



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI COURT – VI**

**ITEM NO. 1**

**CA/2395/2019 In IB-409/PB/2017**

**IN THE MATTER OF:**

**Edelweiss Asset Reconstruction Company Limited**

**...Financial Creditor**

**Versus**

**Net4 India Limited**

**...Corporate Debtor**

**Order under Section 31 of the Insolvency and Bankruptcy Code, 2016.**

**Order delivered on: 18.08.2023**

**CORAM:**

**SHRI. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

Order pronounced in open Court vide separate sheets.

CA/2395/2019 In IB-409/PB/2017 stands allowed.

**SD/-**

**(Rahul Bhatnagar)**

**Member (Technical)**

**SD/-**

**(Bachu Venkat Balaram Das)**

**Member (Judicial)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**COURT VI, NEW DELHI**

**CA/2395/2019**

**IN**

**Company Petition No. (IB) – 409/(PB)/2017**

*Submission of Resolution Plan under Section 30(6) for approval under  
Section 31 of the Insolvency and Bankruptcy Code, 2016*

**IN THE MATTER OF:**

**In the matter of:**

**Edelweiss Asset Reconstruction Company Limited**

**...Financial Creditor**

**Versus**

**Net4 India Limited**

**...Corporate Debtor**

**And in the matter of:**

**Mr. Vikram Bajaj**

**Resolution Professional for Net4 India Ltd.**

**At:** 308, 3<sup>rd</sup> Floor, Pearls Business Park,

Netaji Subhash Place, Pitampura

New Delhi – 110034

**...Applicant**

**Order delivered on: 18.08.2023**



**Coram:**

**SHRI. BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

**SHRI. RAHUL BHATNAGAR, MEMBER (TECHNICAL)**

For the Applicant: Chandhiok and Mahajan

**ORDER**

**PER- RAHUL BHATNAGAR, MEMBER(TECHNICAL)**

1. This is an application filed by the Resolution Professional under Section 30 (6) r/w Section 31 and Section 60(5) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the “Code”) seeking re-consideration of the approval of the Resolution Plan under Section 31 of the Code read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in respect of the Corporate Debtor M/s. Net 4 India Limited.
2. The facts in brief necessary for adjudication of the present application are that M/s. Edelweiss Asset Reconstruction Company Limited (“Financial Creditor”) had preferred an application under Section 7 of the Code for initiation of Corporate



Insolvency Resolution Process against M/s. Net 4 India Limited ("Corporate Debtor"). The Company Petition (IB) 409/(PB)/ 2017 was admitted on 08.03.2019 imposing moratorium under Section 14 of the Code and the Applicant, Mr. Vikram Bajaj was appointed as an Interim Resolution Professional in respect of the Corporate Debtor.

3. Thereafter, in terms of Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 ("CIRP Regulations"), the Interim Resolution Professional made a public announcement in Form-A in the newspaper "Business Standard" in both English and Hindi language on 11.03.2019 *inter alia* calling for the submission of claims of the creditors. Further, the IRP convened the first meeting of the CoC on 06.04.2019, wherein the CoC resolved to appoint the IRP/ Applicant as the Resolution Professional ("RP"), of the Corporate Debtor. The constitution of Committee of Creditors of the Corporate Debtor (along with their voting share) is as follows:



<b>S.No.</b>	<b>Financial Creditor</b>	<b>Claim amount admitted (Rs. crore)</b>	<b>Voting share</b>
1.	Edelweiss Asset Reconstruction Company Limited	235.458	58.447%
2.	State Bank of India	30.659 (Secured) 53.140 (Unsecured)	20.801%
3.	Phoenix ARC P. Ltd.	55.432	13.760%
4.	Paisalo Digital India Limited	22.793	5.658%
5.	Aditya Vikram Lakhotia	0 . 0 0 7	0.002%
6.	Anju Lakhotia	0.007 –	0.002%
7.	Pushpa Lakhotia	0.010	0.003%
8.	Caparo Financial Solutions Limited	5.328	1.323%
9.	Kety Ranikhetwalla	0.007	0.002%
10.	Kapil Mahesh and Purvi Kapil	0.005	0.001%
11.	Mahesh Kambholja	0.005	0.001%
	<b>Voting Count (numbers)</b>		<b>11</b>
	<b>Voting Share %</b>		<b>100%</b>

