



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

**IA(IBC)/1556(CHE)/2022 in CP(IB)/75(CHE)/2021**

*(Filed under Sec. 30(6) & 31 of the Insolvency & Bankruptcy Code, 2016)*

*In the matter of M/s. Milan Textile Enterprise Private Limited*

**Gopalsamy Ganesh Babu**

*Resolution Professional of*

**M/s. Milan Textile Enterprise Private Limited**

986 – H Block, 24<sup>th</sup> Street, Anna Nagar (West)

Chennai, Tamil Nadu – 600 040

*... Applicant*

*Along with*

**IA(IBC)/1022(CHE)/2023 in CP(IB)/75(CHE)/2021**

*(Filed under Sec. 30(6) & 31 of the Insolvency & Bankruptcy Code, 2016)*

*In the matter of M/s. Milan Textile Enterprise Private Limited*

**Lalji Vora**

Swagat, 1/686, New Natham Road,

Thiruppalai, Madurai – 625 014

*... Applicant*

*-Versus-*

1. **Gopalsamy Ganesh Babu**  
*Resolution Professional of*  
**M/s. Milan Textile Enterprise Private Limited**  
986 – H Block, 24<sup>th</sup> Street, Anna Nagar (West)  
Chennai, Tamil Nadu – 600 040
2. **CDR & Co Construction**  
Represented by its Partners  
Karisalpatti, Karumathur Post, Madurai District,  
Tamil nadu, India

*... Respondents*



*Along with*

**IA(IBC)/1095(CHE)/2023 in CP(IB)/75(CHE)/2021**  
(Filed under Sec. 30(6) & 31 of the Insolvency & Bankruptcy Code, 2016)

*In the matter of M/s. Milan Textile Enterprise Private Limited*

**Amar Vora**

Swagat, 1/686, New Natham Road,  
Thiruppalai, Madurai – 625 014

*... Applicant*

*-Versus-*

1. **Gopalsamy Ganesh Babu**  
*Resolution Professional of*  
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Tamil nadu, India

*... Respondents*

**Present:**

*For Applicant*

:

*Anant Merathia, Advocate*  
*G. Rishi Srinivas, Advocate*  
*Poornima Devi, Advocate*  
*Srikanth Rao, Advocate*  
*In IA(IBC)/1556(CHE)/2022*

*Pawan Jhabakh, Advocate*  
*In IA(IBC)/1022(CHE)/2023*

*Avinash Krishnan Ravi, Advocate*  
*In IA(IBC)/1095(CHE)/2023*



CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)  
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

*Order Pronounced on 5<sup>th</sup> January 2024*

COMMON ORDER

*(heard through video conferencing mode)*

IA(IBC)/1556(CHE)/2022 is an Application filed by the Resolution Professional of the Corporate Debtor viz., **Milan Textile Enterprise Private Limited** (*hereinafter referred to as 'Corporate Debtor'*) under Section 30(6) & 31 of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC, 2016') read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short, 'CIRP Regulation, 2016') seeking relief as follows;

- A. *Approve the Resolution Plan as submitted by M/s. CDR & Co Constructions on 15.11.2022 which was duly approved by the Committee of Creditors after it was put to vote in its 11<sup>th</sup> CoC meeting dated 28.11.2022 in accordance with Section 31(1) of IBC, 2016;*
- B. *Direct that the key relief's, waivers, concessions sought for in the instant Resolution Plan be granted on approval of the Resolution Plan;*
- C. *Direct that the Approved Resolution Plan is binding on the Corporate Debtor; its employees, Resolution Applicants, members/shareholders, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues*





*arising under any law for the time being In force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the Resolution Plan.*

- D. Pass necessary orders to enable the Resolution Applicant to file for the approvals and consents with various Government Authorities, as envisaged in the Plan and as may be required to implement the Plan.*
- E. Pass necessary orders in accordance with sub-section (4) of Section 31 of the IBC, 2016 to enable the Resolution Applicant to obtain the necessary approvals required under any law for the time being in force within a period of once year from the date of approval of the resolution plan by the Adjudicating Authority under subsection (1) or within such period as provided for in such law, whichever is earlier;*
- F. Pass such order or further relief(s) as this Hon'ble Adjudicating Authority may deem fit and proper in facts and circumstances of the present case.*

**2. CORPORATE INSOLVENCY RESOLUTION PROCESS –  
MILAN TEXTILE ENTERPRISE PRIVATE LIMITED**

- 2.1. On 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 21.03.2022 and the Applicant herein was appointed as the IRP. The IRP caused paper publication on 25.03.2022 in accordance with Section 15 of IBC, 2016 r/w Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Subsequently the Applicant herein was confirmed as the Resolution Professional in



respect of the Corporate Debtor by the Committee of Creditors.

