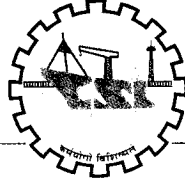


# कोचीन शिपयार्ड लिमिटेड

(भारत सरकार की श्रेणी-1 मिनिरात्रा कंपनी, पोत परिवहन मंत्रालय)



# COCHIN SHIPYARD LIMITED

(A Government of India Category-1 Miniratna Company, Ministry of Shipping)

SEC/48/2017-63

March 06, 2020

<b>To</b> <b>The Manager,</b> <b>Compliance Department,</b> <b>BSE Limited,</b> <b>Phiroze Jeejeebhoy Tower,</b> <b>Dalal Street,</b> <b>Mumbai – 400 001</b>	<b>To</b> <b>The Manager,</b> <b>Compliance Department,</b> <b>The National Stock Exchange of India Ltd.,</b> <b>Exchange Plaza,</b> <b>Bandra – Kurla Complex, Bandra (East)</b> <b>Mumbai – 400 051</b>
<b>Scrip Code/Symbol: 540678/COCHINSHIP</b>	

Dear Sir/Madam,

**Subject: Approval of Resolution Plan for Tebma Shipyards Limited (TSL)**

1. Further to our letter dated December 31, 2019 and pursuant to Regulation 30 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, it is hereby informed that the National Company Law Tribunal, Chennai ("NCLT") has on March 04, 2020 pronounced the order approving the Resolution Plan submitted by Cochin Shipyard Limited (CSL) with respect to Tebma Shipyards Limited (TSL) under the Corporate Insolvency Resolution Process (CIRP) of the Insolvency and Bankruptcy Code, 2016. The written order issued by NCLT in this regard on March 05, 2020, is attached herewith, which is self explanatory.
2. The above is for your information and record please.

For Cochin Shipyard Limited

  
Syamkamal N

Company Secretary  
& Compliance Officer



पंजीकृत कार्यालय : प्रशासनिक भवन, पी.ओ.बैग सं 1653, पेरुमानूर पी. ओ., कोच्ची - 682 015  
Registered Office : Administrative Building, P.O. Bag No. 1653, Perumanoor P.O., Kochi - 682 015  
फोन / Phone : +91(484) 2361181 / 2501200 फाक्स / Fax : +91 (484) 2370897 / 2383902  
वेबसाइट / Website : www.cochinshipyard.com, सीआईएन / CIN: L63032KL1972GOI002414

① ②

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

**MA/06/2020 in CP/738/IB/2018**  
(Filed under Sec. 30(6) of the IBC, 2016)

**IN THE MATTER OF:**

**M/s. Tebma Shipyard Limited**  
Rep. by Balakrishnan Venkatachalam,  
Resolution Professional

... Applicant

**Present:**

For RP : Akshay Bathia, Advocate  
V. Balakrishnan, RP in person

~~For Resolution Applicant~~ : Ravi Rajagopalan, Advocate

For Income Tax : P. Raj Kumar Jhabakh, Advocate

**MA/1228/2019 in CP/738/IB/2018**  
(Filed under Sec. 60(5) of the IBC, 2016)

**IN THE MATTER OF:**

**Balakrishnan Venkatachalam**  
Resolution Professional of  
M/s. Tebma Shipyard Limited

... Applicant

**Present:**

For RP : Akshay Bathia, Advocate  
V. Balakrishnan, RP in person

CORAM :

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



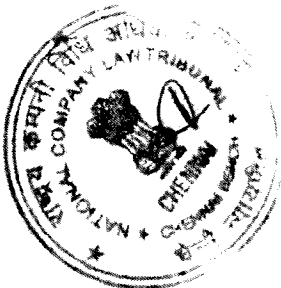
*Order Pronounced on 4<sup>th</sup> March 2020*

**COMMON ORDER**

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

1. The MA/06/2020 is moved by the Resolution Professional of the Corporate Debtor viz., V. Balakrishnan under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (in short IBC, 2016) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short, 'Regulation') seeking the approval of the Resolution Plan submitted by the successful Resolution Applicant viz., **Cochin Shipyard Limited**

2. The Learned Counsel for the Resolution Professional submitted that one M/s. Jotun India Private Limited, in the capacity as an Operational Creditor has filed an Application under Section 9 of IBC, 2016, against the Corporate Debtor viz. Tebma Shipyard and this Authority vide order dated 25.09.2018 admitted the said Application and initiated Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor by appointing one Mr. N. Kumar as the Interim Resolution Professional (IRP).



