IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 205
IB-360/ND/2021
IA-45/2024, IA-4818/2023

IN THE MATTER OF:

Indian Renewable Energy Development Agency Ltd. **... Applicant/ Financial Creditor**

Versus

M/s Taxus Infrastructure & Power Projects Pvt. Ltd. **... Respondent/ Corporate Debtor**

AND IN THE MATTER OF IA-45/2024:

(Under Section: 30(6) of IBC, 2016)

Darshan Singh Anand
(Resolution Professional)
310, New Delhi House,
3rd Floor, 27, Barakhamba Road,
Connaught Place, New Delhi-110001 **... Applicant**

Versus

Satyen Sharma
(Director)
Unit No. 102, Vardhman Centre,
Plot No. 3, First Floor, BH Block,
LSC, Shalimar Bagh West, Delhi-110088 **... Respondent No.1**

Puneet Singh Rana
(Director)
Unit No. 102, Vardhman Centre,
Plot No. 3, First Floor, BH Block,
LSC, Shalimar Bagh West, Delhi-110088 **... Respondent No.2**

Indian Renewable Energy Development Agency Ltd.
Indian Habitat Centre Complex,
1st Floor Core-4A, East Court,
Lodhi Road, New Delhi-110003 **... Respondent No.3**

Waaree Energies Limited
602, Western Edge I, Western Express Highway,
Borivali (East), Mumbai, Maharashtra-400066 **... Respondent No.4**

Under Section: 7 of IBC, 2016

Order delivered on 12.12.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the RP	:	Adv. R.K. Srivastava, Adv. Himrit Singh Wadhwa
For the SRA	:	Adv. Abhishek Anand, Adv. Karan Kohli. Adv. Yashasvi B.

Hearing Through: VC and Physical (Hybrid) Mode

ORAL ORDER

IA-45/2024: Present application has been preferred by Resolution Professional in terms of the provisions of Section 30(6) of IBC, 2016. The application preferred under Section 7 of IBC, 2016 by Indian Renewable Energy Development was admitted in terms of the order dated 10.10.2022 and CIRP was ordered to be commenced qua the Corporate Debtor. The various steps taken by Insolvency Resolution Professional pursuant to said order are enumerated in Para 8 to 12 of the application which reads thus: -

> 8. The initial public announcement in Form A calling for claims from the creditors was published by the applicant as the IRP on 12.10.2022 in the following Newspapers:-
>
> (i) Financial Express (English), Delhi Edition.
>
> (ii) Jansatta (Hindi), Delhi Edition.
>
> (iii) Financial Express (English), Ahmedabad Edition.
>
> (iv) Kutchuday (Gujarati), Gandhidham Edition.
>
> Copies of the aforesaid Newspapers publications dated 12.10.2022 are annexed and marked as **ANNEXURE-A-1 (COLLY)**.

9. The applicant as the IRP had intimated Ministry of Corporate Affairs ("MCA"), Institute of Company Secretaries of India, Institute of Insolvency Professionals ("ICSIIIP"), and Insolvency and Bankruptcy Board of India ("IBBI") and made the relevant information available on the dedicated webpage of the Corporate Debtor, regarding initiation of Corporate Insolvency Resolution Process of the Corporate Debtor on 12.10.2022.

10. The applicant as the IRP had taken all necessary steps to manage the affairs of the Corporate Debtor, had taken control and custody of the assets over which the CD has ownership rights, had intimated the Banks maintaining accounts of the CD to act on the instructions of the IRP in relation to such accounts and furnish all information relating to the CD available with them to the IRP.

11. After collation of all claims received in response to the public announcement, a Committee of Creditors (for short, **'CoC'**) had been constituted by the applicant / IRP on 31.10.2022 in terms of section 21 of the Code. The report certifying the constitution of the CoC and the list of creditors (Version-1) had been filed before this Hon'ble Adjudicating Authority on 31.10.2022.

12. The CoC in the 1st meeting held on 09.11.2022, amongst other issues, decided to appoint the aforesaid IRP/ Applicant Darshan Singh Anand as the Resolution Professional by 100% voting share in the e-voting held from 11.11.2022 to 14.11.2022. A copy of the record of summary of decisions taken dated 15.11.2022 of the 1st meeting held on 09.11.2022 is annexed and marked as **ANNEXURE-A-2**. It is to add that in the second para of the aforesaid minutes, the period of e-voting has been inadvertently mentioned as 11.10.2022 to 14.10.2022 as a typographical error, which actually was 11.11.2022 to 14.11.2022.

2. Para-13 of the application indicates that the Committee of Creditors was constituted on 31.10.2022. The relevant excerpt of the para reads thus: -

13. The composition of the Committee of Creditors as on 31.10.2022 at the initial stage was as under:-

A. Financial Creditors (Members with Voting Rights):

(Amount in Rs.)

Sr. No.	Name of the Financial Creditors	Principal	Interest *(including Damages)*	Total Amount Claimed	Voting %
1	IREDA Limited *(Secured Financial Creditor)*	41,43,52,754	28,40,18,078	69,83,70,832	76.50%
2	Waaree Energies Limited *(Unsecured Financial Creditor)*	10,00,00,000	11,45,42,466	21,45,42,466	23.50%
	Total	51,43,52,754	39,85,60,544	91,29,13,298	100.00%

B. Operational Creditors (Participating Members):

Section 24(3)(c) of the Code allows Operational Creditors with aggregate dues of at least 10% of debt to attend the meeting but they shall not have any voting rights.

(Amount in Rs.)

Sr. No.	Name of the Creditor	Principal	Interest *(including Damages)*	Total Amount Claimed	Aggregate Dues %
1	Waaree Energies Limited*	6,07,78,605	5,65,35,431	11,73,14,036	11.39%

* *Waaree Energies Limited was also part of the Committee of Creditors at that stage as an Unsecured Financial Creditor.*

3. The subsequent steps taken by the Resolution Professional and the CoC are enumerated in para 14 to 18 of the application. The relevant excerpt of the para reads thus: -

> 14. The applicant as the RP had appointed following valuers registered with the Insolvency and Bankruptcy Board of India (for short, **'IBBI'**) vide engagement letters dated 16.11.2022, for determining the estimate of 'fair value' and 'liquidation value' of the assets of the CD, in terms of regulations 27 and 35 of the CIRP Regulations:-
>
> (i) Adroit Appraisers & Research Private Limited
>
> (ii) Devang Shah Plant & Machinery
>
> (iii) Manish Kumar Bhagat Financial Assets
>
> (iv) Parag Sheth Land & Building.
>
> 15. In the first meeting of CoC held on 09.11.2022, IREDA Ltd, the sole secured FC member had raised the issue of inclusion of Waaree Energies Ltd as a FC and had contended that Waaree as the holder of Compulsorily Convertible Debentures of the CD cannot be a FC and is like a shareholder. Elaborate discussions took place in the CoC on this issue.
>
> 16. Thereafter, the applicant as the RP had sought legal opinion in the matter, as was discussed in the CoC meeting and based on the legal opinion, Waaree Energies Ltd was advised by letter dated 06.01.2023 that their claim in Form-C for Rs. 21,45,42,466/- as a FC (unsecured) provisionally admitted earlier now stands rejected. A copy of the said letter dated 06.01.2023 to Waaree Energies Ltd. is annexed and marked as **ANNEXURE-A-3**.

17. Consequently, the reconstituted CoC comprised of IREDA as the sole Secured FC and member holding 100% voting rights. However, Waaree Energies Ltd was being invited to participate in the CoC meetings as an OC having participation rights.

18. Invitation for Expression of Interest in terms of Regulation 36A of the CIRP Regulations in Form G dated 08.12.2022 was published on 08.12.2022 in following Newspapers:-

(i) The Indian Express (English), Delhi. Edition.

(ii) Jansatta (Hindi), Delhi Edition.

(iii) Financial Express (English), Gujarat Edition.

(iv) Kutchuday (Gujarati), Gandhidham, Gujarat Edition.

The Form G was also uploaded on the dedicated webpage of the CD and on the website of IBBI. A copy of the Form-G dated 08.12.2022 is annexed and marked as **ANNEXURE-A-4**.

4. As can be seen from para- 19 of the application, by 24.12.2022 i.e. last date of receipt of expression of interest, response was received from four parties (prospective Resolution Applicants). The para 19 reads thus: -

19. By 24.12.2022, the last date for receipt of 'Expression of Interest', response was received from following 4 Prospective Resolution Applicants (for short, **'PRAs'**): -

(i) Paschim Hydro Energy Pvt. Ltd.

(ii) S. E. Power Ltd.

(iii) Derit Infrastructure Pvt. Ltd.

(iv) Agam Pulp and Paper Pvt. Ltd.

5. We see from para 20 of the application, that with reference to the material available on record, the Resolution Professional was satisfied that all the PRAs were ex-facie meeting the requirement of Section 29(a) of the Code. The further steps taken in the matter are enumerated in para-21 to 30 of the application which reads thus: -

> 21. The provisional list of PRAs was issued on 03.01.2023 in terms of Regulation 36A (10) of the CIRP Regulations, a copy whereof is annexed and marked as **ANNEXURE-A-5**.
>
> 22. As no objection to inclusion or exclusion of any PRA was received in terms of Regulation 36A (11) of the CIRP Regulations, all the 4 PRAs were included in the final list.
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> 23. The final list of PRAs was issued on 18.01.2023 in terms of Regulation 36A (12) of the CIRP Regulations. A copy of the final list of PRAs issued on 18.01.2023 in terms of Regulation 36A (12) of the CIRP Regulations is annexed and marked as **ANNEXURE-A-6.**
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> 24. Information Memorandum (for short, **'IM'**), (Version-1) had been prepared on 10.01.2023, based on the information as made available by the ex-management of the CD and information available in public domain. A copy of password protected IM was circulated to the members of the CoC on 13.01.2023 after obtaining confidentiality undertaking.

25. The 'Request For Resolution Plans' (for short, **'RFRP'**) and the 'Evaluation Matrix' (for short, **'EM'**) documents were approved in the 3rd meeting of CoC held on 17.01.2023, the voting whereof had taken place from 19.01.2023 to 23.01.2023. A copy of the record of summary of decisions taken dated 24.01.2023 of the 3rd meeting of CoC held on 17.01.2023 is annexed and marked as **ANNEXURE-A-7**.

26. The applicant as the RP had issued the IM, EM and RFRP documents to the aforesaid 4 PRAs on 23.01.2023 and the last date for submission of the resolution plans was stipulated as 22.02.2023.

27. One of the aforesaid PRAs had requested for extension of 4 weeks' time for submission of resolution plan vide email dated 22.02.2023. The Applicant approached the CoC for seeking approval for extension and IREDA, the only FC member of the CoC by email dated 23.02.2023 approved extension for 15 days only.

28. Accordingly, the last date for submission of resolution plans, including improvisation if any, of the already received resolution plans was extended up to 09.03.2023, in consonance with the provisions of the Code and the RFRP document. The extension had been ratified by the CoC in its 4th meeting held on 06.03.2023. A copy of the minutes dated 08.03.2023 of the aforesaid 4th meeting of CoC is annexed and marked as **ANNEXURE-A-8**.

29. By the extended last date for receipt of resolution plans, only two resolution plans were received in sealed covers which were opened on 13.03.2023 in virtual presence of the Authorized Representative of the sole member of the CoC and the concerned Resolution Applicant whose Resolution Plan was being opened.

30. In the 5th meeting of CoC held on 20.03.2023, the commercial terms and tenure/s of the 2 resolution plans were apprised to the members and the members were requested to discuss the further course of action. The representative of IREDA Ltd., the sole FC member of the CoC referring to their internal review expressed that the value offered under both the resolution plans are not representative of the true value of the CD and accordingly, suggested two options i.e. firstly to reinvite the Expression of Interest or secondly, to explore selling of the CD as a going concern under liquidation. The applicant as the RP and Chairman of the CoC meeting clarified to the members that it is well settled that the object of IBC is the resolution of the companies and not liquidation and that the second option i.e. sale of the CD as a going concern under liquidation is not feasible at this juncture as two resolution plans had been received. The applicant further clarified that the option for another round for calling the fresh Expression of Interest (EoI's) / Resolution Plans should be considered, as it will be difficult to convince the Hon'ble Adjudicating Authority for liquidation of the CD, as the primary intent of IBC is resolution. It was further clarified to the CoC that for reinviting

EoIs under second round, fresh Form G will be required to be issued and for complying with timelines stipulated in the Code, an application to the Hon'ble Adjudicating Authority for granting 90 days' extension in the last date for completion of CIRP will be needed. It was also suggested that the members have the option to negotiate with the existing resolution applicants for improvisation of the resolution plan amount, if they so desire. Accordingly, two resolutions were proposed i.e. for issuance of fresh Form G and for filing an application for extension of CIRP period by 90 days, both the proposed resolutions were approved by the CoC with 100% voting share. A copy of the minutes dated 21.03.2023 of aforesaid 5th CoC meeting held on 20.03.2023 is annexed and marked as **ANNEXURE-A-9**.

6. As can be seen from para-30 (ibid) the CoC did not approve any of the plans, as they were not satisfied with the offer made by the SRAs.

7. In any case the CoC passed the resolution with 100% vote share that fresh Form-G should be published to invite expression of interest. As can be seen from para-32 of the application, fresh Form-G was published in four newspapers and the previous RFRP was also modified by the CoC. As the fresh process was expected to consume some more time, the extension of the CIRP process was sought from this Adjudicating Authority which was allowed. After receipt of fresh expression of interest and the plans the CoC approved the plan submitted by the present SRA by 76.50% vote shore. The progress in the matter from time to time

has been noted in para-31 to 80 of the application preferred under Section 30(6) of IBC, 2016. The paras 31-80 of the application reads thus: -

31. The voting on the aforesaid resolutions concluded on 22.03.2023 and both the aforesaid resolutions were approved with 100% votes in favour. A copy of the voting result dated 22.03.2023 is annexed and marked as **ANNEXURE-A-10**.

32. As approved by the CoC in aforesaid 5th meeting held on 20.03.2023, a fresh Form G was issued on 24.03.2023 and published in the following newspapers: -

(i) Financial Express (English), Delhi Edition.

(ii) Jansatta (Hindi), Delhi Edition.

