

## **ADJUDICATING AUTHORITY: SCOPE OF JURISDICTION IN APPROVAL OF A RESOLUTION PLAN**

The attempt of the Legislature to overhaul the insolvency resolution framework in the country and the enactment of the Insolvency and Bankruptcy Code ('**the Code**') aims at reorganisation of defaulting companies ('**Corporate Debtor**') by way of providing an opportunity to the persons and/or companies to file a Resolution Plan – i.e., a structured proposal to put the sinking company back on its feet.

The provisions of the Code make it apparent that once a Resolution Professional receives a Resolution Plan(s), Regulation 30(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('**CIRP Regulations**') makes it obligatory upon him to conduct a verification of the compliances and mandatory contents of a Resolution Plan as prescribed in the Code and the regulations framed thereunder.

After being fully satisfied of the same, the Resolution Professional is required to place the Resolution Plans before the Committee of Creditors ('**CoC**') for evaluation and subsequently, voting in terms of Section 30(4) of the Code. The CoC which comprises of financial creditors of the Corporate Debtor, analyses the feasibility and viability of the Resolution Plans by exercising the commercial wisdom ingrained in it and chooses the best Resolution Plan. This expert committee of creditors may also disapprove a plan on the basis of the collegiality and its evaluation.

For approving a Resolution Plan, the Code prescribes an affirmative vote count of not less than 66% of the creditors. In order to make an approved Resolution Plan binding on all the stakeholders, it is placed before the Hon'ble National Company Law Tribunal ('**Adjudicating Authority**') for approval in terms of Section 30(6) read with Regulation 39 of the CIRP Regulations.

The focal point of the present Article is on the scope of jurisdiction of the Adjudicating Authority in approving or rejecting a Resolution Plan placed before it by the Resolution Professional.

### **1. MANDATORY CONTENTS OF A RESOLUTION PLAN**

The Resolution Applicant is mandatorily required to include the following aspects in the Resolution Plan, as set out in Section 30 of the Code read with Regulation 38 of the CIRP Regulations. The Resolution Professional has to verify the following:

- a) Whether the Resolution Plan provides for the **payment of the CIRP cost** – i.e., the cost incurred by the Resolution Professional in conducting the CIRP proceedings and whether such payment is proposed to be paid in priority to the payment of any other debts of the Corporate Debtor and the specific sources of funds to provide for the same.;
- b) Whether the Resolution Plan provides for the **payment of amount due to the Operational Creditors** and specific **sources of funds** that shall be used for the same. Whether the proposal for such payment is made in a manner that payment to Operational Creditors are given priority in payment over Financial Creditors and is not less than-
  - i. the amount to be paid to such creditors in the event of liquidation of the Corporate Debtor under section 53; or
  - ii. the amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distributed in accordance with the order of priority in Section 53(1), whichever is higher.
- c) Whether the Resolution Plan provides for the **payment of debts of dissenting financial creditors** – i.e., creditors who did not vote in favour of the Resolution Plan, in such manner as may be specified by the Insolvency and Bankruptcy

- Board of India (**'the Board'**), which shall not be less than the amount to be paid to such creditors in the event of liquidation under Section 53(1).
- d) Whether the Resolution Plan provides a **statement as to how it has dealt with the interest of all stakeholders**, including Financial Creditors and Operational Creditors, of the Corporate Debtor.
  - e) Whether it includes a **statement giving details** if the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation **of any other Resolution Plan** approved by the Adjudicating Authority at any time in the past.
  - f) Whether it provides the **term of the Resolution Plan** and its **implementation schedule**;
  - g) Whether it stipulates a mechanism regarding **management and control of the affairs** of the Corporate Debtor post the Transfer Date;
  - h) Whether it provides the manner of **implementation and supervision** of the proposed transaction;
  - i) Whether it demonstrates that it **addresses the cause of default**;
  - j) Whether it demonstrates that it is **feasible and viable**;
  - k) Whether it demonstrates that it has provisions for its **effective implementation**;
  - l) Whether it demonstrates that it has **provisions for approvals required and the timeline** for the same;
  - m) Whether it demonstrates that the Resolution Applicant has the **capability to implement** the Resolution Plan;
  - n) Whether it has a declaration to the effect that it is **not in contravention of provisions** of the Applicable Law;
  - o) Whether it is accompanied by an **Affidavit** stating that the Resolution Applicant is eligible under **Section 29A** of the Code; and
  - p) Whether it conforms to the requirements as specified by the Board.