3. It was submitted that the first Committee of Creditors (CoC) meeting was held on 31.10.2018 and it was decided that the IRP was to be replaced by an RP and in the 2<sup>nd</sup> CoC meeting held on 05.12.2018, the CoC has resolved to appoint the Applicant herein as the Resolution Professional (RP) and pursuant thereto, this Authority vide order dated 12.12.2018 appointed the Applicant as the Resolution Professional of the Corporate Debtor.

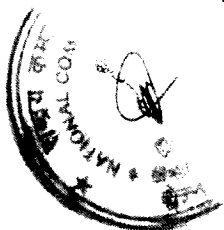
4. The Learned Counsel for the Resolution Professional submitted that the Expression of Interest (EoI) was issued on 25.02.2019 and the last date was fixed as 12.03.2019. Further, multiple people had evinced interest in the Corporate Debtor and since 180 days' period of the CIRP was about to end on 24.03.2019, the Resolution Professional filed an MA/256/2019 for extension of CIRP for a further period of 90 and this Authority vide order dated 20.03.2019 extended the CIRP till 20.06.2019. Thereafter, in the 8<sup>th</sup> CoC meeting held on 14.06.2019, the CoC has recommended the Resolution Professional to file an application for exclusion of time of the CIRP and in pursuance of the same, the Applicant has filed an MA/596/2019 for exclusion of 60 days and this Authority vide order dated 21.06.2019 granted 60 days



exclusion and thereby the CIRP period was extended till 22.08.2019.

5. It is submitted that in the meanwhile, the IBC Amendment Act came into force on 16.08.2019 and by relying on the proviso to the said Amendment Act, the Applicant filed another MA/871/2019 seeking for further extension and this Authority vide order dated 21.08.2019 extended the CIRP till 14.11.2019. Subsequent to the said extension, the Applicant published the revised FORM - G on 20.08.2019 and the deadline for the submission of the Resolution Plan as per FORM - G was stated to be on 20.10.2019 and the CoC had approved the extension of the last date to submit the resolution plan by 5 days.

6. The Learned Counsel for the Resolution Professional submitted that the Resolution Applicant viz. Cochin Shipyard Limited has submitted their Resolution Plan and they were the only eligible applicant who had submitted the plan within the extended timeframe. It is submitted that during the 11<sup>th</sup> CoC meeting held on 06.11.2019, it was decided by a majority vote of 100% to seek for extension of CIRP on the ground that the Resolution Plan to be finalized. In pursuance of the same, upon an Application being filed



by the Resolution Professional this Tribunal vide order dated 20.11.2019 granted a final extension for a period of 45 days for the completion of the CIRP.

7. Pursuant thereto, the CoC deliberated upon the Resolution Plan and has found it to be feasible & viable in accordance with Section 30(4) of the IBC, 2016 and Regulation 39(4) of the CIRP Regulations and has approved the same with 95.49% of the CoC voting on 26.12.2019 .

8. It is evident from the 4<sup>th</sup> meeting of the CoC that the voting shares of the CoC members were revised and the following members constituted the CoC;

S. No.	Name of Creditor	Amount Admitted	Voting Share (%)
1	State Bank of India	339,21,51,995	56.31
2	ICICI Bank	38,98,20,862	6.47
3	IDBI Bank	49,14,84,710	8.16
4	Punjab National Bank	27,16,88,664	4.51
5	Syndicate Bank	39,67,09,499	6.59
6	Andhra Bank	108,21,11,153	17.96

9. Further, it may also be seen that the Eligibility Criteria for submitting the Resolution Plan was fixed in the 4<sup>th</sup> CoC meeting and the same is extracted hereunder;



**RESOLVED THAT** the eligibility criteria for submitting the EoI, as given below and is hereby confirmed.

- o Minimum Asset under Management of funds deployed of Rs. 500 Crore in the immediately preceding completed financial year for a Financial Institutions / Investment Company / PE Investors / NBFC's/ARC
- o For Body Corporate: Minimum net worth Rs. 100 Crore at the group level as per the last available audited financial statements.

