



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - II, CHENNAI**

IA(IBC)(PLAN)/1(CHE)/2024 in CP(IB)/226(CHE)/2022

*(Filed under Sec. 30(6) & 31 of the Insolvency & Bankruptcy Code, 2016 read with
Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency
Resolution Process for Corporate Persons) Regulations, 2016)*

In the matter of *Apollo Polyvinyl Private Limited*

Ashok Seshadri

Resolution Professional of
M/s. Apollo Polyvinyl Private Limited
INNOV 8, 2nd Floor, SKCL Tech Square,
SIPCOT Industrial Estate, Guindy,
Chennai – 600 032

.. .. *Applicant*

-Vs-

Cleena Industries Private Limited

Khasra No. 22 – 2, Banda Kheri,
Adjacent Dev Bhoomi Industrial Area,
Iqbalpur Puhana Road,
Roorkee – 247 667, Uttarkhand

.. .. *Respondent /
Successful Resolution Applicant*

Order Pronounced on 24th June 2024

CORAM

**JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)
RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)**

For Applicant : *Pranav Charan, Advocate*
For Respondent : *Bathri Narayan, Advocate*



ORDER

(Heard through hybrid mode)

IA(IBC)(PLAN)/1(CHE)/2024 is an Application which is filed by the Resolution Professional of the Corporate Debtor viz., **Apollo Polyvinyl Private Limited** under Section 30(6) and 31 of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC, 2016') seeking relief as follows;

- (i) *Pass an order approving the Resolution Plan dated 31.10.2023 read with Addendum dated 19.12.2023 submitted by the Successful Resolution Applicant in respect of the Corporate Debtor, under Section 31(1) of the Code and declare that the same shall be binding on the Corporate Debtor and its employees, members and all creditors (including the Central Government, State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed), guarantors and all other stakeholders of the Corporate Debtor;*
- (ii) *May pass an order for allowing the relief and concessions requested by the Resolution Applicant in the Part 5 of the CoC approved Resolution Plan.*
- (iii) *Pass any order(s) which this Hon'ble Adjudicating Authority may deem fit in the facts and circumstances of this case in the interest of equity, justice and good conscience*



2. CORPORATE INSOLVENCY RESOLUTION PROCESS –
APOLLO POLYVINYL PRIVATE LIMITED

- 2.1. In an Application filed under Section 7 of the IBC, 2016, by the Financial Creditor, the CIRP in respect of the Corporate Debtor was initiated by this Tribunal vide order dated 24.04.2023 and the Applicant herein was appointed as the IRP. The IRP caused paper publication on 27.04.2023 in accordance with under Section 15 of IBC, 2016 r/w Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in “Financial Express” (English) and “Dinamani” (Tamil).
- 2.2. It is stated that RP received claim from two Financial Creditor viz. State Bank of India and Canara Bank. Accordingly, the Committee of Creditors (CoC) was constituted with the State Bank of India with 57.95% voting rights and Canara Bank having 42.05% voting shares.
- 2.3. It is stated that Operational Creditors (other than Workmen and Employees and Government Dues) submitted a total claim for an aggregate amount of Rs.1,19,75,262/- out of which claims for an amount of Rs.65,42,449/- was admitted by the Resolution Professional. Further, it is stated that other creditors submitted a total claim of Rs.25,57,60,853/- out of which Rs.11,45,38,351.50/- was admitted by the Resolution Professional.



- 2.4. It is stated that the 1st Meeting of the Committee of Creditors was held on 22.05.2023 whereby the CoC member confirmed the Applicant herein as the Resolution Professional (RP) of the Corporate Debtor.
- 2.5. It is stated that the RP with the concurrence of the CoC and in accordance with Regulation 35 of IBBI (CIRP) Regulations appointed the four registered Valuers for providing the Liquidation Value and Fair Value of the Corporate Debtor.
- 2.6. It is stated that at the 2nd CoC Meeting held on 21.06.2023, the CoC approved the eligibility criteria for the Prospective Resolution Applicants ("PRAs") as per Section 25(2)(h) of the IBC, 2016. Accordingly, an invitation for Expression of Interest ("EoI") for submitting resolution plans, in terms of Form G was issued as per Section 25(2)(h) of the IBC, 2016 read with Regulation 36A of the IBBI (CIRP) Regulations, 2016.
- 2.7. It is stated that Form G was published in two newspapers, viz. Business Standard (English edition), Dinamani (Chennai edition) on 23.06.2023, whereby PRAs which met the eligibility criteria, were invited to submit their EoI to the Resolution Professional latest by 23.07.2023.