4. That the State Bank of India had assigned a part of its debt to Edelweiss Asset Reconstruction Company Limited and has filed claim before the RP for the remaining debt.
5. That in terms of Regulation 27 of the CIRP Regulations, the Applicant, on 12.04.2019, appointed two registered valuers



namely Crest Capital Group Pvt. Ltd. and Tech Mech International Pvt. Ltd., to determine the fair value and liquidation value of the Corporate Debtor in accordance with Regulation 35 of the CIRP Regulations. The valuation of the Corporate Debtor as done by the valuers is as follows:

<b>Valuer</b>	<b>Fair Value (INR)</b>	<b>Liquidation Value (INR)</b>
Crest Capital Group P. Ltd. - Ms. Alpna Harjai (IBBI/RV/02/2019/11077) Land & Building  - Mr. Lakshya Malhotra (IBBI/RV/05/2019/11553) Plant & Machinery  - Mr. Prateek Mittal (IBBI/RV/05/2018/10021) Securities and Financial Assets	19,13,77,207	10,19,46,241
Tech Mech International Pvt. Ltd - Mr. Lakhan Lai Gupta (IBBI/RV/02/2019/10738) Land & Building  - Mr. Pradeep Kumar (IBBI/RV/02/2019/10566) Plant & Machinery  - Mr. Annop Kumar Goyal (IBBI/RV/05/2018/10020) Securities and Financial Assets	16,49,10,795	11,82,96,093.50
<b>AVERAGE</b>	<b>17,81,44,001</b>	<b>11,01,21,167.50</b>

6. The Resolution Professional published an invitation for expression of interest in requisite Form G on 22.05.2019 in the



newspaper “Business Standard” in both English and Hindi language with 06.06.2019 being the last date for submission of EOI.

7. That pursuant to the publication of Form G for inviting EOIs, EOIs were received from 3 Prospective Resolution Applicants (“PRAs”), and 2 of them were found to be eligible as per eligibility criteria approved by the CoC. Accordingly, the provisional list of PRAs was issued on 16.06.2019 to the CoC members, and the last date of submission of objections was 21.06.2019. The third PRA provided additional documents in support of its meeting the eligibility criteria and accordingly all 3 PRAs were included in the final list which was issued on 01.07.2019.
8. That during the third meeting of the CoC held on 20.06.2019, the CoC members discussed and deliberated on terms of the request for resolution plans ("**RFRP**") and the Evaluation Matrix. Subsequently, the RFRP was approved by the CoC by 99.992% voting shares. Pursuant to Regulation 36B of the Code, the RFPF, Information Memorandum and Evaluation Matrix were issued to



the PRAs and the PRAs initiated their due diligence of the Corporate Debtor.

- 9.** That the last date of receipt of resolution plan was initially 21.07.2019. However, the Applicant received email from PRAs, including the Successful Resolution Applicant, seeking extension of time in submitting the resolution plan since they were still in the process of conducting the legal, financial and technical diligence of the Corporate Debtor. Accordingly, the last date for submission of resolution plan was extended to 04.08.2019.
- 10.** That till the last date for submission of resolution plans i.e. 04.08.2019, the Applicant/ RP received only one resolution plan i.e. from M/s. Open Platforms Private Limited along with Co-Applicants Mr. Sudhanshu Rawat and Mr. Dalip Kumar Kewalramani, the Successful Resolution Applicant(“SRA”).
- 11.** That the Successful Resolution Applicant sent revised plans on several dates taking into account observations of the Applicant and CoC members and submitted the final Resolution Plan on 17.09.2019.





**12.** That the Successful Resolution Plan was discussed and deliberated during the sixth meeting of the CoC conducted on 17.09.2019. Further, it was decided to put the Successful Resolution Plan to voting from 20.09.2019 to 24.09.2019, wherein it was approved with a majority voting share of 77.867%. The Plan was rejected by State Bank of India which holds 20.801% voting share in the CoC. This Tribunal, vide its order dated 29.05.2023, directed the State Bank of India to file an affidavit stating the reasons for rejecting the Plan. In compliance with the order dated 29.05.2023, the SBI has filed an affidavit dated 05.06.2023 wherein the following is stated:

*“The Hon’ble Adjudicating Authority may take its independent view on the merit of the Resolution Plan, as the Bank, having voted against the Resolution Plan, would be entitled to be paid as per the provisions of Section 30 (2) (b) of the IBC, 2016.”*

**13.** That pursuant to approval of final Resolution Plan being submitted by Successful Resolution Applicant, the Applicant issued a Letter of Intent dated 24.09.2019, advising the SRA to deposit Rs. 50 Lacs as performance security. The Successful



Resolution Applicant submitted unconditional acceptance of Letter of Intent on 25.09.2019, however the cheque for performance security was submitted only on 10.10.2019. Thereafter, the Applicant banked the cheque and same has been credited to Canara Bank Account No. 1098201005284. The Committee of Creditors condoned the delay in performance security in the seventh CoC meeting held on 24.10.2019.

- 14.** Resolution professional has also placed on record a copy of the resolution plan as approved by CoC, stated to have been signed by the authorised representative of the Successful Resolution Applicant.
  
- 15.** The Compliance Certificate filed by the Resolution Professional in Form H under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 has also been placed on record.
  
- 16.** That the interests of existing shareholders have been altered by the Resolution plan as under:



S. NO	CATEGORY OF SHAREHOLDER	NO. OF SHARES HELD BEFORE CIRP	NO. OF SHARES HELD AFTER CIRP	VOTING SHARE (%) HELD BEFORE CIRP	VOTING SHARE (%) HELD AFTER CIRP
1.	EQUITY	2,00,58,250	0	100%	0
2.	PERFERENCE	N/A	N/A	N/A	N/A

**17.** The plan provides for payment of Rs. 50 Lacs as CIRP costs in priority to other payments. The brief contours of the Resolution Plan of M/s. Net 4 India Ltd. as approved by the CoC along with the amounts (in Crores) provided for the stakeholders under the Resolution Plan is detailed herein below: -

S. No.	Category of Stakeholder	Amount Claimed (Rs. in Crore)	Amount Admitted (Rs. in Crore)	Amount Provided under The Plan (Rs. in Crore)	Amount Provided to the Amount Claimed (%)
<b>1</b>	<b>Secured Financial Creditors</b>				
A.	EARCL	235.45	235.45	<ul style="list-style-type: none"> <li>• Proceeds from Sale of Assets of NOIDA and Chennai Property of the CD exclusively mortgaged to EARCL (Estimated Value: Rs.14.51 Crore)</li> <li>• 15% Equity Shareholding in the restructured equity of the CD (Estimated Value —Rs. 150 Crore)</li> </ul>	69.87%



B.	State Bank of India	30.65	30.65	2% Equity Shareholding in the restructured equity of the CD (Estimated Value —Rs. 20 Crore)	65.25%
2	<b>Unsecured Financial Creditors</b>				
A	Fixed Deposit	0.04	0.04	0.04	100%
B	Caparo Financial Solutions Ltd.	5.32	5.32	0.05	1%
C	SBI (claim in respect of Corporate Guarantee for debt of Pipetel Communications Private Ltd.)	18.83	18.83	1% Equity Shareholding in the restructured equity of the CD (Estimated Value — Rs. 10 crore)	53.10%
D	SBI (claim in respect of Corporate Guarantee for debt of Net 4 Communications Ltd)	34.30	34.30	0.34	1%
E	Phoenix ARC Ltd. (claim in respect of Corporate Guarantee for debt of Net 4 Communications Ltd.)	55.43	55.43	0.55	1%
F	Paisalo Digital India Ltd. (claim in respect of Corporate Guarantee for debt of Net 4 Communications Ltd.)	22.79	22.79	0.23	1%
G	IFCI Factors Ltd. (claim in respect of Corporate Guarantee for debt of Net 4 Communications Ltd.)	36.29	36.29	0.36	1%
3	<b>Operational Creditors</b>				



A	Government	21.53	21.53	0.05	0.23%
B	Workmen	-	-	-	-
C	Employees	1.80	1.80	0.15	0.83%
	<b>TOTAL</b>	<b>462.48</b>	<b>462.48</b>	<b>196.28</b>	<b>42.44%</b>

**18.** In terms of Section 30 (6) of the Code read with Regulation 39 of the CIRP Regulations, 2016 the Resolution Professional has submitted the Resolution Plan for seeking an order under Section 31(1) of the Code for approval of the resolution plan passed by the committee of creditors under sub-section (4) of Section 30 with 77.867% voting share. The amount proposed under the Plan is well above the Liquidation Value as well as the Fair Value.