10. It is evident from Form - H that the Resolution Applicant has submitted his revised Resolution plan before the Committee of Creditors on 25.10.2019 and in the 12<sup>th</sup> CoC meeting the Committee of Creditors have approved the Resolution Plan with the following distribution of voting share;

S. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan
1	State Bank of India	56.31	Voted in favour
2	ICICI Bank	6.47	Voted In favour
3	IDBI Bank	8.16	Voted in favour
4	<b>Punjab National Bank</b>	<b>4.51</b>	<b>Voted Against</b>
5	Syndicate Bank	6.59	Voted In favour
6	Andhra Bank	17.96	Voted In favour



11. After the successful passing of the Resolution Plan before the CoC on 26.12.2019, the Resolution Professional filed the Resolution Plan with this Adjudicating Authority on 27.12.2019.

12. The Resolution Applicant, who is a third party and Public Sector undertaking has submitted the Resolution Plan along with an Affidavit stating that he is eligible under Section 29A of IBC, 2016 to the Resolution Professional.

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

(ii) A term "Excluded Ship" finds place in the Resolution Plan, which means the following ships forming part of the assets of the Corporate Debtor.

- a) Ship 1 - Y 123 - MPSV;
- b) Ship 2 - Y 159 - TUG;

These "Excluded Ships" are not required for continuing the current operations of the Corporate Debtor and are occupying the space at the Malpe Yard of the Corporate Debtor and will be an impediment in reviving the Corporate Debtor and hence the Resolution Applicant proposes that the title and custody of both the ships shall be held by the Corporate Debtor on behalf of and for the sole benefit of the Financial Creditor, subject to





the condition that the Resolution Professional / Consortium of Lender of the Corporate Debtor shall to the satisfaction of the Corporate Debtor and the Resolution Applicant, sell and deliver both the "Excluded Ship" from the Malpe Yard on 'as is where is' basis without any recourse or obligation, liabilities or costs on the Corporate Debtor or the Resolution Applicant within 120 days from the Effective date (*ES Sale Due Date*).

- (ii) If both or any one of the Excluded Ships remain unsold or undelivered (*Remaining Excluded Ship*) on or prior to the *ES Sale Due Date*, then the Corporate Debtor and the Resolution Applicant shall have a right to initiate, assist and support and complete the sale and deliver the ship to any third party either through bilateral treaty, agreement, auction or in any other manner at any price available on or before 365 days of the *ES Sale Due Date* (*ES Extended Sale Due Date*) on 'as is where is' basis without any recourse or obligation, liabilities or costs on the Corporate Debtor or the Resolution Applicant. If the Corporate Debtor / Resolution Applicant is able to sell and deliver the *Remaining Excluded Ship* and receive the proceeds from the same, the Corporate Debtor or the Resolution Applicant, as the case may be, shall pay to the Financial Creditor, the proceeds received from the sale of the *Remaining Excluded Ship* reduced by (a) ES liabilities (which includes demurrage, expenses, taxes, statutory



payment, custom duties, etc.) and (b) 20% of the ES Sale proceeds less ES liabilities, within 30 days from the ES Actual Sale Date.

- (iii) Further, if the Corporate Debtor / Resolution Applicant is unable to arrange to sell and deliver the ships on or before the *ES Extended Sale Due Date*, then the Financial Creditor deemed to have authorized the Resolution Application and the Corporate Debtor, without any further act on the part of the Financial Creditors and the Corporate Debtor or the Resolution Application, as the case may be shall be entitled to sell the *Remaining Excluded Ship* as a "scrap" to any third party and upon completion of the such sale, the Corporate Debtor / Resolution Applicant, as the case may be shall pay to the Financial Creditor, the proceeds received from the sale of the *Remaining Excluded Ship* reduced by the ES Liabilities within 30 days from the date of ES Scrap Sale Date.
- (iv) As per the Resolution Plan the Resolution Applicant proposes a sum of Rs.65 Crores as the Resolution Plan amount payable to all the stakeholders as full and final settlement and discharge of all the Claims of the Corporate Debtor, including the CIRP Costs. The table below would enunciate the payments to be made to different stakeholders;