- 2.8. It is stated that pursuant to the publication of the Form G by the Resolution Professional, the RP received EoI's from 16 (Sixteen) PRAs. However, only 6 of them provided detailed Expression of Interest. It is stated that as per Regulation 36 of the CIRP Regulations, the information memorandum ("IM") was issued by the Resolution Professional to those 6 PRA's.
- 2.9. It is stated that the RP issued the Request for Resolution Plan ("RFRP") to the 6 PRAs. The RFRP set forth the detailed procedure to be followed by PRAs for the submission of the resolution plans and the process for evaluation of the same in accordance with the provisions of IBC, 2016.
- 2.10. The final list of PRAs included the names of 6 (six) applicants viz. (i) Subbulakshmi Investment Advisory Private Limited; (ii) Navratan Speciality Chemicals LLP; (iii) Siddivinayak Steels; (iv) Cleena Industries Private Limited; (v) SPSS Infrastructure Private Limited; (vi) Nakshatra Corporate Advisors Limited;
- 2.11. It is stated that in the 5th CoC Meeting held on 21.09.2023, the Resolution Professional informed the CoC members that Resolution plans from M/s. Navratan Speciality



Chemicals LLP and Cleena Industries Private Limited were received along with EMD amount of Rs.5 lakhs each. In the said CoC meeting, each resolution plan was opened separately. The Resolution Professional informed that the Resolution Plans would be put up for the consideration before the CoC subject to legal compliance under the provisions of IBC, 2016.

2.12. It is stated that in the 6th CoC meeting held on 04.10.2023, the representatives of the concerned Resolution Applicant presented a summary to the members of the CoC. Also, the RP, has undertaken compliance under Section 29A of the IBC, 2016.

2.13. It is stated that at the 7th CoC Meeting held on 16.10.2022. the CoC instructed both the PRAs to improve their Resolution Plan amount. In the meantime, the RP was directed by the CoC to file an extension application under Section 12(2) of the Code, seeking extension of the CIR Process period beyond 180 days by a period of 90 days. Accordingly, the RP filed such application seeking extension of the CIR Process and the said Applicant was allowed by this Tribunal vide order dated 09.11.2023.

2.14. It is stated that the Resolution Plans were discussed in the 8th CoC meeting held on 03.11.2023. The PRA viz. Navratan



Speciality Chemicals LLP did not incorporate any change in the Resolution Plan as suggested by the Committee of Creditors. However, another PRA viz. Cleena Industries Private Limited incorporated the suggestions given by the CoC.

2.15. It is stated that the said PRA viz. Cleena Industries Private Limited also provided an addendum on 19.12.2023 seeking for approval of: (a) seeking cancellation of the BG for Rs.1.15 Crore as the performance itself is sought to be waived (b) Agreeing to meet 75% of the BG amount in the unlikely event of it being enforced.

2.16. The Resolution Plan of **Cleena Industries Private Limited** along with addendum dated 19.12.2023 was approved by the CoC in the 9th CoC meeting on 19.12.2023 with **100%** voting.

2.17. It is stated that after the approval of the Resolution Plan by the CoC, the RP issued the Letter of Intent dated 23.12.2023 to the Successful Resolution Applicant in accordance with the provisions of RFRP which was accepted by the Successful Resolution Applicant on 26.12.2023.

2.18. It is stated that as per the Letter of Intent, the RPP sought the successful Resolution Applicant to furnish an



unconditional performance security of the required Bank Guarantee or funds 10% of the resolution plan along with acceptance of LOI. Pursuant to the same, the successful Resolution Applicant sought the Resolution Applicant to adjust the EMD amount of Rs.5 lakhs with the Performance Security and further transferred a sum of Rs.2,16,85,000/- by way of Performance Bank Guarantee.

2.19. Thus, in view of the aforementioned facts pertaining to the CIRP of the Corporate Debtor, the present Application is being filed by the Resolution Professional for submission of the Resolution Plan before this Hon'ble Adjudicating Authority under Section 30(6) of the IBC, 2016 and seeking approval for the same in terms of Section 31(1) of the IBC, 2016.

3. ABOUT THE RESOLUTION PLAN

3.1. The details of the approved Resolution Plan submitted by **Cleena Industries Private Limited** (Successful Resolution Applicant) are as follows:-

S. No.	PARTICULARS	CLAIM AMOUNT (Rs.)		AMOUNT PROVIDED IN THE PLAN (Rs.)		
		SUBMITTED	ADMITTED	AMOUNT	%	TIMELINE
1	CIRP Cost	Actual	Actual	70,00,000	100	21 days
2	Secured FC	107,35,77,444	107,35,77,444	28,72,00,000	26.75	21 days



3	Unsecured FC	0	0	-	-	-
4	OC (Workmen & Employee)	0	0	-	-	-
5	OC (Govt. Dues)	1656	1656	1656	100	21 days
6	OC (Other than Workmen & Employees & Govt. Dues)	1,19,73,607	65,40,793	4,98,344	7.62	21 days
7	Other Creditors	8,41,42,941	3,04,52,973	2,50,000	0.82	21 days
8	Other Creditors (Related Party)	17,16,17,912	8,38,85,379	2,50,000	0.30	21 days
9	Contingent Liability	0	0	5,00,000	-	21 days
10	Provisions	0	0	1,00,000	-	21 days
	TOTAL			29,58,00,000		

