circulated the same to the CoC and the CoC in its 2<sup>nd</sup> meeting held on 06.08.2020 had approved the proposal of the IRP in relation to the Information Memorandum and accordingly the IRP had published Form G for submission of Expression of

Interest on 17.08.2020 and thereby fixed the last date for submission of the "Expression of Interest" by the prospective Resolution Applicants as 01.09.2020.

10. Thereafter, in the 3<sup>rd</sup> CoC meeting held on 04.09.2020 the IRP has placed a list of prospective Resolution Applicants before the CoC and the CoC had approved the list of prospective Applicants. The date of issuance of the request for Resolution Plan was 16.09.2020 and the last date for submission of the Resolution Plan was fixed as 31.10.2020.

11. In pursuance of the same, the IRP has received the Resolution Plans from the following persons:-

- (i). Madhav Dhir
- (ii). M.K. Rajagopalan
- (iii). Kotak Special Situations

12. It is further seen that in the 6<sup>th</sup> CoC meeting held on 16.12.2020, the Applicant had apprised the CoC members that totally three Resolution Plans were received and out of which two Resolution Plans were being presented to the CoC after conducting legal due diligence of the Resolution Plan. The Applicant had *prima facie* come to the conclusion that the Resolution Plan submitted by Mr. Madhav Dhir and Mr. M.K. Rajagopalan met the eligible criteria



as prescribed by the CoC and also under the provisions of IBC, 2016 and attendant Regulations framed therein.

13. In the 6<sup>th</sup> CoC meeting held on 16.12.2020, the CoC has sought for the revised Resolution Plans from the two eligible Resolution Applicants. It is seen that revisions were sought due to change in the claim amount and the composition of the CoC on 14.12.2020. Accordingly, the CoC had granted time to the two potential Resolution Applicants till 28.12.2020 to submit the revised Resolution Plans.

14. Further, it is seen that the Applicant has received the revised Resolution Plan only from Mr. M.K. Rajagopalan and another potential Resolution Applicant viz., Madhav Dhir who wanted some more time to submit the revised Resolution Plan but the said request of Mr. Madhav Dhir was not considered by the CoC and ultimately the revised Resolution Plan of Mr. M.K. Rajagopalan was put up for consideration before the CoC. Thus, the Resolution Applicant viz., Mr. M.K. Rajagopalan had presented the Resolution Plan in the 7<sup>th</sup> and the 8<sup>th</sup> CoC meetings held on 29.12.2020 and 04.01.2021 respectively before the CoC.

15. In the interregnum, it is seen that the Applicant had filed IA/1001/2020 seeking thereof to exclude the period of 179 days

from 05.05.2020 till 31.10.2020 in view of the Covid - 19 pandemic which was prevalent during that point of time coupled with the attendant lockdown imposed by the Central as well as by State Governments and also based upon the Regulation 40C of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Based on the reasons stated therein this Tribunal vide its order dated 23.12.2020 allowed the said Application and granted exclusion of the period from 05.05.2020 to 31.10.2020 and thereby 180 days period of the CIRP was about to end on 29.04.2021.

16. Further, it is averred in the Application that the Applicant has ordered for a transaction audit to be done by M/s. MGC Global Risk Advisory LLP to determine whether there was any transaction falling under Sections 43, 45, 50 and 66 of IBC, 2016, accordingly the transaction audit was done for the period from 01.04.2018 to 05.05.2020. In pursuant to the same, the Applicant has filed two Applications u/s 43 of the Insolvency and Bankruptcy Code, 2016 before this Tribunal on 22.01.2021. The same is pending, adjudication.

17. It is seen that the final Resolution Plan was put up for consideration by the CoC in the 9<sup>th</sup> CoC meeting held on



22.01.2021 and the said Resolution Plan was approved with a thumping majority of 87.39%.

18. It is also seen that the Resolution Professional has filed Compliance Certificate in Form H under Regulation 39 (4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 containing the details of the compliance of the Resolution Plan with the mandatory requirements as envisaged under IBC, 2016 and the Regulations framed thereunder.

19. Further, it is seen that the Resolution Applicant, in pursuance of the approval of the Resolution Plan by the CoC, had provided Bank Guarantee for a sum of Rs.25 Crore on 01.02.2021. Pursuant to the approval of the Resolution Plan by the CoC under Section 30(4) of IBC, 2016, the Applicant has filed IA/150/CHE/2021 before this Adjudicating Authority under Section 30(6) of IBC, 2016 seeking Approval of the Resolution Plan in terms of Section 31(1) of IBC, 2016 read with Regulation 39 (4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

20. **SALIENT FEATURES OF THE RESOLUTION PLAN**

- (i) The Resolution Plan as proposed by the Resolution Applicant deals with the interest of all the stakeholders including the employees and the workmen, the

financial creditors and the operational creditors of the Company.

- (ii) As per the Resolution Plan, the Resolution Applicant has proposed to infuse a sum of Rs.423 Crore in the following manner:-

Sl. No	NAME OF THE CREDITOR	AMOUNT CLAIMED / MENTIONED IN IM	AMOUNT ADMITTED BY RP	AMOUNT PROPOSED IN THE RESOLUTION PLAN
				<b>(Rs. in Crores)</b>
1	Secured Financial Creditors	340.43	340.43	340.43
2	Unsecured Financial Creditors (Unrelated Parties)	49.13	49.13	49.13
3	Unsecured Financial Creditors (Related Parties)	45.08	45.00	NIL
4	Operational Creditors (Workmen/Employees)*	2.79	NIL	2.79
5	Operational Creditors (Trade Creditors) – Unrelated parties	2.84	1.87	1.87
6	Operational Creditors (Trade Creditors) – related parties	2.37	2.37	NIL
7	Operational Creditors* ** (Statutory Creditors)	NIL	NIL	3.86
8	Preference Shareholders	9.00	NIL	NIL
9	Equity Shareholders	89.71	NIL	NIL
	<b>Total</b>		<b>438.80</b>	<b>398.08</b>
	CIRP Costs			2.90
	Contingency Funds I & II			22.02
	<b>Total Resolution Plan Amount</b>			<b>423.00</b>

**Note (\*)** The class of creditors have not filed their claims. However, the amounts mentioned in "Amount Claimed" are as per the details mentioned in the IM provided by IRP.

(\*\*) No claim has been received from any statutory authority as per the information provided in the IM/VDR.

- (iii) Perusal of the above table manifests the fact that the Resolution Applicant proposes to pay 100% dues of the Secured and Unsecured Financial Creditors and also dues of the Operational Creditors.

- (iv) It is also seen that the Resolution Applicant does not propose to pay any amount to the Unsecured Financial Creditors (**related parties**) and Operational Creditors (**related parties**) as per clause 5.3.1 of the Resolution Plan.
- (v) It is seen that the entire CIRP cost arrived at for a sum of Rs. 2.90 Crore is being paid by the Resolution Applicant on priority basis.
- (vi) Further it is also seen that the 1<sup>st</sup> upfront payment of Rs.116.75 Crore is being paid by the Resolution Applicant within a period of 45 days from the date of approval of the Resolution Plan and the remaining amount of Rs.223.68 Crore is paid by way of 2<sup>nd</sup> instalment within 90 days from the date of approval of the Resolution Plan.
- (vii) Similarly, in relation to the unsecured financial creditors (other than related parties) a sum of Rs.16.83 Crore is paid as the 1<sup>st</sup> upfront payment within 45 days from the date of approval of the Resolution Plan. The remaining amount of Rs.32.30 Crore will be paid in the 2<sup>nd</sup> instalment within 90 days from the approval of the Resolution Plan by this Adjudicating Authority.
- (viii) The Resolution Plan also proposes to create a contingency fund' to the tune of Rs.22.02 Crore to meet out any contingent expenses being incurred after approval of the Resolution Plan.



The payment schedule being made by the Resolution Applicant in terms of the Resolution Plan is being captured hereunder:-

PAYMENT PROPOSAL	1 <sup>ST</sup> INSTALMENT	2 <sup>ND</sup> INSTALMENT	TOTAL PLAN AMOUNT
PMT AFTER NCLT APPROVAL IN ==>	45 DAYS*	90 DAYS	
	Rs. Crores	Rs. Crores	Rs. Crores
CIRP cost (as per RP's communication)	2.90	----	2.90
Secured Financial Creditors	116.75	223.68	340.43
Unsecured Financial Creditors (other than related parties)	16.83	32.30	49.13
Unsecured Financial Creditors (Related parties)	----	----	----
Operational Creditors (Workmen and Employees)	2.79	----	2.79
Operational Creditors (suppliers) – Unrelated	1.87	----	1.87
Operational Creditors (suppliers) – Related parties	----	----	----
Operational Creditors – (statutory authorities)	3.86	----	3.86
Preference Shareholders	----	----	----
Equity Shareholders	----	----	----
Contingency Fund	5.00	17.02	22.02
<b>TOTAL</b>	<b>150.00</b>	<b>273.00</b>	<b>423.00</b>

**Note** : \* The upfront payment is subject to the outcome of appeal, if any, filed by any stakeholder within the appeal period under IBC against the approval of Resolution Plan by AA.

- (ix) In relation to the source of fund to be mobilized by the Resolution Applicant, it is seen that the Resolution Applicant has already made necessary arrangements to mobilize a sum of Rs.150 Crore and for the remaining amount of Rs.273 Crore, the Resolution Applicant has already tied up for funding from one of the nationalized banks, based on securities exclusive of the Corporate Debtor assets.
- (x) In relation to the Contingent fund, as found in para 5.5.8 of the Resolution Plan, it is seen that the

Resolution Applicant is proposing to establish two contingency funds viz., Contingency Fund – I for a sum of Rs.5 Crore and Contingent Fund – II for a sum of Rs.17.02 Crore, aggregating to a sum of Rs.22.02 Crore.

- (xi) As per the Resolution Plan, the Contingency Fund – I will be used towards payment of the CIRP cost incurred over and above of a sum of Rs.2.90 Crore and any amount in the short fall of payment towards the employees and workmen dues and any operational creditor claim other than related parties and excluding statutory dues.
- (xii) The Contingency Fund – II will be utilized to make payments towards the statutory licence, approval fees etc. for the purpose of renewal or transfer of licences / approvals and also for any shortfall in the statutory dues, over and above a sum of Rs.3.86 Crore. A proposal in the Resolution Plan is subject to maximum of 25% of the claim admitted or 20% of the Contingency Fund - II, whichever is lower and also the contingency fund will be utilized towards payment to any statutory payments to be incurred during the implementation of the Resolution Plan.
- (xiii) It is also seen that as a part of the plan that the unutilized contingency fund, if any, will be credited to the account of the Corporate Debtor, thereafter.