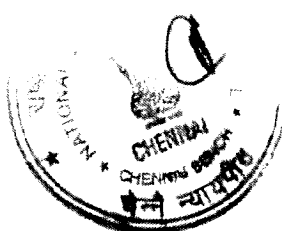


Stakeholders	Amount earmarked (Rs. In Crores)	% of pay out on Admitted Debt
CIRP Costs	3.88	100%
Operational Creditors, Employees & Workmen	1.95	60%
Financial Creditors (Including Dissenting Financial Creditors)	58.65	9.74% plus the Net ES Sale Proceeds or Net ES Scrap Proceeds and EFA Realised Amount
Operational Creditors (other than Workmen & Employees)	0.52	100%
Contingent Liabilities for pending litigation	0.00	NIL
Equity Shareholders and Preference Shareholders	0.00	NIL
<b>TOTAL</b>	<b>65.00</b>	

- (v) The breakup of the amounts proposed to be paid to the Financial Creditor are as follows;

Class of Financial Creditor	Admitted Debt (Rs. In Crores)	Amount provided in Plan	% of pay out on Admitted Debt
Andhra Bank	108.21	10.55	9.74%
ICICI Bank	38.98	3.80	9.74%
IDBI Bank	49.15	4.79	9.74%
Punjab National Bank	27.16	2.65	9.74%
State Bank of India	339.22	33.00	9.74%
Syndicate Bank	39.67	3.86	9.74%
<b>TOTAL</b>	<b>602.39</b>	<b>58.65</b>	<b>9.74%</b>

- (vi) In addition to the above, the Financial Creditor shall be entitled to receive the Net ES Sale Proceeds or Net ES Scrap Proceeds from the sale of "Excluded Ship".



- (vii) It is proposed in the Resolution Plan that the Resolution Applicant shall pay to all the stakeholders of the Corporate Debtor within 30 days from the Record date.
- (viii) The Resolution Plan provides for the formation of a Monitoring Committee and they shall consist of 5 member, being the following;
- a) Resolution Professional or IBBI Registered Insolvency Professional;
  - b) A nominee of the Financial Creditor to represent the CoC; and
  - c) Three nominees of Resolution Applicant to represent the Resolution Applicant
- (ix) As an integral part of the Resolution Plan, on the date of issue of equity shares of the Corporate Debtor to the Resolution Applicant, the entire issued equity share capital of the Corporate Debtor i.e. 7,73,61,510 equity shares of par value of INR 10 (Rupees Ten each) and 12,50,00,000 cumulative redeemable preference shares of INR 10 (Rs. Ten each), together with dividend rights, voting rights and any other rights, shall be reduced, cancelled and extinguished without any consideration payable to the existing shareholders of the Corporate Debtor. The equity shareholding of the Corporate Debtor post capital reduction and issue of equity shares to the Resolution Applicant shall be as follows;



Shareholder	Indicative No. of Equity Shares	Percentage
Resolution Applicant and its nominees	8,00,00,000	100%
<b>Total</b>	<b>8,00,00,000</b>	<b>100%</b>

14. The Resolution Professional has filed Form - H compliance and from that the Fair Value and the Liquidation value is found to be as follows;

	Fair Value	Liquidation Value
Assets to be sole by RP / CoC	₹240,37,68,633/-	₹117,46,20,685/-
Assets Taken over by the Resolution Applicant	₹158,15,95,025/-	₹89,09,45,830/-

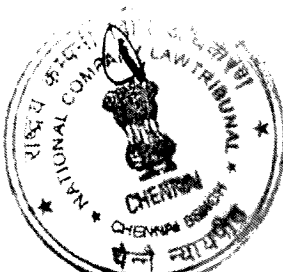
15. From the averments made in the Application as well as in Form-H as filed by the Resolution Professional in relation to the procedural aspects, the same seems to have been duly complied with for which the Resolution Professional has issued a Certificate and it is not necessary for this Authority to go into the same. However, this Authority is duty bound to examine the Resolution Plan within the contours of Section 30(2) of the IBC, 2016. A comparison vis-à-vis with the Mandatory compliance under the IBC



and the Compliance made under the Resolution Plan is captured hereunder;