4. SOURCE OF FUND

4.1. It is stated in Clause 4.37 that the Resolution Applicant shall manage the fund to meet out the obligations as envisage under the Resolution Plan from the following sources;

Detail	Fresh Equity Amount (Rs.)	Through Debt Amount (Rs.)
Resolution Applicant shall source 57.50 % of the total amount payable through its own sources.	6,00,00,000	11,01,00,000
Resolution Applicant shall source 42.50 % of the total amount payable through a loan from Financial Institutions.	-	12,57,00,000
Total	6,00,00,000	23,58,00,000



4.2. It is stated that the Resolution Applicant have capabilities to make investments in the Corporate Debtor as it is financially sound as demonstrated in the audited financial statements for the previous three financial years.

5. **IMPLEMENTATION, MANAGEMENT AND SUPERVISION OF THE RESOLUTION PLAN**

5.1. The indicative implementation schedule for this Resolution Plan is set out below:

Activity	Time-line
Receipt of Letter of Intent from the RP	Y
Issuance of Performance security in form negotiable instruments	Y + 7
Receipt of certified copy of order of Approval from Adjudicating Authority	X ("Effective Date")
Appointment of Monitoring Committee	X+7
Payment for CIRP Process Cost	Within 21 days from effective date
Payment to all stakeholders	Within 21 days from effective date
Financial Creditors to release securities and submit e-form for satisfaction of charge with Registrar of Companies	On full and final payment as envisaged under Resolution Plan
Necessary statutory approvals	Within 2 year from effective date (In accordance with Sec 31(4) of the Code)



- 5.2. Immediately upon receipt of the certified copy of the Order approving the Resolution Plan i.e., on effective date, a Monitoring Committee shall be appointed and shall convene the first meeting of Monitoring Committee within 7 days of such Effective Date.
- 5.3. The Monitoring Committee shall consist of
- (i) Resolution Professional - Chairman
 - (ii) Two Representative of the CoC (one from each FC)
 - (i) Two Representative of the Resolution Applicant
- 5.4. During the Interim Period, the Company will be monitored by the Monitoring Committee ("MC"), in carrying out the day-to-day functions of the Company including the Management and Control of the Corporate Debtor.
- 5.5. At the first meeting of Monitoring, new statutory auditors shall be appointed for the Corporate Debtor to reconstruct the books of accounts for the previous periods as well as to hold office till conclusion of the next Annual General Meeting of the Corporate Debtor and the NCLT approval of the Resolution Plan shall be deemed as directive order for the erstwhile firm of Chartered Accountant for complete co-operation including but not limited to issuance of No Objection certificates, etc.



5.6. The existing directors of the Company shall vacate the office on the Effective Date and should ensure filing of the relevant forms for Induction of new directors as envisaged under the Resolution Plan. However, the day-to-day operations and the management of the Company shall be carried out by the Monitoring Committee. The Monitoring Committee may appoint a professional agency to manage day to day operations of the Company.

5.7. The Resolution Professional shall be paid fees as decided by the Committee of Creditors and Resolution Applicant subject to maximum Rs.25,000/- (Rupees Twenty Five Thousand only) per month. All fees payable to the Monitoring Committee (Including any legal costs which have arisen or may arise out of or in connection with the CIRP of the Company) shall be met out of the accruals of the Company and to the extent the Internal accruals are not sufficient to meet the aforesaid costs and expenses, the same shall be paid by the Resolution Applicant.

6. TABULATION OF VARIOUS COMPLIANCES REQUIRED UNDER THE PROVISIONS OF IBC, 2016

6.1. The Applicant has submitted the details of various compliances as envisaged within the provisions of IBC, 2016 and CIRP Regulations, which require a Resolution Plan to adhere to, which are reproduced hereunder:



CLAUSE OF S.30(2)	REQUIREMENT	HOW DEALT WITH IN THE PLAN
(a)	Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	Chapter 3, Clause 3.1 of the Resolution Plan.
(b)	Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53; or Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall be not less than 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, whichever is higher and (iii) provides for 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.	Chapter 3, Clause 3.1 of the Resolution Plan.
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Chapter 4, Clause 4.8 of the Resolution Plan.
(d)	Implementation and Supervision.	Chapter 4, Clause 4.8 of the Resolution Plan.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Form H Certificate by the Applicant
(f)	Conforms to such other requirements as may be specified by the Board.	Form H Certificate by the Applicant