## **2. ADJUDICATING AUTHORITY TO FUNCTION WITHIN THE BOUNDS OF SECTION 30(2)**

- 2.1 As per Section 31 of the Code, the Adjudicating Authority is required to ensure that the Resolution Plan approved by the CoC is compliant with the provisions contained in Section 30(2). Upon such satisfaction, the Adjudicating Authority shall, by order, approve the Resolution Plan and the same becomes binding upon numerous stakeholders of the Corporate Debtor including the employees, guarantors, creditors etc. However, if the Adjudicating Authority is not satisfied with respect to compliances of Section 30(2), it can reject the Resolution Plan. On the other hand, if the Adjudicating Authority receives a Resolution plan rejected by the CoC, upon satisfaction, it is obligated to initiate liquidation of the Corporate Debtor as per Section 33(1) of the Code.
- 2.2 From a bare reading of Section 31, it becomes apparent that the Adjudicating Authority is not empowered to interfere or review the commercial wisdom of the CoC as the same is a collective business decision taken by the CoC which is presumably best suited to analyse the feasibility and viability of a Resolution Plan. It is not within the purview of the Adjudicating Authority to sit in appeal over the decision of the CoC and is merely required to look into the parameters of Section 30(2) read with Section 31(1) at the stage when a Resolution Plan is placed before it for approval.

- 2.3 The aforesaid tenet of law has been observed by the Hon'ble Supreme Court of India in the case of ***K. Sashidhar V/s Indian Overseas Bank***<sup>1</sup>, wherein one of the major questions of law involved was the scope of judicial review by the Adjudicatory Authority in relation to the opinion expressed by the CoC on the proposal for approval of the resolution plan. It was observed and held that upon receipt of an approved Resolution Plan, the Adjudicating Authority is merely expected and required to verify that the Plan is compliant with the provisions of Section 30(2). It states that: *"21. ...If the CoC had approved the Resolution Plan by requisite percent of voting share, then as per Section 30(6) of the Code, it is imperative for the resolution professional to submit the same to the Adjudicating Authority. On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). No more and no less."*
- 2.4 In the aforesaid matter, the Hon'ble Supreme Court also clarified the role of Adjudicating Authority in case a **rejected Resolution Plan** is placed before it. It was held that in the event of receiving a Resolution Plan disapproved by the CoC, the Adjudicating Authority is under a mandate to pass an order for initiation of liquidation of the Corporate Debtor undergoing CIRP. It has been further made clear that at this stage, the Legislature does not require the Adjudicating Authority to inquire into or analyse the justness or commercial wisdom of the dissenting financial creditors – i.e., the members who have voted against the Resolution Plan.
- 2.5 The Hon'ble Court also emphasised on the **intrinsic assumption as to why the decision of financial creditors forming part of the CoC is considered** paramount. It was observed that the financial creditors who form part of the CoC are considered to be absolutely conversant with the status of the Corporate Debtor and that their team of experts is the best to evaluate and decide the feasibility of a Resolution Plan. They are assumed to be sufficiently proficient to conduct a full-fledged examination of the proposed Resolution Plan. Acting upon the deliberations undertaken by them at various meetings of the CoC, the members take a collective business decision.
- 2.6 Moreover, the Legislature has not provided any ground to challenge the individual or collegial commercial wisdom of the financial creditors. Hence, the perception formed by the CoC cannot be interfered with by the Adjudicating Authority and its discretion is circumscribed by Section 31 of the Code which requires it to ensure that the Resolution Plan approved by the CoC is compliant with the matters referred in Section 30(2) – i.e., (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. No provision of the Code or the regulations framed thereunder empower the Adjudicating Authority to engage in judicial review of the decision of CoC.
- 2.7 Therefore, it is sufficient to state that while analysing the competitiveness and feasibility of a Resolution Plan, the members of the CoC need not provide any justification for the final decision taken by them in exercise of their commercial wisdom, be it approval or rejection of the Resolution Plan. Such decisions of the CoC are protected from judicial scrutiny.