(iii) Financial Express (English), Gujarat Edition.

(iv) Kutchuday (Gujarati), Gandhidham Edition.

Copies of the aforesaid Newspapers publications are annexed and marked as **ANNEXURE-A-11 (COLLY)**.

33. The Form G dated 24.03.2023 was also uploaded on the dedicated webpage of the CD and on the website of IBBI, copies annexed and marked as **ANNEXURE-A-12 (COLLY)**.

34. The previous RFRP was modified with the approval of the CoC in the 6th meeting held on 27.03.2023. A copy of the modified RFRP dated 31.03.2023 is annexed and marked as **ANNEXURE-A-13**.

35. The previous Information Memorandum was also updated and revised with the approval of the CoC in the 6th meeting held on 27.03.2023. A copy of the updated Information Memorandum (Version-2) dated 12.04.2023 is annexed and marked as **ANNEXURE-A-14.**

36. As approved by the CoC in 5th meeting held on 20.03.2023, an application was filed before the Hon'ble Adjudicating Authority on 29.03.2023 praying for extension of CIRP period by 90 days beyond the stipulated period of 180 days. The said application was listed as IA No. 2115/2023 on 26.04.2023 and was allowed by this Hon'ble Adjudicating Authority whereby the CIRP period was extended for a further period of 90 days w.e.f. 09.04.2023. A copy of the order dated 26.04.2023 of this Hon'ble Adjudicating Authority is annexed and marked as **ANNEXURE-A-15**.

37. By 08.04.2023, i.e. the last date for submission of EoI, Expressions of Interest were received from 14 Prospective Resolution Applicants.

38. After conducting the necessary exercise, the provisional list of PRAs in terms of Regulation 36A (10) of the CIRP Regulations was issued on 13.04.2023 and the following resolution applicants were included: -

(i) Paschim Hydro Energy Private Limited
(ii) Derit Infrastructure Private Limited
(iii) MPCL Industries Limited
(iv) SSR Townships Private Limited
(v) Greenergy Solar Enterprises Private Limited
(vi) Agam Pulp and Paper Private Limited
(vii) Kapil Mantri (Individual)
(viii) Shanti GD Ispat and Power Private Limited
(ix) Parmjit Gandhi (Individual)
(x) Sherisha Technologies Private Limited
(xi) Roha Dye Chem Private Limited
(xii) Sunrise Industries (Partnership Firm)
(xiii) Prakash S Jalan (Individual)
(xiv) Mohish Bhalla (Individual)

39. A copy of the provisional list of Prospective Resolution Applicants dated 13.04.2023 is annexed and marked as **ANNEXURE-A-16**.

40. The IM, EM, RFRP and the access to Virtual Data Room (VDR) were shared with the PRAs on 13.04.2023.

41. As no objection to inclusion or exclusion of any PRA was received, all the aforesaid 14 applicants were included in the final list of PRAs. A copy of the final list dated 23.04.2023 of PRAs is annexed and marked as **ANNEXURE-A-17**.

42. The last date for submission of resolution plans along with all other requisite documents / information was 23.05.2023, up to 17.00 hours IST, at the address provided in the RFRP, being the address of office of the applicant / RP.

43. Resolution plans were received from the following 6 PRAs in sealed covers as well as by password protected attachments to their respective emails by 23.05.2023, the last date for receipt of resolution plans:

(i) Agam Pulp and Paper Private Limited.

(ii) Derit Infrastructure Private Limited

(iii) Shanti G.D. Ispat and Power Private Limited

(iv) Parmjit Gandhi (Individual)

(v) Sunrise Industries (Partnership Firm)

(vi) Monish Bhalla (Individual)

44. The resolution plans were opened on 24.05.2023 in the virtual presence of the Authorized Representative of the sole financial creditor member of the CoC and the concerned RA whose plan was being considered and opened and the same were examined by the team of the RP, in respect of submission of requisite documents as prescribed in the RFRP.

45. The resolution plan received from Mohish Bhalla (individual) had failed to comply with the basic criteria of the RFRP dated 31.03.2023, which required submission of 'refundable earnest money deposit' (EMD) and therefore could not be considered and he was advised accordingly.

46. A comparative list of the resolution plans received up to 23.05.2023 is annexed and marked as **ANNEXURE-A-18**.

47. After obtaining 'Non-disclosure Undertaking' from the Legal Counsel, the 5 resolution plans fulfilling the basic criteria of RFRP were shared with the legal counsel on 26.05.2023 for vetting in relation to compliance with IBC, RFRP and other laws of the land. Simultaneously, a Company Secretary having experience in Section 29A verification was engaged for the background check of the resolution applicants in terms of Section 29A of IBC and 'due diligence' in relation to the PRAs and their connected parties. The Company Secretary so engaged had submitted his report certifying that all the 5 RAs were found to be eligible under Section 29A of the Code.

48. On receipt of preliminary reports from the legal counsel after examining the resolution plans vis-à-vis provisions of IBC and CIRP Regulations as well as in respect of stipulations of RFRP, the preliminary observations were conveyed to the RAs namely (i) Agam Pulp and Paper Private Limited, (ii) Derit Infrastructure Private Limited, (iii) Shanti G.D. Ispat and Power Private Limited, (iv) Parmjit Gandhi (Individual) and (v) Sunrise Industries (Partnership Firm) by email/s dated 23.06.2023, 23.06.2023, 25.06.2023, 24.06.2023, 14.06.2023 respectively. Copies of the respective emails sent to the RAs on dates 23.06.2023, 23.06.2023, 25.06.2023, 24.06.2023, 14.06.2023 are annexed and marked as **ANNEXURE-A-19 (COLLY)**.

49. While conveying the observations on their respective resolution plans to the RAs, they were also provided a 'one-time' modification opportunity to make the resolution plan more competitive in value and compliant with the provisions of IBC Code and RFRP.

50. IREDA, the sole secured Financial Creditor and member of the CoC had conveyed to the applicant / RP by telephonic conversation on 30.06.2023 that they had received requests from some RAs to have negotiations before submission of the final modified resolution plan, in consideration of the one-time modification / improvements allowed as per RFRP. Accordingly, negotiations were held on the commercial aspects of the Resolution Plan/s between IREDA, the sole FC member of the CoC and the respective RAs. Some RAs, in view of negotiations being underway and availability of one-time opportunity for submission of legally compliant plan with competitive value, requested for extension in the last date for submission of the modified resolution plan. The last date for submission of the modified resolution plan was 30.06.2023 while the RAs in consideration of the upcoming Eid festival followed by weekend holidays requested for grant of extension in the last date for submission of the modified resolution plan. The RAs were informed by the RP by email dated 30.06.2023 that the timelines under IBC are calculated in

hours and days and there is no exception for holidays. However, with a view to allowing wider participation, the last date for submission of the modified resolution plan/s was extended till 03.07.2023. Furthermore, some of the RAs approached IREDA the sole Secured Financial Creditor for another round of negotiation and improvements and accordingly, the RAs were advised vide emails dated 03.07.2023 that it had been decided to extend the revised resolution plan submission date to 05.07.2023 at 13.00 hours, which was further extended till 15.00 hours and that the final modified resolution plans received will be opened on the same day i.e. on Wednesday 5th July 2023, 16.30 hours in presence of the Authorized Representative of the CoC and the respective resolution applicant/s, present either through virtual mode or physical mode. Copies of all the aforesaid emails to RAs are annexed and marked as **ANNEXURE-A-20 (COLLY)**.

51. The 8th meeting of the CoC was held on 03.07.2023 wherein amongst various other issues, the aspect of applying to the Hon'ble Adjudicating Authority for further extension of CIRP period by 60 days beyond the already extended period of 270 days was discussed and approved.

52. As approved by the CoC, an application was filed on 06.07.2023 by the applicant as the RP before this Hon'ble Adjudicating Authority, praying for further extension of CIRP period by 60 days beyond the already extended period of 270 days. This application was listed on 13.07.2023 as IA No. 3586/2023, this Hon'ble Adjudicating Authority allowed the prayers, whereby the CIRP period was extended up to 05.09.2023.

53. Modified resolution plans were received from all the aforesaid 5 RAs by the stipulated time i.e. 3.00 PM on 05.07.2023 and were opened same day in the presence of the sole secured FC member of the CoC and the respective Ras, as under: -

(i) M/s Derit Infrastructure Private Limited dated 05.07.2023.

(ii) M/s Agam Pulp and Paper Private Limited dated 05.07.2023.

(iii) M/s Shanti G.D. Ispat and Power Private Limited dated 05.07.2023.

(iv) M/s Parmjit Gandhi (Individual) dated 05.07.2023.

(v) M/s Sunrise Industries (Partnership Firm) dated 01.07.2023, received on 05.07.2023.

54. The aforesaid 5 modified resolution plans were required to be again examined by the Legal Counsel in toto, in respect of compliance with IBC requirements, even though the 5 earlier versions of the resolution plans received by 23.05.2023 from these 5 RAs had already been examined and observations of the Legal Counsel had been conveyed to them, to ensure that the changes / modifications made while submitting the aforesaid modified resolution plans have not resulted in making the plans non-compliant in any respect. Accordingly, the aforesaid 5 modified resolution plans were shared with the Legal Counsel for examination and certification from the aspect of compliance with IBC, CIRP Regulations and RFRP. The observations of the legal counsel thereon were shared with the respective RAs and their clarifications were sought thereon. The aforesaid 5 modified resolution plans read with the respective clarification letters were again examined by the legal counsel and final reports were received. All the aforesaid modified resolution

plans except that of Mr. Parmjit Gandhi (Individual), read with respective clarification letter/s, which formed part & parcel of the respective modified resolution plans were certified by the Legal Counsel to be compliant with IBC and CIRP Regulations. The modified Resolution Plan submitted by Mr. Parmjit Gandhi (Individual) dated 05.07.2023 was thus rejected as non-compliant and an intimation to that effect conveying the reasons thereof was sent to the said RA vide electronic mail dated 13.07.2023.

55. It is pertinent to add that the list of creditors was updated from time to time on receipt of further records and the latest list of creditors (V-5) as on 05.04.2023 was applicable as on 07.08.2023 when the 9th meeting of the CoC was convened. A copy of list of creditors (V-5) as on 05.04.2023 is annexed and marked as **ANNEXURE-A-21**.

56. The aforesaid 5 modified resolution plans read with respective clarification letter/s of the 5 RAs were deliberated upon in the 9th CoC meeting held on 07.08.2023 wherein the RP in compliance with Section 30(3) of Code put up the Resolution Plans for the consideration and approval by the members in terms of Section 30(4) of the Code. The members of the CoC, in terms of Regulation 39(3) of CIRP Regulations, 2016 are required to evaluate the resolution plans received as per the evaluation matrix, and to record their deliberations on the feasibility and viability of each resolution plan and thereafter to vote on all such resolution plans simultaneously based on independent assessment by the members of CoC.

Accordingly, in terms of the provisions of Section 30(5) of the Code, the respective RAs were invited to the meeting and were permitted to join the meeting one at a time to present their plan and address the queries, if any, of the members and of RP, so as to facilitate the assessment with respect to feasibility and viability of the Resolution Plan/s.

After deliberations by CoC on feasibility and viability of all the five Resolution Plan/s presented, voting on the resolution plan/s had taken place through e-voting from 09.08.2023 up to 5.00 PM on 15.08.2023. The result of the voting was circulated on 16.08.2023 whereby the resolution plan of M/s. Sunrise Industries was approved by the CoC by 100% votes. The relevant resolution as under was approved by the CoC by 100% votes in favour:-

> "***RESOLVED THAT*** *pursuant to Section 30(4) and (6) of Insolvency and Bankruptcy Code, 2016 read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and Regulation 34 and Regulation 31 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other applicable provisions of Insolvency and Bankruptcy Code, 2016 and rules and regulations made thereunder, the approval of the committee of creditors be and is hereby accorded to approve the Final Resolution Plan submitted by M/s. Sunrise Industries (Partnership Firm) on dated 05th July 2023 read with clarification letter dated 17th July, 2023 and 01st August 2023 and authorise the RP to intimate the decision of the Committee to the Resolution Applicant.*

RESOLVED FURTHER THAT *the Resolution Professional shall submit the Resolution Plan approved by the Committee of Creditors, with the Adjudicating Authority on unconditional acceptance of the Letter of Intent to be issued by the RP on behalf of CoC. The Successful Resolution Applicant shall, within a period of 7 (seven) banking working days from the date of issuance of the Letter of Intent (or earlier in case the application for approval of Resolution Plan is to be submitted to NCLT earlier), provide an irrevocable and unconditional Performance Bank Guarantee of an amount aggregating to 10% of the Resolution Plan Value Payable to Creditors and the EMD deposited earlier shall be adjusted while calculating the aggregate amount of PBG ("PBG Amount"). PBG is to be issued by any scheduled commercial bank in favour of Taxus Infrastructure and Power Projects Private Limited which "Performance Bank Guarantee" shall be in the format as provided in Appendix 4 (Performance Bank Guarantee). The total Resolution Applicant's Contribution will not include the Working Capital Amount/ CAPEX offered in the said plan. The Performance Bank Guarantee shall be valid ("Performance Bank Guarantee Validity Period") till the tenure as approved and communicated via Letter of Intent for such period (i.e. plan validity period) for the satisfaction of terms of the approved Resolution Plan by Successful Resolution Applicant. The Performance Bank Guarantee shall have a claim period of 1 (one) year after the Performance Bank Guarantee Validity Period. Non-submission of the Performance Bank Guarantee*

by the Applicant in accordance with the RFRP, along with the unconditional acceptance of the Letter of Intent, shall lead to withdrawal of the Letter of Intent issued by the Committee of Creditors, unless otherwise determined by the Committee of Creditors at its sole discretion. (As per point 1.10.1 on page 20 of the RFRP Document).