(xiv) The Resolution Plan also provides for formation of the Monitoring Committee, post approval of the Resolution Plan. The Monitoring Committee shall comprise the following persons:-

- a) Resolution Professional (as head of the Monitoring Committee);
- b) Two representatives from the Committee of Creditors;
- c) Two representatives nominated by the Resolution Applicant.

(xv) In clause 5.14 of the Resolution Plan, the Resolution Applicant has sought for certain reliefs and concessions in relation to the proper implementation of the Resolution Plan.

21. However, the Resolution Plan filed by the successful Resolution Applicant however has been challenged by way of several applications as disclosed in the cause title extracted in the instant order itself and in the circumstances the said applications are also taken up and disposed off by virtue of this common order.

22. The objections as raised by the different categories of creditors or by the unsuccessful intended Resolution Applicants viz. have been categorised as follows:-



## **OBJECTIONS TO THE RESOLUTION PLAN**

### **(I) MA/13/CHE/2021 – DR. PERIYASAMY PALANI GOUNDER**

23. One of the objectors to the Resolution plan is the suspended Director / Promoter of the Resolution Plan, who has filed MA/13/CHE/2021. The Learned Senior Counsel, Mr. P.S. Raman who appeared on behalf of the Applicant in MA/13/CHE/2021 contended that there are several procedural lacunae and misinformation in the conduct of the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor. It was contended that the entire CIRP process was rushed and marred with procedural inadequacies and that the existing Resolution Applicant lacks the expertise to keep the Corporate Debtor as a going concern. The bone of contention of the Learned Senior Counsel for the suspended Director / Promoter of the Corporate Debtor was that the valuation of the non – core assets of the Corporate Debtor is not in compliance with Regulation 35(1)(a) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and that assets of the Corporate Debtor are undervalued and not valued properly. It was further submitted that according to the valuation report prepared by BVe Consulting Engineers in 2019, the total value of the properties at Replacement Cost amounts to

INR 1641 Crore which is four times the value proposed in the Resolution Plan proposed by the Resolution Applicant.

24. The Learned Senior Counsel for the erstwhile promoter, further submitted that the fair value and Liquidation value of the Corporate Debtor is Rs.724.985 Crore and Rs.565.055 Crore respectively and the said figure is undervalued and is at least less than 33% of the valuation done by BVe Consulting Engineers in September 2019 and even by taking into account the prevailing Covid – 19 pandemic situation and the market shock caused as a result of the same, a 70% fall in valuation of the Corporate Debtor is untenable and incredulous.

25. It was contended by the Learned Senior Counsel that the valuers appointed by the IRP were based out of Delhi and never visited or inspected the property of the Corporate Debtor themselves, and their functions were delegated to the local associates in Tamil Nadu. It was submitted that Regulation 35 of the IBBI (IRPCP) Regulations 2016 mandates physical verification of the assets by the valuers which has admittedly been violated in the present case.

26. It was also contended by the Learned Senior Counsel for the erstwhile Promoter that the CoC itself was not properly constituted

at that time and the unsecured Financial Creditor amounting to 12.61% were not part of the decision making process in respect of appointing the valuers. The Learned Senior Counsel also submitted that the valuation Report as such was not given either to the Promoter or the Members of the CoC and the Resolution professional only circulated the valuation figures.

27. Further, it was submitted that the suspended Director of the Corporate Debtor has placed a request with the Petitioner Creditor, the Resolution Professional and the members of the CoC to call for a meeting to consider the financial proposal through the promoter protected by conditional Term Sheet dated 22.01.2021 issued in its favour by M/s. Deutsche Bank, by way of an External Commercial Borrowing for a facility amount of INR 3,500 Million. Also, the promoter issued communication dated 08.03.2021 seeking the proposal to be placed before the CoC and consider filing of Form FA and an Application under Section 12A of IBC, 2016, however the RP has failed to act on the same.

28. Some of the other alleged procedural violations which were highlighted by the Learned Senior Counsel for the promoters are recapitulated hereunder;

- (a) Regulation 6(2) of the IBBI (IRCPC) Regulations 2016 requires that the public announcement should be

published in the website of the Corporate Debtor which was not done by the IRP.

- (b) Regulation 18(1)(b) read with Regulation 13 requires verification of the claim to be done within a period of 7 days from receiving the claim, however in the present case, eventhough the claim was filed by some of the Financial Creditor even before the 2<sup>nd</sup> CoC meeting, 12.61% of the voting share of the Financial Creditor was not admitted in the CoC till its 6<sup>th</sup> meeting.
- (c) Regulation 35A requires that RP must prima facie identify the avoidance transactions within 75 days from the CIRP date and it was submitted that in the Form – H, application under Section 43 was filed by the RP, however no such notice was received by the promoters.
- (d) Regulation 36A mandates that Invitation for Expression of Interest was to be issued within 75 days from the date of CIRP, however in the present case, the Form – G was issued only after expiry of a period of 90 days.

29. The Learned Senior Counsel further contended that the immunity attached to the commercial wisdom as stated by the Hon'ble Supreme Court in the matter of **Committee of Creditors of Essar Steel India –Vs- Satish Kumar Gupta and Others;** (2020) 8 SCC 531 lies in the assumption that the CoC has access to all the documents and relevant material and therefore, applies its business mind and arrives at a decision, however in the instant case, many of the CoC members were excluded from the Committee till 14.12.2020 and it is amply clear that the CoC enjoys no immunity. Further, reliance was also placed upon the Judgment

of the Hon'ble NCLAT in the matter of **Binani Industries Limited –Vs– Bank of Baroda; 2018 SCC OnLine NCLAT 565** wherein it has been laid down that IBC is not a recovery mechanism and that the members of the CoC represent the interest of all the stakeholders.

**(II) MA/18/CHE/2021– DHARANI FINANCE LIMITED**

**(III) MA/48/CHE/2021– DHARANI FINANCE LIMITED**

30. MA/18/CHE/2021 is an Application which is filed by M/s. Dharani Finance Limited, who has filed his claim before the IRP in the capacity as an Operational Creditor for a sum of Rs.1,94,14,024 in Form – B on 03.08.2020. The relief as sought in the said Application is as follows;

- a. That this Hon'ble Tribunal may be pleased to direct the Resolution Professional to adjudicate and admit the claim of the Applicant submitted on 03.08.2020 as an Operational Creditor.
- b. That this Hon'ble Tribunal may be pleased to declare that the Applicant is not a related party of the Corporate Debtor (i.e.) M/s. Appu Hotels Limited
- c. That this Hon'ble Tribunal may be pleased to declare the Resolution Plan, if any, approved by the Committee of Creditors (CoC) without admitting the claim of the Applicant as an Operational Creditor as void and *non-est* in law.
- d. That this Hon'ble Court may be pleased to direct the respondent to produce the minutes of the Committee of Creditors (CoC) meeting.



- e. That this Hon'ble Tribunal may pass such further or other orders as it deems fit and proper in the circumstances of the case and thus render justice.

31. MA/48/CHE/2021 is an Application which is filed by M/s. Dharani Finance Limited, who has filed his claim before the IRP in the capacity as an Financial Creditor for a sum of Rs.4,81,62,175/- in Form – C on 03.08.2020. The relief as sought in the said Application is as follows;

- a. That this Hon'ble Tribunal may be pleased to direct the Resolution Professional to adjudicate and admit the claim of the Applicant submitted on 03.08.2020 as an Financial Creditor and consequently permit the Applicants to participate in the proceedings of the Committee of Creditors (CoC) with a proportionate voting right.
- b. That this Hon'ble Tribunal may be pleased to declare that the Applicant is not a related party of the Corporate Debtor (i.e.) M/s. Appu Hotels Limited
- c. That this Hon'ble Tribunal may be pleased to declare the Resolution Plan, if any, approved by the Committee of Creditors (CoC) without admitting the claim of the Applicant as an Operational Creditor as void and *non-est* in law.
- d. That this Hon'ble Court may be pleased to direct the respondent to produce the minutes of the Committee of Creditors (CoC) meeting.
- e. That this Hon'ble Tribunal may pass such further or other orders as it deems fit and proper in the circumstances of the case and thus render justice.

32. It was submitted by the Learned Senior Counsel Mr. Sathish Parasaran, appearing on behalf of M/s. Dharani Finance Limited

that the Applicant Company is a listed Company whose shares are traded in Bombay Stock Exchange (BSE) and that about 71.76% of the shares amounting to 9139 persons are held by outsiders and any inaction or indecision on the claim submitted by the Applicant would invariably affect the interest of them. It is seen that the Applicant Company viz. M/s. Dharani Finance Limited has submitted its claim before the IRP, both in the capacity as an Operational Creditor and Financial Creditor on 03.08.2020. It is averred in the Application that the IRP / RP has not acted upon the claim being submitted by the Applicant Company and after repeated request mail sent by the Applicant, the RP on 19.01.2021 in its e-mail has replied to the Applicant that they are "Related Party" in relation to the Corporate Debtor. Hence the Applicant Company has moved the above two Applications seeking for admission of the claim and sought to declare them as not a Related Party of the Corporate Debtor and also not to act upon the Resolution Plan submitted by the prospective Resolution Applicant.

33. In so far as admission of the claim is concerned, it is seen from the Resolution Plan that the claim of the Applicant has been admitted by the RP both in the capacity as an Operational Creditor and Financial Creditor; however the Applicant was classified as "Related Party" of the Corporate Debtor. However during the

course of submissions, the Learned Senior Counsel Mr. Sathish Parasaran, submitted that there is a discrimination in relation to the distribution of the amount by the Resolution Applicant. It is seen that no such pleading has been made in the Application in relation to the discrimination of the amount being made to the Related Parties in the Resolution Plan and the present Application has been filed only with a prayer to declare the Applicant Company as not a Related party of the Corporate Debtor. In so far as the admission of the claim, the said prayer has become infructuous, since the claim of the Applicant Company was admitted by the RP and the same is also reflected in the Resolution Plan.

34. The Learned Senior Counsel for the Applicant Company submitted that the Applicant Company is not a Related party of the Corporate Debtor and placed reliance upon the second proviso to Section 21(2) which is as follows;

**21. Committee of Creditors. -**

(1) The interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.

(2) The committee of creditors shall comprise all financial creditors of the corporate debtor:

Provided that a financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor, shall not

have any right of representation, participation or voting in a meeting of the committee of creditors:

Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares or completion of such transactions as may be prescribed, prior to the insolvency commencement date.

35. It was submitted that the Applicant Financial Creditor is classified as Non Banking Financial Company (NBFC) by Reserve Bank of India (RBI) and also the Applicant Company is regulated by Securities Exchange Board of India (SEBI) and as such they are regulated by the Financial Service provider and hence they are entitled to participate in the meeting of the CoC.