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<sup>1</sup> AIR2019SC1329

2.8 The aforesaid mandate of law has also been reaffirmed and elaborately reiterated by the Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Limited V/s Satish Kumar Gupta & Ors.***<sup>2</sup>, wherein one of the important questions of law raised by a group of appeals and writ petitions was regarding the jurisdiction of the Adjudicating Authority and NCLAT qua the Resolution Plans which have been approved by the CoC. The Hon'ble Supreme Court extensively dealt with the said aspect and provided the much desired clarification with respect to the same. With respect to the Adjudicating Authority, it has been observed and held that the matters provided under Section 30(2) provide the aspects to test the validity of the Resolution Plan already approved by the CoC and not to approve a plan which has been rejected by the CoC in exercise of its commercial wisdom. It was stated that:

*"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 CoC, 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."*

2.9 The Hon'ble Supreme Court concluded by holding that **the limited scope of judicial review available to the Adjudicating Authority allows it to see whether the CoC has taken into account the following** considerations:

- i. the Corporate Debtor needs to be kept as a going concern during CIRP proceedings;
- ii. it needs to maximise the value of its assets; and
- iii. the interests of all stakeholders including operational creditors has been taken care of.

If the Adjudicating Authority is of the opinion that the aforesaid aspects have not been considered, it may send a Resolution Plan back to the CoC with a direction to file such plan again after satisfying the aforesaid parameters. Once the Adjudicating Authority is satisfied that the CoC has paid attention to these key features, it must then pass the resolution plan, other things being equal.

2.10 The mandate of law stipulated aforesaid implies that the interference of the Adjudicating Authority with respect to a business decision of the CoC is not within the purview of its jurisdiction. Hence, if the Adjudicating Authority is allowed to enter into the merits, it might lead to rejection of a plan already approved by a majority vote of the CoC and loss of an efficacious and implementable Resolution Plan.

2.11 The aforementioned mandate of law has been reiterated by the Hon'ble Supreme Court in the recent case of ***Maharashtra Seamless Limited vs. Padmanabhan Venkatesh and Ors.***<sup>3</sup>, wherein one of the questions of law involved was whether the scheme of the Code contemplates that the sum forming part of the Resolution Plan should match the liquidation value or not. While settling the said question, the Hon'ble Supreme Court *inter alia* observed and reaffirmed the mandate previously laid down by the Court. It was observed that once a Resolution Plan is approved by a majority vote of the CoC, for the final approval of the Resolution Plan, the Adjudicating Authority has to be satisfied that the provisions of Section 30(2) are complied with. It was further emphasised that the Adjudicating Authority must also be satisfied that the plan has provisions for its implementation in terms of the proviso to Section 31(1) of the Code.

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<sup>2</sup> 2019 SCC Online SC 1478

<sup>3</sup> Civil Appeal Nos. 4242 and 4967-4968 of 2019

2.12 It is significant to mention the **non-obstante Clause of Section 60(5)** which concerns the jurisdiction of the Adjudicating Authority states that:

### **60. Adjudicating Authority for Corporate Persons**

*(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of--*

- a) any application or proceeding by or against the corporate debtor or corporate person;*
- b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and*
- c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.*

2.13 As regards the abovementioned Clause, the Hon'ble Supreme Court in **Committee of Creditors of Essar Steel India Limited V/s Satish Kumar Gupta & Ors.**<sup>4</sup> held that since the clause states 'any other law for the time being in force', it does not include the provisions of the Code. Further, Section 60(5)(c) is in the nature of residuary jurisdiction vested in the Adjudicating Authority so that it may deliberate and decide all the questions of law and fact arising out of the CIRP proceedings or liquidation proceedings. It was further clarified that this clause does not affect Section 30(2) and Section 31(1) which circumscribes the jurisdiction of the Adjudicating Authority. It states as follows:

*"A harmonious reading, therefore, of Section 31(1) and Section 60(5) of the Code would lead to the result that the residual jurisdiction of the NCLT Under Section 60(5)(c) cannot, in any manner, whittle down Section 31(1) of the Code, by the investment of some discretionary or equity jurisdiction in the Adjudicating Authority outside Section 30(2) of the Code, when it comes to a resolution plan being adjudicated upon by the Adjudicating Authority. This argument also must needs be rejected."*

2.14 It is cogent to mention that once the Resolution Plan has been approved by the CoC and placed before the Adjudicating Authority for its approval under Section 31 read with Regulation 39 of the CIRP Regulations, and the CIRP proceedings have terminated, the CoC gets discharged. At this stage of the proceedings, **the Adjudicating Authority does not have the jurisdiction to direct the Resolution Professional to revive the proceedings or the CoC or to allow a new Resolution Applicant to place its Resolution Plan before it.** Such a direction would not only tantamount to subversion of the outcome of the resolution process but would also result in obviating the functions of the CoC. Such a decision may only be made by the Hon'ble Supreme Court in extraordinary circumstances in exercise of its powers under Article 142 of the Constitution of India which empowers it to pass any decree or make any order necessary for doing complete justice in any cause or matter pending before it. The Supreme Court was constrained to exercise such powers and revive the CIRP proceedings in the case of *Chitra Sharma V/s Union of India*<sup>5</sup> in a situation where the amendment was made to include real estate allottee / home buyers in the definition of financial creditors pending the

