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09-02-2023

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IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH (COURT-2)

IA No. /314/(AHM)/ 2021

In

CP (IB)/ 586/(AHM) /2019

[Application under Section 30(6) and Section 31 of the Insolvency & Bankruptcy Code, 2016 for approval of Resolution Plan]

IN THE MATTER OF:

Mr. Vikash Jain, Resolution Professional of
M/s. Sona Alloys Private Limited
Having registered address at:
204 Wall Street-1, Opp Orient Club,
Nr. Gujarat College, Ellis Bridge,
Ahmedabad – 380006, Gujarat

... Applicant

Versus

Mr. Amit Kumar Jain & Ors.

... Respondents

Order Pronounced on: 06/02/2023

Coram:

DR. DEEPTI MUKESH
HON'BLE MEMBER (JUDICIAL)

AJAI DAS MEHROTRA
HON'BLE MEMBER (TECHNICAL)



MEMO OF PARTIES

**Mr. Vikash Jain, Resolution Professional of
M/s. Sona Alloys Private Limited**

Having registered address at:
204 Wall Street-1, Opp Orient Club,
Nr. Gujarat College, Ellis Bridge,
Ahmedabad – 380006, Gujarat

...Applicant

Versus

1. Amit Kumar Jain

Sanskrit Villa, Bh Karnavati Club,
S.G. Highway, Ahmedabad

2. Asit Jain

Sanskrit Villa, Bh Karnavati Club,
S.G. Highway, Ahmedabad

3. Samir Kumar Chattopadhyay

4th floor, Medimax House,
Opp. Karnavati Hospital, Ellisbridge,
Ahmedabad -380006

4. Committee of Creditors of

Sona Alloys Private Limited
Represented through lead stakeholder
Rare Asset Reconstruction Limited
104-106, Gala Argos, Bs. Harikrupa Tower,
Gujarat College Road, Ahmedabad- 380006.

5. MTC Business Pvt. Ltd.

Successful Resolution Applicant

401,4th Floor, Navkar Commercial Complex,
Sir M.V. Road, Andheri (East),
Mumbai, Maharashtra - 400069 IN

...Respondent (s)



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Appearance:

For RP : Mr. Saurabh Soparkar, Sr. Adv. a/w. Mr. Jaimin Dave, Adv.

Mr. Rasesh Sanjanwala, Sr. Adv. a.w Mr. Shashvata Shukla,

For Applicant: Mr. Karan Sanghani, Adv. & Mr. Tejas Trivedi, Adv. Mr.

Aditya Joshi, Adv.&Mr. Tarak Damani, Adv. Ms. Kiran Taneja,

For Vedanta Ltd.: Mr. Gopal Jain, Sr. Adv. & Mr. Diwakar Maheshwari,

Adv., Ms. Pratiksha Mishra, Adv. & Mr. Moiz Rafique, Adv.

For SRA: Mr. Krishnendu Dutta, Sr. Adv. & Mr. Mohd. Shahan Ulla, Adv.

& Mr. Varun Himatkasingka, Adv. for R-5

For CoC : Mr. Mihir Thakore, Sr. Adv. a.w Mr. Yuvraj Thakore, Adv.

ORDER

1. The present IA No.314/(AHM)/2021 is an application filed by the Resolution Professional (RP) u/s 30(6) & 31 of IBC, 2016 seeking approval of the resolution plan of Corporate Debtor - M/s. Sona Alloys Private. Ltd. wherein MTC Business Private. Ltd. (MBPL) is the successful Resolution Applicant (SRA). Before dealing with approval of the resolution plan, the objection filed by M/s Vedanta Ltd., the unsuccessful resolution applicant is to be considered and decided first.

OBJECTION BY M/S. VEDANTA LTD. –

2. M/s. Vedanta Ltd. (VL) submitted the resolution plan which was not approved by the Committee of Creditors (CoC). The major objection of M/s Vedanta Ltd. is that the SRA, M/s. MBPL was, in its capacity as a Financial Creditor, part of CoC which was in violation of the principle of conflict of interest, leading to failure to maintain the confidentiality of the resolution plan submitted by VL, thereby, giving undue advantage to M/s MBPL.