36. Further, it was submitted by the Learned Senior Counsel for the Applicant Company that the IBC, 2016 does not prohibit payments of debt owed to the "Related party". In this context, it was submitted that even a promoter and shareholders of the Company are entitled to initiate CIRP under Section 7 of IBC, 2016 and even a related party can also initiate CIRP in relation to a Company, and similarly when a claim has been made by the Related party Company of the Corporate Debtor there is no explicit or implicit prohibition for payment of debts owed.



37. The Learned Senior Counsel for the Applicant Company further submitted that in the present case, the successful Resolution Applicant has promised to pay all the Creditors every money owed to them, except for the Applicant / Objector. Reliance was placed by the Learned Senior Counsel on Section 53 of IBC, 2016 to state that the said provision does not provide for such a discrimination to a person who happens to be a related party, then the successful Resolution Applicant, cannot under the guise of a "Resolution Plan" discriminate the similarly placed creditor on untenable grounds.

38. The Learned Senior Counsel for the Applicant Company relied upon the Judgment of the Hon'ble Supreme Court in the matter of **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Ors.** (2020) 8 SCC 531 and the decision of the Hon'ble NCLAT in the matter of **Binani Industries Limited -Vs- Bank of Baroda & Anr.**, in *Company Appeal (AT)(Insolvency)No. 82 of 2018* to hold that there is a discrimination in relation to the distribution of the amount by Resolution Applicant as no such amount has been paid to the Related Party of the Corporate Debtor, be it Operational Creditor or Financial Creditor.



**(iv) IA/572/CHE/2021– APEX LABORATORIES PRIVATE LIMITED**

**(v) IA/571/CHE/2021– APEX LABORATORIES PRIVATE LIMITED**

39. IA/572/CHE/2021 is an urgent hearing Application for IA/571/CHE/2021. Since IA/571/CHE/2021 is taken for hearing and disposal along with other connected applications, IA/572/CHE/2021 which is an urgent hearing application, stands **closed.**

40. IA/571/CHE/2021 is an Application which is filed by M/s. Apex Laboratories Pvt. Ltd. under Section 60(5) of IBC, 2016, who is a prospective Resolution Applicant and has not submitted his Resolution Plan before the CoC, has filed the present Application seeking relief as follows;

- a. Direct the Respondent to refix the timeline for submission of the Resolution Plan in light of the order passed by this Hon'ble Tribunal dated 23.12.2020 in IA/1001/2020 in IBA/1459/2019;
- b. Direct the Respondent to issue the Information Memorandum in accordance with Regulation 36 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and to permit the Applicant to submit the Resolution Plan, within a time to be fixed by this Hon'ble Tribunal.
- c. To pass such other and further reliefs as the nature and circumstances of the case may require and warrant and thus render justice.

41. The Learned Senior Counsel Mr. S. R. Rajagopalan, appearing on behalf of the Applicant Company submitted that the

IRP issued Invitation for Expression of Interest (EoI) in Form G on 09.08.2020 and the last date was mentioned as 24.08.2020 and the date of issue of provisional list of prospective resolution applicants was mentioned as 03.09.2020 and in Sl. No. 14 of Form – G, the date of issue of the Information Memorandum, Evaluation Matrix and request for Resolution Plans to the prospective Resolution Applicants was mentioned as 08.09.2020. However, in the meantime, the IRP was replaced by the Respondent / Resolution Applicant in the 3<sup>rd</sup> meeting of the CoC on 04.09.2020 and this Tribunal vide order dated 02.11.2020 passed in IA/726/IB/2020 has confirmed the Respondent herein to act as the Resolution Professional of the Corporate Debtor.

42. The Learned Senior Counsel submitted that the Applicant Company submitted its Expression of Interest vide e-mail dated 29.08.2020 to the IRP of the Corporate Debtor, to which the IRP has sent an e-mail on 07.09.2020 to the Applicant requesting for some additional documents. It was submitted that the IRP had caused a notification of the provisional list of eligible prospective Resolution Applicants dated 11.09.2020 and that the name of the Applicant Company was there in the provisional list of eligible prospective Resolution Applicants. However, it was submitted that the Information Memorandum was issued to the Applicant Company only on 16.09.2020 and owing to strict lockdown

imposed by the State / Central Government in view of Covid-19 pandemic, the Applicant has sent an e-mail to the IRP on 29.10.2020 to extend the time for submission of the Resolution Plan till the end of November 2020, to which the IRP has sent a reply on 29.10.2020 itself by extending the time till 02.11.2020.

43. Thereafter, it was submitted that the Applicant Company has informed the RP that the Information Memorandum is incomplete in respect of certain details relating to the financials of the Corporate Debtor and that thte Applicant Company was under a bonafide impression that the RP would furnish updated Information Memorandum. While things stands thus, to the shock of the Applicant Company, it was learnt in the 9<sup>th</sup> CoC meeting held on 22.01.2021, the Resolution Plan in respect of the Corporate Debtor which was submitted by Mr. M.K. Rajagopalan was approved with 87.39% majority by the CoC.

44. Thus, it was contended by the Learned Senior Counsel Mr. S.R. Rajagopalan that the entire process after the receipt of the Expression of Interest has been done in contravention of the provisions of IBC, 2016 and Regulations framed thereunder and that the Information Memorandum issued by the RP was incomplete and admittedly did not contain many vital particulars, as envisaged under the Regulation 36 of IBBI (IRPCPR) Regulations



2016. Further, it was submitted that the IRP and the RP have acted in violation of the provisions of IBC, 2016 and IBBI Regulations and acted in an arbitrary manner and the entire process from the stage of invitation for Expression of Interest is vitiated. It was also submitted that, in one breath the RP has sought for the exclusion of the time and on the other hand, *de hors* the same, the RP has proceeded in contravention of the provisions of IBC, 2016 and Regulations framed thereunder.

**(VI) IA/181/CHE/2021– RSM INDUSTRIES PVT. LTD.**

**(VII) IA/183/CHE/2021– SUNBRIGHT INDUSTRIES PVT. LTD.**

45. IA/181/CHE/2021 & IA/183/CHE/2021 is an Application which is filed by unsecured Financial Creditors of the Corporate Debtor who have submitted their claim to the IRP as early as on 03.08.2020; however the IRP has admitted the claim belatedly and the Applicants herein was allowed to participate only in the 6<sup>th</sup> Meeting of the CoC which was held on 16.12.2020. The relief portion as sought for in IA/183/CHE/2021 is extracted hereunder;

- a. That this Hon'ble Tribunal may be pleased to direct for fresh valuation of the assets of the Corporate Debtor to be undertaken by Qualified valuers who are familiar with the Real Estate Conditions of Tamil Nadu and have the necessary expertise about the Hospitality Industry;
- b. That this Hon'ble Tribunal may be pleased to direct a *de novo* Information Memorandum;



- c. That this Hon'ble Tribunal may be pleased to direct a fresh issue of Form G calling for additional Expressions of Interests from prospective Applicants both within India and abroad, especially those applicants with global expertise in the Hospitality Industry;
- d. That this Hon'ble Court may be pleased to direct for fresh consideration or ratification of all decisions made at the meetings of the CoC from the start of the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor since the Creditors were only permitted to participate at a very belated stage and not afforded the opportunity to be part of the decision making process;
- e. That this Hon'ble Tribunal may pass such other and further reliefs as the nature and circumstances of the case may require and thus render justice.

46. The Learned Counsel Mr. R. Venkatavaradhan, appearing on behalf of the Applicants in IA/181/CHE/2021 and IA/183/CHE/2021 submitted that the Applicants are unsecured Financial Creditors in relation to the Corporate Debtor and submitted a claim to the tune of Rs.5,58,54,738/- and Rs.16,55,68,956/- respectively before the IRP in Form – C on 03.08.2020. However, the claim which was submitted by the Applicants were not admitted by the IRP and hence the Applicants have sent a representation to the IRP vide their letter dated 02.09.2020, to include the Applicants in the 3<sup>rd</sup> CoC meeting which was scheduled to be held on 04.09.2020. It was submitted that the Applicants were even not allowed to participate in the 4<sup>th</sup> and 5<sup>th</sup> meeting of the CoC which was held on 12.10.2020 and 12.11.2020 respectively. Further, it was submitted

that the Applicant's claim was finally accepted and it was done so without any demur and no additional documents were requested and that it is clear from the actions of the IRP and RP that they are stalling the action against the Applicant's claim.

47. The Learned Counsel for the Applicants submitted that the Applicants were allowed to participate only in the 6<sup>th</sup> meeting of the CoC held on 16.12.2020. Further, the entire unsecured Financial Creditors in relation to the Corporate Debtor who constitute 12.61% of the total financial debt had been wholly excluded from the process till the 6<sup>th</sup> CoC meeting which was held on 16.12.2020. It was further submitted that the claim submitted by the Applicant was taken cognizance by the IRP and was mentioned by the IRP in the minutes of the 2<sup>nd</sup> CoC meeting and that the Applicant was included only in the CoC meeting after commencement of 7 months of CIRP. It was submitted that all major decisions relating to the Resolution Process had been completed prior to the 6<sup>th</sup> meeting of the CoC, more particularly, the decisions relating to appointment of valuers for valuation of the assets of the Corporate Debtor and decisions for calling for Resolution Plan were made prior to the introduction of unsecured Financial Creditor having a total voting share of 12.61% in the CoC.



48. At this juncture, it is to be noted here that the 100 % claims of the unsecured Financial Creditors including the Applicants, as admitted by the Resolution Professional are being paid in full by the Resolution Applicant. However, the Applicants have filed the present Application seeking fresh start of Corporate Insolvency Resolution Process, for the reasons best known to them.

**(VIII) IA/172/CHE/2021 – SREE PROVISION STORES & 5 ORS.**

**(IX) IA/291/CHE/2021 – N.K. SANITATIONS PVT. LTD. & 2 ORS.**

49. IA/172/CHE/2021 and IA/291/CHE/2021 are Applications filed by the Operational Creditors of the Corporate Debtor, in relation to which some of the Applicants who have submitted their claim to the RP and the others have not submitted their claim. However, the present Application has been filed by them by bringing out certain lacunae in the process of CIRP. The relief as sought for in both the IAs are one and the same and they are extracted hereunder;

- a. Direct the Respondent – Resolution Professional to publish For G afresh (Expression of Interest) with wider publicity and invite fresh Resolution Plans for the Corporate Debtor in order to ensure wider participation in the interest of all the stakeholders of the Corporate Debtor, including that of the Project creditors, and to place before the Committee of Creditors (CoC) to consider the same along with the existing Resolution Plans; and
- b. Pass such further or other orders / reliefs as may be deemed fit and proper in the facts and circumstances of the case and thus render justice.