***RESOLVED FURTHER THAT** the Committee of Creditors hereby authorize Resolution Professional to continue to discharge its duties till the approval of Resolution Plan by Adjudicating Authority and complete the necessary legal formalities.*

***RESOLVED FURTHER THAT** the Committee of Creditors hereby authorize Resolution Professional to seek legal assistance from Legal Counsel to give effect to this resolution and the cost incidental to give effect to this resolution be treated as Insolvency Process Cost.*

***RESOLVED FURTHER THAT** the committee hereby agrees to reimburse and disburse the necessary expenses (if any) by debiting the TRA Account 153402000000790 maintained with Indian Overseas Bank in the name of Taxus Infrastructure and Power Projects Private Limited and authorize Mr Darshan Singh Anand, Resolution Professional to do all acts, deeds and matters as may be necessary to give effect to this resolution."*

A copy of the minutes dated 09.08.2023 of the 9th CoC meeting held on 07.08.2023 along with the result of voting dated 15.08.2023 circulated on 16.08.2023 are annexed and marked as **ANNEXURE-A-22 (COLLY)**.

57. The resolution plan of M/s. Sunrise Industries dated 01.07.2023 received on 05.07.2023 read along with clarification letters dated 17.07.2023, 08.08.2023, undated clarification letter/s received on 01.08.2023 and 05.08.2023 was approved by the CoC in its aforesaid 09th CoC Meeting.

58. Letter of Intent (LoI) was issued on 16.08.2023 to M/s. Sunrise Industries, the Successful Resolution Applicant (for short, **'SRA'**), with

a request to convey unconditional acceptance thereof. A copy of the Letter of Intent dated 16.08.2023, duly and unconditionally accepted by M/s. Sunrise Industries on 17.08.2023, is annexed and marked as **ANNEXURE-A-23**.

59. The SRA M/s. Sunrise Industries had submitted the performance guarantee by way of remittance of the required amount as per RFRP *i.e. amount aggregating to 10% of the Resolution Plan Value Payable to Creditors, and the EMD deposited earlier shall be adjusted while calculating the aggregate amount of PBG*. Accordingly, the SRA deposited the aggregate amount of Rs. 2,10,91,710/- to the account of the CD, as detailed below:

(a) Rs. 5,00,000/- dated 03.04.2023 through RTGS UTR No. HDFCR52023040395781010.

(b) Rs. 1,00,00,000/- dated 23.05.2023 through Demand Draft No. 034453.

(c) Rs. 1,05,91,710/- dated 18.08.2023 through RTGS UTR No. HDFCR5202308188062376

Accordingly, the RP had made a term deposit of the said amount i.e. Rs. 2,10,91,710/- received towards PBG for an initial period of 12 months to be renewed thereafter till successful implementation of the Resolution Plan.

60. Accordingly, an application had been filed under Section 30 (6) of the Code read with Regulation 39 (4) of the CIRP Regulations by the applicant as the RP on 05.09.2023 under Diary No. 0710102076942023. After curing the of the defects, the application was numbered as I.A. No.

4982 of 2023 and notice was issued on 05.10.2023. The said application was accompanied by Form H dated 31.08.2023 of the applicant as the Resolution Professional. By order dated 02.01.2024, the applicant was directed to file the 'convenience proforma'. The same was filed on 30.01.2024 under Diary No. 0710102076942023/2. The aforesaid I.A. No. 4982 of 2023 was last heard on 25.04.2024 and order was reserved.

61. It is pertinent to add here that Waaree Energies Ltd., whose claim as a financial creditor had been rejected by the RP by letter dated 06.01.2023 (refer para number 16 hereinabove) had filed an application before this Hon'ble Adjudicating Authority under Section 60 (5) of the Code, challenging the aforesaid letter dated 06.01.2023 whereby the rejection of their claim was conveyed to them. The application was listed as IA No. 2068 of 2023, it was heard on 25.04.2024 and the order was reserved, along with aforesaid IA No. 4982 of 2023.

62. Order in the aforesaid IA No. 2068 of 2023 reserved on 25.04.2024 was pronounced on 29.05.2024, the IA was allowed and it was directed in para 12 of the order as under:-

> *"12. In the result, the prayer is allowed and the Resolution Professional is directed to consider the claim made by the applicant as a Financial Debt and also to call the meeting of the CoC within 7 days of this order for passing appropriate resolution to that effect. The Applicant is allowed to participate in all the future CoC meetings with all rights provided under IBC.* ***The IA is disposed of accordingly."***

63. It is pertinent to add here that the aforesaid order dated 29.05.2024 has been challenged by IREDA, the sole secured financial creditor of the CD by filing an appeal before the Hon'ble NCLAT, Principal Bench, New

Delhi which has been numbered as Comp. App. (AT) Ins. No. 1380 of 2024 and is next listed on 03.09.2024.

64. Similarly, order in the aforesaid IA No. 4982 of 2023 which reserved on 25.04.2024 was pronounced on 29.05.2024, whereby it was directed in para 10 of the order as under:-

> *"10. Thus in view of the aforementioned directions, the present application is restored back to the CoC for further consideration in the light of the said directions.* ***In the result, this application is disposed of with observations as above.****"*

65. In compliance with the aforesaid directions in IA No. 2068 of 2023, the applicant as the RP admitted the claim of Waaree Energies Ltd. as an unsecured financial creditor for an amount of Rs. 21,45,42,466/-, whereafter Waaree was also included in the CoC as a FC (Unsecured) having 23.50% voting rights. A report dated 01.06.2024 certifying the reconstitution of the Committee of Creditors was filed on 04.06.2024. A copy of the report dated 01.06.2024 certifying the reconstitution of the Committee of Creditors is annexed and marked as **ANNEXURE-A-24**.

66. In further compliance with the directions of Hon'ble NCLT in IA No. 4938/ 2023, the applicant as the RP gave advance notice by email dated 31.05.2024 to the members of the CoC for convening the 14th meeting of CoC on 05.06.2024. The formal notice/ agenda for the same was issued on 04.06.2024 and a copy of the notice/ agenda dated 04.06.2024 is annexed and marked as **ANNEXURE-A-25**.

67. In the 14th CoC meeting held on 05.06.2024, it was inter alia discussed and decided that the existing successful resolution applicant M/s. Sunrise

Industries may be given an opportunity to revisit and update their resolution plan which was earlier approved by the CoC in the 9th meeting held on 07.08.2023 as a consequence of the direction of Hon'ble NCLT in IA No. 4938/ 2023. The minutes of the 14th CoC meeting held on 05.06.2024 were circulated on 07.06.2024 and electronic voting on the proposed resolution had commenced on 07.06.2024 and concluded on 12.06.2024. A copy of the minutes dated 07.06.2024 along with result of voting dated 12.06.2024 is annexed and marked as **ANNEXURE-A-26 (COLLY)**.

68. Accordingly, a letter was issued by the applicant as the RP on 13.06.2024 to M/s. Sunrise Industries, the existing SRA, requesting them to revisit the resolution plan dated 01.07.2023 submitted on 05.07.2023 read with clarification letters (i) dated 17.07.2023. (ii) undated received on 01.08.2023, (iii) undated projections of profit & loss under resolution plan received on 05.08.2023 and (iv) dated 08.08.2023 and to submit an updated resolution plan in compliance with Hon'ble NCLT orders dated 29.05.2024. A copy of the letter dated 13.06.2024 is annexed and marked as **ANNEXURE-A-27**.

69. In response, M/s. Sunrise Industries, the existing SRA has submitted an updated resolution plan dated 20.06.2024.

70. The updated resolution plan dated 20.06.2024 was shared with the legal counsel on 21.06.2024 for checking out for being compliant with RFRP Document, IBC 2016 and laws of the land to enable the RP to put it before the CoC along with RP certificate for deliberation and decision. The observations of the legal counsel were shared with the SRA, for

clarification / addendum. The SRA submitted a clarification letter dated 02.07.2024 which was also shared with the legal counsel and the legal counsel provided the certificate that confirming that the Updated Resolution Plan dated 20th June 2024 read with Clarification Letter dated 02nd July 2024 submitted by M/s. Sunrise Industries is compliant with the RFRP Document, IBC 2016, and the other applicable laws of the land.

71. The Updated Resolution Plan dated 20th June 2024 read with Clarification Letter dated 02nd July 2024 submitted by M/s. Sunrise Industries, the earlier SRA as detailed hereinabove was presented to the 15th CoC meeting held on 18.07.2024 in terms of Section 30 (3) of the Code for its approval. During course of the deliberations in the CoC meeting on the said resolution plan, the Resolution Applicant M/s. Sunrise Industries was also invited to participate when the plan was being deliberated. The members of CoC asked the RA to further enhance the resolution plan value and the amount/s allocated to the FC members. After hectic negotiations, the RA agreed to submit their revised financial proposal within one day as an Addendum. After elaborate discussions and deliberations, it was decided in the CoC meeting to circulate the proposed resolutions after receipt of the addendum letter from the RA, by incorporating the same in the proposed resolutions. On 19.07.2024, M/s. Sunrise Industries submitted the addendum letter to the updated Resolution Plan dated 20th June 2024 to be read along with the Clarification Letter dated 02nd July 2024, all forming part of the updated Resolution Plan dated 20th June 2024. Accordingly, the addendum letter dated 19.07.2024 was shared with the CoC members by email and the

following resolution was proposed to be voted upon by including the same in the minutes of the 15th CoC meeting held on 18.07.2024, circulated on 20.07.2024: -

"***RESOLUTION***:

To consider and, if thought fit, to pass with or without modification the following resolution:

"***RESOLVED THAT*** *pursuant to Section 30(4) and (6) of Insolvency and Bankruptcy Code, 2016 read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and Regulation 34 and Regulation 31 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other applicable provisions of Insolvency and Bankruptcy Code, 2016 and rules and regulations made thereunder, in compliance with and in consideration of Hon'ble Tribunals Orders dated 29.05.2024 in I.A. No. 4982/2023 and IA No. 2068/2023 in C.P.(IB) No. 360(ND)2021, approval of the committee of creditors be and is hereby accorded to approve the Updated Resolution Plan submitted by M/s. Sunrise Industries (Partnership Firm) on dated 20th June 2024 read with clarification letter dated 02nd July, 2024 (received on 05th July 2024) and Addendum to the updated Resolution Plan dated 19th July 2024, all forming part and parcel of the updated Resolution Plan dated 20th June 2024, and authorise the RP to intimate the decision of the Committee of Creditors to the Successful Resolution Applicant.*

***RESOLVED FURTHER THAT** the Resolution Professional shall submit the Final Updated Resolution Plan approved by the Committee of Creditors, with the Adjudicating Authority on acceptance of the Letter of Intent to be issued by the RP on behalf of the CoC and up dation of Performance Bank Guarantee amount post addendum dated 19.07.2024.*

***RESOLVED FURTHER THAT** the Committee of Creditors hereby authorize Resolution Professional to continue to discharge his duties till the approval of Resolution Plan by Adjudicating Authority and complete the necessary legal formalities.*

***RESOLVED FURTHER THAT** the Committee of Creditors hereby authorize Resolution Professional to seek legal assistance from Legal Counsel to give effect to this resolution and the cost incidental to give effect to this resolution be treated as Insolvency Process Cost.*

***RESOLVED FURTHER THAT** the committee hereby agrees to reimburse and disburse the necessary expenses (if any) which shall form part of the CIRP Cost by debiting the TRA Account 153402000000790 maintained with Indian Overseas Bank in the name of Taxus Infrastructure and Power Projects Private Limited and authorize Mr Darshan Singh Anand, Resolution Professional to do all acts, deeds and matters as may be necessary to give effect to this resolution."*

A copy of the minutes dated 20.07.2024 of the aforesaid 15th CoC meeting held on 18.07.2024 is annexed and marked as **ANNEXURE-A-28**.

72. The voting on the proposed resolution was commenced on 20.07.2024 and concluded on 29.07.2024 whereby the member holding 76.50% voting share voted in favour of the resolution while the member holding 23.50% voting share abstained by not voting upon the resolution and accordingly, the resolution stood approved with 76.50% of the votes cast in favour of the resolution. A copy of the record dated 29.07.2024 of the summary of decisions in the 15th CoC meeting held on 18.07.2024 is annexed and marked as **ANNEXURE-A-29**.

73. Letter of Intent was issued to the SRA on 30.07.2024 and the SRA has signed and unconditionally accepted the same. A copy of the LOI dated 30.07.2024 duly accepted by the SRA is annexed and marked as **ANNEXURE-A-30**.

74. The SRA has since provided the performance guarantee by way of deposit of funds to the account of the CD as under:-

EMD Amount *(via RTGS on dated 03.04.2023)*	5,00,000
PPD Amount (via RTGS *on dated 23.05.2023)*	1,00,00,000
Balance Performance Guarantee Amount (via RTGS *on dated 18.08.2023)*	1,05,91,710
Additional Balance Performance Guarantee Amount (via RTGS on 20.06.2024)	1,07,272
Additional Balance Performance Guarantee Amount (via RTGS on 31.07.2024)	57,271
Total:	**2,12,56,253**

75. The SRA through Mr. Pawan Kumar Gupta, its partner has submitted an affidavit dated 03.08.2024, undertaking to give effect to the clarifications provided via the clarificatory letter dated 02.07.2024 and an Addendum dated 19.07.2024 forming part of the Updated Resolution Plan. A copy of the affidavit dated 03.08.2024 is annexed and marked as **ANNEXURE-A-31**.

76. The aforesaid updated resolution plan dated 20.06.2024 along with clarificatory letter dated 02.07.2024 and addendum letter dated 19.07.2024 forming the resolution plan are being submitted to this Hon'ble Adjudicating Authority for approval.