2.2 The Applicant/ RP received claims from two categories of claimants i.e. Secured Financial Creditors and Operational Creditors (Government dues) for a total amount of Rs.49,11,71,073/- (Rupees Forty- Nine Crores Eleven Lakhs Seventy-One Thousand and Seventy-Three only) and the same were admitted by the Applicant / RP.

2.3. About 30 Unsecured Related Party Financial Creditors filed their respective claim forms before the Applicant/ Resolution Professional beyond the stipulated 90 days after the commencement of CIRP period and thus the same were not admitted by the Applicant/ Resolution Professional herein. Some of the said unsecured related party financial creditors then filed applications against the rejection of claims before this Tribunal after the approval of the Resolution Plan by the CoC.

2.4. An Invitation for Expression of Interest (EoI) i.e. Form – G was issued on 18.06.2022 and the time was provided till 17.08.2022 for submission of the Resolution Plans by the Prospective Resolution Applicants. Pursuant to the same, only one Prospective Resolution Applicant, i.e., an



individual Mr. Bhumireddy Gari Mohan Reddy, submitted the EoI.

- 2.5. The Information Memorandum was prepared by the Applicant in accordance with Section 29 of IBC, 2016 r/w Regulation 36 of the CIRP Regulations 2016 and it was shared with the Committee of Creditors and eligible prospective resolution applicants after obtaining the requisite affidavits u/s. 29(2) of IBC, 2016.
- 2.6. The Applicant in accordance with Regulation 35 of CIRP Regulations, 2016 appointed two Registered Valuers for Land & Building and Plant & Machinery. The Registered valuers submitted the valuation reports depicting the fair value and liquidation value of the CD in accordance with internationally accepted valuation standards.
- 2.7. In the 5<sup>th</sup> CoC meeting held on 18.08.2022, the CoC was not convinced with the resolution plan submitted by the only Prospective Resolution Applicant i.e., one Mr. Bhumireddy Gari Mohan Reddy. Thus, in order to get better value maximization, it was further resolved to issue fresh Invitation for EoI and to call for more submissions of the Resolution Plan by more Resolution Applicants.





2.8. The 6<sup>th</sup> CoC meeting was held on 27.09.2022 and the final list of Prospective Resolution Applicants was confirmed and approved by the Committee of Creditors, which is as follows:

- a. *Bommidal Enterprises Private Limited, 8-24-53, Boomidal House, Mangalagiri Road, Guntur - 522 001. AP.*
- b. *Bhumireddy Gari Mohan Reddy, #2-1272/3, BV Reddy Colony, Chittoor 517001, AP.*
- c. *M/s. CDR & Co Constructions: # 1/124, Karisalpatti, Karumathur Post, Usilampatti Taluk, Madurai Dt. - 625 514.*
- d. *Nakshatra Corporate Advisors Limited: Nakshatra, # 377, Gandhi Nagar, Ambazari Road, Nagpur - 440010,*
- e. *Shanti G.D.Ispat and Power Private Limited: #502, 4th Floor, Rajeev Gandhi Complex, BAL Ashram Compound, Kutchery Chowk, Rajpur - 432001*

2.9. The 7<sup>th</sup> CoC meeting was held on 18.10.2022. It was decided that the last date as per the Request for Resolution Plan be modified from 24.10.2022 to 27.10.2022 as it had been erroneously mentioned as 24.10.2022 in an inadvertent manner. The said change was undertaken by the RP and was also communicated to the final list of PRAs.

2.10. The 8<sup>th</sup> CoC meeting was held on 02.11.2022 and the RP received the Resolution Plans from 3 out of 5 PRAs as follows;



- a. *Bommidal Enterprises Private Limited, 8-24-53, Boomidal House, Mangalagiri Road, Guntur - 522 001. AP.*
- b. *Bhumireddy Gari Mohan Reddy, #2-1272/3, BV Reddy Colony, Chittoor 517001, AP.*
- c. *M/s. CDR & Co Constructions: # 1/124, Karisalpatti, Karumathur Post, Usilampatti Taluk, Madurai Dt. - 625 514.*

2.11. The 9<sup>th</sup> CoC was held on 09.11.2022. In the said meeting, a detailed report of the discussions and negotiations with each of the aforementioned 3 Prospective Resolution Applicants was recorded.