50. The Learned Counsel Mr. S. Sathiyarayanan, appearing on behalf of the Applicants in IA/172/CHE/2021 and IA/291/CHE/2021 submitted from the commencement of the CIRP, the IRP and the RP have focused only on the recovery of the Corporate Debtor without taking any sincere efforts towards continuity of the Corporate Debtor's business as a going concern. Further, it was submitted that the RP was appointed by this Tribunal only on 02.11.2020 and before that the IRP has appointed a Delhi based valuer and inspite of concerns raised by the CoC, the IRP went on to appoint the same valuer. It was submitted that almost all the members of the CoC were advising the RP to take corrective steps to re-issue Form G and follow the proper procedure of publication after getting the valuation report; however the RP has not considered the same. It was further submitted that many other Operational Creditors of the Corporate Debtor, like the Applicants were totally unaware of the initiation of the CIRP in relation to the Corporate Debtor and have been following with the Purchase manager and the Finance Department of the Corporate Debtor for their pending invoices and they never knew about the initiation of the CIRP in relation to the Corporate Debtor until recently.

51. It was submitted by the Learned Counsel that after submission of the claim before the RP, the RP has not responded to

the e-mails sent by the Applicants and also rejected their claims by stating that the same should have been submitted within 90 days from the commencement of the CIRP. It was further submitted that the public announcement has been made during the peak of Covid period in Chennai and many Trade Creditors did not know about the initiation of the CIRP and could not file their claim before the IRP.

52. The Learned Counsel submitted that the Form – G inviting the Expression of Interest is said to have been published by the IRP when the whole country was in the grip of Covid – 19 pandemic and consequently many of the prospective Resolution Applicants were unable to visit the hotel premises of the Corporate Debtor. Further, an attack was also made on the credibility of the Resolution Applicant to state that he has no experience in the hospitality business and the Resolution Applicant is trying to convert the hotel's asset into hospital assets. Hence, the present Application is filed seeking a direction against the RP to publish afresh Form – G for Expression of Interest.

**(x) IA/192/CHE/2021– ARYAV EXPORTS PVT. LTD.**

**(xi) IA/217/CHE/2021– ARYAV EXPORTS PVT. LTD.**

53. IA/217/CHE/2021 is an urgent hearing Application for IA/192/CHE/2021. Since IA/192/CHE/2021 is taken for hearing

and disposal along with other connected applications, IA/217/CHE/2021 which is an urgent hearing application, stands **closed.**

54. IA/192/CHE/2021 is an Application which is filed by unsecured Financial Creditors of the Corporate Debtor who have submitted their claim to the IRP as early as on 03.08.2020, for a sum of Rs.4,87,49,914/-, however the IRP has admitted the claim belatedly and the Applicants herein was allowed to participate only in the 6<sup>th</sup> Meeting of the CoC which was held on 16.12.2020. The relief portion as sought for in IA/192/CHE/2021 is extracted hereunder;

- a. That this Hon'ble Tribunal may be pleased to stay the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor pending adjudication of the present Application;
- b. That this Hon'ble Tribunal may be pleased to direct for fresh start of the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor in view of the severe violations of the Code during the process;
- e. That this Hon'ble Tribunal may pass such other and further reliefs as the nature and circumstances of the case may require and thus render justice.

55. The Learned Counsel appearing on behalf of the Applicant in IA/192/CHE/2021 has made submissions similar to that of the Applicants in IA/181/CHE/2021 and IA/181/CHE/2021, since they



all stand on the same footing. Hence in order to avoid prolixity, the same is not reproduced hereunder.

**(XII) OBJECTIONS FILED IN IA/150/CHE/2021 – DHARANI DEVELOPERS PVT. LTD.**

56. M/s. Dharani Developers Private Limited, the objector to the Resolution Plan has filed a claim before the IRP in Form – C on 03.08.2020 which was accepted by the IRP to the extent of Rs.28,97,26,897. It was submitted by the Learned Counsel Mr. Ravi Rajagopalan for the objector that eventhough the claim of M/s. Dharani Developers Private Limited was accepted by the IRP; however they were not allowed to participate in the CoC meeting since the IRP classified them as "Related Party" in terms of Section 21(2) of IBC, 2016. It was submitted that the CoC in its 9<sup>th</sup> Meeting held on 22.01.2021 had resolved to approve the Resolution Plan submitted by one Mr. M.K. Rajagopalan with a vote of 87.39% in which the Financial Creditors who were related parties were wholly excluded from payment of any sums under the Resolution Plan. Being aggrieved by the same, the objector viz. M/s. Dharani Developers Pvt. Ltd. have filed the present objections before this Adjudicating Authority.

57. The first objection raised by the Learned Counsel was that the impugned Resolution Plan is in contravention of Section 30(2)(b)(ii) read with Section 53 of the Code as it discriminates

the Objector belonging to the category of "Unsecured Financial Creditors" by creating an artificial sub-category as "Unsecured Financial Creditor – Related Parties" and excluding it from any payout. Further, it was submitted that nowhere in IBC, 2016 the Financial Creditors are disqualified or barred to be a beneficiary / recipient of a pay-out under a Resolution Plan, for being a "related party".

58. The second objection raised by the Learned Counsel was that the impugned Resolution Plan has been approved with a clause which contravenes the ratio laid down by the Hon'ble High Court of Delhi in the matter of **Venus Recruiters Pvt. Ltd. –Vs- Union of India & Ors.** which is a "law" within the meaning of Section 30(2)(e) of IBC, 2016. In this regard, it was submitted that under Clause (xlvii) of Section 5.6 of Terms of the Resolution Plan, the Resolution Applicant makes himself a beneficiary of the proceeds of all avoidance applications filed during the CIRP period, which is forbidden under the Scheme of the Code as enunciated in **Venus Recruiters (supra)** at para 86.

59. The third objection raised by the Learned Counsel was that the impugned Resolution Plan contravenes Regulation 38(2) and 38(3) of the IBBI (IRPCPR) Regulations, 2016 read with Section 30(2)(e) and (f) of IBC, 2016. In this regard, it was submitted that

nowhere in the Resolution Plan the following mandatory requirements contemplated under Regulation 38(3) have been effectively dealt with;

- a) Provide for the Management and Control of the Corporate Debtor.
- b) Addresses the cause of default.
- c) It has provisions for approvals required and the timelines for the same.
- d) Resolution Applicant has the capability to implement the Plan.

60. The fourth objection raised by the Learned Counsel was that the impugned Resolution Plan contravenes Regulations 38(1A) and 39(3) read with Section 30(2)(e) and (f) of IBC, 2016. In this regard it was submitted that the aforesaid Regulations mandates that the CoC may evaluate the Resolution Plan and approve the same after recording the feasibility and viability of the same and in the record of the 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> CoC meetings, nowhere it is seen that the CoC had discussed the "feasibility and viability" of the Plan.

61. The fifth objection raised by the Learned Counsel was that the Committee of Creditors and Resolution Professional have given a go-by to established procedure, acted in bad faith and have failed to maximize the value for all stakeholders being in

contravention of the provisions, the objective and spirit of IBC, 2016. In this regard, it was submitted that after excluding the period of lockdown and the exclusion granted by this Tribunal in IA/1001/2021, the CIRP in relation to the Corporate Debtor came to be completed within a period of 82 days. Further, it was submitted that the object of the CIRP being revival of the Corporate Debtor as a going concern was defeated by the CoC by accepting the Resolution Plan filed by the Resolution Applicant like a slump sale in Liquidation.

### **REPLY BY THE RP TO THE OBJECTIONS**

62. The Learned Senior Counsel Mr. Vijay Narayan and Mr. V. Ramakrishnan, who appeared on behalf of the Resolution Professional has briefed his reply as follows.

63. In relation to the objections raised by the suspended Directors / erstwhile Promoters of the Corporate Debtor in MA/13/CHE/2021, the Learned Senior Counsel submitted that they have no *locus standi* as per the dictum of the Hon'ble Supreme Court in the matter of **Innoventive Industries Ltd. -Vs- ICICI Bank; (2018) 1 SCC 407** . It was further submitted that the suspended Directors / erstwhile Promoters of the Corporate Debtor having participated and attended in all the meetings of the Committee of Creditors did not choose to raise any objection in the

said meeting and has filed the present Application at the eleventh hour only for the purpose of delaying the Resolution Plan. The Learned Senior Counsel for the Resolution Professional went on to submit that the appointment of valuers for valuation of the assets of the Corporate Debtor falls within the domain of the IRP / RP under IBC, 2016 and the decisions which have been taken by the CoC are well within their powers. Further, in relation to the allegations made by the suspended Directors / erstwhile Promoters of the Corporate Debtor in respect of the valuation, it was submitted by the Learned Senior Counsel for the RP that the opinion on the valuation of the assets of the Corporate Debtor cannot be a basis for challenge in the present proceedings and that CIRP was conducted in consideration of the provisions and Regulations and three Resolution Applicants have expressed their interest and among there one Resolution Applicant was disqualified. Further, it was also submitted that the Resolution Plan amount was arrived on the basis of the market value which cannot be questioned.

64. The Learned Senior Counsel further submitted that the valuation Report relied by the suspended Directors / erstwhile Promoters of the Corporate Debtor of "BVe Consulting Engineers" dated September 2019, cannot be taken as a yardstick and in the absence of a specific challenge to the valuation report such



allegations as made by the objectors do not have any force. It was further submitted that the value of the Corporate Debtor is derived from the market as Rs.423 Crore which was the best price after following due course of law and such a Resolution Plan has been approved by the CoC in its commercial wisdom. Thus, it was submitted that, so long as there is no violation of any of the provisions of the Code and the Code is in compliance with Section 32 and other provisions of IBC, 2016. In so far as other allegations as raised by the suspended Directors / erstwhile Promoters of the Corporate Debtor, it was submitted that they were a mute spectator to all the proceedings and did not challenge the same at the relevant point of time.

65. It was further submitted by the Learned Senior Counsel that the Resolution Professional is an officer of this Tribunal and is bound to act only on the basis of the report available before him. The valuation of the assets of the Corporate Debtor was done by IBBI Registered valuers and if there are any differences in the valuation between any two valuers, a third valuer has to be appointed, which was done in the present case. It was also submitted that the valuation of the properties before the pandemic cannot be compared to the valuation of the properties post pandemic and that the pandemic has affected the hospitality industry at large. Further, if the valuation was not correct, the CoC

would have disregarded the valuation, however the CoC in their commercial wisdom and experience accepted the valuation report and it is not open for the promoters to attack the valuation. Further, no *mala fide* have been attributed by the promoters against the valuers and that the RP can only consider the value given by the valuers and not that of the promoters. Further, the valuation of BVe Consulting Engineers done prior to filing this main IBA cannot be taken as a benchmark and relied upon, as the value of the assets of the Corporate Debtor.