<sup>4</sup> 2019 SCC Online SC 1478

<sup>5</sup> 2018 SCC Online SC 874 (Supreme Court)

CIRP proceedings of the case. Another matter in which CIRP period was extended by 90 days post the termination of CIRP proceedings is that of *Jaiprakash Associates Ltd. and Ors. V/s Union of India*<sup>6</sup> wherein the CoC rejected the two Resolution Plans placed before it and still resolved to save the Corporate Debtor from liquidation. It was held that such Resolution Applicants may be allowed to file their revised Resolution Plans before the CoC afresh and a period of 90 days was granted.

2.15 In the matter of *Shrawan Kumar Agarwal Consortium V/s Rituraj Steel Private Limited*<sup>7</sup> wherein the Adjudicating Authority had passed an order for re-bidding, despite the approval of the Resolution Plan by the CoC, the Hon'ble NCLAT observed and reiterated that the Adjudicating Authority is bound to remain within the four corners of Section 30(2) of the Code. It was further held that since the Adjudicating Authority has limited power of judicial scrutiny under Section 31, it cannot in any scenario transgress the commercial wisdom of the CoC. It was also clarified that **even if the process of re-bidding leads to maximization of value of assets of the Corporate Debtor, the Adjudicating Authority is not entitled to invalidate the business decision of the CoC.**

2.16 As stated above, the commercial aspects starting from the eligibility criteria of a Resolution Applicant to the approval of a Resolution Plan are to be dealt with by CoC. **The Adjudicating Authority has no jurisdiction to sit in appeal over the commercial and business decisions unless such decisions are capricious or in contravention to the provisions of the Code or any other existing law.** In the case of *Kannan Tiruvengandam V/s M.K. Shah Exports Ltd. and Others*<sup>8</sup>, the Adjudicating Authority had intervened with the eligibility criteria of Resolution Applicants. In an appeal therefrom, the Appellate Authority acknowledged the mandate of law whereby it was observed that a question of eligibility criteria for eligibility of a Resolution Applicant is a matter which must be dealt with by the expert committee of CoC. The decision of the Adjudicating Authority was set aside and it was held that the Adjudicating Authority has no jurisdiction to sit in appeal over the decision of the CoC unless it violates any provision of law or is perverse.

2.17 Moreover, in a recent matter of *Paramjit Singh Saini & Anr. V/s Puma Realtors Pvt. Ltd.*<sup>9</sup>, where another Resolution Applicant filed an application to place its Resolution plan before the CoC after one Resolution Plan was already approved by a 100% vote of the CoC and placed before the Adjudicating Authority, the Adjudicating Authority itself held that the Bench is bound by the procedure prescribed under the Code. Once it is in compliance of the procedure, the Bench has the jurisdiction to see as to whether the Resolution Plan placed before it is in confirmation with Section 30(2) of the Code or not. The application was dismissed.

### **3. ADJUDICATING AUTHORITY MUST ATTAIN SATISFACTION AS TO THE MANNER OF IMPLEMENTATION PROPOSED BY RESOLUTION APPLICANT**

It is important to stipulate that **proviso to Section 31(1)** of the Code specifically emphasises that-

*"Before passing an order approving the Resolution Plan, the Adjudicating Authority shall satisfy itself that the Resolution Plan has provisions for its effective implementation."*

<sup>6</sup> [2019] 153 CLA 141 (SC) (Supreme Court)

<sup>7</sup> Company Appeal (AT) (Insolvency) No. 1409 of 2019

<sup>8</sup> Company Appeal (AT) (Ins.) No. 203 of 2018

<sup>9</sup> C.P. (IB)-934(PB)/2018

Hence, when the Adjudicating Authority hears an application for approval of a Resolution Plan, it may scrutinize the following aspects including but not limited to:

- i. The detailed manner in accordance with which the Resolution Applicant proposes to implement the Resolution Plan such as the Scheme of merger or demerger or incorporation of a new entity or any other way of implementation proposed by the Resolution Applicant.
- ii. The personnel who shall form a part of the supervision of the implementation of the Resolution Plan.
- iii. Justification of the time period or the term of implementation schedule proposed by the Resolution Applicant.
- iv. Any redressal mechanism or exit options provided to the creditors for any injustice that might be caused to them during the execution of the Resolution Plan.
- v. Sources of funds proposed to be infused by the Resolution Applicant and whether the same shall be invested at once or in a phased manner. Emphasis may also be given to the whether any provision has been made to meet the shortfall of funds.