B. Other relevant aspects for approval of the resolution plan:

77. In all, 15 meetings of the CoC have been held till date as under: -

CoC Meeting	Date
1st	09.11.2022
2nd	06.12.2022
3rd	17.01.2023
4th	06.03.2023
5th	20.03.2023
6th	27.03.2023
7th	02.05.2023
8th	03.07.2023
9th	07.08.2023
10th	05.09.2023
11th	15.09.2023
12th	15.03.2024

13th	29.05.2024
14th	05.06.2024
15th	18.07.2024

78. The claims received from various claimants were considered in terms of provisions of the Code and on the basis of documents in support submitted by the claimants. The list of claimants was revised and updated from time to time. As per the final and updated list dated 01.06.2024 of the claimants (Version-6) as submitted to the Committee of Creditors in the 14th meeting held on 14.06.2024, the voting share of the claimants is as under:

Sl. No.	Name of the Creditors	Amount Claimed by the Creditors (Amount in Rs.)	Amount Admitted (Amount in Rs.)	% of Voting Right
1.	IREDA limited	69,83,70,832	69,83,70,832	76.50%
2.	Waaree Energies Ltd.	21,45,42,466	21,45,42,466	23.50%
	Total	91,29,13,298	91,29,13,298	100.00

79. The summary of the category wise admitted claims as on 01.06.202 as under:-

Category of Creditors	Claims received	Claims admitted
Secured Financial Creditors in Form C	69,83,70,832	69,83,70,832
Unsecured Financial Creditor in Form C	21,45,42,466	21,45,42,466
Operational Creditors (Employee) in Form D	3,17,098	3,17,098
Operational Creditor (Other than Workmen and Employee) in Form B	28,71,83,413	22,24,83,386
Operational Creditor Statutory Dues (Other than Workmen and Employee) in Form B	11,73,73,448	Nil
Other Creditors (other than Financial and Operational Creditor) in Form F	4,79,35,273	1

C. Salient features of the resolution plan:

80. Salient features of the Resolution Plan are as under:-

(a) Name and particulars of the Resolution Applicant:

Name:	M/s. Sunrise Industries
Constitution:	Partnership
Address:	J-23, RBI Enclave, Paschim Vihar, New Delhi-110063.
Partners:	Mr. Pawan Kumar Gupta Mr. Praveen Kumar Gupta

(b) Identification of the Resolution Plan:

The Resolution Plan approved by the Committee of Creditors is titled as "Updated Resolution Plan as per the Hon'ble NCLT order dated 29.05.2024 in IA 4982/2023 and IA No. 2068/2023 in CP (IB)-360(ND)2021 in the matter of Taxus Infrastructure and Power Projects Pvt. Ltd." dated 20.06.2024. It consists of 1 unnumbered jacket / covering page and typed pages 1 to 79, which was received by the applicant on 20.06.2024, read with (i) Clarification letter dated 02.07.2024 comprising of 1 page and (ii) Addendum dated 19.07.2024 to the Updated Resolution Plan consisting of 1 unnumbered jacket of 4 pages. A copy of the aforesaid Resolution Plan, the clarification letter and the Addendum, all constituting part and parcel of the updated resolution plan are annexed and marked as **ANNEXURE-A-32 (COLLY)**.

(c) Financial value of the Resolution Plan:

(i) The resolution applicant had proposed a total payout of Rs. 21,14,89,811/- initially in the resolution plan dated 20.06.2024. This comprised of (a) Rs. 21,00,00,000/- payable to IREDA, Secured Financial Creditor, (b) Rs. 10,72,713/- payable to Waaree Energies Ltd., Unsecured Financial Creditor, (c) Rs. 3,17,098/- payable to employees and (d) Rs. 1,00,000/- payable to suppliers of goods and services. In addition thereto, an amount of Rs. 5,00,000/- is set aside for liabilities on account of any contingencies and a further amount of Rs. 3,40,27,287/- towards CAPEX & WC fund. Thus, the total amount proposed was Rs. 24,60,17,098/-.

(ii) During the discussions and negotiations held in the 15th CoC meeting on 18.07.2024, the RA had agreed to submit revised summary of financial proposal, which was submitted by addendum dated 19.07.2024. In terms of the addendum, the amount proposed to be paid to Waaree Energies Ltd., unsecured financial creditor has been enhanced to Rs. 21,45,425/- from the amount of Rs. 10,72,713/- which was proposed in the resolution plan dated 20.06.2024. On the other hand, the amount for CAPEX has been reduced to Rs. 3,29,54,575/- from Rs. 3,40,27,287/- which was proposed in the resolution plan dated 20.06.2024. The total amount proposed has been retained at Rs. 24,60,17,098/-.

Thus, Rs. 21,25,62,523/- (Rupees Twenty-One Crores Twenty-Five Lacs Sixty-Two Thousand Five Hundred and Twenty-Three Only) is the amount payable under the resolution plan, as per the revised summary of the financial proposal included in the addendum dated 19.07.2024. In addition thereto, an amount of Rs. 5,00,000/- is set aside for liabilities on account of any contingencies and a further amount of Rs. 3,29,54,575/- towards capital expenditure & working capital requirement.

(iii) It is to be noted that the only major difference in the present updated resolution plan dated 20.06.2024 / 19.07.2024 from the earlier resolution plan dated 01.07.2023 is that an amount of Rs. 21,45,425/- has been proposed to be payable to Waaree Energies Ltd. as an unsecured financial creditor whereas no allocation had been made on this count in the earlier resolution plan. Simultaneously, the amount allocated for CAPEX & WC fund has been reduced to Rs. 3,29,54,575/- from the earlier proposed amount of Rs. 3,51,00,000/- in the earlier resolution plan dated 01.09.2023.

(iv) In addition to the aforesaid amounts proposed in the resolution plan read with its addendum, the resolution applicant has also proposed as under:-

(a) 70% of the amount, if received from GUVNL in respect of award, order etc. in favour of the Corporate Debtor, from the cases pending in arbitration / tribunals / courts, will be shared with the secured financial creditor/s. (*Sub-para 6 on Page 44 of the Resolution Plan*)

(b) 95% of the incremental revenue surplus accrued at the time of approval of the resolution plan by the Adjudicating Authority from the date of CIRP will be shared with the secured financial creditor/s (*Page 44 of the Resolution Plan, under the heading* ***'treatment of cash and bank balances'***).

(v) As no claim had been admitted by the RP from any government authorities, in the nature of statutory dues like Income Tax, GST, Sales Tax, Service Tax, Excise Duty, Custom Duty etc., there was no requirement of making any provision in the resolution plan for payment to such government authorities, who would be operational creditors for the purpose of Insolvency Resolution Process.

(vi) It has been stated in the resolution plan that the resolution applicant estimated that the liquidation value of the corporate debtor is not even sufficient to cover the dues of Secured Financial Creditors and that the liquidation value attributable to operational creditors and to workmen and employees and the statutory authorities as per the provisions of the Code and applicable Regulations is presumed to be Nil. The RA has further stated that it has tried, to the extent possible, to balance the valuation of the Corporate Debtor against the claims of various stakeholders and has provided for payments in the manner set forth in the plan in accordance with Section 30 (2) (b) of the Code and that the same is reasonable in the opinion of the Resolution Applicant. (*Summary of financial proposal on page 22*)

(vii) It has also been stipulated in the resolution plan that the entire share capital of the company pertaining to the promoters and other shareholders shall stand cancelled and extinguished at nil value. (*Page 46*).

(viii) It has been stipulated in the resolution plan that the outstanding CIRP Costs, if any, shall be paid within a period of 90 Days from the date of approval of the Resolution Plan and in priority to all other debts of the Corporate Debtor and shall be paid on actual basis, as approved by the members of the COC, for the period up to the Effective Date. *(Page 28)*

(d) Term of the Plan and its implementation schedule:

As per para (X) of the resolution plan under the heading 'Term, Implementation Schedule and Monitoring of the Resolution Plan' on pages 54 to 56, the duration of the resolution plan is 720 days i.e. approximately 2 years for the payment to all the creditors of the corporate debtor including financial, operational, as also infusion of funds toward working capital and others. Accordingly, the term of the plan is 2 years from the date of approval by the Hon'ble Adjudicating Authority.

(e) Compliance of the resolution plan with requirements of the Code and the CIRP Regulations framed thereunder.

The Plan is required to be compliant with provisions of the Code as well as with the regulations framed thereunder, including the aspect of 'Mandatory contents of the Resolution Plan'. The same is analysed as under:-

S. No.	Requirement of IBC and CIRP Regulations.	Section / Clause of the IBC and of CIRP Regulations	Relevant Page, Para, Clause of the Resolution Plan / Clarification letters.

1.	RA should not be ineligible.	S. 29A.	Declaration submitted vide para (XIX) on Page Nos. 74-75 of resolution plan. Certificate dated 29.06.2023 provided by Mr. Gyan Sheel, Company Secretary.
2.	Affidavit by RA that he / it is eligible u/s 29A.	S. 30(1).	Two affidavits dated 14.06.2024 as per appendix-13 have been submitted by Mr. Pawan Kumar Gupta and Mr. Praveen Kumar Gupta. Original affidavits are attached as Annexure A-34(colly).
3.	Plan provides for payment of IRPC in priority to the payment of other debts.	S. 30(2)(a).	In Para (VI) (A) (i), second unnumbered para on Page No. 25. In Para (XI) under the heading "Insolvency Resolution Process Cost" on Page Nos. 57-58.
4.	Plan provides for payment of debts of Operational Creditors (OCs), which shall not be	S. 30 (2) (b) (i).	In Para (VI) (A) (iii) on Page Nos. 27-28, read with Para (1) of the Clarificatory Letter dated

	less than the amount to be paid to such creditors in the event of liquidation of the CD u/s 53.		02.07.2024.
5.	OR Plan provides for payment of debts of OCs, which shall not be less than amount to be paid such creditors if the amount to be distributed under the Plan had been distributed in accordance with the order of priority u/s 53, **WHICHEVER IS HIGHER.**	S. 30 (2) (b) (ii).	In Para (VI) (A) (iii) on Page Nos. 27-28, read with Para (1) of the Clarificatory Letter dated 02.07.2024.
6.	Plan provides for payment of debts of Financial Creditors (**FCs**) who do not vote in favour of Plan, which shall not be less than the amount to be paid to such creditors in accordance with S. 53 (1) in the event of liquidation of the CD.	S. 30 (2) (b) (ii), proviso to (b).	In Para (VI) (A) (iv) on Page No. 28, read with Para (2) of the Clarificatory Letter dated 02.07.2024.
7.	Plan provides for amount payable to	Reg 38 (1) (a)	In Para (1) of the of the Clarificatory

	the OCs shall be paid in priority over FCs.		Letter dated 02.07.2024.
8.	Plan provides for amount payable to the FCs who have a right to vote under Section 21 (2) and did not vote in favour of the plan shall be paid in priority over FCs who voted in favour of the plan.	Reg 38 (1) (b)	In Para (1) of the of the Clarificatory Letter dated 02.07.2024.
9.	Plan includes a statement as to how it has dealt with the interests of all stakeholders……	Reg 38 (1A)	In Para (XI) on Page Nos. 58-59.
10.	Plan includes a statement giving details if the RA 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 any time in the past.	Reg 38 (1B)	In Para (XII) on pages 59-60 it has been confirmed that neither the resolution applicant nor any of its related parties has ever failed or ever contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at anytime in the past.
11.	Plan provides the	Reg 38 (2)	In Para (X) on Pages

	term of the plan and its implementation schedule.	(a)	Nos. 54-56.
12.	Plan provides the management and control of the business of the CD during its term. Plan provides for the management of the affairs of the CD after approval of the resolution plan.	Reg 38 (2) (b) Sec. 30 (2) (c)	In Para (X) sub-para (a) on Page No. 56. In Para (X) sub-para (c) on Page No. 57.
13.	Plan provides adequate means for supervising its implementation. Plan provides for the implementation and supervision of the resolution plan.	Reg 38 (2) (c) Sec. 30 (2) (d)	In Para (X) sub-para (a) on Page No. 56.
14.	Plan provides the manner in which proceedings in respect of avoidance transactions will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any shall be distributed.	Reg 38 (2) (d)	In Para 9 on Page Nos. 78-79, read with Para (3) of the of the Clarificatory Letter dated 02.07.2024.
15.	Plan demonstrates that it addresses the	Reg 38 (3) (a)	Chapter VIII (a) on pages 50-52.

	cause of default.		
16.	Plan demonstrates that it is feasible and viable.	Reg 38 (3) (b)	Chapter VIII (b) on Page Nos. 52- 53.
17.	Plan demonstrates that it has provisions for its effective implementation.	Reg 38 (3) (c)	Para (VIII) (c) on Page No. 53.
18.	Plan demonstrates that it has provisions for approvals required and the timeline for the same.	Reg 38 (3) (d)	Para (VIII) (d) on Page No. 53.
19.	Plan demonstrates that the RA has the capability to implement the plan.	Reg 38 (3) (e)	Para (VIII) (e) on Page Nos. 53-54.
20.	Plan to be submitted along with an affidavit stating that it is eligible under Section 29A to submit the resolution plan.	Reg 39 (1) (a)	Two affidavits dated 14.06.2024 as per appendix-13 have been submitted by Mr. Pawan Kumar Gupta and Mr. Praveen Kumar Gupta.
21.	Plan to be submitted along with an undertaking that every information and records provided in connection with or	Reg 39 (1) (c)	In Para (XX) (10) on Page No. 79.

	in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the CIRP, forfeit any refundable deposit and attract penal action under the Code.		

8. As regard to para 63 of the application reproduced hereinabove, whereby it has been stated that the appeal filed by IREDA against the order dated 29.05.2024 passed by this Tribunal is pending before the Hon'ble NCLAT in Company Appeal (AT)(Ins) No. 1380 of 2024, it is noted that said appeal was dismissed *vide* judgment dated 06.12.2024. In the wake, the order passed by this Tribunal of admitting the claim of Waaree Energies Limited as a financial creditor stood upheld by the Hon'ble Appellate Tribunal.

9. As has been mentioned in the application (ibid) in terms of the order dated 29.05.2024 this Tribunal directed for reconstitution of CoC, as the applicant in IA-2086/2023 questioned the decision of Resolution Professional not admitting his claim as Financial Creditor. Para- 10 to 12 of the order reads thus: -

> *"**10.** In exercise of its Summary jurisdiction, this Tribunal is not expected to conduct extensive trials and determine the disputed question . The broad scope of jurisdiction is to see whether the claim is based on authentic*

record/document or not. In the present case, the Arbitral Award dated 31.12.2021 is placed on record and is not disputed. In this context, a reference has been made Regulation 8(2)(b)(iv) of the IBBI (Insolvency Resolution Process for Corporate Persons), 2016. "

"8. Claims by financial creditors

(2) The existence of debt due to the financial creditor may be proved on the basis of -

(b) the records available with an information utility, if any; or other relevant documents, including -

(iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any."