66. In relation to the sharing of the valuation report, it was submitted by the Learned Senior Counsel that Regulation 35 of the IBBI (IRPCP) Regulations 2016 contemplates sharing of only fair value and liquidation value on obtaining confidentiality undertaking from the members of the CoC and eventhough the promoter is not a member of the CoC, the values were shared with the promoter and that there are no requirements under the law for the RP to share the valuation report.

67. In relation to the objections raised by M/s. Dharani Finance Limited in MA/18/CHE/2021 and MA/48/CHE/2021, it was submitted by the Learned Senior Counsel that the Applicants are squarely covered under the definition of "related party" under Section 5(24) of IBC, 2016 and as per Section 21(2) of IBC, 2016

the Applicants are not entitled to take part in the CoC. It was further submitted that the claims as submitted by the Applicants were admitted and reflected in the website of the Corporate Debtor and the Applicants were included in the list of creditors. The Learned Senior Counsel submitted that, it is the duty of the RP only to collate and admit the claim of the Applicant and that it is the prerogative of the Resolution Applicant to make allocation of payments for the related parties. In the present case, the Resolution Applicant had thought it fit not to make any payment for the Related Party and in so far as the Resolution Professional is concerned, he has ensured that the Resolution Plan is in conformity with Section 30(2) of IBC, 2016 read with attendant Regulations framed thereunder.

68. In relation to the objections raised by the potential Resolution Applicant M/s. Apex Laboratories, in IA/571/CHE/2021 it was submitted by the Learned Senior Counsel that they are challenging the plan after the approval of the same by the CoC, on the ground that there were material violations by the Resolution Professional. It was submitted that the request of the Applicant herein seeking for extension of time for submission of the Resolution Plan was rejected by the Resolution Professional on 29.10.2020 and the Applicant did not even challenge the same in the manner known to law and has preferred to file the Application

IA/571/CHE/2021 as an objector after the Resolution Plan has been approved by the CoC in the month of January 2021. Further, the objections raised are very flimsy that the Information Memorandum does not provide sufficient information and hence he could not participate and submit the Resolution Plan for approval. Also no valid reason has been submitted for non submission of the Resolution Plan and no reasons has been placed on record for delayed application, seeking of rejection of approved plan. It is also seen that no adequate steps were taken by Apex Laboratories for submission of the Resolution Plan inspite of opportunity having been granted. Hence Apex Laboratories has no *locus standi* to seek rejection of the Resolution Plan which is approved by the CoC.

69. In relation to the objections raised by the Applicants in IA/181/CHE/2021 and IA/193/CHE/2021 it was submitted by the Learned Senior Counsel Mr. V. Ramakrishnan, that the claims filed by these creditors were not considered since they did not submit certain documents. In this regard, the Learned Senior Counsel invited the attention of this Tribunal to the typed set of papers filed by the RP in IA/181/CHE/2021 along with their reply, at page No. 15 wherein the RP vide his email dated 18.11.2020 at 5:35 PM has stated as follows;



"Dear Sir,

Refer to your mail. I have just received the handover documents from the IRP and will verify our claim and revert. In the meantime you may submit documents of proof such as loan agreement or any other related legal documents to prove that this is a financial debt."

70. A perusal of the aforesaid e-mail shows that the RP vide his email dated 18.11.2020 has requested the Applicants to file additional proof such as loan agreement or any other related legal documents to prove that this is a financial debt. In pursuance of the same, the Applicant was admitted into the CoC as a member. Further, it was contended that there is no pleading in the application that there was a *mala fide* intention in withholding the claim of the Applicants by the IRP / RP.

71. In relation to the contentions raised by the Applicants in IA/172/CHE/2021 and IA/291/CHE/2021, it was submitted by the Learned Senior Counsel Mr. V. Ramakrishnan that the Applicants in IA/291/CHE/2021 have lodged their claim before the RP in Form – B only on 24.12.2020 and 28.12.2020 much after the timelines prescribed under the Code and Regulations and that the RP vide his emails dated 03.01.2021, 05.01.2021 and 07.01.2021 had rejected the claims of the Applicants. Eventhough the said communications were received by them, the Applicants have chosen to file the present Application before this Tribunal only on

10.03.2021 and a perusal of the prayer portion of the Application would reveal the fact that the same is nothing but an attempt to derail and frustrate the Resolution Plan which was approved by the CoC with the requisite majority. Further, it was submitted that eventhough their claims have been rejected, the Applicants have not chosen to challenge the said rejection, however chose for a direction to issue a fresh Form – G and it is not the case of the Applicants that they are prospective Resolution Applicant, which itself goes on to show that the present Application has been filed with an ulterior design. Lastly, it was contended that the Applicants have no *locus standi* to file the present Application with such a relief since they are only Trade Creditors and not forming part of the CoC and as such the Learned Senior Counsel sought for the dismissal of the present Application.

72. In relation to the objections raised by M/s. Dharani Developers Pvt. Ltd., the Learned Senior Counsel submitted that the Resolution Plan has been approved with the majority of 87.23% of the vote of CoC and the deliberations in various CoC meetings will demonstrate that the CoC in its commercial wisdom has followed and approved the Resolution Plan. However, since the objections as raised by the objector, are already covered in the reply submissions made by the Learned Senior Counsel for the RP, the same are not reproduced hereunder in order to avoid prolixity.

## **DISPOSITIVE REASONINGS OF THIS TRIBUNAL**

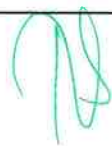
73. Heard the rival submissions made by the Learned Senior Counsel for both the parties the documents filed in support of the same and also perused the written submissions filed by the all the parties to the present proceedings. From the arguments advanced by the Learned Senior Counsel for the parties, it is seen that the primary attack is seen on the valuation of the assets in relation to the Corporate Debtor.

### **(I) VALUATION REPORT:-**

74. After the commencement of the CIRP in relation to the Corporate Debtor, by this Adjudicating Authority on 05.05.2020, it is seen from the records that the IRP as per Regulation 27 of IBBI (IRPCPR) Regulations, 2016 had appointed two registered valuers to determine the fair value and liquidation value of the Corporate Debtor in accordance with Regulation 35 of the said Regulations. In relation to the appointment of the valuers, the same is captured in the minutes of the 2<sup>nd</sup> CoC meeting dated 06.08.2020 which is extracted hereunder;

#### Item No.A4

".....In the light of the forgoing, the undersigned executed his duty as the Resolution Professional and called quotations from various valuation professionals / RVEs for engagement in the assignment of valuation of the Corporate Debtor. It was informed that a comparative chart containing the quotes of all the valuers / RVE was circulated to the CoC members for their



reference. Thereafter, based on the minimum quotes received and after giving due consideration to the professional expertise of the valuers, the Interim Resolution Professional engaged two set of valuers viz. Mr. Vikas Agarwal, Mr. Anil Kumar Saxena and Mr. Anubhav Aggarwal (one set of valuers), for all the three categories of assets and Future value Advisors India (P) Ltd., a Registered Valuer Entity (registered with IBBI) for all the three category of assets. The appointment of the said valuers was made in accordance with Regulation 27 r/w 35 of the CIRP Regulations and IBBI circulars in connection to such engagement of valuers.....”

.....

.....

.....In light of the forgoing, the Chairman assured the Committee members that the Valuers had stated the process of Valuation and a few information was awaited from the end of the Corporate Debtor on pursuance to which the valuers will visit the sites of the Corporate Debtor. It is further informed that in furtherance of the process, the valuers sent their questionnaire for requirement of information and documents. The IRP provided the information sought by them as available with the Corporate Debtor. However, it was informned to the CoC that the difficulties were being faced in collecting the desired information from the Corporate Debtor, owing to travel restrictions, mandatory quarantine / partial lockdown rules and unavailability of staff in Chennai. The Chairman also informed the members that he has filed an application with NCLT Chennai under Section 19(2) of IBC, 2016 regarding non – cooperation of the Corporate Debtor. As on the time of discussion, the same was awaiting approval of the Bench for admission / listing. The committee was apprised that both the group of valuers had local associates based in Chennai who would visit the site in Chennai / Coimbatore as soon as information required was made available. The Chairman assured that no difficulties would be faced from the end of both the valuation teams concerning the visit to the sites of the Corporate Debtor based in Tamil Nadu. The Chairman apprised the committee that he held a meeting with both the teams of the Valuers wherein all the terms & conditions and course of progression were discussed. However, it was brought to light that, if the members are still willing to change the valuers, name of the valuers can be suggested so as to replace the existing team of valuers. The Chairman informed that he will share the one pager profile containing the experience of the Valuers with respect to the hospitality industry.....”



75. Thus, from reading of the above extracted minutes from the 2<sup>nd</sup> CoC meeting would reveal the fact that the appointment of the Valuers in relation to the Corporate Debtor was deliberated in the meeting of the CoC and that the name proposed by the IRP was accepted by the CoC and accordingly the valuation was done by those valuers.

76. Thereafter, it is seen that the CoC in its 3<sup>rd</sup> CoC meeting has passed a resolution for change of IRP to RP and the Applicant herein in IA/150/CHE/2021, Mr. Radhakrishnan Dharmarajan, was appointed as the Resolution Professional in relation to the Corporate Debtor by this Adjudicating Authority and in the 6<sup>th</sup> CoC meeting held on 16.12.2020, the details of the valuations in relation to the Corporate Debtor were again discussed.

"Agenda Item No. A.2

.....

The RP further apprised that he has provided the CoC members with the fair value and liquidation value to all those who have submitted the confidential undertaking. RP further apprised, that due to significant difference in the value of land and building submitted by the valuers appointed by IRP, the RP had to appoint third valuer in accordance with provisions of Regulation 35 of CIRP Regulations, 2016.

After it was noted that valuation of non-core assets was not done, the third valuer appointed by RP has submitted the value of non-core assets and the same has been shared with CoC members who have submitted their undertaking. The RP emphasised that their value is not very significant, and it will not affect the liquidation value much. However, second valuation for the non-core assets will be needed in order to reach a final value. RP apprised the CoC members that the valuers appointed by IRP are based in Delhi and they are asking much higher price for carrying the valuation of non-core

assets. Therefore, the RP will hire a local valuer keeping the cost in mind.”

77. In pursuance of the same, it is seen from the minutes of the 7<sup>th</sup> CoC meeting that the third valuer Mr. Vaidya Raman was appointed by the Resolution Professional who visited the premises and conducted the valuation to the non-core assets.