#### **4. ADJUDICATING AUTHORITY TO DECIDE THE INELIGIBILITY OF A RESOLUTION APPLICANT UNDER SECTION 29A**

4.1 Section 31 of the Code read with Regulation 39 of the CIRP Regulations empowers the Adjudicating Authority to approve a Resolution Plan approved by the CoC or reject a Resolution Plan if it does not conform to the requirements of law. One of the most significant aspect to be adjudicated upon by the Adjudicating Authority is to decide whether the Resolution Applicant is eligible to file a Resolution Applicant. This is whether Section 29A comes into picture. It provides a list of persons who are ineligible to qualify as a Resolution Applicant and includes undischarged insolvents, wilful defaulters, a person who has been a promoter of the Corporate Debtor, a person who has is a related party of a person previously in charge of the management and control of the Corporate Debtor etc.

4.2 As stipulated above, it is the CoC which analyses and approves or disapproves a Resolution Plan, in exercise of its commercial wisdom. It is pertinent to highlight **Regulation 39(3)** of the CIRP Regulations which provides that:

*"The committee shall evaluate the resolution plans received under Sub-Regulation (1) strictly as per the evaluation matrix to identify the best resolution plan and may approve it with such modifications as it deems fit:*

*Provided that the committee shall record the reasons for approving or rejecting a resolution plan."*

4.3 This Regulation shows that the in the event the CoC rejects a Resolution Plan on the ground that it is non-compliant with any provisions of law, including the ground of ineligibility Section 29A, such decision is not final. The Adjudicating Authority, after hearing the Resolution Applicant and the CoC can, in a quasi-judicial capacity, can determine whether the Resolution Plan violates the provisions of any law, including Section 29A, after which an appeal can be preferred from the decision of the Adjudicating Authority to the Hon'ble National Company Law Appellate Tribunal ('**NCLAT**') under Section 61 of the Code. The said position of law has been reaffirmed by the Hon'ble Supreme Court in the

matter of *ArcelorMittal India Private Limited vs. Satish Kumar Gupta and Ors.*<sup>10</sup>, wherein it has been held that the **disapproval of a Resolution Plan by the CoC on the ground that it is violative of Section 29A is not final** unless the same is decided by the Adjudicating Authority.

4.4 It is a settled position of law that while adjudicating an application for approval of a Resolution Plan under Section 31, the Adjudicating Authority has the jurisdiction to find out whether the Resolution Applicant is ineligible under Section 29A. The said mandate of law has been reiterated by the Hon'ble NCLAT in the matter of *JSW Steel V/s Mahender Kumar Khandelwal & Ors.*<sup>11</sup>. In this matter, it was *inter alia* alleged that JSW Steel, the successful Resolution Applicant whose plan was approved by the Adjudicating Authority, is a related party of the Corporate Debtor – i.e., Bhushan Power and Steel Limited. The Hon'ble NCLAT observed and held that the following person are empowered to decide whether a Resolution Applicant is ineligible being a related party under Section 29A of the Code:

- i. The Resolution Professional in terms of Section 30(1) when a Resolution Plan is submitted to him by the Resolution Applicant,
- ii. The CoC in terms of Section 30(3) when a Resolution Plan is placed before it for evaluation and voting,
- iii. The Adjudicating Authority while passing an order under Section 31 of the Code.

4.5 It has been already established that the Adjudicating Authority is to remain within the boundaries of Section 30(2) of the Code while approving a plan under Section 31. Since Section 30(2) also includes Section 30(2)(e) – i.e., confirmation as to whether the Resolution Plan contravenes any of the provisions of the law for the time being in force, it is very well within the jurisdiction of the Adjudicating Authority to make a decision in this respect. Further, till the stage of approval of plan by the Adjudicating Authority, as it is the competent authority which is the last in order to decide the ineligibility of a Resolution Applicant, **its decision may supersede the decision of the CoC in the context of Section 29A of the Code.**

## 5. **LATE SUBMISSION OF EOI OR RESOLUTION PLAN:**

5.1 It is pertinent to mention that the RFRP document provides the last date of submission of a Resolution Plan and post that date, the Resolution Professional cannot allow new PRA to submit a Resolution Plan or an EOI. However, in the case of *Krishna Chamadia and Ors. V/s State Bank of India and Ors.*<sup>12</sup> the CoC, at its discretion allowed the late submission of a Resolution Plan which was then approved by a majority of the CoC members. On an application by one of the PRAs who submitted his Plan within the timelines, the Adjudicating Authority held that the commercial wisdom of the CoC cannot be intervened with. It was further held that the decision of the CoC shall be scrutinized at the time of consideration of the Resolution Plan when the same is placed before the Adjudicating Authority for approval.