*"**11.** Thus, in the present case, when there is an Arbitral Award in favour of the Applicant, its claims should not have been rejected by the Resolution Professional."*

*"**12.** In the result, the prayer is allowed and the Resolution Professional is directed to consider the claim made by the applicant as a Financial Debt and also to call the meeting of the CoC within 7 days of this order for passing appropriate resolution to that effect. The Applicant is allowed to participate in all the future CoC meetings with all rights provided under IBC. The IA is disposed of accordingly."*

10. In compliance with the aforementioned order, the CoC was reconstituted on 01.06.2024. During the course of hearing, we asked the Counsel for the Resolution Professional to indicate the satisfaction of requirement of Section 30(2) of IBC, 2016 and other relevant regulations on the subject. There is no dissenting Financial Creditor. As far as Operational Creditors are concerned, as can be seen from the resolution plans, the Operational Creditors are offered 0.04% of their claim. The claim of the workmen is nil and similarly statutory and government dues are also nil. Though there were statutory claims, but the RP did not admit the same as they were received after the initiation of CIRP. Furthermore, there is no application pending before us, questioning the decision

of not admitting the statutory claims. No other application to oppose the plan and for objection thereto is filed.

11. The employees are offered 100% payment qua their admitted claim. The summary of claims and that of financial proposal reads thus: -

V. FINANCIAL PROPOSAL UNDER THE RESOLUTION PLAN

1. SUMMARY OF CLAIMS

The following list of claims has been prepared on the basis of IM provided by the Resolution Professional and the details of the claims specifically provided by the RP:

S. NO.	Type of Creditor	Amount of Claim admitted (in Rupees)
	Financial Creditor/s	
1.	Secured Financial Creditors	69,83,70,832
2.	Unsecured Financial Creditors	21,45,42,466
	Operational Creditors	
1.	Workmen	NIL
2.	Employees	3,17,098
3.	Statutory & Government Dues	NIL
4.	Supplier of Goods & Services	22,24,83,386
	Other Creditors	
1.	Other than the Creditors mentioned above	1
	Total	**113,57,13,783**

2. SUMMARY OF THE FINANCIAL PROPOSAL

Since the resolution applicant didn't get any information on the liquidation value of the corporate debtor, the resolution applicant estimated that the liquidation value of the corporate debtor is not even sufficient to cover the dues of Secured Financial Creditors. Therefore, the liquidation value attributable to Unsecured Financial Creditors, Operational Creditors and to workmen and employees and the Statutory Authorities as per the provisions of the Code and applicable regulations is presumed to be NIL.

The Resolution Applicant has tried, to the extent possible, to balance the valuation of the Corporate Debtor against the Claims of the various stakeholders of the Corporate Debtor and

has provided for payments in the manner set forth in accordance with Section 30(2)(b) of the Code and is reasonable in the opinion of the Resolution Applicant.

S. No.	Particulars	Amount of Claim admitted (In Rs.)	Amount Proposed (In Rs.)	Timeline for Payment
1.	**Payment to Financial Creditors**			
	I. Secured Financial Creditors			The entire proposed amount to the FC will be paid in different Tranches from the effective date ("T") as: **a.** **1st Tranche (Upfront):** INR 5.00 Crores shall be paid within 90 Days from the Effective Date. **b.** **2nd Tranche** of INR 5.00 Crores within 1 Year from the effective date. ***(That is a total payment of INR 10.00 Cr shall be paid during the First Year after approval of the plan by the AA)*** **c.** **3rd Tranche:** The remaining balance payment of INR 11.00 Crores shall be paid within 2 years from the effective date.
	a) IREDA Limited	69,83,70,832	21,00,00,000	
	II. Un-Secured Financial Creditors- ***Waaree Energies Limited***	21,45,42,466	10,72,713	Upfront within 90 days from the effective Date.
	III. Secured /Un-Secured Financial Creditors **(RELATED PARTY)**	NIL	NIL	Not Applicable
3.	**Payment to Operational Creditors**			
	I. Workmen Claims,	NIL	NIL	Not Applicable
	II. Employees Claims	3,17,098	3,17,098	Within 90 days i.e. Upfront
	III. Statutory &	NIL	NIL	Not Applicable

	Government Dues			
	IV. Claims of Supplier of Goods & Services	22,24,83,386	1,00,000	Within 90 days i.e. Upfront
4.	**Payment to Other Creditors**			
	Non-Related Party	1	NIL	Not Applicable
	Related Party	NIL	NIL	Not Applicable
5.	**Amount set aside for liabilities on account of any contingencies**			
	Fund towards Contingencies		5,00,000	As per the requirement
6.	**Amount for CAPEX & WC Fund**			
	Fund towards the Capital expenditure and working capital requirement		3,40,27,287	As per the requirement
	TOTAL	**92,11,71,317**	**24,60,17,098**	

It is clarified that apart from the above mentioned payment, the Resolution Applicant proposed the following:

1. **Sharing of 95% of the incremental revenue surplus**, accrued at the time of approval of Resolution Plan by the Adjudicating Authority from the date of CIRP after adjustment of the unpaid CIRP cost, **to the SECURED FINANCIAL CREDITOR/S.**
2. In addition to the above the RA also proposes to provide the **UNSECURED FINANCIAL CREDITOR a share of 0.50% of the incremental revenue surplus**, accrued at the time of approval of Resolution Plan by the Adjudicating Authority from the date of CIRP after adjustment of the unpaid CIRP cost.
3. The Resolution Applicant proposes to pay to the Secured Financial Creditor/s an amount equals to 70% of the total amount, if received, from the GUVNL pursuant to the order received in favour of the Corporate Debtor in the matter/s which are pending before the Appellate Tribunal for Electricity. All the expenses for pursuing/follow-up the pending GUVNL Recovery after the Approval date shall be borne by the RA.
4. As a successful RA has already submitted the performance security of Rs. 2,10,91,710-/- in the form of RTGS and balance of Rs.1,07,272-/- has been deposited in the form of RTGS on 20-06-2024.
5. RA undertakes and confirms that they will not take any discount on prepayment of the amount proposed in the Resolution plan.
6. Apart of above amount RA also confirm to pay incentive to the RP of RS. 12,45,464/ -(i.e Rs. 10,52,085/-Plus Gst @18% i.e RS. 1,89,376-/-, which shall be disbursed post completion of receipt of Resolution Plan payments to secured Financial Creditors.
7. Apart from the above mentioned payment proposed, no other payment has been provided to any other creditors (whether their claim have been received or not, accepted or not by the IRP/RP) including Related Parties & Connecting Persons.

12. The secured Financial Creditor i.e. IREDA is offered Rs. 21 Cr. against its admitted claim of Rs. 69,83,70,832/-. The unsecured Financial Creditor i.e. Waaree Energies Limited is offered Rs. 21,45,425/- against its admitted claim of Rs. 21,45,42,466/-. The Distribution offered in terms of the updated plan after addendum dated 19.07.2024 reads thus: -

REVISED SUMMARY OF THE FINANCIAL PROPOSAL

S. No.	Particulars	Amount of Claim admitted (In Rs.)	Amount Proposed (In Rs.)	Timeline for Payment
1.	**Payment to Financial Creditors**			
	I. Secured Financial Creditors			The entire proposed amount to the FC will be paid in different Tranches from the effective date ("T") as: a. **1st Tranche (Upfront):** 5 Crores (within 90 Days from the Effective Date) b. **2nd Tranche:** 5 Crores (within one year from the Effective Date) **(That is a total payment of INR 10 Cr. shall be paid during the First Year after approval of the plan by AA)** c. **3rd Tranche:** The remaining balance payment of INR 11.00 Crores shall be paid within 2 years from the Effective Date.
	a) IREDA Limited	69,83,70,832	21,00,00,000	
	II. Un-Secured Financial Creditors- Waaree Energies Limited	21,45,42,466	21,45,425	Upfront within 90 Days from the effective Date.
	III. Secured /Un-Secured	NIL	NIL	Not Applicable

	Financial Creditors (RELATED PARTY)			
3.	Payment to Operational Creditors			
	I. Workmen Claims	NIL	NIL	Not Applicable
	II. Employees Claims	3,17,098	3,17,098	within 90 Days i.e. Upfront
	III. Statutory & Government Dues	NIL	NIL	Not Applicable
	IV. Claims of Supplier of Goods & Services	22,24,83,386	1,00,000	Within 90 days i.e. Upfront
4.	Payment to Other Creditors			
	Non-Related Party	1	NIL	Not Applicable
	Related Party	NIL	NIL	Not Applicable
5.	Amount set aside for liabilities on account of any contingencies			
	Fund towards Contingencies		5,00,000	As per the requirement
6.	Amount for CAPEX & WC Fund			
	Fund towards the Capital expenditure and working capital requirement		3,29,54,575	As per the requirement
	TOTAL	92,11,71,317	24,60,17,098	

13. The plan also provides for payment of CIRP cost and other dues as per Section 30(2)(a) and (b) of the Code. The relevant excerpt of the plan in this regard reads thus: -

A. PAYMENTS TO BE MADE ON PRIORITY

i. Payment towards Outstanding CIRP costs including dues of creditors during CIRP period

The Resolution Professional has not shared any unpaid CIRP cost therefore Resolution Applicant assumes there is no unpaid CIRP cost as on date. Further to that the Resolution Applicant understands that the total CIRP Costs incurred and ratified by the CoC to the extent it's pending, if any, as on the Effective Date would be communicated to the Resolution Applicant.

The outstanding CIRP Costs, if any, shall be paid within a period of 90 Days from the date of approval of the Resolution Plan and in priority to all other debts of the Corporate Debtor and shall be paid on actual basis, as approved by the members of the COC, for the period up to the Effective Date.

The Outstanding CIRP cost shall firstly be met out of fund available with the CD in its bank account or the revenue generated and in case of any shortfall the said amount will be adjusted from amount payable to financial creditors.

Further, any CIRP Cost of such quantum and nature, which has been incurred regularly during the CIRP Period, shall be paid in full after the approval of the Resolution Plan by the NCLT or any other Competent Authority. Further, the dues incurred by the Resolution Professional during the CIRP period, towards the operational creditors, if any, shall be paid in terms of agreements with such operational creditors.

Further, Any CIRP Cost of such nature and quantum which is exceptional and not being incurred on a regular basis during the CIRP Period shall be paid in full, provided all the supporting documents of such Cost is shared to the Resolution Applicant in original and is also approved by Committee of Creditors.

It is hereby clarified that upon payment of the entire CIRP Costs by the Resolution Applicant, made pursuant to approval of plan by the Hon'ble NCLT, the Resolution Professional or any other third party shall have no claim or demands against the Resolution Applicant and/or the Corporate Debtor for any reason what-so-ever and shall stand completely settled, written off and extinguished in perpetuity.

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Therefore, except for CIRP Costs, any liabilities and/ or claims that arise between the insolvency commencement date and the effective date shall stand waived, extinguished, abated, and discharged in perpetuity as on the effective Date, pursuant to the NCLT Approval Order or order of any Competent authorities.

ii. Payment proposed to the Unsecured Financial Creditors

The liquidation value of the Corporate Debtor has not been provided by the Resolution Professional. Based on the data available from the Information Memorandum and other documents, and based on its experience, the Resolution Applicant has developed its own Valuation. Basis above, it has been assumed that Liquidation Value does not even cover outstanding debt of the Secured Financial Creditors.

The Resolution Applicant has been informed by the Resolution Professional vide his letter dated 13.06.2024, that the claim of Waaree Energies Limited has been

accepted as an unsecured financial creditor in accordance with Hon'ble NCLT Orders dated 29.05.2024 IN I.A. 4982/2023 AND IA NO. 2068/2023 IN C.P.(IB)-360(ND)2021. The Resolution Applicant therefore proposes an amount towards the satisfaction of the claim of Unsecured Financial Creditor/s which is mentioned in in "Chapter V" above under the clause/heading named "SUMMARY OF THE FINANCIAL PROPOSAL".

The Resolution Applicant believes that the amount proposed towards satisfaction of the claim of the unsecured financial creditor/s is more than what they would get as per section 53(1) of the IBC, in case the CD goes into Liquidation.

iii. **Payment of Liquidation Value due to Operational creditors.**

The liquidation value of the Corporate Debtor has not been provided by the Resolution Professional. Based on the data available from the Information Memorandum and other documents, and based on its experience, the Resolution Applicant has developed its own Valuation. Basis above, it has been assumed that Liquidation Value does not even cover outstanding debt of the Secured Financial Creditors.

As per the information provided in the IM the RP under the category of Operational Creditors have accepted claims of Rs. 3,17,098/- of the Employees and Rs. 22,24,83,386/- claims of operational creditor other than Workmen and Employees and Government Dues. Accordingly, the resolution plan envisaged paying the Operational Creditors in the manner as set forth in this plan and the amount to be distributed under the resolution plan is more than 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 sub-section (1) of section 53.

In case the amount to be paid to the Operational creditors in the event of liquidation is more than the amount proposed in this plan then the Resolution Applicant will increase the amount accordingly and the increased amount will be adjusted from the amount provided towards the secured financial creditors.

iv. **Payment of liquidation value of dissenting financial creditors**

iv. **Payment of liquidation value of dissenting financial creditors**

As per the estimation of the Resolution Applicant, the amounts proposed to be paid to each unrelated Financial Creditors under the present Plan is more than the Minimum Liquidation Value as would have been due to such Financial Creditor in case the CD goes into Liquidation.

The RA assures the payment against the debts of the financial creditors, who do not vote in favour of the resolution plan, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 of IBC-2016 in the event of a liquidation of the corporate debtor as per the Section 30(2) (b).

It is further clarified that the payment already provided for in the Resolution Plan to the financial creditors (Unsecured) is more than that amount which is payable in accordance with sub-section (1) of section 53, whereas we believe the situation will not arise when amount payable to the Secured Financial Creditors needs to be modified. However, as an abundant caution if there arises any situation warranting payment of amount higher than that is already provided for the unsecured Financial Creditor the same shall be adjusted inter se from the amount proposed to be paid to the other Financial Creditors under the present Plan on proportionate basis and no additional fund shall be infused for payment of such deficit amount. Further we proposes that the payment to the dissenting financial creditors if any required to be made as per sub-section (1) of section 53, then such payment shall be made in priority to other assenting financial creditors.