78. In relation to the appointment of Registered valuers, Regulation 27 of IBBI (IRPCP) Regulations, 2016 deals with the same, which is extracted hereunder;

### **27. Appointment of registered valuers.**

The resolution professional shall within seven days of his appointment, but not later than forty-seventh day from the insolvency commencement date, appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with regulation 35:

Provided that the following persons shall not be appointed as registered valuers, namely:

- (a) a relative of the resolution professional;
- (b) a related party of the corporate debtor;
- (c) an auditor of the corporate debtor at any time during the five years preceding the insolvency commencement date; or
- (d) a partner or director of the insolvency professional entity of which the resolution professional is a partner or director.

79. Section 35 of the said Regulations deals with the Fair Value and Liquidation Value of the Corporate Debtor and the appointment of third valuer by the Resolution Professional in certain cases, which is extracted hereunder;



### **35. Fair value and Liquidation value.**

(1) Fair value and liquidation value shall be determined in the following manner:-

(a) the two registered valuers appointed under regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor;

(b) if in the opinion of the resolution professional, the two estimates of a value are significantly different, he may appoint another registered valuer who shall submit an estimate of the value computed in the same manner; and

(c) the average of the two closest estimates of a value shall be considered the fair value or the liquidation value, as the case may be.

(2) After the receipt of resolution plans in accordance with the Code and these regulations, the resolution professional shall provide the fair value and the liquidation value to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value and the liquidation value and shall not use such values to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29:

(3) The resolution professional and registered valuers shall maintain confidentiality of the fair value and the liquidation value."

80. In the present case, it is seen from the minutes extracted supra from the 6<sup>th</sup> CoC meeting that RP further apprised the CoC members, that due to significant difference in the value of land and building submitted by the valuers appointed by IRP, the RP had to appoint third valuer in accordance with provisions of Regulation 35 of CIRP Regulations, 2016. Accordingly, the third valuer has

submitted his report before the RP and accordingly the fair value and the Liquidation value in relation to the Corporate Debtor was arrived at by the Resolution Professional.

81. Thus, it is clear that the RP has arrived at a Fair Value and the Liquidation Value based on the average of all the three valuers and the same has been done in accordance with Regulation 35 of the IBBI (IRPCP) Regulations 2016. Further, the valuation certificate dated September 2019 relied on by the promoter / suspended Director of the Corporate Debtor would be of no relevance as the same was not done in accordance with the Regulations framed under the IBC, 2016. Also, the RP who is in charge of the affairs of the Company Debtor once the CIRP has been triggered in relation to the Corporate Debtor, he has to act as per the provisions of the Regulations and cannot act according to the whims and fancies of the promoters / erstwhile directors of the Corporate Debtor. The valuation certificate dated September 2019 relied on by the promoter / suspended Director of the Corporate Debtor was done during pre-Covid period and the same cannot be a yardstick for the valuers who have been appointed pursuant to the Regulations framed under the provisions of IBC, 2016. Also, the stance of the Learned Senior Counsel for the promoter / suspended Director of the Corporate Debtor that the CIRP was triggered during the peak of Covid would be of no relevance since



at that point of time, there was no statutory bar for this Adjudicating Authority to initiate CIRP in relation to a Company. However, it is seen that the Application for initiation of CIRP was filed by the Financial Creditor as early as in the year 2019 itself and during that point of time there was no cases of Covid in India and the matter was heard in detail and the orders were reserved during March 2020. While this being the fact, the contention of the Learned Senior Counsel that only because of Covid they were not able to settle the creditors of the Corporate Debtor, does not hold much water. Eventhough, the valuation as arrived at by the valuers may not be acceptable to the erstwhile promoters / Directors of the Corporate Debtor,, it cannot give them a right to challenge the same before this Adjudicating Authority on ostensible grounds.

82. Further, it is also seen that as against the order of exclusion of CIRP, passed by this Tribunal in IA/1001/IB/2020, the erstwhile promoter or Corporate Debtor has filed an appeal before the Hon'ble NCLAT and the Appellate Tribunal vide its order dated 05.05.2021 in *Company Appeal (AT)(Ins) No. 19 & 20 of 2021* while dealing with the valuation of the Corporate Debtor in para 14 and 15 has held as follows;



14. In response to the above, the Counsel for the Respondents contended that the entire CIRP was conducted as per the procedure prescribed by the I&B Code. The Appellant who is holding some equity shares in 3rd Respondent/Corporate Debtor has come before this Appellate Tribunal by filing the present Appeal only to distract and delay the Insolvency Resolution Process and to bring about a halt to the approval of the Resolution Plan which the Committee of Creditors has approved with a majority of 87.34% which is pending for approval before the Adjudicating Authority.

15. The Appellant's contention about the valuation of the Corporate Debtor of ₹ 1600 crores is unsupported by any evidence. The fact remains that the Resolution Plan amount has arrived after following the procedure prescribed under the Code and the Rules and Regulations made thereunder

*(emphasis supplied)*

83. Thus, the Hon'ble NCLAT also has rendered a finding that the Resolution Plan amount has been arrived at after following the procedure prescribed under the Code and the Rules and Regulations made thereunder.

84. Hence for reasoning stated *supra*, this Adjudicating Authority finds that there was no error committed by the IRP / RP in so far as appointing the registered valuers in relation to the Corporate Debtor, nor there was any error on the valuation being submitted by those Registered valuers and as a consequence thereof, the objections as raised by all the objectors in relation to the valuation of the Corporate Debtor are overruled. Accordingly, MA/13/CHE/2021 stands **dismissed**.

**(II) ON NON – CONSIDERATION OF SEC.12A APPLICATION:-**

85. The Learned Senior Counsel Mr. P.S. Raman, appearing on behalf of the erstwhile Promoter / Director of the Corporate Debtor contended that the Resolution Professional and the CoC has not considered the proposal as given under Section 12A of IBC, 2016. In this regard, it is pertinent to refer to certain communications that exchanged between the parties in relation to the same. In the 9<sup>th</sup> CoC meeting wherein the Resolution Plan was about to be put for vote, the erstwhile promoter of the Corporate Debtor Mr. Senni Malai, requested the RP to consider an application filed under Section 12A of IBC, 2016. The record of the minutes as found in the 9<sup>th</sup> CoC meeting is extracted hereunder;

“.....As the Resolution Plan agenda was about to be put up for voting, Mr. Senni Malai, MD of the CD and Mr. Kaliannan representing the CD, requested the RP about a Sec 12 A, Application for withdrawal request letter, prepared by them and circulated to the CoC about two hours before this meeting. RP informed them, that discussions on that can't be part of this agenda as that has not come from the Applicant and it was not part of the agenda for this meeting. However, the Corporate Debtor's representative insisted that this be discussed. RP said he would seek the opinion of the Applicant, being TFCI in this case. Mr. Anoop Bali from TFCI said that he can't opine on this letter as it is addressed to the CoC, when prompted by Mr. Kaliannan, that this letter is being put up through TFCI, Mr. Anoop Bali said that this can't be taken up as it has not come in the appropriate required form and he will not be able to comment on this and requested the RP to carry on with the agenda for the day, that of voting on the Resolution Plan. Mr. Senni Malai requested other creditors to comment. Mr. Arun Shah of Aryav Exports said that CoC can discuss this. However other creditors with significant voting share such as SBI, Bank of India said that we should stick to the Agenda on hand and not deviate from the main agenda. RP then requested the representatives from Corporate Debtor to allow for the agenda

items to go through as the majority of the CoC in favour of that and no further discussions can be made on the letter sent to the CoC.”

86. A perusal of the aforesaid minutes would show that the promoter of the Corporate Debtor has proposed for a 12A settlement only at the 9<sup>th</sup> CoC meeting, when the Resolution Plan of the Resolution Applicant was about to be put to vote. Further, it is also seen that the Petitioning Creditor viz. Toursim Finance Corporation of India (TFCI) was also kept in dark about the 12A proposal by the promoters and also flagged an issue stating that the letter has been addressed to the CoC and not to them. However, it is seen that the said agenda of proposal to be made under Section 12A was not considered by the CoC and that they proceeded to vote for the Resolution Plan.

87. It is also seen that the Term Sheet relied on by the Learned Senior Counsel for the promoter in order to substantiate that they have the source to settle the entire dues of the CoC, it is seen that the said Term Sheet dated 22.01.2021 issued by Deutsche Bank would start of with a disclaimer as follows;

“Please note that the terms set out in this Term Sheet are indicative only and do not constitute an offer to finance the Facility. The terms and conditions of the term sheet remain subject to the diligence, internal approvals, credit committee approval, successful syndication, KYC and satisfactory documentation.”



88. Thus, it is seen that the proposal as projected by the Learned Senior Counsel for the promoters to be made under Section 12A, seems to be only an eye wash and a dilatory tactics to delay the process of CIRP in relation to the Corporate Debtor and that the fact that the proposal has been mooted only during the eleventh hour is to stall the Resolution Plan as moved by the Resolution Applicant. Hence, for the aforesaid reasons, the allegations of the promoters that their Section 12A Application was not considered by the RP and the CoC do not hold any merits and stands overruled.

**(II) PROCEDURAL IRREGULARITIES:-**

89. Another major objection in relation to the Resolution Plan was that the IRP / RP has violated umpteen provisions of the Regulations by not adhering to the timelines framed thereunder. In this regard, it is to be seen that the model timelines given under the IBBI Regulations were designed by keeping into mind the CIRP period of 180 days; however in many cases the CIRP period has exceeded more than 330 days and still continues. Thus, it cannot be gainsaid that the IRP or the RP as the case may be has to strictly adhere to the model timelines stipulated under the Regulations. For instance, an avoidance Application as found in Section 43, 45 and 50 can be filed either by the RP or by the Liquidator and the model timeline prescribed under the attendant



Regulations states that the same should be filed in T+75 days. If the said model timelines is construed as mandatory then the avoidance transactions which entitle the Liquidator to file an Application, would be rendered as nugatory.

90. It is significant to note here that, a statutory provision regulating a matter of practice or procedure will generally be read as directory and not mandatory. Thus, even though the objectors to the Resolution Plan have alleged many procedural irregularities in relation to the conduct of the proceedings in relation to the CoC; however those objectors have miserably failed to establish as to what prejudice has been caused to them in respect of the same. Further, a person who has been inducted as a member of the CoC in its 6<sup>th</sup> meeting cannot be allowed to question the actions taken by the CoC in the past meetings. However, in relation to the objections raised by the Applicants in IA/181/CHE/2021 and IA/183/CHE/2021, this Tribunal is unable to comprehend their objections in relation to the plan, especially when they are getting 100% of their claim amount to be paid by the Resolution Applicant. Hence, this raises a suspicion as to whether that these Applications as filed by the objectors are motivated.