7. **MANDATORY CONTENTS OF THE RESOLUTION PLAN IN TERMS OF REGULATION 38 OF THE CIRP REGULATIONS:-**

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Resolution Plan</i>
38(1)	The amount due to the Operational Creditors under a Resolution Plan shall be given priority in payment over Financial Creditor.	Chapter 3, Clause 3.1 of the Resolution Plan.
38(1A)	A Resolution Plan shall include a statements as to how it has dealt with the interest of all stakeholders, including Financial Creditors and Operational Creditors of the Corporate Debtor	Chapter 4, Clause 4.24 of the Resolution Plan.
38(1B)	A Resolution Plan shall include 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.	Chapter 4, Clause 4.3 of the Resolution Plan.
38(2)	A Resolution Plan shall provide (a) the term of the plan and its implementation schedule	Chapter 3 of the Resolution Plan.
	(b) the management and control of the business of the Corporate Debtor during its terms; and	Chapter 4, Clause 4.8 of the Resolution Plan
	(c) adequate means for supervising its implementation	Chapter 4, Clause 4.8 of the Resolution Plan
38(3)	A Resolution Plan shall demonstrate that (a) It addressed the cause of default;	Chapter 4, Clause 4.6 of the Resolution Plan
	(b) It is feasible and viable;	Chapter 4, Clause 4.6 of the Resolution Plan
	(c) it has provisions for its effective implementation;	Chapter 4 of the Resolution Plan



<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Resolution Plan</i>
	(d) it has provisions for approvals required and the timeline for the same; and	Chapter 4, Clause 4.2 of the Resolution Plan
	(e) the Resolution Applicant has the capability to implement the Resolution Plan	Chapter 4, Clause 4.3 of the Resolution Plan

8. The RP has attached the Certificate stating that the successful Resolution Applicant is not ineligible under Section 29A of IBC, 2016 to submit a Resolution Plan. The said Certificate is attached at page Nos. 293 to 299 of the Application.

9. **ANALYSIS AND FINDINGS OF THIS TRIBUNAL**

9.1. It is seen from Form – H that the Liquidation value of the Corporate Debtor is Rs.23.22 Crores and the corresponding Fair value is Rs.28.64 Crores and the Resolution Plan value is Rs.29.58 Crores.

9.2. Further, it is seen from Form – H that the RP has filed Application under Section 66 of IBC, 2016. In relation to the same, it is seen that a memo is filed by the Financial Creditors vide SR No.2340 dated 08.05.2024 stating that the RP will continue as the



authorized representative of the Financial Creditor to pursue the Application post the approval of the plan by this Tribunal.

9.3. In so far as the approval of the Resolution Plan is concerned, this Authority is convinced on the decision of the Committee of Creditors, following the much-celebrated Judgment of the Hon'ble Supreme Court in the matter of **K. Sashidhar –Vs– Indian Overseas Bank** (2019) 12 SCC 150, wherein in para 19 and 62 it is held as under;

“19.....In the present case, however, our focus must be on the dispensation governing the process of approval or rejection of resolution plan by the CoC. The CoC is called upon to consider the resolution plan under Section 30(4) of the I&B Code after it is verified and vetted by the resolution professional as being compliant with all the statutory requirements specified in Section 30(2).

62.In the present case, however, we are concerned with the provisions of I&B Code dealing with the resolution process. The dispensation provided in the I&B Code is entirely different. In terms of Section 30 of the I&B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC and they express their opinion on the proposed resolution plan in the form of votes, as per their voting share. In the meeting of the CoC, the proposed resolution plan is placed for discussion and after full interaction in the presence of all concerned and the Resolution Professional, the constituents of the CoC finally proceed to exercise their option (business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, non-recording of reasons would not per-se vitiate the collective



decision of the financial creditors. The legislature has not envisaged challenge to the “commercial/business decision” of the financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count.”

9.4. The Hon’ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steels –Vs– Satish Kumar Gupta & Ors. in Civil Appeal No. 8766 – 67 of 2019** at para 42 has held as under;

42.Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of Section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and Section 32 read with Section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra).

9.5. The Hon’ble Supreme Court in the matter of **K. Sashidhar v. Indian Overseas Bank and Ors. (2019) 12 SCC 150** has lucidly delineated the scope and interference of the Adjudicating Authority in the process of approval of the Resolution Plan and held as under;

“55. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite per cent of voting share of financial creditors. Even in that enquiry, the grounds on which



the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides: (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.

58. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with Section 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters “other than” enquiry into the



autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers.”

(emphasis supplied)

9.6. Also, the Hon’ble Supreme Court in the matter of **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Ors.** (2020) 8 SCC 531 after referring to the decision in *K. Sashidhar (supra)* has held as follows;

“73. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or sub-class of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a



resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal."

(emphasis supplied)

9.7. The Hon'ble Supreme Court in its recent decision in **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Ltd. & Ors.** in *Civil Appeal no. 3395 of 2020* dated 24.03.2021 has held as follows;

76. The expositions aforesaid make it clear that the decision as to whether corporate debtor should continue as a going concern or should be liquidated is essentially a business decision; and in the scheme of IBC, this decision has been left to the Committee of Creditors, comprising of the financial creditors. Differently put, in regard to the insolvency resolution, the decision as to whether a particular resolution plan is to be accepted or not is ultimately in the hands of the Committee of Creditors; and even in such a decision making process, a resolution plan cannot be taken as approved if the same is not approved by votes of at least 66% of the voting share of financial creditors. Thus, broadly put, a resolution plan is approved only when the collective commercial wisdom of the financial creditors, having at least 2/3rd majority of voting share in the Committee of Creditors, stands in its favour.