2.12. The 10<sup>th</sup> CoC was held on 18.11.2022. The modified resolution plans of the aforesaid 3 PRAs were taken into consideration by the CoC for taking a decision on the same in the next meeting.

2.13. The 11<sup>th</sup> CoC meeting was held on 28.11.2022. It was stated that the 3 PRAs who have submitted the Resolution plans are eligible and they pass the muster u/s. 29A of IBC, 2016. The CoC, after deliberation and considering all the other aspects including the improvement in the offer in the Modified Resolution Plans submitted by the three Resolution Applicants, informed the RP that the Resolution Plan submitted by **M/s. CDR & Co Constructions**, No.





1/124, Karisalpatti, Karumathur Post, Usilampatti Taluk, Madurai Dt. - 625 514 which offered **Rs.25.01 Crores** has been approved unanimously with **100% voting**.

- 2.14. The relevant extract of the Resolution passed by the CoC in the 11<sup>th</sup> CoC meeting is reproduced herein below;

*RESOLVED THAT the Resolution Plan submitted by CDR & Constructions, No. 7/124, Karisalpatti, Karvomatiner Post, Usilampatti Taluk, Madurai Dt-625314 in respect of Milan Textile Enterprise Private Limited is hereby approved. It is further resolved that Pursuant to Regulation 39(4) Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 read with Section 30(6), the RP is hereby authorized to file an application before the Adjudicating Authority for approval of the Resolution Plan duly recommended by the CoC members.*

- 2.15. The abovementioned successful Resolution Applicant also submitted its affidavit stating that the ineligibility criteria prescribed under section 29A of IBC, 2016 is not applicable to them. A copy of the Affidavit of compliance w.r.t eligibility under Section 29A of the Insolvency and Bankruptcy Code, 2016 is annexed herewith as Annexure-17. A Copy of the Resolution Plan submitted by the successful Resolution Applicant which was approved by the CoC unanimously is annexed herewith as Annexure-18.



The Letter of Intent issued by the Applicant herein to the successful Resolution Applicant, ie. M/s. CDR & Co Constructions on 30.11.2022 is annexed herewith as Annexure- 19.

2.16. The Compliance Certificate duly certified by the Applicant/ Resolution Professional in Form-H, under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulation is enclosed herewith as Annexure-20.

2.17. The Applicant/ Resolution Professional herein thus has filed the instant Application seeking approval of this Tribunal for the Resolution Plan approved by the Committee of Creditors of the Corporate Debtor, i.e, M/s Milan Textiles Enterprises (P) Limited.

### 3. ABOUT THE RESOLUTION PLAN

3.1. The Successful Resolution Applicant, i.e., M/s. CDR & Co Constructions is a registered partnership firm founded by Late Mr. C. Devaraj, having qualified and experienced partners. It is a major infrastructure firm headquartered in Madurai, Tamilnadu, India. The firm was established in 1987 and started doing projects in PWD. It was submitted that the firm has done Public Works Department projects in all over Tamil Nadu until 2009. In 2009, Mr. D. Rajmohan



s/o Late Mr. C. Devaraj had taken charge of CDR & Co Constructions as an Entity Partner. After that, the firm switched its focus to highways and successfully completed many State Highway Projects all over Tamil Nadu. It is submitted that the turnover of the firm is INR 72 crores for the last financial year 2021-2022.

- 3.2. It is submitted that the total amount which is proposed to be paid towards the admitted claims of the claimants / stakeholders of the Corporate Debtor is INR 25,00,73,321/- (Rupees Twenty-Five Crores Seventy- Three Lakhs Three Hundred and Twenty-One only). The summary of the proposed payments and absorption of liability of the Corporate Debtor is tabulated herein below.

S. No.	CATEGORY OF STAKEHOLDERS	TOTAL ADMITTED CLAIMS (INR)	TOTAL AMOUNT PROPOSED TO BE PAID (INR)
1	CIRP Costs	0.55	0.55
2	Secured FC	15.60	15.60
3	Unsecured FC	-	-
4	OC – Rent Advance	-	1.06*
5	OC – Govt. Dues	33.51	7.80
<b>TOTAL</b>			<b>25.01</b>

*\* It is to be noted that after the statutory approval of the Resolution Plan, the liability for Rent Advances will be absorbed by the Resolution Applicant "RA") and continued in the books of the CD, since the RA intends to continue lease and rental agreements for the mall building space through the existing contracted period. The amount that stands credited against each of the lessee in the books of the CD aggregating to Rs.1,05,70,921/-as per the books of the CD will be absorbed by the*





RA and the rental advances will continue as liability till the end of the contract period as per the lease agreements presently in force.