**19.** Section 31 of the Insolvency and Bankruptcy Code, deals with the approval or rejection of a Resolution Plan by the Adjudicating Authority. Approval of the Resolution Plan is accorded under the provisions of Section 31(1) of the Code. In terms of Section 31(1) of the Code, the Adjudicating Authority has also to examine whether the requirements of sub-section (2) of Section 30 have been complied with or not.



- 20.** Sub-section 2 of Section 30 casts a duty on the Resolution Professional to examine the Resolution Plan received by him and to confirm that such Resolution Plan provides for the payment of insolvency resolution process costs, provides for the payment of the debts of the operational creditors and financial creditors in such manner as specified, provides for the management of the affairs of the corporate debtor after approval of the Resolution Plan; the implementation and supervision of the Resolution Plan, that the Resolution Plan does not contravene any of the provisions of the law, and that the Resolution Plan conforms to such other requirements as may be specified by the Board.
- 21.** The Resolution Professional has filed compliance certificate in Form H and *inter alia*, has confirmed that he has examined and verified the Resolution Plan approved by the CoC of M/s. Net 4 India Limited, in the light of the requirements of the Code and Regulations and that it is compliant to the relevant provisions of the Code and Regulations.



**22.** It has been submitted in the application and in Form H duly certified by RP that the final Resolution Plan approved by 77.867% vote share of the members of the Committee of Creditors meets the requirements as laid down in various clauses of Section 30 (2) of the Code.

**23.** In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in the resolution plan in Clause VI.3 which provides for payment of CIRP costs in priority over payments to any other creditors from the upfront amount brought in by the RA. The Resolution Professional has also confirmed in the compliance certificate given in Form H that the Resolution Plan provides for the payment of Insolvency Resolution Process costs. Be that as it may it is made clear that Insolvency Resolution Process cost shall be paid in its entirety by the resolution applicant in priority to other debts of the corporate debtor.

**24.** As regards compliance of clause (b) of Section 30 (2) of the Code, the Resolution Professional has certified that the resolution plan provides for the payment of the debts of operational creditors in



such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under Section 53. The Liquidation Value of the Corporate Debtor is marginal in comparison to the Claims of Creditors and is not even sufficient to cover secured creditors. Therefore, the liquidation value of the Operational Creditors has been considered nil by the Resolution Applicant.

- 25.** There appears to be no discrimination in the resolution plan in respective class of creditors, as same treatment is provided to similarly situated class of creditors. As a sequel to the aforesaid discussion it is seen that clause (b) of sub-section (2) of Section 30 of the Code stands satisfied. Objections against the plan were raised by M/s. Intec Capital Ltd by raising an Application bearing no. IA/3799/2020. However, the same was withdrawn on 07.06.2023, Therefore, no objections exist as on date against the Plan. Further, the Hon'ble Supreme Court in the matter of '**Swiss Ribbon' Vs. 'Union of India', 2019 (4SCC)** held as follows:





*“That the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters / those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests.”*

**26.** In terms of Section 30(2)(c), the Resolution Plan provides for management of affairs of the corporate debtor after approval of the Resolution Plan. The management of the affairs and control of the business of the corporate debtor after approval of the Resolution Plan has been provided in Section V of the Resolution plan. The Resolution Professional has confirmed in the compliance certificate given in Form H that the Resolution Plan provides for the management and control of the business of the corporate debtor.



**27.** The fourth requirement envisaged by Section 30(2)(d) is that it must provide for the implementation and supervision of the resolution plan. The Resolution Professional has confirmed in the compliance certificate given in Form H that Section V Clause 7 of the Resolution Plan provides for adequate means for supervising its implementation. It has been stated that the Resolution Professional shall constitute the monitoring agency. The RA shall pay the RP same monthly remuneration/ fees as paid during the CIRP. Further, an Asset Sale Committee shall be set up with the appointment of 2 members, one member shall be nominated by Edelweiss ARC and other member by Corporate Debtor to supervise and manage the sale of the two properties as per the Resolution Plan. EARC shall have the right to modify/authorize any other member to be a part of the Asset Sale Committee. In addition, EARC shall have the veto power to take the decision w.r.t. the sale of asset. Both these committees will be deemed to have completed their respective tasks once their objectives have met and consequently dissolved.