91. Thus, the objections as raised by the objectors in relation to the procedural irregularities in relation to the conduct of the

Corporate Insolvency Resolution Process, are not so grave in order to defeat the Resolution Plan as filed by the Resolution Professional. Hence, for the said reasons, the objections as raised by the objectors in respect of the same are overruled. Accordingly, IA/181/CHE/2021, IA/183/CHE/2021, IA/192/CHE/2021, IA/172/CHE/2021 and IA/291/CHE/2021 stand **dismissed**.

**(III) RELATED PARTY:-**

92. M/s. Dharani Finance Limited has filed two Applications viz. MA/18/CHE/2021 and MA/48/CHE/2021 aggrieved against the action of the RP in categorizing them as the "Related Party" of the Corporate Debtor. The Learned Senior Counsel for the said Applicant Company placed reliance upon second provision to Section 21(2) to state that they are not related party. For the sake of convenience the said provision is extracted hereunder;

**21. Committee of Creditors. -**

(1) The interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.

(2) The committee of creditors shall comprise all financial creditors of the corporate debtor:

Provided that a financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor, shall not

have any right of representation, participation or voting in a meeting of the committee of creditors:

Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares or completion of such transactions as may be prescribed, prior to the insolvency commencement date.

93. A bare perusal of the said provision shows that, eventhough the Applicants viz. M/s. Dharani Finance Limited are regulated by a financial service regulator, they have miserably failed to establish that the debts due to them have become due solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares. Further the phrase "completion of such transactions as may be prescribed" would also be of no avail, since the transactions as such have not been prescribed by the Board. In any case, this Tribunal is of the considered view that the Applicants in MA/18/CHE/2021 and MA/48/CHE/2021 are related party in respect of the Corporate Debtor and that the decision of the IRP / RP in categorizing the Applicant viz. M/s. Dharani Finance Limited as "Related Party" of Corporate Debtor is free from all legal infirmities and does not warrant any interference by this Adjudicating Authority. Accordingly, MA/18/CHE/2021 and MA/48/CHE/2021 stands **dismissed**.



**(IV) DISCRIMINATION IN THE RESOLUTION PLAN:-**

94. Another rival contention put forth by the Learned Senior Counsel for the objectors was that there was a discrimination in respect of the distribution of amount to the Financial Creditor – Related Party compared with the Financial Creditor – unrelated Party. It was contended that no amount is paid by the Resolution Applicant, to the Related Party of the Corporate Debtor, be it Financial Creditor or Operational Creditor. In this regard, it is to be noted here that the way in which the amount has to be distributed and paid, purely falls within the domain of the Resolution Applicant and further the CoC in its commercial wisdom has accepted the same. Further, there is no provision in the IBC, 2016 which mandates that the Related party should be paid in parity with the unrelated party. The judgment relied on by the Learned Senior Counsel by the Hon'ble NCLAT in the matter of **Binani Industries**, was reconsidered by the Hon'ble Supreme Court in the matter of **Essar Steels** (supra), wherein the Hon'ble Supreme Court in para 109 has held as follows;

"109. When it comes to the validity of the substitution of Section 30(2)(b) by Section 6 of the Amending Act of 2019, it is clear that the substituted Section 30(2)(b) gives operational creditors something more than was given earlier as it is the higher of the figures mentioned in sub-clauses (i) and (ii) of subclause (b) that is now to be paid as a minimum amount to operational creditors. The same goes for the latter part of subclause (b) which refers to dissentient financial creditors. Mrs. Madhavi Divan is correct in her argument that Section 30(2)(b) is in fact a beneficial provision in favour of operational

creditors and dissentient financial creditors as they are now to be paid a certain minimum amount, the minimum in the Case of operational creditors being the higher of the two figures calculated under sub-clauses (i) and (ii) of clause (b), and the minimum in the Case of dissentient financial Creditor being a minimum amount that was not earlier payable. As a matter of fact, pre-amendment, secured financial creditors may cramdown unsecured financial creditors who are dissentient, the majority vote of 66% voting to give them nothing or next to nothing for their dues. In the earlier regime it may have been possible to have done this but after the amendment such financial creditors are now to be paid the minimum amount mentioned in sub-section (2). Mrs. Madhavi Divan is also correct in stating that the order of priority of payment of creditors mentioned in Section 53 is not engrafted in sub-section (2)(b) as amended. Section 53 is only referred to in order that a certain minimum figure be paid to different classes of operational and financial creditors. It is only for this purpose that Section 53(1) is to be looked at as it is clear that it is the commercial wisdom of the Committee of Creditors that is free to determine what amounts be paid to different classes and sub-classes of creditors in accordance with the provisions of the Code and the Regulations made thereunder.

95. It must be noted here that so long as the provisions of the Code and the Regulations have been met, it is the commercial wisdom of the requisite majority of the CoC which is to negotiate and accept a resolution plan, which may involve differential payment to different classes of creditors, together with negotiating with a prospective resolution applicant for better or different terms which may also involve differences in distribution of amounts between different classes of creditors. Further, the Hon'ble Supreme Court also in the matter of **Essar Steels** (supra), in para 58 has held as follows

"58. ....In Mihir Mafatlal (supra), the Court was dealing with schemes of amalgamation under Section 391 of the Companies Act, 1956. Under Section 392 of the said Act,

the High Court is vested with a supervisory jurisdiction, which includes the power to give directions and make modifications in such schemes, as it may consider necessary, for the proper working of the said Schemes. This power in Section 392 is conspicuous by its absence when it comes to the Adjudicating Authority under the Code, whose jurisdiction is circumscribed by Section 30(2). It is the Committee of Creditors, under Section 30(4) read with Regulation 39(3), that is vested with the power to approve resolution plans and make modifications therein as the Committee deems fit. It is this vital difference between the jurisdiction of the High Court under Section 392 of the Companies Act, 1956 and the jurisdiction of the Adjudicating Authority under the Code that must be kept in mind when the Adjudicating Authority is to decide on whether a resolution plan passes muster under the Code. When this distinction is kept in mind, it is clear that there is no residual jurisdiction not to approve a resolution plan on the ground that it is unfair or unjust to a class of creditors, so long as the interest of each class has been looked into and taken care of. It is important to note that even under Sections 391 and 392 of the Companies Act, 1956, ultimately it is the commercial wisdom of the parties to the scheme, reflected in the 75% majority vote, which then binds all shareholders and creditors. Even under Sections 391 and 392, the High Court cannot act as a court of appeal and sit in judgment over such commercial wisdom."

*(emphasis supplied)*

96. Thus, the contentions of the Learned Senior Counsel for the objectors that differential treatment are being made to them since they are related party in respect of the Corporate Debtor do not hold any merit in view of the discussions made *supra* and also the decisions referred in support of the same. Hence the objections raised by the objectors in relation to the said issues are overruled.

**(v) PENDING AVOIDANCE APPLICATION**


97. One the contentions raised by the objectors was as the decision of the Hon'ble High Court of Delhi in **Venus Recruiters**

**Pvt. Ltd. –Vs- Union of India & Ors.**, in *Writ Petition (Civil) No. 8705 of 2019* in para 86, it was held that avoidance applications are neither for the benefit for the Resolution Applicants nor for the Company after the resolution is complete. It is for the benefit of the Corporate Debtor and the CoC of the Corporate Debtor management / Resolution Applicant, by pursuing such an Application. In this context, it was contended that as per the terms of the Resolution Plan, the Resolution Applicant makes himself as a beneficiary of the proceeds of all the Avoidance Application filed during the CIRP.

98. While advertng to the said contentions, it is to be noted that the judgment rendered in **Venus Recruiters** (*supra*) was arising totally of a different facts which are discernible to the facts on hand. Further, para 89 of the said judgment, states as follows;

“89. In the present petition, this Court is concerned with a Corporate Debtor, in respect of which the Resolution Plan was approved by the NCLT and an application is sought to be filed by the RP as former RP through its counsel. The RP cannot wear the hat of the `Former RP' and pursue an avoidance application in respect of preferential transactions after the hat of the Corporate Debtor has changed and it no longer remains a Corporate Debtor. This would be wholly impermissible in law as the mandate of the RP has come to an end. The NCLT also has no jurisdiction to entertain and decide avoidance applications, in respect of a Corporate Debtor which is now under a new management unless provision is made in the final Resolution Plan.”

(emphasis supplied)



99. Thus, in the present case, a provision is made in the Resolution Plan as to the fate of the avoidance Application pending in relation to the Corporate Debtor and hence the objections raised by the objectors in this regard are required to be eschewed.

**(IV) OBJECTIONS BY PROSPECTIVE RESOLUTION APPLICANT**

100. M/s. Apex Laboratories Private Limited, claiming to be a prospective Resolution Applicant has filed IA/571/CHE/2021 seeking direction to refix the timelines under the CIRP process and also to issue the Information Memorandum. In this regard, it is seen that M/s. Apex Laboratories is not a prospective Resolution Applicant, since they have not submitted the Resolution plan before the CoC, however sought additional time only to submit the Resolution Plan before the CoC, which came to be rejected by the RP on 29.10.2020. While this being the fact, the inability of M/s. Apex Laboratories to submit the Resolution Plan within the timeframe fixed by the CoC, would not empower the Applicant to file an Application seeking extension of time to submit a Resolution Plan, nor challenge the Resolution Plan which was submitted by the prospective Resolution Applicant.

101. In the light of the same, it is relevant to refer to the Judgment of the Hon'ble Supreme Court in **Arcelor Mittal India**



**Private Limited –Vs– Satish Kumar Gupta** (2019) 2 SCC 1,  
wherein the Supreme Court in para 75 and 76 has held as follows;

“75. What has now to be determined is whether any challenge can be made at various stages of the corporate insolvency resolution process. Suppose a resolution plan is turned down at the threshold by a Resolution Professional under Section 30(2). At this stage is it open to the concerned resolution applicant to challenge the Resolution Professional’s rejection? It is settled law that a statute is designed to be workable, and the interpretation thereof should be designed to make it so workable.....