**4. TIMELINES ENVISAGED FOR THE PAYMENT OF MONIES TO THE STAKEHOLDERS POST APPROVAL BY NCLT**

4.1. It is stated that upon approval of this Resolution Plan by the Adjudicating Authority in accordance with the Code, the aforesaid manner of distribution will be binding on all the Stakeholders of the Corporate Debtor. It is stated that the Resolution Plan outlines the payment to be made to Financial Creditors of the Company on effective date as follows.

PAYMENT DESCRIPTION	TIME SCHEDULE	PAYMENT (IN INR)	CUMULATIVE (IN INR)
CIRP costs in full (provided at Rs.55 Lakhs but will be settled at actual as finally determined)	Within 30 days after approval of the Plan by NCLT	55,00,000/-	
1 <sup>st</sup> Part Payment to Government Dues – Income Tax Dept.	Within 30 days after approval of the Plan by NCLT	5,00,00,000/-	5,55,00,000/-
2 <sup>nd</sup> and Full and Final Payment to Government Dues – Income Tax Dept.	Within 60 days after approval of the Plan by NCLT	2,80,00,000/-	
1 <sup>st</sup> Part payment to Secured FC	Within 60 days after approval of the Plan by NCLT	2,80,02,400/-	11,15,02,400/-
2 <sup>nd</sup> Part Payment to Secured FC	Within 90 days after approval	5,00,00,000/-	16,15,02,400/-



	of the Plan by NCLT		
3 <sup>rd</sup> Part Payment to Secured FC	Within 120 days after approval of the Plan by NCLT	3,90,00,000/-	20,05,02,400/-
Final Payment to Secured FC	Within 150 days after approval of the Plan by NCLT	3,90,00,000/-	23,95,02,400/-
<b>Sub – Total of Payments to Stakeholders</b>		<b>23,95,02,400/- **</b>	
Investment in Business Infrastructure	Within 24 months after approval of Plan by NCLT	10,00,00,000/- ***	33,95,02,400/-

*\*\*It is to be noted that after the statutory approval of the Resolution Plan, the liability for Rent Advances will be absorbed by the Resolution Applicant ("RA") and continued in the books of the CD, since the RA intends to continue lease and rental agreements for the mall building space through the existing contracted period. The amount that stands credited against each of the lessee in the books of the CD aggregating to Rs. 1,05, 70,921/-, as per the books of the CD will be absorbed by the RA and the rental advances will continue as liability till the end of the contract period as per the lease agreements presently in force.*

*\*\*\*Investment in Business Infrastructure - The RA proposes to invest Rs.10,00,00,000, in creating improved business infrastructure as per its detailed business plan to create exclusive parking space for the mall which includes cost of land to be purchased and refurbishing of the mall structure. This will enhance the capacity utilisation significantly and ensure the sustainability of the business growth continuously over time. The proposed investment will help in providing better parking facilities at the mall, resulting in increased customer footfall and higher capacity utilisation. The investment will improve the profitability of operations and by way of enhancing the yield per sq. ft over. The investment is thus quite significant*





*from the point of view of profitability of the operations in the long run.*

5. DETAILS OF PERFORMANCE BANK GUARANTEE AND EARNEST MONEY DEPOSIT

5.1. It is stated that as per RFRP, within 7 business days of the date of approval of the Resolution Plan by the CoC, the Successful Resolution Applicant(s) shall provide a Performance Guarantee of an amount equivalent to (10% of amount proposed to secured Financial creditor in the Resolution Plan) in favour of City Union Bank. However, in case the successful Resolution Applicant fails to give Performance Guarantee, it is open for it to transfer an amount equivalent to INR (10% of amount proposed to the secured Financial creditors in the Resolution Plan) in favour of City Union Bank. It is stated that, pursuant to the same, the successful Resolution Applicant herein has deposited a sum of INR 3,50,00,000/- (Rupees Three Crores Fifty Lakhs only) in the allocated bank account of the sole financial creditor/CoC herein. It is stated that performance security would be released/against/at-time of final payment due to the financial creditors under Resolution Plan. (A Copy of the proof of the deposit of the mandated sum of an amount equivalent to 10% of the amount proposed to the Secured Financial Creditors in the Resolution Plan which is





a sum of INR 3,50,00,000/- in favour of City Union Bank / sole FC is annexed herewith as Annexure – 21.)