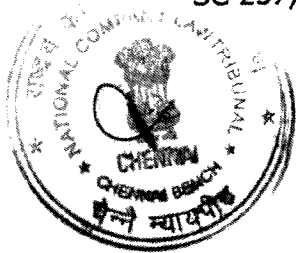
<b>MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS</b>	<b>COMPLIANCE UNDER RESOLUTION PLAN</b>
<b>S. 30(1)</b> - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	The Affidavit of the Resolution Applicant (RA) is placed on record and the RP in Form H has certified that the RA has submitted an affidavit and the said affidavit is in order.
<b>S. 30(2)(a)</b> - Payment of Insolvency and Resolution cost in the manner specified by the Board	Clause 7 (a) of the Resolution Plan provides for the payment of CIRP costs and the same would be paid within 30 days from the Record date. The CIRP Cost is arrived at ₹3.88 Crores.
<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	Resolution Applicant has stated in Clause 7(c) that the amount available to Operational Creditors in the event of liquidation is NIL and as per the Plan the Operational Creditors are being paid 100% of their admitted claim and the Workmen are being paid 60% of their admitted claim and the same would be paid within 30 days from the Record date.
<b>Reg. 38(1)</b> - Resolution Plan identifies specific source of funds that will be used to pay the (a) Insolvency Resolution Process cost? (b) Liquidation value due to Operational Creditors? (c) Liquidation value due to dissenting financial creditors	Clause 7 of the Resolution Plan manifest that the total Amount provided under the Resolution Plan for a sum is Rs.65 Crores and the Resolution Application proposes to pay the said sum out of the Equity investment or from loan.
<b>Reg. 38(1A)</b> - Resolution Plan shall include a statement as to	Clause 7 provides for payments to be made to all the stakeholders of the

how it has dealt with the interest of all the stakeholders, including financial creditors and operational creditors of the Corporate Debtor	Corporate Debtor and the same shall be paid within 30 days from the Record date.
<b>S. 30(2)(c)</b> - Management of the affairs of the Corporate Debtor after approval of the Resolution Plan	Clause 10 (c)(i) of the Resolution Plan deals with the Management and Control of the Corporate Debtor after the approval of the Resolution Plan
<b>S. 30(2)(d)</b> - Implementation and Supervision of the Resolution Plan	Clause 10(b) of the Resolution Plan deals with the Implementation of the Resolution Plan in a time bound manner
<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 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.	Clause 10 of the Resolution Plan deals with the Term, Implementation Schedule and Monitoring of the Resolution Plan
<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	Clause 5 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 and its capability to implement the Resolution plan



e) the resolution applicant has the capability to implement the resolution plan																																	
<b>S. 30(2)(e)</b> - Does not contravene any of the provisions of the law for the time being in force	Clause 8 (a)(viii) of the Resolution plan is an Undertaking by the Resolution Applicant wherein it has been stated that the Resolution Plan is not in contravention with the provisions of any Applicable Laws.																																
<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	The CoC, in its 12 <sup>th</sup> meeting has approved the Resolution Plan in the following voting pattern; <table border="1" data-bbox="827 958 1257 1267"> <thead> <tr> <th>S. No</th> <th>Name of Creditor</th> <th>Ascent (%)</th> <th>Dissent (%)</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>SBI</td> <td>56.31</td> <td>-</td> </tr> <tr> <td>2.</td> <td>ICICI Bank</td> <td>6.47</td> <td>-</td> </tr> <tr> <td>3.</td> <td>IBDI Bank</td> <td>8.16</td> <td>-</td> </tr> <tr> <td>4</td> <td>PNB</td> <td>-</td> <td>4.51</td> </tr> <tr> <td>5</td> <td>Syndicate Bank</td> <td>6.59</td> <td>-</td> </tr> <tr> <td>6</td> <td>Andhra Bank</td> <td>17.96</td> <td>-</td> </tr> <tr> <td></td> <td><b>TOTAL</b></td> <td><b>95.49</b></td> <td><b>4.51</b></td> </tr> </tbody> </table>	S. No	Name of Creditor	Ascent (%)	Dissent (%)	1.	SBI	56.31	-	2.	ICICI Bank	6.47	-	3.	IBDI Bank	8.16	-	4	PNB	-	4.51	5	Syndicate Bank	6.59	-	6	Andhra Bank	17.96	-		<b>TOTAL</b>	<b>95.49</b>	<b>4.51</b>
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	<b>TOTAL</b>	<b>95.49</b>	<b>4.51</b>																														