Brief background of the case:



3. The Resolution Plan of MBPL was approved by the CoC on 24.03.2021 with 99.732 % voting share. Thereafter on 31.03.2021, Vedanta Ltd. was informed by RP that their Plan was not approved.
4. On 03.04.2021, Vedanta Ltd. requested Resolution Professional to refund the security deposit and the same was refunded by Resolution Professional on 05.04.2021. Vedanta Ltd. also sought the release of the Bank guarantee submitted by it and collected the Bank Guarantee so returned immediately.
5. IA 314 of 2021 on 12.04.2021 was filed by Resolution Professional for approval of the Resolution Plan before this Tribunal. The Unsuccessful Resolution Applicant -Vedanta Ltd. sent a letter to the Resolution Professional attaching a revised Resolution Plan on 15.06.2021, with a request to present the revised plan to CoC. This request was duly rejected by the Resolution Professional on 24.06.2021, as the timelines of CIRP had concluded and an application for approval of Resolution Plan was already filed. This rejection by RP was contested again by Vedanta Ltd.
6. After almost one year from the date of filing of the application for approval of the resolution plan, Vedanta Ltd. filed IA No.406 of 2022 before this Tribunal on seeking submission of a revised Resolution Plan and the same was rejected vide order dated 09.05.2022.
7. Thereafter, Vedanta Ltd. filed IA No.491 of 2022 seeking recall of the order dated 09.05.2022 passed in IA No.406 of 2022 and the same was rejected by this Tribunal vide order dated 10.06.2022.
8. Thereafter, Vedanta Ltd. preferred Company Appeal (AT) (INS) No.712 of 2022 and 713 of 2022 before the Hon'ble NCLAT against the order passed by this Tribunal. The Hon'ble NCLAT rejected the appeal filed by Vedanta Ltd. vide order dated 03.08.2022. However, Vedanta Ltd. was permitted to



raise objections against the approval of the Resolution Plan in the present proceedings before NCLT.

9. Accordingly, Vedanta Ltd. has filed the present objections before this Tribunal.
10. It was submitted on behalf of Vedanta Ltd. that the judgement of Rajputana Properties Private Limited (RPPL) requires that strict confidentiality of the resolution plan should be maintained. It was further stated that apparently, as per page 42 (para 5) and 43 of IA 314 of 2021, the resolution plan was shared with CoC members including the Successful Resolution Applicant. The judgement of the Hon'ble Supreme Court in the case of Phoenix ARC Private Limited, specially para 85 & 98 was also referred and it was stated that the main objection of M/s Vedanta Ltd. is that the Successful Resolution Applicant, being part of the CoC, was able to put undue influence in the acceptance of its own resolution plan.
11. It was submitted on behalf of Resolution Professional that prior to 8th March 2021, Seven CoC meetings were held and the revised plan was considered only in the 8th meeting held on 08.03.2021. The revised plan was put up for approval on 17.03.2021 in 9th Coc meeting. As per page 39 of reply of RP, M/s Vedanta Ltd., objector herein, was informed on 31.03.2021 that their resolution plan has not been approved and, if required, they can request for refund of EMD. On 03.04.2021, M/s Vedanta Ltd., the objector, sought refund of EMD which was duly paid back to them. It was only on 15.06.2021, nearly two and half months after the said communication, that the objector M/s Vedanta Ltd. raised objection for the first time through their letter dated 15.06.2021 which was duly replied by the Resolution Professional on 28.06.2021. The Interlocutory Application No.406 of 2022 and 491 of 2022 of the objector were rejected by NCLT, which was confirmed by Hon'ble



NCLAT, though Hon'ble NCLAT allowed the objector to place its objections during the hearing of the resolution plan. It was further stated that the Proviso to Section 30(5) of IBC, 2016, provides that Financial Creditor who has given the resolution plan can attend as well as vote on the said resolution plan. He further submitted that plans were opened simultaneously on 08.03.2021 and were password protected, thus, complete confidentiality of the resolution plan was maintained. There was no improvement in the financial bid after the opening of the plan on 08.03.2021. Thus, there was no conflict of interest in one of the Financial creditor submitting the resolution plan, and this practice is also supported by the proviso to Section 30(5) of the IBC, 2016.