6. SOURCE OF FUNDS

- 6.1. It is stated that the Resolution Applicant has confirmed vide the Resolution Plan that it would be in a comfortable liquidity position to meet the financial obligations as contemplated and committed in the Resolution Plan from its own resources and accruals.
- 6.2. It is also stated in the Resolution Plan that the payments in relation of the financial obligations could also be provided by the personal properties of the partners of the successful Resolution Applicant which have a market value of about INR 35 crores and are unencumbered and free from lien.
- 6.3. Further the Resolution Applicant has confirmed vide the Resolution Plan that it generates substantial cash surplus thereby has sufficient funds and will be generating revenue in the future vide its existing business to make the payments to meet its liability as envisaged under the Resolution Plan within the timelines stated. (A Copy of the income tax returns of the successful Resolution Applicant for the assessment year 2021 - 22 is annexed herewith as Annexure-22.)



## 7. RECONSTITUTION OF SHARE CAPITAL

- 7.1. The Resolution Plan does not make any provision for payment to the existing shareholders of the CD, since the entire capital has been wiped out by losses and diversion of funds. The existing share capital will be extinguished and written off in the books of the Corporate Debtor.
- 7.2. New shares in the CD will be issued in favour of the partners of the RA, on an appropriate basis at par value for a total value consisting of the total cost of the Resolution, which shall consist of payment to financial creditors, operational creditors and assumption of past liabilities as expressly provided in the Resolution Plan.
- 7.3. It is made clear that the shares will be allotted to the Successful Resolution Applicant as and when payments are made / funds are infused into the Corporate Debtor as per the timelines provided in the Resolution Plan.

## 8. DETAILS OF MONITORING COMMITTEE

- 8.1. After the statutory approval of the Resolution Plan, the RA will constitute a Supervision and Monitoring Committee for the smooth implementation of the Resolution Plan. The term of the Committee will be upto the period of the final



implementation of the Resolution Plan. The members of the Committee will be from the reconstituted Board of Directors and Key Management Persons of the Corporate Debtor and the RP will act as its Chairman. The functions and responsibilities of this Committee will be properly defined to ensure the smooth and strict implementation of the Resolution Plan and its effective supervision. The Committee shall meet at regular intervals and submit progress reports to the CoC on a quarterly basis until the completion and full implementation of the Resolution Plan.

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

9.1. 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.	Clause 18, 19, 20 and 21 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	Clause 18, 19, 20 and 21 of the Resolution Plan.





	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.	
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause 31 of the Resolution Plan.
(d)	Implementation and Supervision.	Clause 34 of the Resolution Plan.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Declaration given by RP in Form H.
(f)	Conforms to such other requirements as may be specified by the Board.	Declaration given by RP in Form H.

**10. 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.	Clause 10 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	Clause 10 of the Resolution Plan



Reference to relevant Regulation	Requirement	How dealt with in the Resolution Plan
	Financial Creditors and Operational Creditors of the Corporate Debtor	
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.	Clause 11 of the Resolution Plan
38(2)	A Resolution Plan shall provide (a) the term of the plan and its implementation schedule	Clause 25 of the Resolution Plan.
	(b) the management and control of the business of the Corporate Debtor during its terms; and	Clause 29 of the Resolution Plan
	(c) adequate means for supervising its implementation	Clause 31 of the Resolution Plan
38(3)	A Resolution Plan shall demonstrate that (a) It addressed the cause of default;	Clause 9 of the Resolution Plan
	(b) It is feasible and viable;	Clause 9 of the Resolution Plan
	(c) it has provisions for its effective implementation;	Clause 31 of the Resolution Plan
	(d) it has provisions for approvals required and the timeline for the same; and	Clause 27 of the Resolution Plan
	(e) the Resolution Applicant has the capability to implement the Resolution Plan	Clause 12 of the Resolution Plan

11. The successful Resolution Applicant has submitted an Affidavit of compliance under Section 29A of IBC, 2016 to submit a Resolution



Plan under the provisions of IBC, 2016 and the same is annexed as Annexure – 17.