**28.** The fifth and sixth conditions in terms of clause (e) & (f) of sub-section (2) of Section 30 of the Code provide to ensure that the Resolution Plan does not contravene any of the provisions of the law and conforms to such other requirements as may be specified by the Board. In this regard the Resolution Professional has certified that the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016, the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and does not contravene any of the provisions of the law for the time being in force. Be that as it may in terms of clause (e) & (f) of sub-section (2) of Section 30 of the Code, we make it clear that the Resolution Applicant shall comply with all applicable laws under the proposed Resolution Plan, whether or not specifically provided therein.

**29.** It is pertinent to state here that Section 29A of the Code prescribes certain eligibility criteria and disqualifications for persons who submit a resolution plan. Resolution Applicant has given adequate declaration and undertaking on their eligibility to



submit the Resolution Plan. At para 4(ii) of Form H Resolution Professional has also certified that the Resolution Applicant is eligible to submit resolution plan and does not fall under any of the categories as mentioned in Section 29A of the Code.

- 30.** Regulation 36B(4A) of the CIRP Regulations requires that the Resolution Applicant shall provide a performance security. Resolution professional has certified that the Resolution Applicant has submitted cheque of Rs. 50 lakhs in favour of Corporate Debtor in compliance of Regulation 36B(4A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- 31.** As to the Reliefs and Concessions stated in Part VII of the Resolution Plan, the exemption as sought for in relation to the payment of registration charges, stamp duty, taxes and fees arising out of the implementation of the Resolution Plan is not granted. The other reliefs and concessions as sought for, which exempt the Corporate Debtor from holding the Resolution Applicant liable for any offences committed prior to the commencement of CIRP as stipulated under Section 32A of IBC,



2016 are granted to the Resolution Applicant. With regard to other concessions and reliefs, most of them are subsumed in the reliefs above granted. Whichever is beyond the reliefs granted above shall not be construed as granted. Regarding exemptions, if any sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted. In view of the same, this plan is hereby **approved**.

- 32.** As a sequel to aforesaid discussions we are satisfied that all the requirements of Section 30(2) are fulfilled and no provision of the law for the time being in force appears to have been contravened.
- 33.** The Resolution Professional has further certified that the Resolution Plan has been approved by the CoC after considering its feasibility and viability and other requirements specified by the Code and CIRP Regulations.
- 34.** The Adjudicating Authority is not expected to substitute its view with the commercial wisdom of the CoC nor should it deal with the technical complexity and merits of Resolution Plan, unless it is found contrary to express provision of law and goes against



the public interest. The object of the Code is to promote resolution and every effort must be made to try and see that resolution is made possible.

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

**36.** The Hon'ble Supreme court in ***K. Sashidhar v. Indian Overseas Bank & Ors (2019) 12 SCC 150***, which involved a critical question on the scope of judicial scrutiny over a commercial decision taken by the CoC to approve or reject a



Resolution Plan held that the legislature, while enacting the IBC, has consciously not provided any ground to challenge the commercial wisdom of the individual financial creditors or the collective decision of the CoC before the NCLT/NCLAT and that the decision of CoC's commercial wisdom has been made non-justiciable. The Court held that neither the NCLT nor the NCLAT has the jurisdiction to reverse the commercial wisdom of the dissenting financial creditors and clarified that the amendment made to Section 30 (4) of the IBC - which came into force w.e.f. June 6, 2018 vide the IBC (Second Amendment) Act, 2018 and introduced the requirement for the CoC to consider the feasibility and viability of a Resolution Plan before its approval - was simply a restatement of the factors that the CoC is required to bear in mind while considering approval of a Resolution Plan.