12. The successful Resolution Applicant supported the arguments of the Resolution Professional and reiterated that the legislative intent, as read in the proviso to Section 30(5) of IBC, 2016 is to permit the Financial Creditor, who is part of CoC, to submit resolution plan as also to vote on it. The requirement of placement of the resolution plan before the CoC has been met. As per the proviso of Section 21 of IBC, 2016, only related parties are prevented from sitting in CoC. The voting share of Mehta Group, in all was less than 10% and even if the same is ignored, the plan has mustered the requisite approval of the CoC.
13. CoC adopted the arguments of Resolution Professional and successful Resolution Applicant and stated that there was no change in financial bid after 08.03.2021 and plan presented by the Successful Resolution Applicant was far better and was approved in the commercial wisdom of the CoC by an overwhelming majority and hence, there is no reason why the plan should not be approved by the Adjudicating Authority.
14. On specific query by the Bench, the Learned Senior counsel Mr. Jain for the objector - M/s. Vedanta Ltd. confirmed that the resolution plan submitted by



Vedanta Ltd. was password protected. In the rejoinder, Learned Senior Counsel Mr. Jain for the objector M/s. Vedanta Ltd. reiterated that the decision-making process in the approval of the resolution plan by the CoC has been vitiated by the presence of Mehta Group in the CoC and the resolution plan should not be approved by the Adjudicating Authority.

15. M/s. Vedanta Ltd.–The Unsuccessful Resolution Applicant filed its written submission with the following submissions:

- i. Violation of Principles of avoidance of conflict of interest and transparency;
- ii. Disclosure of Vedanta's Resolution Plan to MBPL during CoC meetings is in violation to maintain the confidentiality of the Plan.

16. The Resolution Professional filed its written submissions in response to Vedanta's objections:

- i. The objection raised by Vedanta are totally misconceived and against the provisions of IBC. Proviso to Section 30(5) of IBC provides that a Financial Creditor who is also a Resolution Applicant will have a right to vote at the meeting of the CoC.
- ii. Secondly, even if one takes out the voting share of Mehta group (MTC and MBPL), which comes to 10% approximately, then also the Resolution Plan will stand approved by the requisite voting share of CoC. Therefore, voting of MTC and Mehta Trading Corporation will not have any bearing on the outcome of the resolution plan.
- iii. CoC, in its commercial wisdom, has approved the Resolution plan with a majority of 99.732% voting share.
- iv. The Resolution Plan of MBPL is even otherwise financially better than the Resolution Plan of Vedanta. The Net Present Value of the Resolution



Plan of MBPL is Rs. 312.28 crores, as against the Net Present Value of the Resolution Plan of Vedanta Ltd. of Rs. 256.02 crores.

- v. Lastly, the conduct of Vedanta suggests that they have filed objections with malafide intention of derailing the successful resolution of the Corporate Debtor. Vedanta was informed about the non-approval of their plan as far back as on 31.03.2021. Thereafter, on 03.04.2021, Vedanta demanded refund of the Security Deposit and the return of the Bank Guarantee which was released to them. The Resolution Professional filed the application for approval of the Resolution plan on 12.04.2021. Thereafter, on 15.06.2021, Vedanta raised objections and submitted a revised plan with a request to Resolution Professional to present the same before the CoC. The said request was duly rejected by the Applicant—Resolution Professional vide letter on 24.06.2021. Thereafter, Vedanta went into a deep slumber only to file IA in April, 2022. This shows that Vedanta wanted to derail the successful resolution of the Corporate Debtor.
17. We have heard the learned counsels for the Resolution Professional, SRA, CoC and the objector and perused the material available on record. The main contentions of M/s Vedanta Ltd. are that the successful resolution applicant is one of the members of CoC, the process was therefore vitiated due to conflict of interest and the SRA had undue advantage being part of CoC. At this stage, it is relevant to refer to the provision of the Insolvency & Bankruptcy Code, 2016. The ineligibility of the person to submit resolution plan is specified in Section 29A. It is nobody's case that the SRA is ineligible to give the plan under Section 29A. The contentions raised by the M/s Vedanta Ltd are contrary to the legislative intent as enshrined in provisions of