<sup>10</sup> 2018 SCC Online SC 1733 (Supreme Court)

<sup>11</sup> Company Appeal (AT) (Insolvency) No. 957 of 2019 (NCLAT)

<sup>12</sup> MA-01, 1535, 1040 and 1039/2019 in C.P. (IB)-156/(MB)/2017 (NCLT)

5.2 It is a settled position of law that CoC is the paramount body for taking decisions when it comes to consideration of a Resolution Plan and it might even reject a Resolution Plan which is submitted much later than the last date of the submission of Resolution Plans. In the case of ***North East Centre for Technology Application and Reach V/s Sri Vari Metal Works Pvt. Ltd. and Ors.***<sup>13</sup>, the PRA submitted its Resolution Plan after 4 months of the stipulated last date, the CoC declined to consider the same on account of its late submission, even though *prima facie* it was compliant with Section 30(2) and the Adjudicating Authority had passed an order for liquidation of the Corporate Debtor. The Hon'ble NCLAT upheld the decision taken by the Adjudicating Authority as the commercial wisdom of the CoC cannot be interfered with.

## 6. **ROLE OF ADJUDICATING AUTHORITY POST THE APPROVAL OF RESOLUTION PLAN**

- 6.1 Post the approval of the Resolution Plan, it reaches finality and becomes binding on the Corporate Debtor, its employees and workmen, promoters, creditors etc. A Monitoring Committee proposed by the Resolution Applicant in its Resolution Plan is appointed which controls the Corporate Debtor till the time of execution of the plan is carried out. Post the appointment of such committee, no issue can be raised before any Court of law or Tribunal including the Adjudicating Authority.
- 6.2 This position of law is reaffirmed by the Hon'ble NCLAT in the matter of ***S.A Pharmachem Pvt. Ltd. V/s Alok Industries Ltd. & Ors.***<sup>14</sup> wherein upon an issue of payment being raised by one of the operational creditors, it was held that after a plan has reached finality, it is binding on the stakeholders including the operational creditors and it is only for the Monitoring Committee to see how the distribution of payment is made to creditors. Further, it was clarified that **upon approval of the plan, all dues stand cleared in terms of the plan and no issue in respect thereof can be raised before any Court of Law or Tribunal.** Hence, it transpires that even the Adjudicating Authority loses its jurisdiction once it approves a Resolution Plan.
- 6.3 However, upon receiving an application from a person in charge of the management or control of business and operations of the Corporate Debtor, the Adjudication Authority may have to issue directions to the local district administration to extend assistance to such person in implementation of a Resolution Plan in terms of sub-regulation (8) of Regulation 39 of CIRP Regulations. Further, as per sub-regulation (9) of Regulation 39, the Adjudicating Authority may have to issue appropriate directions in case of non-implementation of the approved Resolution Plan, upon receipt of an application from any creditor in this respect.

## 7. **Conclusion**

As is discernible, the above line of judgements provide insight into the power and jurisdiction of the Adjudicating Authority with respect to the approval of a Resolution Plan. It is well-established that the Code circumscribes the said jurisdiction within the four walls of Section 30(2) and under no circumstances can the commercial wisdom and this business decision of the CoC, be trespassed. In case the Resolution Plan is non-compliant with Section 30(2), the inevitable sequel is initiation

<sup>13</sup> [2019]214CompCas101

<sup>14</sup> Company Appeal (AT) (Insolvency) No. 66 of 2020

of liquidation process under Section 33 of the Code. The significant matter to be decided by the Adjudicating Authority at this stage involve eligibility of the Resolution Applicant and the fact whether the plan provides provisions for effective implementation.

Indubitably, the approval and rejection of a Resolution Plan is a decision which is in the realm of commercial wisdom of the CoC. The Adjudicating Authority is incompetent to scrutinize the justness of the opinion expressed by the CoC and hence, it is imperative that it upholds the position of law settled by the Hon'ble Supreme Court regarding the same in order to efficaciously conclude the Corporate Insolvency Resolution Process in a time bound manner.

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