77. In the scheme of IBC, where approval of resolution plan is exclusively in the domain of the commercial wisdom of CoC, the scope of judicial review is correspondingly circumscribed by the provisions contained in Section 31 as regards approval of the Adjudicating Authority and in Section 32 read with Section 61 as regards the scope of appeal against the order of approval.

77.1. Such limitations on judicial review have been duly underscored by this Court in the decisions above-referred, where



it has been laid down in explicit terms that the powers of the Adjudicating Authority dealing with the resolution plan do not extend to examine the correctness or otherwise of the commercial wisdom exercised by the CoC. The limited judicial review available to Adjudicating Authority lies within the four corners of Section 30(2) of the Code, which would essentially be to examine that the resolution plan does not contravene any of the provisions of law for the time being in force, it conforms to such other requirements as may be specified by the Board, and it provides for: (a) payment of insolvency resolution process costs in priority; (b) payment of debts of operational creditors; (c) payment of debts of dissenting financial creditors; (d) for management of affairs of corporate debtor after approval of the resolution plan; and (e) implementation and supervision of the resolution plan.

77.2. The limitations on the scope of judicial review are reinforced by the limited ground provided for an appeal against an order approving a resolution plan, namely, if the plan is in contravention of the provisions of any law for the time being in force; or there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period; or the debts owed to the operational creditors have not been provided for; or the insolvency resolution process costs have not been provided for repayment in priority; or the resolution plan does not comply with any other criteria specified by the Board

77.6.1. The assessment about maximisation of the value of assets, in the scheme of the Code, would always be subjective in nature and the question, as to whether a particular resolution plan and its propositions are leading to maximisation of value of assets or not, would be the matter of enquiry and assessment of the Committee of Creditors alone. When the Committee of Creditors takes the decision in its commercial wisdom and by the requisite majority; and there is no valid reason in law to question the decision so taken by the Committee of Creditors, the adjudicatory process, whether by the Adjudicating Authority or the Appellate Authority, cannot enter into any quantitative analysis to adjudge as to whether the prescription of the resolution plan results in maximisation of the value of assets or not. The generalised



submissions and objections made in relation to this aspect of value maximisation do not, by themselves, make out a case of interference in the decision taken by the Committee of Creditors in its commercial wisdom

78. To put in a nutshell, the Adjudicating Authority has limited jurisdiction in the matter of approval of a resolution plan, which is well defined and circumscribed by Sections 30(2) and 31 of the Code read with the parameters delineated by this Court in the decisions above referred. The jurisdiction of the Appellate Authority is also circumscribed by the limited grounds of appeal provided in Section 61 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by the CoC. Within its limited jurisdiction, if the Adjudicating Authority or the Appellate Authority, as the case may be, would find any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by Code and exposted by this Court.

9.8. Thus, from the catena of judgments rendered by the Hon'ble Supreme Court on the scope of approval of the Resolution Plan, it is amply made clear that only limited judicial review is available for the Adjudicating Authority under Section 30(2) and Section 31 of IBC, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the Committee of Creditors.



9.9. On hearing the submissions made by the Ld. Counsel for the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with **100%** voting share. As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant, for making the plan effective after approval by this Bench. On perusal of the documents on record, we are also satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016,

9.10. The Resolution Plan along with the addendum is hereby **Approved** by this Adjudicating Authority, subject to the observations made in this order. The Resolution Plan shall form part of this Order. The Resolution Plan is binding on the Corporate Debtor and other stakeholders.



9.11. The Resolution Applicant has sought for reliefs and concessions under the Resolution Plan and the same are dealt with hereunder;

SL. No	RELIEF AND/OR CONCESSIONS AND APPROVAL SOUGHT BY RESOLUTION APPLICANT (CHAPTER 16 OF RESOLUTION PLAN)	ORDERS THEREON
1	The approval of the Adjudicating Authority and the COC to the proposed plan shall constitute adequate approval and cancellation of the existing issued, subscribed and paid- up share capital including the share premium of the Corporate Debtor as on effective date. Accordingly, no approval or consent shall be necessary from any other Person, Shareholders, Members, Registrar of Companies, Ministry of Corporate Affairs or any Governmental Authority, Court or Tribunal. It is also clarified that the Resolution Applicant shall not be required to deal with the dissenting or abstaining Financial Creditors in any manner other than as provided under the Code	Granted
2	The approval of this Plan by the Adjudicating Authority shall be deemed to have waived all the procedural requirements in terms of Section 66, Section 42 and Section 62(1)(c) of the Companies Act, 2013 and the NCLT (Procedure for Reduction of Share Capital) Rules, 2016 for reduction of share capital and issuance of equity shares to the Resolution Applicant and/or the Financial Creditors	Granted
3	The Secured Financial Creditors shall Immediately Issue No Objection Certificate and release the charge over the assets of Corporate Debtor Including but not limited to the Corporate Guarantee and pledges created in favour of any of the Financial Creditors by and/or In respect of the Corporate Debtor upon final payment as proposed under this resolution plan. Further, the receipt of certified copy of the order for approval of the Resolution Plan from Adjudicating Authority shall be deemed to be	Granted