Section 30(5) of Insolvency & Bankruptcy Code, 2016. For ready reference the extract of the provision of Section 30(5) of the Code is reproduced below:

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:

*Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors **unless such resolution applicant is also a financial creditor. (emphasis provided)***

17.2 The Subsection (5) of Section 30 specifies that not only financial creditor can submit the resolution plan and attend the CoC meeting but can also vote on it

17.3 The requirement of voting of resolution plan and approval by more than 66% of the CoC has been met in this case. It is further noted that even if one takes out the voting share of MTC and MBPL of Mehta Group, which comes to 10% approximately, then also the Resolution Plan of MBPL will stand approved by 89.732%, Therefore, voting of MBPL and Mehta Trading Corporation will not have any bearing on the outcome of the resolution plan.

17.4 It is admitted by M/s Vedanta Ltd. that the Plan was password protected. Both the plans were opened simultaneously and therefore, the SRA had no prior knowledge or advantage in this regard. Also, the financial bid was not revised after 08.03.2021 when the plans MBPL and Vedanta Ltd. were opened simultaneously, thus, no prejudice has been caused to M/s Vedanta Ltd. Moreover, Vedanta Ltd. was informed about the non-approval of their plan on 31.03.2021 by the Resolution



Professional. Thereafter, on 03.04.2021, Vedanta Ltd. demanded refund of the Security Deposit and return of the Bank Guarantee and the same was also released on 05.04.2021. The Resolution Professional filed the application for approval of the Resolution plan on 12.04.2021. Thereafter, it was only on 15.06.2021, that Vedanta Ltd. raised objections and submitted a revised plan with a request to Resolution Professional to present the same before the CoC. The said request was duly rejected by the Applicant-Resolution Professional vide letter dated 24.06.2021. Vedanta Ltd. filed the IA challenging the Plan only in April, 2022 which was rejected and appeal against such rejection was dismissed with direction to be heard in this application by Hon'ble NCLAT. We have complied the said directions and heard Vedanta Ltd. as well as considered their objections as per law. Hence, the sequence of events shows that Vedanta Ltd. wanted only to derail the resolution of the Corporate Debtor.

18. Considering the submission of R.P that the resolution plan of M/s MBPL was Superior to that of Vedanta Ltd. , that confidentiality of plans were maintained by password protection, that M/s MBPL was an eligible resolution applicant, that the plan had mustered sufficient vote share of CoC even if vote of Mehta Group is ignored and considering the provisions of Subsection (5) of Section 30 of Insolvency & Bankruptcy Code, 2016, we arrive at the decision that there is no substance in the objections raised by M/s Vedanta Ltd. The objections of Vedanta Ltd. are rejected and we will now consider the approval of the Resolution Plan submitted by MBPL.

RESOLUTION PLAN

19. The present application has been filed by Mr. Vikash Jain, Resolution Professional of M/s Sona Alloys Private Ltd. under Section 30(6) and Section

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31 of Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as **IB Code**) for approval of the Resolution Plan.

The brief facts of the case are given below:

20. The Corporate Debtor was admitted into Corporate Insolvency Resolution Process (hereinafter referred to as **CIRP**) by this Adjudicating Authority vide order dated 16.06.2020, in an application filed by M/s. Noble Resources International Pte. Ltd. - the Operational Creditor u/s 9 of the IB Code, 2016 wherein moratorium was declared and CIRP was initiated. Mr. Jagdishchandra Babulal Mistri was appointed as Interim Resolution Professional (hereinafter referred to as **IRP**). Thereafter, IRP made a public announcement in Form -A and collated claims and constituted the Committee of Creditors (hereinafter referred to as "**CoC**" for short). The CoC consists of the following members:

Sr.No.	Name and Address	Category	Voting Share (%)
1	Rare Asset Reconstruction Limited	Secured	73.756
2	Union Bank of India		10.402
3	Indian Overseas Bank		2.806
4	Indian Bank (Erstwhile Allahabad Bank)		2.765
5	Mehta Trading Corporation	Unsecured	6.968
6	MTC Business Private		3.035