**37.** The Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Ltd v. Satish Kumar Gupta & Ors (2020) 8 SCC 531***, had again re-emphasized the primacy of the commercial wisdom of the CoC by holding that the scope of judicial review by NCLT while approving a Resolution Plan was required to be



within the parameters of Section 30 (2) of the IBC and with respect to the NCLAT, it must be within the parameters of Section 32 read with Section 61 (3) of the IBC. The SC observed that the NCLT/NCLAT can under no circumstance trespass upon a commercial decision of the majority of the CoC. Further, it was also held as follows:

*“There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or subclass 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.”*

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

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





**39.** The Hon'ble NCLAT, Chennai Bench in the matter of *Sp Coal Resources Pvt Ltd vs Indus Fila Limited TA (AT) No. 13 of 2021 in Company Appeal (AT) (INS.) No. 850 of 2019* held as follows:

*“69. In the instant case on hand, the `2<sup>nd</sup> Respondent`, had undertaken to infuse approximately a sum of Rs.20 Crores in the `1<sup>st</sup> Respondent / Corporate Debtor`, when required for its `revival`, through its `Group Companies`, `Promoters`, `Investors` and `Associates`. Suffice it, for this `Tribunal`, to make a relevant mention that whether a certain `Resolution Plan`, leads to the maximisation of Value of the Assets or not is within the `subjective realm of assessment` of the `Committee of Creditors`, and the same cannot be a matter of enquiry.*

*70. One cannot brush aside a vital fact that a `Resolution Plan`, as approved by the `Committee of Creditors`, in exercise of its `subjective commercial wisdom`, cannot be tinkered and tampered with, when the `Resolution Plan`, was approved with a `Requisite Majority` of 69.04%, after indulging in due discussions/deliberations, as regards the `feasibility` and `viability` of the `Resolution Plan`.*

*73. Be it noted, that the I & B Code, 2016, is not a `Debt Enforcement Procedure`, and the same cannot be used as a mechanism for the `Recovery of Dues`, for the `Creditors`. It is an axiomatic principle in `Law`, there is not rule for substituting any `commercial` term(s) of the `Resolution*



*Plan', approved by the 'Committee of Creditors', especially, in the teeth of the 'Resolution Plan', satisfying the requirements of the ingredients of the I & B Code, 2016.*

*74. Added further, in the instant case, the 'method and manner of infusion of funds by the '2nd Respondent / 'Resolution Applicant', into the '1st Respondent / Corporate Debtor', in the earnest opinion of this 'Tribunal', on the facts and circumstances of the case, is not to be 'displaced', because of the latent and patent fact that the conclusions / decisions, were arrived at, by the 'Committee of Creditors', in exercise of their 'subjective commercial wisdom', which has a 'supremacy and primacy', in 'Law'.*

*77. An 'Adjudicating Authority' ('NCLT') or an 'Appellate Tribunal' ('NCLAT'), cannot sit in an 'Appeal', to find out the 'Viability' and 'Feasibility' of 'Financial Matrix' of such 'Resolution Plan', as opined by this 'Tribunal'."*

**40.** In the present case the resolution plan has been approved with 77.867% voting share much above the statutory requirement of 66% in terms of Section 30 (4) of the Code and has the requisite statutory voting share. Besides, the decision of CoC is a reasoned and self-speaking one as required under proviso to Regulation 39(3) of the CIRP Regulations, 2016.



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

**42.** In the facts we are satisfied that the requirements as per the Code and regulations have been complied with. Moreover, the Resolution Plan has been approved by 77.867% voting share of the members of CoC and has been submitted in compliance of Section 30 of the Code for approval. In view of the aforesaid discussions and as no infirmity have been brought out upon screening of the Resolution Plan; *we hereby approve the Resolution Plan under sub-section (1) of Section 31 of the Code.*

**43.** We also approve appointment of 'Monitoring Committee' as well as the Asset Sale Committee. We grant liberty to the Monitoring Committee to apply to the Tribunal for any further direction in



order to ensure effective implementation of the plan, if such a necessity arises.

**44.** In respect of reliefs and concessions sought for in the Plan which are beyond the jurisdiction of this Tribunal, the Monitoring Committee can make such claim before the authorities which shall be considered in accordance with law.

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

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

**47.** We hereby exclude the period spent under adjudication and it is declared that the moratorium order passed by this Bench under



Section 14 of the Code shall cease to have effect from the date of this order.

- 48.** The Resolution Professional shall forward all records relating to the CIR Process and the Resolution Plan to IBBI to be recorded at its database.
- 49.** The approved 'Resolution Plan' shall become effective from the date of passing of this order.
- 50.** CA/2395/2019 and CP No. (IB) 409/(PB)/2017 are disposed off accordingly.

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

**SD/-**  
**(RAHUL BHATNAGAR)**  
**MEMBER (TECHNICAL)**

**SD/-**  
**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**