SL. NO	RELIEF AND/OR CONCESSIONS AND APPROVAL SOUGHT BY RESOLUTION APPLICANT (CHAPTER 16 OF RESOLUTION PLAN)	ORDERS THEREON
	consent of Financial Creditors to withdraw any recovery proceedings initiated by them against the Corporate Debtor.	
4	All instruments issued by the Corporate Debtor either to the promoters, shareholders, or any third party shall stand cancelled pursuant to approval of this Resolution Plan by the Adjudicating Authority and no separate sanction/ approval/consent shall be necessary from any other Person / Governmental Authority In relation to either of these actions under any agreement, the constitutional documents or under any Applicable Law	Granted
5	Approval of this plan shall be deemed approval for waiver from filing of statutory returns (including but not limited to any filings for Registrar of Companies, Direct and Indirect tax authorities, Reserve Bank of India, Director General of Foreign Trade, GST returns, Income Tax Returns etc.), for a period prior to Effective Date. Certified copy of the order approving Resolution Plan shall be a direction on such statutory authorities to allow for Apollo Polyvinyl Private Limited (IN CIRP) to do compliance(s) with effect from and after the date of approval of Resolution Plan by the Adjudicating Authority	In terms of Section 31(4) one year time period is granted
6	An approval with regards to the right of way ("Right of Way") for an unfettered access to the property of the corporate debtor.	Granted
7	All existing license and approvals which have been cancelled or deactivated to be revived as per IB Code 2016 and the Company shall be permitted to continue its business and assets in the manner operated prior to submission this plan until the renewal or extension of such licenses and approvals is pending with such authorities. The relevant Governmental Authorities will provide a reasonable period of time after Completion Date In order for the Resolution Applicant to:	Granted



SL. NO	RELIEF AND/OR CONCESSIONS AND APPROVAL SOUGHT BY RESOLUTION APPLICANT (CHAPTER 16 OF RESOLUTION PLAN)	ORDERS THEREON
	<p>(a) Assess the status of licenses and approvals required by the Company and to procure that the Company applies for the same; and</p> <p>(b) Regularize any non-compliances under the Applicable Law (Including nonregistration, Inadequate/non-stamping of documents as required under Applicable Law) existing prior to the Closing Date,</p> <p>However, for the removal of doubts it is clarified that any amount which is related to a period prior to the effective date in respect of above stated licenses and approval shall not be paid by the Resolution Applicant or the Corporate Debtor</p>	
8	<p>The concerned Governmental Authorities shall not initiate any Investigations, actions, prosecution or any other proceeding in relation to any non-compliances with Applicable Law by the Corporate Debtor during the period prior to the Closing Date. Neither shall the Resolution Applicant, nor the Corporate Debtor, nor their respective directors, officers and employee appointed on and as of the Closing Date be liable for any violations, liabilities, penalties or fines with respect to or pursuant to the Company not having In place requisite licenses and approvals required to undertake its business as per Applicable Law, or any non-compliances of Applicable Law by the Company, Further, the concerned Governmental Authorities will provide a reasonable period of time after the Completion Date, for the Resolution Applicant to assess the status of any non-compliances under the Applicable Law (including with respect to applicable environmental laws, directions or orders by the Ministry of Environment and Forest, permits clearances and forest related clearances) and to procure that the Company regularizes such non-compliances under the Applicable law existing prior to the Completion Date</p>	Granted in terms of Section 32A of IBC, 2016



SL. NO	RELIEF AND/OR CONCESSIONS AND APPROVAL SOUGHT BY RESOLUTION APPLICANT (CHAPTER 16 OF RESOLUTION PLAN)	ORDERS THEREON
9	An order directing to the concerned land authorities to accord expeditiously their consent/approval/ Sanction/No-objection Certificate for recording required changes, if any, in the land revenue records in favour of Corporate Debtor on going concern basis. Further, any penalty or fee or lease rent that is due or is chargeable for recording such change shall be waived and completely relinquished including any fee towards transfer of ownership of the land	This is for the appropriate authorities to consider keeping in view the object of IBC, 2016
10	Direction to authorities for providing key Infrastructure facilities and approvals like Consent to Establish, Consent to Operate, Water approval, Electricity approval, etc	This is for the appropriate authorities to consider keeping in view the object of IBC, 2016
11	Waiver of any dues of whatsoever nature towards dues with respect to office premises, Water authorities, electricity department or any such infrastructure provider prior to CIRP commencement date subject to payment of amount as envisage under the resolution plan	Granted, in terms of clean slate principle
12	Withdrawal of litigations initiated by the Financial Creditors against Corporate Debtor immediately on closing date and issue no-dues certificate(s) in favour of Corporate Debtor and release their respective charges on the securities in full and complete satisfaction of amount as envisage under this resolution plan towards Financial Creditors by Corporate Debtor, Including all guarantees provided by the Financial Creditors, for credit facilities availed by Corporate Debtor and upgrade the account once the resolution plan is approved.	Granted