	Limited		
Total			100

21. It is submitted by the applicant that the CoC in its 1st meeting dated 27.07.2020 resolved to replace the IRP by Resolution Professional Mr. Vikash Jain. The IRP was replaced by Resolution Professional - Mr. Vikash Jain vide order dated 20.10.2020 of the Adjudicating Authority .
22. The CoC in its 3rd meeting dated 11.11.2020, asked RP to file an application for extension of Corporate Insolvency Resolution Process (CIRP) period for 90 days along with request for exclusion of period corresponding to the Covid Pandemic. Form – G was published on 13.11.2020 with last date of submission of the Resolution Plan as 12.01.2021. In view of the directions given by the CoC, the Resolution Professional filed application for extension of period of Corporate Insolvency Resolution Process (CIRP) by ninety(90) days beyond one eighty(180) days and the said application was allowed by this Authority vide order dated 05.01.2021 and extension of CIRP period by 90 days was granted.
23. The CoC in its 5th meeting held on 08.01.2021, on the request of Prospective Resolution Applicants to extend the timeline for submission of resolution plans, resolved to extend the timeline by 21 days specifying 02.02.2021 as the last date. The CoC further resolved to appoint Dhelariya & Associate as the process advisor with 80.93% votes.



24. In its 6th meeting held on 03.02.2021, the Resolution Professional informed the members of CoC that 2(*two*) resolution plans have been received as on 02.02.2021, namely,

- a) *MTC Business Private Limited and*
- b) *Vedanta Limited.*

The same were opened simultaneously in the same meeting.

25. The CoC in its 7th meeting, held on 17.02.2021, sought improvement in the offer and requested both the Resolution Applicants to submit a revised plan by 19.02.2021. Thereafter, MTC Business Pvt. Ltd. submitted its revised Plan on 19.02.2021 but Vedanta Ltd. sought extension of time. Vedanta Ltd. submitted its revised Plan on 22.02.2021, within the extended timeline.

26. The 8th meeting of CoC was scheduled on 23.02.2021, the meeting was adjourned on various dates and adjourned 8th COC meeting was held on 08.03.2021. The Resolution Applicants submitted final Resolution Plans revising the amount offered to the stakeholders. Accordingly, the CoC advised the Resolution Professional to put the Plans of MTC Business Pvt Ltd. and Vedanta Limited for e-voting. Further, the CoC was re-constituted on 15.03.2021 by the Resolution Professional, consequent to the order passed by this Tribunal. As of date, the reconstituted CoC consisted of the following members:

Sr.No.	Name and Address	Category	Voting Share (%)



1	Rare Asset Reconstruction Limited	Secured	73.756
2	Union Bank of India		10.402
3	Indian Overseas Bank		2.806
4	Indian Bank (Erstwhile Allahabad Bank)		2.765
5	Mehta Trading Corporation	Unsecured	6.968
6	MTC Business Private Limited		3.035
7*	Pani Logistics		0.264
8*	Ritesh M. Jain (HUF)		0.004
Total			100

Note-*marked CoC members were added at the time of reconstitution of the CoC.

27. After the reconstitution of the CoC, the last CoC meeting i.e., the 9th CoC meeting was held on 17.03.2021., wherein it was resolved that the final Resolution Plans be put for e-voting. The e-voting lines were kept open from 18.03.2021 till 24.03.2021 wherein the Resolution Plan submitted by M/s. MTC Business Private Ltd (MBPL) was approved with a majority of 99.732% voting share by the CoC. It is further submitted by the RP that the approved Resolution Plan of MTC Business Private. Ltd. complies with the provisions of Section 30 of the IB Code, 2016 and Regulation 38 of the CIRP Regulations.