**12. OBJECTIONS TO THE RESOLUTION PLAN**

12.1. IA(IBC)/1022(CHE)/2023 is an Application filed by Lalji Vora under Section 60(5) of IBC, 2016 read with Rule 11 of NCLT Rules, 2016 seeking relief as follows;

- a. That this Hon'ble Tribunal may be pleased to pass an order under Section 31(2) of the Code, to reject the Resolution Plan submitted by the 2<sup>nd</sup> respondent, as approved by the CoC in their 11<sup>th</sup> meeting dated 28<sup>th</sup> November 2022;*
- b. Pass such other order or orders as this Hon'ble Tribunal may deem fit.*

12.2. IA(IBC)1095(CHE)/2023 is an Application filed by Amar Vora under Section 60(5) of IBC, 2016 read with Rule 11 of NCLT Rules, 2016 seeking relief as follows;

- a. Pass an order under Section 31(2) rejecting the Resolution Plan submitted by the 2<sup>nd</sup> Respondent, as approved by the CoC in its 11<sup>th</sup> meeting which took place on 28.11.2022;*
- b. And such other order or orders as this Hon'ble Tribunal may deem fit, in the interest of justice and equity.*

12.3. The Applicants herein are the Suspended Directors of the Corporate Debtor. It is contended that the Resolution Plan submitted by the 2<sup>nd</sup> Respondent was mechanically voted and unanimously approved by the CoC in its 11<sup>th</sup> meeting





which was held on 28.11.2022. It is stated that the Resolution Plan submitted by the 2<sup>nd</sup> Respondent is vague and uncertain regarding the Management of the Corporate Debtor post approval of the said Plan.

12.4. It is submitted that under Clause 4 of the Resolution Plan, an SPV would take over the assets of the Corporate Debtor after approval of the Resolution Plan, whereas Clause 6(b), (c) of the Resolution Plan provides that the 2<sup>nd</sup> Respondent would continue with the business of the Corporate Debtor as going concern by focusing on the core business of the Corporate Debtor.

12.5. It is stated that clause 22 of the Resolution Plan provides that the existing share capital of the Corporate Debtor would be extinguished, and new shares would be issued in favour of the Partners of the Resolution Applicant for the total value of the Resolution Plan. The Applicant submits that the total value of the Resolution Plan at clause 16 stands at Rs.68,49,00,000/- which under clause 22 of the Resolution Plan would be allotted to the partners of the 2<sup>nd</sup> Respondent. It is stated that such an allotment of new shares to the 2<sup>nd</sup> Respondent is impermissible in law or the Companies Act 2013, as there would be allotment of shares to the partners of the 2<sup>nd</sup> Respondent without the total value of the Resolution Plan being achieved or brought into the Corporate Debtor. It is stated that it is never



contemplated under law, that an allotment of shares would take place on an anticipated / contingent event and therefore, clause 22 of the Resolution Plan is in violation of law and runs contrary of the provisions of section 30 (2) (e) of the Code.

- 12.6. It is stated that there is a discriminatory Treatment in the Resolution Plan for payment to the Income Tax Department. In the matter of **Principal Commissioner of Income Tax v. M/s. Assam Company India Limited**, *Company Appeal No. 243 of 2023*, the Hon'ble NCLAT, Principal Bench, following the ratio of the Hon'ble Supreme Court of India in **State Tax Officer Vs. Rainbow Papers Limited**, *Civil Appeal No. 1661 of 2020*, held that dues of the Income-Tax Department are 'Government dues', and thus, the Income-Tax Department is a secured creditor. In furtherance to the said finding, the Hon'ble NCLAT set aside a resolution plan which did not treat secured financial creditors and the Income Tax Department on par with one-another, as being violative of section 30(2) of the IBC. Accordingly, it is stated that the Income Tax Department, to whom dues are owed from the Corporate Debtor, is a secured creditor *vis-à-vis* the Corporate Debtor, and that such a creditor should be treated in par with other secured creditors in a valid Resolution Plan.



12.7. It is stated that Clause 7(a) of the proposed Resolution Plan depicts the Table of payments which the Plan proposes to make *vis-à-vis* the admitted claims of the creditors. According to the said Table, the secured financial creditors are proposed to be paid Rs.15.60 crores *vis-à-vis* their admitted claim, which is Rs.15.60 crores i.e., 100% of their admitted claims. Therefore, the Resolution Applicant is proposing to pay 100% to the secured financial creditors. Juxtaposed to this, the Resolution Applicant has proposed to earmark only Rs.7.8 crores out of the admitted claims of Rs.33.51 crores for making payment to the sole 'Operational Creditors - Government Dues' viz., the Income Tax Department. Therefore, the State dues are proposed to be paid only to the extent of 23.27% of their admitted claims. Since the resolution plan proposes to discriminate between similarly situated creditors i.e., secured creditors comprising of Banks and Income Tax Department, the resolution plan is in clear violation of section 30(2)(b) of the Insolvency and Bankruptcy Code, 2016.