SL. NO	RELIEF AND/OR CONCESSIONS AND APPROVAL SOUGHT BY RESOLUTION APPLICANT (CHAPTER 16 OF RESOLUTION PLAN)	ORDERS THEREON
13	Any and all dues, liabilities or obligations payable to, claims, counter-claims, demands, actions or penalties, made or imposed by or any arrears, dividend or obligations owed or payable to (including but not limited to all Interests, damages, losses, expenses and third party claims), and any right, title, Interest enjoyed by, any actual or potential other stakeholders of the Corporate Debtor including any group companies whether under law or otherwise, whether or not claimed, whether or not filed, whether or not crystalized, whether or not accrued, whether or not-admitted, whether or not notional, whether or not known, whether due or contingent, whether or not disputed, present or future, whether or not being adjudicated in any proceedings, whether or not decreed, whether or not reflected in the financial statements of the Corporate Debtor, or whether or not reflected in any record, document, statement, statutory or otherwise, arising prior to or after the Effective Date, but pertaining to period prior to the Effective Date, and/or arising in connection with Assignment or acquisition of shares of the company by the Investors or conversion of the Conversion Debt into Equity or restructuring of the Assigned Debt or in any other manner as a result of or in connection with this Plan, shall be deemed to have been irrecoverably waived and permanently extinguished and written off in full with effect from the Effective Date. To give effect to such waiver and extinguishment, any contract, agreement, deed or document, whether oral or written, expressed or implied, statutory or otherwise, pursuant to which any such dues, liabilities, obligations, claims, counterclaims, demands, actions, penalties, right, title or Interest in claimed (other than as specifically mentioned herein) shall stand modified with effect from the Effective Date without any further act, deed and approval of the Resolution Plan by Adjudicating Authority shall be deemed to be sufficient notice which may be required to be given to any person for such	Granted



SL. NO	RELIEF AND/OR CONCESSIONS AND APPROVAL SOUGHT BY RESOLUTION APPLICANT (CHAPTER 16 OF RESOLUTION PLAN)	ORDERS THEREON
	matters and no further notice shall be required to be given.	
14	<p>Existing directors / promoters / guarantors of the Corporate Debtor shall not have any right to claim against the Corporate Debtor or Resolution Applicants on any unsatisfied portion of dues of any creditor</p> <p>Further, the existing directors/promoters/guarantors of the Corporate Debtor shall not have any subrogation rights against the Corporate Debtor or Resolution Applicants in respect of unsatisfied portion of dues of any creditors</p>	Granted
15	All obligations, liabilities claims or proceedings in relation to any corporate guarantee, Bank guarantee, Indemnities and all other forms of credit support provided by the company prior to the effective date shall be deemed to be owed and due as of Insolvency Commencement Date and shall immediately, Irrecoverably and unconditionally stand extinguished, waived, withdrawn and abated on and from the effective date.	Granted
16	Waiver as to any liability that may arise pursuant to cases /arbitration/proceeding/ action as mentioned in Information Memorandum and / or any other information as provided by the RP including but not limited to the one set out in Resolution Plan.	Granted
17	Removal of attachment or cease on the assets/properties of the Corporate Debtor created by any government authority upon approval of resolution plan by Adjudicating Authority	Granted in view of clean slate principle enshrined under IBC, 2016
18	All litigations, prosecutions, legal proceedings, criminal proceedings, suits, claims (Including claims for damages), notices, show cause notices, demand notices,	Granted