28. The amount provided for the stakeholders under the Resolution Plan is as under:

Sr. No.	Stakeholders	Claims Admitted (in crores)	Proposed Payment as per Resolution Plan (in crores)	Tenure(Years) From Trigger date
1	Outstanding CIRP Cost (At actuals)	0.00	1.00	Upfront
2	Workmen and Employees dues other than Related Party Employees	1.85	1.85	Upfront
3	Related Party Employees	1.25	Nil	NA
4	Operational Creditors - Other than Statutory Dues	114.97	0.11	Upfront
5	Operational Creditors - Statutory Dues	157.50	0.19	Upfront
6	Secured Financial Creditors	1696.82	365.85	Within 5 years
7	Unsecured Financial Creditors - Related Party	2.44	Nil	NA
8	Unsecured Financial Creditors - other than Related Party	194.25	189.00	20th year
		2169.08	558.00	

29. It is further submitted that the Approved Resolution plan of M/s. MTC Business Pvt. Ltd provides the term of the plan and its implementation schedule. The implementation schedule proposed by the Resolution Applicant is as under:



Sr. no.	Activity	Timeline
Phase I – Approval process of the Proposed Resolution Plan		
1.	Approved by NCLT	E
2.	Notice on Company's Website	E + 14
3.	Intimation to MCA, RBI, Tax authorities and various other statutory authorities	
4.	Intimation to all creditors, and other stakeholders of the Company	
Phase II- Settlement of Creditors		
5.	Payment of CIRP Costs as approved by CoC	E+ 90
6.	Payment to Operational Creditors	E + 90
7.	Payment of the proportionate amount to the dissenting financial creditors from the upfront cash and simultaneous execution of the agreement to assign the Deferred Debt by the dissenting financial Creditors	E + 90



8.	Upfront Payment to Secured Financial Creditors and simultaneous execution of the Agreement to Assign the deferred debt by the Dissenting Financial Creditors	E+90
9.	Issuance of OCRPS to unsecured Financial creditors, with redemption as per the terms of the resolution plan	E+90
10.	Standalone Capital Reduction, issuance/allotment of Equity shares of the Corporate Debtor to the SPV, the appointment of the Reconstituted Board	E+90
11.	Release of upfront PBG, if not adjusted towards upfront cash	E+90
12.	Amalgamation becoming Effective: Amalgamation i.e, the merger of the SPV into the Corporate Debtor as consideration to shareholders of the SPV.	Post the Trigger Date E+90 or date on which the Upfront Cash payment is



		fully discharged (i.e., Amalgamation Appointed date)
Phase III- Implementation of Proposed Resolution Plan		
13.	Management of Company	E + 90
14.	Change in Memorandum and Article of Association and other documentation as required under the proposed plan	E + 120
15.	Restarting the operations of the Corporate Debtor	E + 365
16.	Improvement in operations	Within 1 to 3 years
17.	i) Payment of Deferred Cash ii) Release of Existing Security and Issuance of no dues certificate iii) Execution of Assignment Agreement iv) Release PBG	E + 1915 (or such earlier timeline in case of prepayment)
18.	Redemption of OCRPS	E + 7390



Note: The timelines shall stand automatically adjusted in case of prepayment of deferred cash at the option of the Resolution Applicant in its sole discretion with discounting rate@10% per annum and without any extra levy or prepayment charges.

30. It is submitted by the RP that the Resolution Plan also provides for performance security of Rs. 10 crores as per sub-regulation (4A) of regulation 36B of the CIRP Regulations, 2016. It is verified in Form – H and the bank statement filed by the RP that the performance security of Rs.10 Crore was deposited on 30.03.2021 in the account of Corporate Debtor as recorded in the resolution plan (Page 166) of this application. Thus, it is seen that the amount of Rs.10 Crore, being performance security was received by the RP before the submission of the Resolution Plan for approval.
31. It is further submitted that in accordance with Section 31(1) of the Code, 2016 the approved resolution plan shall be binding on the corporate debtor and its employees, members, and creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan. It is also clarified that neither the Corporate Debtor nor the Resolution Applicant shall be required to make any payments over and above the



amount provided for under the said Resolution Plan on and from the date of approval of the resolution plan.