14. The steps regarding implementation of the plan as contained therein reads thus: -

The Resolution Plan envisages duration of 720 **days (i.e. approximately 2 years)** for the payment to all the creditors of the corporate debtor including financial, operational, infusion of funds towards working capital and others. The aboSve-mentioned period will start from the day Resolution Plan is approved by the Adjudicating Authority or the receipt of the Approval Order, whichever is later.

Implementation Schedule

Step	Action	Timeline (in days)
Step 1	Approval of the Resolution Plan by the Adjudicating Authority or the receipt of the Approval Order, whichever is later.	T
Step 2	Intimation to all the Creditors, existing shareholders and Other Stakeholder of the CD	Within T+3
Step 3	Appointment of the monitoring committee and Change in Management of the Corporate Debtor, by appointment of key managerial personnel and/or Directors nominated by RA on the Board of the Corporate Debtor.	Within T+3
Step 4	Resolution Applicant will Infuse funds in the form of Debt & equity as proposed for the upfront payment and the same will be allocated for payment to Financial Creditors and Non-financial Creditors in accordance with resolution plan.	Within T+ 90
Step 5	Issue of the shares to the new shareholders.	Within T+ 90
Step 6	Infusion of the fund in the form of Debt to make the pending payment of the FC as per amount proposed in the resolution plan.	Within T+ 720
Step 8	Transfer of all the Assets to the CD and Receipt of NOC other documents from the Financial Creditors for satisfaction/modification of charges.	Within T+720

15. The plan also contains the provisions for Monitoring Committee which reads thus: -

Monitoring Committee

The resolution plan shall be approved by the Committee of Creditors and post receipt of the approval of the CoC, the Resolution Plan will have to be filed with the Adjudicating Authority for its approval and upon approval of plan by Adjudicating Authority, the following actions to be taken:

a. **Constitution of Committee for monitoring and supervision of resolution plan:**

This is envisaged in the Resolution Plan to constitute a monitoring committee comprises of a representative of the CoC, Resolution Applicant along with the resolution professional **Mr. Darshan Singh Anand** for supervision and monitoring of implementation of the Resolution Plan for the term of the Resolution Plan. The monitoring committee/entity, constituted, shall have inter alia the following responsibilities:

i. To supervise the implementation of the Resolution Plan and ensure that the Resolution Plan is implemented as approved without any deviations;
ii. To ensure timely disbursement of funds to the financial and other creditors, as per the payment terms set out above;
iii. To ensure that approvals, to the extent required for implementation of the Resolution Plan, are applied for and obtained in a timely manner.
iv. To bring to the notice of NCLT, any deviations/violations, of the Resolution Plan, by any person;
v. To provide regular updates to the NCLT, as and when required

b. **Remuneration to the members of the monitoring committee**

The resolution plan envisages for payment of fee to chairperson be as decided by the members during the first meeting of the **monitoring committee**. All incidental/out of pocket expenses shall be paid and will be reimbursed as per actual/s.

No fee other than the fee of the chairperson shall be borne by Resolution applicant.

Chairperson here means the Erstwhile RP or any other person as elected by the members of the monitoring committee and who will have the right to called the meeting of the monitoring committee and will chaired the same, can sign any documents on behalf of the monitoring committee and have any other rights as provided in the IBC & related regulation and/or as decided by the members of the monitoring committee in its first meeting.

c. Management and Control of the CD after approval of the Resolution plan

The resolution applicant shall take over the management of Company after the approval of the Resolution Plan by the Adjudicating Authority and the Resolution Professional shall be discharged from his duties. The Resolution Applicant proposes to appoint the following directors of the Corporate Debtor after the approval of the Resolution Plan:

1. Mr. Pawan Kumar Gupta or any person as may be nominated by the Resolution Applicant.
2. Mr. Parveen Kumar Gupta or any person as may be nominated by the Resolution Applicant.

16. From the aforementioned it is clear that the requirements of Section 30(2)(a) to (d) are satisfied. The plan also indicates that the same is not contrary to any provisions of law. The part XIII of the plan where in the mandatory contents of the same are indicated reads thus: -

XIII. MANDATORY CONTENTS OF THE RESOLUTION PLAN

Provisions of the Code/ Regulations	Reference	Provision in the Resolution Plan
Sec. 30(2)(a)	Provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;	The Resolution Professional has not shared any unpaid CIRP cost therefore Resolution Applicant assumes there is no unpaid CIRP cost as on date. Although, in case there is any pending CIRP cost, then such Insolvency Resolution Process Costs shall be paid in priority over payments to all Creditors. The Insolvency Resolution Process Costs, to the extent that it remains outstanding, shall be first duly paid by the Corporate Debtor from its accruals and distributable cash.

Sec. 30(2)(b)	Provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than i. The amount to be paid to such creditors in the event of a 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 sub-section (1) of section 53. Provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor	This has been provided in this Resolution Plan at Chapter VI (Part A)
Sec. 30(2)(c)	Provides for the management of the affairs of the corporate debtor after approval of the resolution plan	This has been provided in this Resolution Plan at Chapter X
Sec. 30(2)(d)	The implementation and supervision of the resolution plan	This has been provided in this Resolution Plan at Chapter X. It provides for the constitution of the Monitoring Committee.
Sec. 30(2)(e)	Does not contravene any of the provisions of the law for the time being in force	The RA declares and confirms that the present Resolution Plan does not contravene any of the provisions of the law for the time being in force. This has been provided in this Resolution Plan at Chapter XVII.
Sec 30(2) (f)	Confirms to such other requirements as specified by the Board.	No other requirements are specified by the Board
Sec. 30(4)	Provides for manner of distribution taking into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor	Chapter V provided the Summary of the Financial Proposal
Sec. 31(1) Proviso	The resolution plan has provisions for its effective implementation	This has been provided in this Resolution Plan at Chapter VIII (Point "C")

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Sec. 31(4)	Addresses necessary approvals required under any law for the time being in force within a period of one year from the date of approval of resolution plan by the NCLT	This has been provided in this Resolution Plan at Chapter VII.
Sec. 31(4) Proviso	If the plan contains a provision for combination, as referred to in Section 5 of the Competition Act, 2002, whether the resolution applicant has obtained or addresses the approval of the Competition Commission of India under that Act prior to the approval of the resolution plan by the COC	The RA declares that the present provision is not applicable to this Resolution Plan.
Reg. 37(a)	Transfer of all or part of the assets of the corporate debtor to one or more persons	The RA declares that the present provision is not applicable to this Resolution Plan.
Reg. 37(b)	Sale of all or part of the assets whether subject to any security interest or not	The RA declares that the present provision is not applicable to this Resolution Plan.
Reg. 37(ba)	Restructuring of the corporate debtor, by way of merger, amalgamation and demerger	The RA declares that the present provision is not applicable to this Resolution Plan.
Reg. 37(c)	The substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons.	This has been provided in this Resolution Plan at Chapter VII
Reg. 37(ca)	Cancellation or delisting of any shares of the corporate debtor, if applicable	This has been provided in this Resolution Plan at Chapter VII
Reg. 37(d)	Satisfaction or modification of any security interest	Any and all security interest on any of the assets of the CD shall stand satisfied upon the payment of the Resolution Amount to the Secured Financial Creditor as per the amount proposed in the plan. And any such security interest shall stand released upon the payment of the Resolution Amount in favour of

		the CD/RA.
Reg. 37(e)	Curing or waiving of any breach of the terms of any debt due from the corporate debtor	The RA proposes that all such breach of terms of any debt of the CD shall stand cured on and all penalties, fines, breaches, etc., shall stand waived upon successful implementation of this Resolution Plan.
Reg. 37(f)	Reduction in the amount payable to the creditors	The RA has proposed for reduction in the amount payable to the creditors of the CD in the Financial Proposal of this Resolution Plan.
Reg. 37(g)	Extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor	The RA declares that the present provision is not applicable to this Resolution Plan.
Reg. 37(h)	Amendment of the constitutional documents of the corporate debtor	In order to give effect to this Resolution Plan, the RA shall be at a liberty to amend or change any constitutional document of the Corporate Debtor, including the Memorandum of Association, Articles of Association etc. for any purpose including but not limited to changing the name of the Corporate Debtor, changing the amount of authorised share capital of the Corporate Debtor etc. This has been provided in Chapter VII.
Reg. 37(i)	Issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose	The RA declares that the present provision is not applicable to this Resolution Plan.
Reg. 37(j)	Change in portfolio of goods or services produced or rendered by the corporate debtor	The RA declares that the present provision is not applicable to this Resolution Plan till the

		implementation of the plan.
Reg. 37(k)	Change in technology used by the corporate debtor	The RA declares that the present provision is not applicable to this Resolution Plan.
Reg. 37(l)	Obtaining necessary approvals from the Central and State Governments and other authorities	This has been provided in Chapter VIII
Reg. 38(1)	The amount payable under a resolution plan - (a) to the operational creditors shall be paid in priority over financial creditors; and (b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.	This has been provided in Chapter VI (Part A)
Reg. 38(1A)	Includes a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor	The RA declares that it has endeavoured to take into account all claims, including the claims of statutory authorities while proposing the present Resolution Plan and has dealt with the interests of all stakeholders, including Financial Creditors, and Operational Creditors and Other Creditors of the CD. This has been provided in Chapter XI
Reg. 38(1B)	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	The RA declares that neither the RA nor any of its related parties have 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. This has been provided in Chapter XII
Reg. 38(2)(a)	The term of the plan and its implementation schedule	This has been provided in this Resolution Plan at Chapter X
Reg. 38(2)(b)	The management and control of the business of the corporate debtor during its term	This has been provided in this Resolution Plan at Chapter X
Reg. 38(2)(c)	Adequate means for supervising its implementation	This has been provided in this Resolution Plan at Chapter X It provides for the constitution of the Monitoring Committee.
Reg. 38(2)(d)	The manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed	This has been provided in this Resolution Plan at Chapter XX (Point -9)
Reg. 38(3)(a)	Addresses the cause of default	This has been provided in this Resolution Plan at Chapter VIII
Reg. 38(3)(b)	Demonstrate that it is feasible and viable	The RA confirms that the present Plan is feasible and viable, considering the payments being made to each category of creditors of the CD. This has been provided in this Resolution Plan at Chapter VIII
Reg. 38(3)(c)	Has provisions for its effective implementation	This has been provided in this Resolution Plan at Chapter VIII
Reg. 38(3)(d)	Has provisions for approvals required and the timeline for the same	This has been provided in this Resolution Plan at Chapter VIII
Reg. 38(3)(d)	The resolution applicant has the capability to implement the resolution plan	This has been provided in this Resolution Plan at Chapter VIII
Reg. 39(1)(a)	Affidavit stating that it is eligible under	The affidavit is attached along with

	section 29A to submit resolution plans	the Resolution Plan. In addition to that a statement is also given in Chapter XIX
Reg. 39(1)(c)	Undertaking that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the Corporate Insolvency Resolution Process, forfeit any refundable deposit, and attract penal action under the Code	Chapter XX Point 11

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17. As can be seen from the remark against Section 30(2)(a)(ibid), the RA has declared that the plan does not contravene any provision of law. It is also noted that in Clause XVII of the plan, the SRA has specifically declared that the same is not in contravention to the provisions of the application. The clause reads thus: -

> ***"XVII.DECLARATION TO THE EFFECT THAT THE PLAN IS NOT IN CONTRAVENTION OF PROVISIONS OF THE APPLICABLE LAW***
>
> *The Resolution Applicant hereby confirms that this Resolution Plan is not in contravention of the provisions of any Applicable Law.*
>
> *The SRA has also furnished an affidavit declaring that it is not disqualified from submitting the resolution plan in terms of the provisions of Section 29(a) of IBC, 2016."*

18. In clause (XIX) of the plan, the SRA has disclosed that it is not disqualified under Section 29A of the Code from submitting the plan. The declaration made in the resolution plan reads thus: -

XIX. DECLARATION UNDER SECTION 29A OF INSOLVENCY AND BANKRUPTCY CODE, 2016

The Resolution Applicant confirms that, as on the date of this Plan and on the basis of the records of the Resolution Applicant, the Resolution Applicant is eligible under Section 29A of the Insolvency and Code to submit the Plan and the Resolution Applicant and/or any 'connected person' (as defined under Section 29A of the Insolvency and Bankruptcy Code, 2016 ("Code")) or any other person covered under Section 29A of the Code:

(a) is not an un-discharged insolvent;

(b) is not a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;

(c) at the time of submission of this resolution plan has does not have any account, does not control or manage, or not the promoter of, a corporate debtor whose account has been, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any law for the time being in force and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the Corporate Debtor;

(d) has not been convicted of any offence punishable with imprisonment for two years or more under any Act specified under the Twelfth Schedule of Code or for seven years or more under any law for the time being in force

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(e) is not disqualified to act as a director under the Companies Act, 2013;

(f) is not prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;

(g) has not been the promoter, or been in the management or control of a corporate debtor, in which a preferential transaction, an undervalued transaction, an extortionate credit transaction or a fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under the Code;

(h) has not executed an enforceable guarantee in favour of a creditor, in respect of a corporate debtor under insolvency resolution process or liquidation under the code an such guarantee has been invoked by the creditor and remains unpaid in full or part;

(i) has not been subject to any disability, corresponding to the aforesaid conditions under any law in a jurisdiction outside India.

Further, we also confirm that the Resolution Applicant shall also be compliant to Section 29A of the Code.

The Resolution Applicant further clarifies the following details:

(a) The Resolution Applicant and / or any Connected Person has not been convicted of any offence in the preceding five years

(b) there are no criminal proceedings pending or decreed against the Resolution Applicant and / or any Connected Person

(c) The Resolution Applicant and any Connected Person have not been disqualified to act as a director under the Companies Act, 2013

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(d) The Resolution Applicant and any Connected Person have not been identified as wilful defaulter by any bank or financial institution or consortium thereof in accordance with the guideline of the RBI

(e) The Resolution Applicant and any Connected Person have not been disqualified or debarred from accessing to or trading in the securities market under any order of the Securities and Exchange Board of India and / or any other such judicial authority

(f) Details of transactions between the Resolution Applicant (including any Connected Person) and the Corporate Debtor during the preceding two years: None

(g) The RA undertake that the contents of the affidavit submitted as per Appendix-13 provided with this plan in this regard shall continue to be true and warrant and that it shall remain true at all point of times.