SL. NO	RELIEF AND/OR CONCESSIONS AND APPROVAL SOUGHT BY RESOLUTION APPLICANT (CHAPTER 16 OF RESOLUTION PLAN)	ORDERS THEREON
	actions, arbitration or administrative, judicial, quasi-judicial, regulatory, government or any enforcement agencies, pending or threatened against the company or whose outcome adversely effects the Company (Including but not limited to the proceedings set out in the Information Memorandum) arising prior to the Effective Date ("Proceedings"), shall be deemed to have been withdrawn or dismissed and will be deemed to have been barred with effect from the Effective Date. Pursuant to the order of the Adjudicating Authority approving this Plan, all liabilities, obligations, demands, actions or penalties made or imposed in relation to any proceedings, whether or not claimed, whether or not filed, whether or not assessed, whether or not crystalized, whether or not accrued, whether or not admitted, whether or not notional, whether or not known, whether due or contingent, whether or not disputed, present or future, whether or not being adjudicated in any proceedings, whether or not decreed, whether or not reflected in any record, document, statement, statutory or otherwise, arising prior to or after the Effective Date, but pertaining to a period prior to the Effective Date shall be deemed to have been irrecoverably waived and permanently extinguished and written off in full and settled at Nil value with effect from the Effective Date by virtue of the order of the Adjudicating Authority approving this plan	
19	All legal suits, proceedings, certificate proceedings and/or quasi-legal proceedings that have been Initiated against Corporate Debtor or the Incumbent Promoter Group Subsidiaries/Associates / related party(ies) of the Incumbent Promoter Group, which may have an adverse impact on Corporate Debtor of any nature whatsoever, shall not adversely impact corporate debtor and Resolution Applicant, including but not limited to:	Granted in terms of Section 32A of IBC, 2016



SL. NO	RELIEF AND/OR CONCESSIONS AND APPROVAL SOUGHT BY RESOLUTION APPLICANT (CHAPTER 16 OF RESOLUTION PLAN)	ORDERS THEREON
	<p>a) for recovery of any debts and dues (including but not limited to statutory dues like Central/State Sales Tax/value added tax/Central Excise/Service Tax/ Goods and Services Tax, Income Tax, Custom Duty, etc. or any other statutory dues) pending against Apollo Polyvinyl Private Limited (IN CIRP) and 100% waiver of all such claims/dues thereunder subject to amount envisage under this resolution plan towards such liability;</p> <p>b) As per section 32A of IB Code, the liability of the corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor, Resolution Applicant and the Directors appointed after approval of plan shall not be prosecuted for any offence from the date the resolution plan has been approved by the Adjudicating Authority</p>	
20	Approval of this resolution plan shall be deemed a direction to Resolution Professional and COC to handover the possession of all assets, books of accounts and other business records related to the Corporate Debtor and provide full access to information and cooperation to Resolution Applicant.	Ordered
21	The Goods and Services Tax authorities (GST authorities) shall activate the existing GST number or register and issue new GST number as required by the Resolution applicant or the Corporate Debtor without requiring them to file due GST returns for any period prior to the closing date. Further, no amount shall be payable to the GST authorities for the aforesaid period	This is for the appropriate authorities to consider keeping in view the object of IBC, 2016
22	As per information provided in the information memorandum, there is a caution notice dated 14.03 2022 from the Additional Director General of Foreign Trade, Chennai estimating non-fulfilment of the export obligation of Rs.7,00,05,267 incurred while importing,	Granted in view of clean slate principle enshrined under



SL. NO	RELIEF AND/OR CONCESSIONS AND APPROVAL SOUGHT BY RESOLUTION APPLICANT (CHAPTER 16 OF RESOLUTION PLAN)	ORDERS THEREON
	<p>machinery for the project. Even though the RP had intimated the changed status of the company they have not made any claim so far.</p> <p>As no claim has been submitted to the Resolution Professional in respect of non-fulfilment of the export obligation of Rs.7,00,05,267/- therefore, the Resolution Applicant or the Corporate Debtor shall not be liable to make any payment to the Director General of Foreign Trade or any other authority in respect of aforesaid export obligation including any penalty, interest or any other demand by whatever name it is called.</p> <p>The outstanding export obligation shall stand extinguished from the effective date and the Resolution Applicant and the Corporate Debtor shall not be liable to fulfil any export obligation in respect of import of machinery or any other prior acts of the Corporate Debtor related to the period prior to the effective date.</p>	<p>IBC, 2016 and also in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i></p> <p><i>2021 SCC Online SC 313</i></p>

9.12. As far as the question of granting time to comply with the statutory obligations / seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.

9.13. In case of non-compliance with this order or withdrawal of the Resolution Plan by the Successful Resolution



Applicant, the Monitoring Committee shall forfeit the Performance Security furnished by the Resolution Applicant in the form of Performance Bank Guarantees.

9.14. The Resolution Applicant is directed to make payment of the entire Resolution Plan amount within the time period stipulated under the Resolution Plan i.e. 21 days, failing which the entire amount paid by the Resolution Applicant (*including the Performance Guarantee*) as on the said date would stand automatically forfeited, without any recourse to this Tribunal.

9.15. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.

9.16. Liberty is hereby granted for moving any Application if required in connection with the implementation of this Resolution Plan.



9.17. A copy of this Order is to be submitted to the concerned Office of the Registrar of Companies.

10. IA(IBC)(PLAN)/1/CHE/2024 stands **disposed of** accordingly.

11. The **Registry** is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsel for information and for taking necessary steps.

12. Files be consigned to the record.

Sd/-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

Sd/-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)