16. 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 SCC Online SC 257**, wherein in para 19 and 62 it is held as follows;



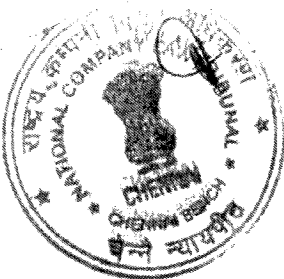


"19.....In the present case, however, our focus must be on the dispensation governing the process of approval or rejection of resolution plan by the CoC. The CoC is called upon to consider the resolution plan under Section 30(4) of the I&B Code after it is verified and vetted by the resolution professional 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."

17. 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).

18. This Authority has done an extensive analysis of the Resolution Plan and upon a question put forth by the Tribunal in relation to the Liquidation Value being ₹89,09,45,830/-, the Resolution Applicant proposes to infuse only a sum of Rs.65 Crores, which does not even meet the liquidation value, for which, the Learned Counsel for the Resolution Professional replied that the Committee of Creditors have voted in favour of the Resolution Plan after deliberating upon all these aspects and thereby have taken a 'commercial decision' by voting in favour of the Resolution Plan even if the Resolution Plan value is lesser than the Liquidation value in and by which they are interested in the revival of the Corporate Debtor rather than the death of the Corporate Debtor by liquidation. 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."

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.

19. The Resolution Applicant has sought for various Reliefs, Concessions and Dispensations in relation to the Resolution Plan and taking into consideration of the same, this Authority vide order dated 08.01.2020 directed the Resolution Professional to issue notice to the Income Tax Authorities and the State of Karnataka. Pursuant to the said direction, the Deputy Commissioner of Income Tax vide diary No.1302 dated 24.02.2020 has filed their memo in relation to the Resolution Plan of the Corporate Debtor. The relevant portion of the memo is extracted hereunder;

"3.....it is submitted that the requirement to send the notice to the concerned department is a procedural requirement and as such does not impact the right of the Department to proceed in accordance with the provisions of the Income Tax Act, 1961. Therefore, It is submitted that this Hon'ble Tribunal, may take the objections on record without prejudice to the rights of the Department to take all appropriate proceedings under the provisions of the Income Tax Act, 1961 to protect the interest of the Government revenue including the right to reopen the assessment....."

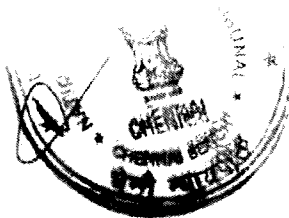
Thus, as to the Relief and Concessions sought for in the Resolution Plan, taking into consideration the Judgments of the Hon'ble NCLAT, and more particularly the decision of the Hon'ble Supreme Court of India in the matter of **Embassy Property Developments Pvt. Ltd. -Vs- State of Karnataka & Ors.** in *Civil Appeal No. 9170 of 2019*, 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.

20. 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.

21. 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.



22. In relation to MA/1288/2019, the same has been filed by the Resolution Professional under Section 60(5) of IBC, 2016 seeking relief as follows;

- a. *permit the RP to sell the HULLY Y 123 & TUG Y 159 currently on the books of the Corporate Debtor.*
- b. *Any other orders which the Hon'ble Tribunal may deem fit for the current application.*

A perusal of the Resolution Plan, more particularly Clause 6(d) of the Resolution Plan deals with the mode and sale of these two ships in a detailed manner and also in view of the approval of the Resolution Plan by this Authority, the **MA/1288/2019** filed by the Resolution Professional stands **disposed of** and the **MA/06/2020** filed by the Resolution Professional for the approval of the Resolution Plan stands **allowed**.

-SD-

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

-SD-

**(R.VARADHARAJAN)**  
MEMBER (JUDICIAL)



Certified to be True Copy

N. SRIPANJAN  
MEMBER (JUDICIAL)  
NATIONAL COMPANY LAW TRIBUNAL  
CHENNAI  
13/06/2020