19. A separate affidavit has been given by the Resolution Applicant indicating that it does not suffer from any disqualification under Section 29(a) of IBC, 2016 which reads thus: -

AFFIDAVIT

[IN CASE OF CONSORTIUM- TO BE SUBMITTED BY EACH MEMBER OF THE CONSORTIUM]

I, [*Pawan Kumar Gupta Partner/authorized person of resolution applicant, authorised by the Board of the resolution applicant for giving such affidavit*], son of *[Ram Karan Gupta]*, aged about *50* years, currently residing at *[J-23, RBI Enclave,Paschim Vihar, New Delhi -110063] and having Aadhaar No. 393078626660*, on behalf of *[Sunrise Industries]* having registered office at *J-23, RBI Enclave,Paschim Vihar, New Delhi -110063 ("**Resolution Applicant**", a term which also includes any person acting jointly with the Resolution Applicant)*, do solemnly affirm and state to the committee of creditors of **Taxus Infrastructure and Power Projects Private Limited** ("**CoC**") and the Resolution Professional of **Taxus Infrastructure and Power Projects Private Limited** ("**RP**") as follows:

1. That I am duly authorized and competent to make and affirm the instant affidavit for and on behalf of the Resolution Applicant in term s of the [*resolution of its board of directors/ power of attorney- to provide other necessary details of such authorization*]. The said document is true, valid and genuine to the best of my knowledge, information and belief.

2. That the Resolution Applicant, any other person acting jointly or in concert with the Resolution Applicant, any 'connected person' (as defined under Section 29A of the Insolvency and Bankruptcy Code, 2016 ("**Code**")) or any other person is not ineligible to submit Resolution Plan as per the provisions of Section 29A of the Code:

a) is not an undischarged insolvent;

b) is not a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;

c) is not a person whose account has been, does not control or manage, or is not the promoter of, a corporate debtor whose account has been, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 and continued for a period of one year or more from the date of such classification till the date of commencement of the corporate insolvency resolution process of **Taxus Infrastructure and Power Projects Private Limited**;

d) has not been convicted of any offence punishable with imprisonment –
(i) for two years or more under any Act specified under the Twelfth Schedule;or
(ii)for seven years or more under any law for the time being in force.

e) is not disqualified to act as a director under the Companies Act, 2013;

f) is not prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;

g) has not been the promoter, or been in the management or control of a corporate debtor, in which a preferential transaction, an undervalued transaction, an extortionate credit transaction or a fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under the Code;

h) has not executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part;

i) has not been subject to any disability, corresponding to the aforesaid conditions under any law in a jurisdiction outside India.

3. That the Resolution Applicant unconditionally and irrevocably represents, warrants and confirms that it is eligible under the terms and provisions of the IBC (read with the relevant regulations framed there under) to submit a resolution plan and it shall provide all documents, representations and information as may be required by the RP or the CoC to substantiate that the Resolution Applicant is eligible under the Code to submit a resolution plan in respect of **Taxus Infrastructure and Power Projects Private Limited**

4. That the Resolution Applicant unconditionally and irrevocably undertakes that it shall provide all data, documents and information as may be required to verify the statements made under this affidavit.

5. That the Resolution Applicant understands that the CoC may evaluate the resolution plan to be submitted by the Resolution Applicant or any other person acting jointly with it and such evaluation shall be on the basis of the confirmations, representations and warranties provided by the Resolution Applicant under this affidavit and the RFRP.

6. If, at any time after the submission of this affidavit and before the approval of the Resolution Applicant's resolution plan by the Hon'ble Adjudicating Authority under the Code, the Resolution Applicant becomes ineligible to be a resolution applicant as per the provisions of the Code (and in particular Section 29A of the Code), the fact of such ineligibility shall be forthwith brought to the attention of the RP and the CoC.

SOLEMNLY AFFIRMED AT NEW DELHI
ON THIS THE 14th June 2024

20. It is noted that another partner qua the SRA Praveen Kumar Gupta has also given his separate affidavit to the effect that the SRA does not suffer from disqualification in terms of the provisions of Section 29A. The affidavit is enclosed at page 795 to 796 of the application and reads thus: -

AFFIDAVIT

[IN CASE OF CONSORTIUM- TO BE SUBMITTED BY EACH MEMBER OF THE CONSORTIUM]

I, [*Parveen Kumar Gupta Partner of resolution applicant, authorised by the Board of the resolution applicant for giving such affidavit*], son of *[Ram Karan Gupta]*, aged about *52* years, currently residing at *[J-23, RBI Enclave,Paschim Vihar, New Delhi -110063] and having Aadhaar No. 815877562525* on behalf of *[Sunrise Industries]* having registered office at *J-23, RBI Enclave,Paschim Vihar, New Delhi -110063 ("**Resolution Applicant**", a term which also includes any person acting jointly with the Resolution Applicant),* do solemnly affirm and state to the committee of creditors of **Taxus Infrastructure and Power Projects Private Limited** ("**CoC**") and the Resolution Professional of **Taxus Infrastructure and Power Projects Private Limited** ("**RP**") as follows:

1. That I am duly authorized and competent to make and affirm the instant affidavit for and on behalf of the Resolution Applicant in term s of the [*resolution of its board of directors/ power of attorney- to provide other necessary details of such authorization*]. The said document is true, valid and genuine to the best of my knowledge, information and belief.

2. That the Resolution Applicant, any other person acting jointly or in concert with the Resolution Applicant, any 'connected person' (as defined under Section 29A of the Insolvency and Bankruptcy Code, 2016 ("**Code**")) or any other person is not ineligible to submit Resolution Plan as per the provisions of Section 29A of the Code:

a) is not an undischarged insolvent;

b) is not a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;

c) is not a person whose account has been, does not control or manage, or is not the promoter of, a corporate debtor whose account has been, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 and continued for a period of one year or more from the date of such classification till the date of commencement of the corporate insolvency resolution process of **Taxus Infrastructure and Power Projects Private Limited;**

d) has not been convicted of any offence punishable with imprisonment –
(i) for two years or more under any Act specified under the Twelfth Schedule;or
(ii)for seven years or more under any law for the time being in force.

e) is not disqualified to act as a director under the Companies Act, 2013;

f) is not prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;

g) has not been the promoter, or been in the management or control of a corporate debtor, in which a preferential transaction, an undervalued transaction, an extortionate credit transaction or a fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under the Code;

h) has not executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part;

i) has not been subject to any disability, corresponding to the aforesaid conditions under any law in a jurisdiction outside India.

3. That the Resolution Applicant unconditionally and irrevocably represents, warrants and confirms that it is eligible under the terms and provisions of the IBC (read with the relevant regulations framed there under) to submit a resolution plan and it shall provide all documents, representations and information as may be required by the RP or the CoC to substantiate that the Resolution Applicant is eligible under the Code to submit a resolution plan in respect of **Taxus Infrastructure and Power Projects Private Limited**

4. That the Resolution Applicant unconditionally and irrevocably undertakes that it shall provide all data, documents and information as may be required to verify the statements made under this affidavit.

5. That the Resolution Applicant understands that the CoC may evaluate the resolution plan to be submitted by the Resolution Applicant or any other person acting jointly with it and such evaluation shall be on the basis of the confirmations, representations and warranties provided by the Resolution Applicant under this affidavit and the RFRP.

6. If, at any time after the submission of this affidavit and before the approval of the Resolution Applicant's resolution plan by the Hon'ble Adjudicating Authority under the Code, the Resolution Applicant becomes ineligible to be a resolution applicant as per the provisions of the Code (and in particular Section 29A of the Code), the fact of such ineligibility shall be forthwith brought to the attention of the RP and the CoC.

SOLEMNLY AFFIRMED AT NEW DELHI
ON THIS THE 14th June 2024

21. As per the stand taken by the Ld. Counsel for the Resolution Professional, as also by RP who appeared virtually, the SRA has also deposited a cash amount of Rs. 2,12,56,253/- as performance guarantee. The Resolution Professional and his Counsel namely Rajesh Kumar Shrivastava (Enrollment No.- UP 2965/1989) stated at the bar that the SRA has deposited in CIRP account of Corporate Debtor an amount of Rs. 2,12,56,253/- as performance guarantee. The averments to the effect have been made in the resolution plan which reads thus:

"XVIII : PERFORMANCE SECURITY/GUARANTEE

The Resolution Applicant hereby undertakes to provide performance security upon issuance of the LOI in the form of RTGS and the interest generated from such performance security shall be provided to the Secured Financial Creditor i.e. IREDA Limited, in addition to the payment proposed above in this resolution plan, as the said interest generated from the amount

provided for the performance security shall not be considered as the revenue generated by the Corporate Debtor. The RA also proposes to adjust the amount of the performance security of Rs. 2,11,98,982/- towards the last installment of payment as required as per the payment timelines provided in this Resolution plan.

22. During the course of hearing Ld. Counsel for the Resolution Professional submitted that the amount of performance guarantee has been kept in fixed deposit in Parliament Street Branch of Bank of Baroda.

23. We find that the value of plan is much beyond the fair value of the Corporate Debtor, assessed by the valuators appointed by the Resolution Professional in terms of the provisions of Regulation 27 of IBBI Regulations, 2016 read with Regulation 35 thereof.

24. Besides we note that in terms of the judgment of Hon'ble Supreme Court in case of ***Committee of Creditors of Essar Steel India Limited Through Authorised Signatory vs. Satish Kumar Gupta & Ors*** [Civil Appeal No. 8766-67 of 2019], it is the subject matter of commercial wisdom of CoC to take decision regarding the amount of bid offered by SRA and the scope for this Tribunal to interfere on such issue is negligible. The above view was also reiterated by Hon'ble Supreme Court in ***Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited & Anr.*** (Civil Appeal No. 3224 of 2020), the Hon'ble Supreme Court ruled that the scope of examination of the application for approval of Resolution Plan by this Tribunal is confined to the provisions of Section 30(2) of IBC, 2016. Para 153 of the Judgment reads thus: -

*"**153.** Regulation 38(3) mandates that a Resolution Plan be feasible, viable and implementable with specific timelines. A Resolution Plan whose implementation can be withdrawn at the behest of the successful Resolution Applicant, is inherently unviable, since open-ended clauses on modifications/withdrawal would mean that the Plan could fail at an undefined stage, be uncertain, including after approval by the Adjudicating Authority. It is inconsistent to postulate, on the one hand, that no withdrawal or modification is permitted after the approval by the Adjudicating Authority under Section 31, irrespective of the terms of the Resolution Plan; and on the other hand, to argue that the terms of the Resolution Plan relating to withdrawal or modification must be respected, in spite of the CoC's approval, but prior to the approval by the Adjudicating Authority. The former position follows from the intent, object and purpose of the IBC and from Section 31, and the latter is disavowed by the IBC's structure and objective. The IBC does not envisage a dichotomy in the binding character of the Resolution Plan in relation to a Resolution Applicant between the stage of approval by the CoC and the approval of the Adjudicating Authority. The binding nature of a Resolution Plan on a Resolution Applicant, who is the proponent of the Plan which has been accepted by the CoC cannot remain indeterminate at the discretion of the Resolution Applicant. The negotiations between the Resolution Applicant and the CoC are brought to an end after the CoC's approval. The only conditionality that remains is the approval of the Adjudicating Authority, which has a limited jurisdiction to confirm or deny the legal validity of the Resolution Plan in terms of Section 30 (2) of the IBC. If the requirements of Section 30(2) are satisfied, the Adjudicating Authority shall confirm the Plan approved by the CoC under Section 31(1) of the IBC."*

25. The resolution plan also contains the analysis regarding the cause for the default, which is primarily attributable to high interest cost erstwhile management had to bear. Further, the plan also takes note of its feasibility and viability and contains provisions for effective implementation, timelines for approval and the capability of the SRA to implement the plan. The relevant excerpt of the plan in this regard reads thus: -

VIII. STATEMENT IN COMPLIANCE TO REGULATION 38(3) OF IBBI (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2016

a) Cause of default

The actual reason for the cause of default and thereafter insolvency of the TAXUS INFRASTRUCTURE AND POWER PROJECTS PRIVATE LIMITED is not known but review of IM, financial position, statement of affairs and other available documents of TIPPPL by the Resolution Applicant point to following key reasons for the present situation of the Corporate Debtor:

i. Delay in commissioning of the Solar Plant lead to both revenue loss and also imposed penalty.

ii. Prolong litigation and arbitration with different stakeholders.

iii. Financial issues like cost overrun.

iv. Un-favorable Economic Scenario and economic slowdown.

v. Increase in Operational and financial cost without corresponding increase in revenue.

vi. Mounting of financial debt due to continued losses.

vii. Issues arise due to the payment below the tariff rate by the procurer.

The resolution applicant has provided a detailed turnaround plan below wherein they have **address the cause of default** which is mainly the mounting interest amount on the loan and the debts taken by the CD:

Firstly, the Resolution Plan envisages clearing the outstanding debts of the Corporate Debtor. The Resolution Plan considers the interests of all stakeholders and provides for payment/ repayment settlement of all stakeholders, keeping in view the objective of reviving the Corporate Debtor as an entity. Further, the Resolution Applicant believes that through the Proposed Resolution Plan, the debt of the corporate debtor is being reset at a level where the future cash flows of the Corporate Debtor, normalised after considering all the past events.

In addition to the above the RA also proposes an infusion of Rs. 3,40,27,287/- towards the Capital expenditure and working capital needs. This will help the corporate debtor to overcome the problem of availability of immediate cash needed for the Day to day operations and will resolve the cost overrun issue.

Further, the Resolution Applicant introduces the funds to install the required machinery to make the non-operational plant Operational. This will lead to the Corporate Debtor to utilized its installed capacity of the Solar Power Plant i.e. 5 MW.

This increase in capacity utilization will lead to increase in monthly revenue and will help the Resolution applicant make the Corporate Debtor profitable in a shorter duration of time. Further this will also help the Resolution Applicant to make the payment of the proposed amount in a time bound manner.

The Government of India has focused a lot on the electricity generated using the renewal resources and started a number of Government subsidies and other incentives for this sector the RA will appoint industry experts and other technical experts to understand the policies and incentives that can help the CD to grow exponentially and implement the same.

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The RA will have rounds of meeting with GUVNL try to resolve the issues with them w.r.t. the Tariff rate and will see if any new avenues for generation of revenue can be created.