12.8. It is stated that clause 14 of the proposed Resolution Plan deals with the future recovery *qua* the legal action initiated under section 66 of the IBC for recovery of monies allegedly diverted from the corporate debtor prior to the





commencement of CIRP. By virtue of the said clause, the Resolution Applicant proposes to vest the Operational Creditor (Government Dues) with 100% of the future recovery, if any. To this extent, the proposed Resolution Plan seeks to discriminate equally placed secured creditors by permitting one to receive all monies with certainty under the resolution plan whereas the IT Department is left with a contingent claim, which is vigilantly contested by the Applicant herein. It is trite law that the benefit ought to be for the body of creditors at large and a creditor cannot, in abuse of its position in the COC, alter the mandate of law to gain an unjust enrichment in terms of priority in payment, in contravention of the statutory scheme of distribution and rights set out under the IBC.

12.9. It is stated that the Resolution Plan, specifically, clauses 14 and 31 therein, do not enshrine for modus to pursue the pending *lis* u/s 66 of the IBC, after the approval of the Resolution Plan. It is stated that since such a description is mandatory, omission of the same is therefore, in violation of the statutory mandate of regulation 38(2)(d) of the CIRP Regulations.

12.10. It is stated that the resolution plan is silent on furnishing of the performance security by the Resolution Applicant.



If no such security has been furnished by the Resolution Applicant, then such an omission, being violative of regulation 36B(4A) of the CIRP Regulations, is a fundamental error and strikes at the root of the insolvency resolution process itself rendering it invalid. Under such circumstances, the objectors have prayed to reject the Resolution Plan of the 2<sup>nd</sup> Respondent.

12.11. Heard the submissions made by the Learned Counsel for the objectors and perused the records.

12.12. In relation to the Reconstitution of Share Capital, the Successful Resolution Applicant has filed a memo clarifying Clause 22 of the Resolution Plan by stating that that the shares will be allotted to the Successful Resolution Applicant as and when payments are made/ funds are infused into the Corporate Debtor as per the timelines provided in the Resolution Plan and that the word "appropriate basis" in the Clause 22 means in proportion to the amounts paid by the Resolution Applicant.

12.13. In relation to the Management and Control of the Corporate Debtor, it is clearly stated in the Resolution Plan that the partners of the Respondent No.2 firm will be inducted into the Board of Directors of the Corporate Debtor upon approval of the resolution plan, thereby



replacing the erstwhile management for the purpose of ensuring that the plan is properly implemented. The resolution plan clearly provides for the details pertaining to the management & control of the business of the control of the business of the corporate debtor during its term. Further, as per the Clause 26 of the Plan the duly constituted Monitoring Committee will be monitoring & supervising the implementation of the resolution plan. In Clause 4 of the Plan, the successful resolution applicant / Respondent No.2 has disclosed the future business module for the Corporate Debtor and the said clause is not contradictory to the Clauses 22, 23 and 26 of the Plan.

12.14. In relation to the discriminatory treatment in the Resolution Plan for payment of Income Tax Department, it is noted that the Hon'ble Supreme Court of India has clearly held in **Paschimanchal Vidyut Vitran Nigam Ltd v. Raman Ispat Private Limited & Ors**, Civil Appeal Nos. 7976 of 2019 that the Judgment passed in **Rainbow Papers** has to be confined to the facts of that case alone. The relevant extracts from the said Order is reproduced hereinbelow'

49. *Rainbow Papers (supra) did not notice the 'waterfall mechanism' under Section 53 - the provision had not been adverted to or extracted in the judgment. Furthermore, Rainbow Papers (supra) was in the context of a resolution process and not during liquidation. Section 53, as held earlier, enacts the waterfall mechanism providing for the hierarchy or*





priority of claims of various classes of creditors. The careful design of Section 53 locates amounts payable to secured creditors and workmen at the second place, after the costs and expenses of the liquidator payable during the liquidation proceedings. However, the dues payable to the government are placed much below those of secured creditors and even unsecured and operational creditors. This design was either not brought to the notice of the court in *Rainbow Papers* (supra) or was missed altogether. In any event, the judgment has not taken note of the provisions of the IBC which treat the dues payable to secured creditors at a higher footing than dues payable to Central or State Government.

50. The Gujarat Value Added Tax Act, 2003 no doubt creates a charge in respect of amounts due and payable or arrears. It would be possible to hold [in the absence of a specific enumeration of government dues as in the present case, in Section 53(1)(e)] that the State is to be treated as a 'secured creditor. However, the separate and distinct treatment of amounts payable to secured creditor on the one hand, and dues payable to the government on the other clearly signifies Parliament's intention to treat the latter differently and in the present case, having lower priority. As noticed earlier, this intention is also evident from a reading of the preamble to the Act itself.