- 32.** It is submitted by the resolution applicant that upon approval of Resolution plan, change in the management or control of the corporate debtor, according to Section 32A of the Insolvency and Bankruptcy Code, 2016, notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under Section 31 of the Insolvency and Bankruptcy Code, 2016 and any instrument executed by the Corporate Debtor under the *Negotiable Instrument Act, 1881* including but not limited to Post Dated Cheques, Demand Promissory Notes etc prior to the NCLT Approval Order date shall in no manner be the liability of the Resolution Applicant and effect of all such instruments shall stand extinguished.
- 33.** It is further submitted that the subscription of the Equity Shares by the Resolution Applicant and its Affiliates/Nominees the entire Equity Shares held by the Existing Shareholders shall stand fully extinguished as a part of this Resolution Plan.
- 34.** It is submitted by the resolution applicant that nothing contained in this Resolution Plan shall affect the rights of the Corporate

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Debtor to recover any amounts due to the Corporate Debtor from any third party including any Related Parties of the Corporate Debtor, under Proceedings initiated by the Corporate Debtor *(including but not limited to the Company's Electricity Proceedings, Company's Water Proceedings, other Proceedings under Section 138 of the Negotiable Instruments Act, 1881, other recovery Proceedings)* and there shall be no set off of any such amounts recoverable by the Corporate Debtor against any amount paid / payable by the Corporate Debtor or any liability discharged, satisfied or extinguished pursuant to this Resolution Plan.

35. It is further submitted by the resolution applicant that the plan provides that on the amalgamation effective date as an integral part of the Resolution Plan, the entire SPV i.e. **M/s. MTC Steel Alloys Private Limited** shall stand transferred, merged, vested and/or amalgamated with the Corporate Debtor as on the Amalgamation Effective Date on a going concern basis, in accordance with the requirements of Section 2(1B) of the Income Tax Act, 1961, the provisions of Chapter XV of the Companies Act and other Applicable Laws, as per the terms and conditions of this Resolution Plan, without any further act, deed or document.
36. It is submitted by the RP that he has not filed any other application concerning the subject matter of this application before any other Court including the Hon'ble Supreme Court of India.
37. The liquidation value of the Corporate Debtor is Rs. 2,78,79,14,100/-.The value of the Resolution Plan is Rs.



5,57,00,62,184/- .The Net Present Value (NPV) of the Plan, discounted at the rate 10% is Rs. 312.18 Crore. It was submitted on behalf of RP that the value of the plan is higher than the liquidation value.

38. We have heard learned counsel for the applicant and perused the material available on record. It is noted that Form H has been filed by Resolution Professional wherein all information/details as regards to conduct of CIRP as well as the process adopted for the Resolution Plan have been given. The Resolution Applicant has proposed to pay the Financial Creditors Rs.554.85 crores against its total admitted claim of Rs. 1893.22 crores. An amount of Rs. 2.15 crores has been proposed in the Resolution Plan for payment to the Operational Creditor against the total admitted claim of Rs. 274.32 crores including the Statutory Dues and Employees/Workmen.
39. It is further noted that an affidavit as regards the eligibility of the resolution applicant under Section 29A along with the undertaking of the resolution applicant to this effect has been filed. We have also perused the contents of the resolution plan, we are of the view that Regulations 36 to 39 of CIRP Regulations, 2016 have been complied with. We further noted that the resolution plan complies with all requirements under Section 30(2)(b) of the IB Code. We also find that the resolution plan addresses the cause for failure and also contains measures to run the Corporate Debtor in future and that the resolution plan is both feasible and viable as held by CoC and it also contains provisions for its effective implementation. Accordingly, we being satisfied, approve the Resolution Plan and pass the following order:



- I. The approved 'Resolution Plan' is annexed with this order at **Annexure - A** and shall become effective from the date of passing of this order.
- II. The order of moratorium dated 16.06.2020 passed by this Adjudicating Authority under Section 14 of the IB Code shall cease to have effect from the date of this order.
- III. The Resolution Plan so approved shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan.
- IV. The monitoring committee as proposed in Part II of the resolution plan shall be constituted for supervising the effective implementation of the Resolution Plan.
- V. Any applications filed and pending for preferential, undervalued, fraudulent, extortionate transactions shall be pursued by the monitoring Committee and later by SRA and net amount recouped, if any, shall be distributed to the creditors on pro-rata basis.
- VI. The Resolution Professional, Mr. Vikash Jain, shall be released from the duties of the resolution professional of the Corporate Debtor as per the provisions of the IB Code and rules/regulations made thereunder.
- VII. The Resolution Professional shall forthwith send a copy of this Order to the participants and the resolution applicant(s).
- VIII. The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.