The Resolution Applicant believes that with the right measures and in current improved environment the factors that caused distressed in the business of the Corporate Debtor can be addressed and handled effectively.

b) Feasibility and Viability

The Resolution Applicant has taken due care to ensure feasibility and viability of the Resolution Plan. RA has addressed interest / claim of all the stakeholders who have filed claims with the Resolution Professional. The proposal for each stakeholder has been considered and envisage after own due diligence on feasibility and viability. The timeline for making payment to the stakeholders under this Resolution Plan is carefully observed and framed by the Resolution Applicant for the effective and smooth implementation of this Resolution Plan.

As per the information provided in the IM, the RA understands that the plant is not utilizing its full capacity and a capacity of 2MW out of the total capacity of 5MW is Non-Operational due to Non- Availability of Inverter. Therefore, the Resolution Applicant shall have to introduce the funds to make the entire capacity working, in addition to that maintenance of the solar plant is a costly affair and require a continues working capital to maintain the plan. The RA has the financial capacity to meet the Capital expenditure and also the working capital required for the maintenance of the plant.

Also the Corporate Debtor is undergoing the insolvency process and it must have lost its credibility in the market/industry. Resolution Applicant who has the credibility in the market shall facilitate the creditworthiness of the Corporate Debtor by taking the credit in market and by infusion of funds which shall help the Corporate Debtor in revival process. After introduction of the fresh fund for working capital and other expenses as proposed in the resolution plan, the RA will ensure the regular operations of the Company with the required Technology changes.

The RA being into the business of sale, purchase & renting of real estate and other properties, so it has the competency to generate new business opportunity for the CD in the minimum possible time.

c) **Provisions for its effective implementation**

The resolution plan has provided for constitution of monitoring committee represented and chaired by the resolution professional, nominee of the resolution applicant and a nominee of the financial creditor. Further the resolution applicant has to provide a performance guarantee to insure effective implementation of the Resolution Plan. In addition to above an implementation schedule has been explained in details in the plan.

d) Provisions for approvals required and the timeline for the same

The Resolution Applicant assumes that the Resolution Plan does not require any government approval other than the renewal of expired lease/licenses/contracts, if any. The RA require waiver of default by the contracting parties, so that no penalty/Interest is imposed for the past delays/breach reported or not reported pertaining to the period up to the effective date. In case any other necessary approvals are required during the course of implementation of the plan, then the Resolution Applicant will obtain the same as per the timelines given in the Code.

e) Resolution applicant has the capability to implement the resolution plan

The Resolution Applicant has vast experience. The RA is engaged in the real estate business since last many years and can provide required capital to grow TIPPPL in its line of business from own sources and by short term debts. The RA maintains standard account with the bankers for debt. The RA and his team members on board/management holds ample experience in the businesses and are fully aware about the present status of the company. The requirement of additional staff required will be reviewed from time to time and the same will be hired and deployed as and when required.

26. The plan also contained provisions regarding the manner in which the only pending application under Section 66 of IBC, 2016 and securities/ guarantees would be dealt with and provides thus: -

> ***"8. Treatment of Security and Guarantee Provide B The Promoters/Directors of the Corporate Debtor or by any third party.***
>
> *The guarantees/contractual Comforts/Collateral provided by existing shareholders/promoters/ directors/Guarantors /any third party in respect of the debt of the CD shall remain intact in favor· of the financial creditors or any other creditors and shall not be extinguished by virtue of this Resolution Plan and the Banks may proceed against the said guarantees/ contractual*

comforts collateral but the Corporate Debtor shall not be made a party to.any legal proceedings whatsoever.

However no right of subrogation shall be available to existing shareholders/ promoters/guarantors (or any other person claiming through them), in case of invocation of/ payment by existing shareholders/ directors/promoters /guarantors under their existing guarantees/contractual comforts/collateral and such subrogation rights shall stand permanently waived/ extinguished pursuant to NCLT Approval Order.

Moreover, from the date of approval of the resolution plan no one shall have any right to invoke any guarantees/collateral/contractual comforts by the Corporate Debtor to anyone.

***9. Treatment of recoveries from PUFE transactions under IBC, 2016**- Any recoveries by the Corporate Debtor resolution applicant from the erstwhile promoters I directors or other entities against avoidance transactions (PUFE transactions under IBC, 2016) shall be vested with the Financial Creditors and the expenses for pursuing/follow-up the pending Applications after the Approval date shall be borne by the Financial Creditors themselves.*

27. As far as the issue of reliefs and concessions which fall in the jurisdiction of different Government Authorities, and/ or are subjected to the provisions of different laws for the time being in force are concerned, it is made clear that the amount payable by the SRA in terms of the plan to different creditors, stakeholders, and to keep the Corporate Debtor as a going concern cannot be subject to any condition, assumptions, relief/concessions and/or qualification. It also needs to be underlined that the provisions of Section 31(4) of IBC, 2016 mandates the Resolution Applicant to obtain the necessary approval 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 of the IBC, 2016. In terms of the provisions of Section 14 of the Code even during the period of CIRP, no default in payment of current dues is a precondition for continuation of the License, Permit, Registration and similar rights. Thus, even during the moratorium period, some of the facilities forming part of the reliefs and concessions sought are made available to the CD only when there is no default in payment of the current dues. On approval of the Resolution Plan, the SRA/CD cannot be put on a better footing by exempting it from paying its legitimate dues under the law. For the sake of convenience, the explanation below Section 14 of the code is extracted below:

> ***"14. Moratorium. –***
>
> *(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -*
>
> *(a) …..*
>
> *(b) …..*
>
> *(c) …..*
>
> *(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*
>
> *Explanation.- For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, <u>shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the</u>*

use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;"

(Emphasis Supplied)

28. In any case, in terms of the provisions of Sections 13 and 15 of the IBC 2016 read with Regulations 6, 6A, 7, 8, 8A, 9 and 9A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, all the claimants such as Operational Creditors, Financial Creditors, Creditors in Class, Workmen and Employees and other Creditors can raise their claims before the IRP/RP. The claims are dealt with by IRP in terms of the provisions of Section 18(1)(b) of the IBC, 2016 and by RP in terms of the provisions of Section 25(1)(b) thereof read with Regulations 12A, 13 and 14 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Thereafter, the RP prepares an Information Memorandum in terms of the provisions of Regulation 36(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Memorandum contains inter alia a list of creditors containing the range of creditors, the amounts claimed by them, the amount of their claim admitted and the security interest if any in respect of such claims. As has been provided in Regulation 36(1) of the Regulations (ibid), the Information Memorandum is required to be submitted in electronic form to each member of CoC, on or before 95th day from the Insolvency commencement date. As has been provided in Regulation 36A of the Regulations the RP publish brief particulars of the invitation for Expression of Interest in Form G of Schedule I to the Regulations at the earliest i.e. not later than 60th day from the Insolvency commencement date, from interested and eligible Prospective Resolution Applicants to submit

Resolution Plans. As can be seen from Regulation 36B of the Regulations, the RP shall issue Information Memorandum Evaluation Matrix (IMEM) and request for Resolution Plans, within 5 days of the date of issue of provisional list of eligible Prospective Resolution Applicants (required to be issued under Regulation 36A(10) of the Regulations). It is with reference to such Information Memorandum Evaluation Matrix that the RP issues request for Resolution Plan. The request for Resolution Plan details each step in the process and the manner and purposes of interaction between the Resolution Professional and the Prospective Resolution Applicant. The Resolution Plan submitted after consideration of the IMEM and RFRP is then examined by the Committee of Creditors. Nevertheless, it needs to satisfy the requirements of Regulation 37 and 38 of the extant Regulations. Once the plan is approved by the CoC, in terms of the provisions of Regulations 39 of the aforementioned Regulations, it virtually becomes a contract entered into between the CD represented through RP, SRA and the Creditors of the CD. On being approved by this Adjudicating Authority, by operation of Section 31(1) of the Code, the plan becomes binding on the Corporate Debtor and its employees, members, 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 enforced such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the Resolution Plan. Thus, Section 31(1) of IBC, 2016, takes care of most of the relief/concession/waiver solicited by the Resolution Applicant.

29. Besides, in terms of the provisions of Section 32A, for an offence committed prior to the commencement of the Corporate Insolvency Resolution Process, the liability of the CD ceases and the CD is not liable to be prosecuted from the date of approval of Resolution Plan by this Adjudicating Authority, if the Resolution Plan results in change of management or control of the CD to a person who was not promotor or in the management or control of the CD or a related party of such a person or a person with regard to whom the concerned Investigating Agency has reason to believe that he had abated or conspired for the commission of the offence and has submitted or filed a report or a complaint to the relevant statutory authority or Court. In such cases, where the prosecution is instituted against the CD, during CIRP, the CD stands discharged qua the same from the date of approval of the Resolution Plan. Nevertheless, every person who was a designated partner as defined in clause (j) of Section 2 of the Limited Liability Partnership Act, 2008, "an officer who is in default" as defined in Clause (60) of Section 2 of Companies Act, 2013 or was in any manner in charge of, or responsible to the CD for the conduct of his business or associated with the CD in any manner and was directly or indirectly involved in the commission of an offence as per the report submitted or complaint filed by Investigating Agency shall continue to be liable to be prosecuted and punished for such an offence committed by the Corporate Debtor notwithstanding the Corporate Debtors' liability ceases after approval of the plan.

30. In the wake of the provisions of Section 32A(2), no action is taken against the property of the Corporate Debtor in relation to an offence committed prior to

the commencement of the Corporate Insolvency Resolution Process of the CD, where such property is covered under Resolution Plan approved by this Authority under Section 31, which result in the change in the control of the CD to a person who was not a promotor or in the management or control of the Corporate Debtor or related party of such person or a person with regard to whom the Investigating Agency has reason to believe that he had abated or conspired for commission of the offence and has submitted or filed a report or complaint to the relevant statutory authority or Court.

31. The action against the property of the Corporate Debtor as referred to in Section 32A of the Code includes the attachment, seizure, retention or confiscation under such law as may be applicable to the Corporate Debtor. One may also be not oblivious of the fact that in the backdrop of provisions of Section 31(3)(a) of the IBC, 2016, the moratorium order passed by the Adjudicating Authority under Section 14 ceases to have effect. In sum and substance, the SRA/CD would be entitled to no other relief/concession/waiver except those, which are available to it as per the provisions of Section 31(1) and 32A of IBC, 2016.

32. In any case, the resolution plan also indicated that irrespective of any grant of any agreed concession by this tribunal as prayed by the SRA, the plan would be implemented. The relevant excerpt of the application reads thus: -

> ***"XVI. <u>RELIEFS SOUGHT/ OTHER TERMS</u>***
>
> *[…]*

Further it is clarified that whether any or all the reliefs sought by the RA is granted or not by the adjudicating authority, this resolution plan shall remain in effect."

33. The Ld. Counsel for SRA and the SRAs who are present in person stated that they do not have imposed any condition precedent regarding implementation of the plan.

34. It is further directed that the SRA shall implement the plan as per the timelines indicated in the implementation schedule which has been reproduced herein above.

35. In the backdrop of aforementioned factual position, discussion, analysis and findings, the IA-45/2024 filed by the RP for approval of the Resolution Plan is allowed. The Plan submitted by the SRA, certified by the RP is approved.

36. As a sequel, we issue the following directions: -

i. The approved Resolution Plan shall become effective from the date of passing of this Order and shall be implemented strictly as per the term of the plan and implementation schedule given in the Plan;

ii. All claims which have not been dealt with in the Resolution Plan do not survive after the approval of the Resolution Plan;

iii. The SRA/CD would be entitled to no other reliefs/ concessions/waivers except those are available/permissible to it as per the provisions of Section 31(1) and 32A of IBC, 2016. The SRA is at liberty to approach the relevant authorities who would consider these claims as per the provisions of the relevant law in an expeditious manner;

iv. Following steps would be taken in terms of the resolution plan: -

SL. NO.	STEP TO BE TAKEN	TIMELINE FROM DATE OF RECEIPT OF ORDER
1.	Intimation to all the creditors, existing shareholders and other stakeholders of the CD	Within 3 days
2.	Constitution of Monitoring Committee	Within 3 days
3.	Change in management of CD and appointment of KMP/ Directors	Within 3 days
4.	SRA to infuse funds in the form of debt & equity for payment to Financial Creditors and non-Financial Creditors in accordance with the plan	Within 90 days
5.	Issue of shares to new shareholders	Within 90 days
6.	Infusion of fund in the form of debt to make the pending payment of the FC as per the amount proposed in resolution plan	Within 720 days
7.	Transfer of all assets to the CD and receipt of NOC and other documents from the FC for satisfaction/ modification of charges	Within 720 days

v. The SRA shall abide by the timelines mentioned in the resolution plan as given in the table extracted below para 11 of this order.

vi. The order of the moratorium in respect to the corporate debtor passed by this Adjudicating Authority under Section 14 of the IBC, 2016 shall cease to have effect from the date of passing of this Order;

vii. The SRA shall act in terms of the provisions of Section 31(4) of IBC 2016;

viii. The Monitoring Committee shall file the progress report regarding implementation of the Plan before this Adjudicating Authority, every month;

ix. The RP shall forward all the records relating to the conduct of the CIRP and the Resolution Plan to the IBBI for its record and database;

x. The RP shall also forthwith send a copy of this order to the participants and the Resolution Applicant. He would also send a copy of this order to the ROC concerned within 15 days of this order;

xi. The RP shall intimate each claimant about the principle or formulae, as the case may be, for payment of debts under the Plan;

37. The Court Officer and Resolution Professional (RP) shall forthwith make available/send a copy of this Order to the CoC and the Successful Resolution Applicant (SRA) for immediate necessary compliance.

38. A copy of this order shall also be sent by the Court Officer and Applicant to the IBBI and RoC for their record.

<u>IA-4818/2023</u>: The Resolution Professional undertakes to inform the Financial Creditors regarding the pendency of the application and would ensure that the Financial Creditor would take steps to pursue the application in accordance with the law. Let the IA be listed on 05.02.2025.

Sd/-

(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-

(ASHOK KUMAR BHARDWAJ)
MEMBER (J)

Iqraa Wasi/ Atul Raj