76. Given the timeline referred to above, and given the fact that a resolution applicant has no vested right that his resolution plan be considered, it is clear that no challenge can be preferred to the Adjudicating Authority at this stage. A writ petition under Article 226 filed before a High Court would also be turned down on the ground that no right, much less a fundamental right, is affected at this stage. This is also made clear by the first proviso to Section 30(4), whereby a Resolution Professional may only invite fresh resolution plans if no other resolution plan has passed muster”

102. In the facts and circumstances of the case, it is evident that M/s. Apex Laboratories Private Limited, is not even an unsuccessful Resolution Applicant but only an intended prospective resolution applicant, who has failed to submit the Resolution Plan within the timelines fixed by the CoC and as per the dictum laid down by the Hon’ble Supreme Court in the **Arcelor Mittal (supra)**, M M/s. Apex Laboratories Private Limited has no vested right that his resolution plan ought to have been considered by the CoC and no

challenge can be preferred thereof before this Adjudicating Authority. Hence, in view of the discussions made supra, the objections raised by the Applicant are overruled and as a consequence the IA/571/CHE/2021 stands **dismissed**.

**(v) APPROVAL OF RESOLUTION PLAN**

103. Thus, after overruling all the objections raised in relation to the Resolution Plan, this Adjudicating Authority in so far as the approval of the Resolution Plan is concerned, section 30(6) of the IBC, 2016 cast certain duties upon this Adjudicating Authority to examine the Resolution Plan as to whether the Plan falls within the contours of the said Section. Hence, a comparison of the mandatory compliance as required under IBC, 2016 *vis-à-vis* the compliance as made in the Resolution Plan is being tabulated hereunder.

<b>MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS</b>	<b>COMPLIANCE UNDER RESOLUTION PLAN</b>
<b>S. 30(1)</b> - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	The Affidavit of the Resolution Applicant (RA) is found in "Format 3B" in Volume II of the Resolution Plan wherein Mr. M. K. Rajagopalan, the Resolution Applicant has stated that he is eligible under Section 29A of IBC, 2016 to submit a Resolution Plan. Further, the Resolution Professional in Form - H has certified that the said Affidavit is in order.



<p><b>S. 30(2)(a)</b> - Payment of Insolvency and Resolution cost in the manner specified by the Board</p>	<p>Clause 5.3.1 of the Resolution Plan provides for the payment of CIRP costs in priority. The CIRP Cost is arrived at ₹2.90 Crore and would be paid within 45 days from the date of approval of the Resolution Plan.</p>
<p><b>S. 30(2)(b)</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</p>	<p>Clause 5.3.5 and 5.3.6 of the Resolution Plan states that all the Operational Creditors (Unrelated Party) are being paid 100% of their admitted claim within 45 days from the date of approval of the Resolution Plan.</p>
<p><b>Reg. 38(1A)</b> - Resolution Plan shall include a statement as to how it has dealt with the interest of all the stakeholders, including financial creditors and operational creditors of the Corporate Debtor</p>	<p>Clause 5.2 of the Resolution Plan provides for payments to be made to all the stakeholders of the Corporate Debtor.</p>
<p><b>S. 30(2)(c)</b> - Management of the affairs of the Corporate Debtor after approval of the Resolution Plan</p>	<p>Clause 5.11 of the Resolution Plan deals with the Management and Control of the Corporate Debtor after the approval of the Resolution Plan</p>
<p><b>S. 30(2)(d)</b> - Implementation and Supervision of the Resolution Plan</p>	<p>Clause 5.10 of the Resolution Plan deals with the manner of supervision and Implementation of the Resolution Plan.</p>
<p><b>Reg. 38(2)</b> - Resolution Plan shall provide:  a) term of plan and its implementation schedule  b) management and control of the business of the Corporate Debtor during its term;  c) it has provisions for effective implementation</p>	<p>Clause 5.6, 5.10 and 5.10.2 of the Resolution Plan deals with the adequate means of supervision and Implementation of the Resolution Plan</p>

<p>d) it has provisions for approval required and the timeline for the same; and e) the Resolution applicant has the capability to implement the Resolution Plan.</p>																																																																					
<p><b>Reg. 38(3)</b> - Resolution Plan shall demonstrate: a) it address the cause of default b) it is feasible and viable c) it has provisions for effective implementation d) it has provisions for approval required and the timeline for the same e) the resolution applicant has the capability to implement the resolution plan</p>	<p>Clause 4.7, 5.16, 5.10, 5.13 and 5.16(iv) of the Resolution Plan deals with the causes of default of the Corporate Debtor and the operational Viability of the project by the Resolution Applicant.</p>																																																																				
<p><b>S. 30(2)(e)</b> - Does not contravene any of the provisions of the law for the time being in force</p>	<p>The Resolution Professional in Form H has confirmed that the Resolution Plan is not in contravention with the provisions of any Applicable Law.</p>																																																																				
<p><b>S. 30(4)</b> - 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</p>	<p>The CoC in its 9<sup>th</sup> meeting held on 22.01.2021 has approved the Resolution Plan in the following voting pattern;</p> <table border="1" data-bbox="813 1500 1412 2004"> <thead> <tr> <th>S. No</th> <th>Name of Creditor</th> <th>Assent (%)</th> <th>Dissent (%)</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>State Bank of India</td> <td>26.41</td> <td>-</td> </tr> <tr> <td>2.</td> <td>IDBI Debentures Trusteeship Ltd.</td> <td>19.64</td> <td>-</td> </tr> <tr> <td>3.</td> <td>Indian Bank</td> <td>17.80</td> <td>-</td> </tr> <tr> <td>4.</td> <td>Bank of India</td> <td>13.41</td> <td>-</td> </tr> <tr> <td>5.</td> <td>TFCI</td> <td>5.62</td> <td>-</td> </tr> <tr> <td>6.</td> <td>IDBI</td> <td>3.03</td> <td>-</td> </tr> <tr> <td>7.</td> <td>Edelweiss ARC</td> <td>1.06</td> <td>-</td> </tr> <tr> <td>8.</td> <td>Allium Finance (P) Ltd.</td> <td>0.42</td> <td>-</td> </tr> <tr> <td>9.</td> <td>Prabhat Resources Ltd.</td> <td>-</td> <td>4.28</td> </tr> <tr> <td>10.</td> <td>Sun Bright Industries</td> <td>-</td> <td>4.25</td> </tr> <tr> <td>11.</td> <td>M/s. RSM Industries</td> <td>-</td> <td>1.43</td> </tr> <tr> <td>12.</td> <td>Aryav Exports (P) Ltd.</td> <td>-</td> <td>1.25</td> </tr> <tr> <td>13.</td> <td>Modern Constructions</td> <td>-</td> <td>0.86</td> </tr> <tr> <td>14.</td> <td>URC Builders</td> <td>-</td> <td>0.39</td> </tr> <tr> <td>15.</td> <td>M. Chandrasekaran</td> <td>-</td> <td>0.16</td> </tr> <tr> <td></td> <td><b>TOTAL</b></td> <td><b>87.39</b></td> <td><b>12.62</b></td> </tr> </tbody> </table>	S. No	Name of Creditor	Assent (%)	Dissent (%)	1.	State Bank of India	26.41	-	2.	IDBI Debentures Trusteeship Ltd.	19.64	-	3.	Indian Bank	17.80	-	4.	Bank of India	13.41	-	5.	TFCI	5.62	-	6.	IDBI	3.03	-	7.	Edelweiss ARC	1.06	-	8.	Allium Finance (P) Ltd.	0.42	-	9.	Prabhat Resources Ltd.	-	4.28	10.	Sun Bright Industries	-	4.25	11.	M/s. RSM Industries	-	1.43	12.	Aryav Exports (P) Ltd.	-	1.25	13.	Modern Constructions	-	0.86	14.	URC Builders	-	0.39	15.	M. Chandrasekaran	-	0.16		<b>TOTAL</b>	<b>87.39</b>	<b>12.62</b>
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104. In so far as the approval of the Resolution Plan is concerned, this Authority is not sitting on an appeal against the decision of the Committee of Creditors and this Authority is duty bound to follow the much celebrated Judgment of the 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 follows;

“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.”

105. 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 follows;

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)*.

106. Further the 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 follows;

“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)*

107. Also the 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 follows;

"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 maximising 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)*

108. The 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 follows;

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.

77.6.1. The assessment about maximisation 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 maximisation 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 maximisation 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.

109. Further, it is also relevant to refer to the decision of the Hon'ble Supreme Court in the matter of **Maharashtra Seamless Limited –Vs- Padmanabhan Venkatesh & Ors.** in *Civil Appeal No. 4242 of 2019* at para 26 and 27 has held as follows;

"26. No provision in the Code or Regulations has been brought to our notice under which the bid of any Resolution Applicant has to match liquidation value arrived at in the manner provided in Clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. This point has been dealt with in the case of Essar Steel (supra). We have quoted above the relevant passages from this judgment.

27. It appears to us that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Once, a resolution plan is approved by the CoC, the statutory mandate on the Adjudicating Authority under Section 31(1) of the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof. We, per se, do not find any breach of the said provisions in the order of the Adjudicating Authority in approving the resolution plan."



110. Thus, as held by the Hon'ble Supreme Court, there is no provision in IBC, 2016 or in the Regulations which stipulates that the bid of the Resolution Applicant has to match the Liquidation value of the Corporate Debtor.

111. Thus, from the catena of judgments rendered by the Supreme Court on the scope of approval of the Resolution Plan, it is amply made 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.

112. The Resolution Applicant has sought for various Reliefs, Concessions in Part VI of the Resolution Plan. However, by taking into consideration the Judgments of the Hon'ble NCLAT and more particularly the decision of the Hon'ble Supreme Court of India in the matter of **Embassy Property Developments Pvt. Ltd. -Vs- State of Karnataka & Ors. (2020) 13 SCC 308**, we direct the Resolution Applicant to file necessary application before the necessary forum / authority in order to avail the necessary Relief and Concessions, if it is in accordance with law.



113. Thus the Resolution Plan is hereby **approved** and is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect and the "Moratorium" imposed under section 14 of IBC, 2016 shall not have any effect henceforth. The Resolution Professional shall submit the records collected during the commencement of the Proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance. Liberty is hereby granted for moving any Miscellaneous Application, if required, in connection with implementation of this Resolution Plan. That in respect of stepping by the New Promoters/Resolution Applicant into the shoes of the erstwhile Company and taking over the business, the provisions of Companies Act, 2013 shall be applicable and because of this reason a copy of this Order is to be submitted in the Office of the Registrar of Companies, Chennai.

114. The Resolution Professional is further directed to handover all records, premises / documents to Resolution Applicant to finalise the further line of action required for starting of the operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access to all the records premises / documents through

Resolution Professional to finalise the further line of action required for starting of the operation. Accordingly, the Application IA/150/CHE/2021 stands **allowed**. All other connected Applications, as arrayed in the cause title, stands **dismissed**.

-sd-  
**(ANIL KUMAR B)**  
MEMBER (TECHNICAL)

-sd-  
**(R. SUCHARITHA)**  
MEMBER (JUDICIAL)

*Raymond*