- IX.** As regards various reliefs and concessions which are being sought, we hereby grant the following reliefs and concessions only as against reliefs and concessions claimed by the resolution applicant :
- i.** After the payment of the dues to the creditors, as per the resolution plan, all the liabilities of the said stakeholders shall stand permanently extinguished and other claims including Government/Statutory Authority, whether lodged during CIRP or not, shall stand extinguished after the approval of the resolution plan. We further hold that contingent/unconfirmed dues shall also stand extinguished;
 - ii.** From the date of this order, all claims except those provided in the plan of the Corporate Debtor stand extinguished.
 - iii.** From the date of this order, all encumbrances on the assets of the Corporate Debtor before the plan shall stand permanently extinguished.
 - iv.** The reliefs granted in (i) (ii) & (iii) supra are subject to outcome of interlocutory applications regarding claims presently pending before the Adjudicating Authority and as per undertaking given by the Resolution Professional in para 8 of affidavit filed on 08.01.2023 in IA 431/AHM/2021, such creditors will be entitled to pro rata amount as per their respective category in accordance with the Resolution Plan, from the escrow account maintained for this purpose, as per said undertaking.
 - v.** For reliefs and concessions sought from the Government/Statutory Authorities including environmental clearance as well as stamp duty, we direct the resolution applicant to approach the concerned Authorities. The concerned Authorities may decide the matter as



per applicable provisions of law for effective implementation of the Resolution Plan.

- vi. As regards reliefs prayed under various provisions of the Income Tax Act, 1961, the corporate Debtor/ resolution applicant may approach the Income Tax Authorities who shall take a decision on relief and concessions sought by the resolution applicant in accordance with the provisions of the Income Tax Act, 1961.
- vii. The resolution applicant shall be entitled to review, revise or terminate any appointments/agreements entered into by or on behalf of the Corporate Debtor in accordance with the terms and conditions of such agreements/MoUs/contracts;
- viii. The management of the Corporate Debtor shall be handed over to the Board of Directors as may be nominated by the resolution applicant for proper running operations of the business of the Corporate Debtor;
- ix. The Board of Directors of the Corporate Debtor shall also be reconstituted and procedural compliances shall be done to give effect to such reconstitution;
- x. The resolution applicant shall, pursuant to the resolution plan approved under Section 31(1) of the Code, obtain necessary approvals required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under Section 31 or within such period as provided for in such law, whichever is later, as the case may be;
- xi. All the approvals of shareholders/members of the Corporate Debtor shall be deemed to have been obtained and the provisions



made in the resolution plan as regards the restructuring of capital shall be binding on them. For concession of stamp duty as prayed in the resolution plan, the resolution applicant may approach the concerned Government Authority.

- xii. With respect to the grant of license/ Government approval if the license or approval is terminated, suspended and revoked. The resolution applicant may approach the concerned Department/ Authorities for such approval/ renewal and Government Authorities may consider the request of the resolution applicant as per applicable provisions of law for the effective implementation of the resolution plan.

40. Accordingly, IA 314 of 2021 is allowed with the above-said observations and directions and stands disposed of.
41. An urgent certified copy of this order, if applied for, is to be issued to all concerned parties upon compliance with all requisite formalities.

S/d-

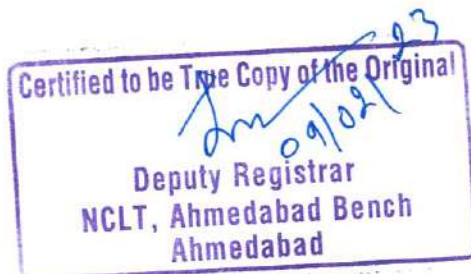
AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

S/d-

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

RAHUL/LRA

Prepared by Vimal
cu
Signature _____
Date 09-2-2023



IA 314(AHM)2021
In
CP (IB) 586 of 2019