52. The views expressed by the present judgment finds support in the decision reported as *Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs*. In that case, Section 142A of the Customs Act 1962 was in issue - authorities had submitted that dues payable to it were to be treated as 'first charge' on the property of the assessee concerned. In the resolution process, it was argued that the Customs Act, 1962 acquired primacy and had to be given effect to.

.....

Similarly, in *Duncans Industries Ltd. v. Aj Agrochem*, Section 16G of the Tea Act, 1953 which required prior consent of the Central Government (for initiation of winding up proceedings) was held to be overridden by the IBC. In a similar manner, it is



held that Section 238 of the IBC overrides the provisions of the Electricity Act, 2003 despite the latter containing two specific provisions which open with non-obstante clauses (i.e., Section 173 and 174). The position of law with respect to primacy of the IBC, is identical with the position discussed in *Sundaresh Bhatt and Duncan Industries (supra)* [refer also: *Innoventive Industries (supra)*, *CIT v. Monnet Ispat & Energy Ltd*, *Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd*, and *Jagmohan Bajaj v. Shivam Fragrances Private Limited*).

53. In view of the above discussion, it is held that the reliance on Rainbow Papers (supra) is of no avail to the appellant. In this court's view, that judgment has to be confined to the facts of that case alone.

12.15. It is to be noted that there is no provision in the Income Tax Act, 1961 which states that the statutory authority shall have the 1<sup>st</sup> Charge on the assets of the CD. So, unlike Rainbow Papers case, where Section 48 of the GVAT Act clearly conferred rights on the statutory authority as a secured creditor, the IT Act does not do so. Thus, in the instant case, the Income Tax department cannot be treated as a secured creditor.

12.16. In relation to the manner of distribution of monies recovered under Application for Avoidance Transaction, it is to be noted that it is the CoC which has approved that the proceeds of the Application under Section 66 of IBC, 2016 should accrue to the Income Tax Department, because there are being paid only 23.27% of their admitted





claim. Thus, there is no illegality or irregularity in distribution of the monies recovered under PUFET Transactions in the Resolution Plan.

12.17. In relation to the furnishing of Performance Bank Guarantee, it is noted that the performance security of INR 3,50,00,000/- (Rupees Three Crores and Fifty Lakhs only) has been paid by the Respondent No.2 in the account of the Corporate Debtor in two tranches on 08.12.2022 and 13.12.2022. A Copy of the proof of the deposit of the mandated sum of an amount equivalent to 10% of amount proposed to the secured Financial Creditors in the Resolution Plan which is a sum of INR 3,50,00,000/- (Rupees Three Crores Fifty Lakhs only) in favour of City Union Bank /sole FC herein by the Respondent No.2 is appended as Annexure-4.

12.18. Further, the objectors being the suspended Directors of the Corporate Debtor have no locus to raise any objection to the Resolution Plan approved by the Committee of Creditors. In this regard, it is significant to refer to the Judgment of Hon'ble NCLAT in the matter of **Dr. Ravi Shankar Vedam v. Tiffin Barytes Asbestos and Paints Limited**, TA (AT) No. 134/2021, Company Appeal (AT) (Ins) No. 653/2019, (NCLAT - Chennai, 13.06.2023, wherein it is held as under;





.....Explanation For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law." (Emphasis Supplied)

23. As can be seen from the Explanation to Section 30(2) of the 'I&B Code, 2016, the Code contemplates for 'Deemed Approval of the Shareholders of the Resolution Plan and its implementation and even a Shareholder, is deemed to have given its approval for implementation of the Resolution Plan, and such "Deemed Approval" cannot be taken away or undone by objecting to the Resolution Plan. We are of the view that giving the shareholder a Right to challenge the Resolution Plan or raise objections against its Approval, would render the Explanation redundant.

28. Keeping in view, the scope and intent of the Legislature, and that the 'I & B Code, 2016' is a distinct shift from 'Debtor in Possession' to 'Creditor in Control Insolvency System, where the Shareholders have a limited role and are only confined to co-operate with the Resolution Professional as specified under Section 19 of the Code, are entitled to receive the Liquidation value of its equity, if any, in accordance with Section 53 of the Code, we are of the considered opinion that a 'Shareholder' has no locus standi to challenge the Resolution Plan."

12.19. Thus, in view of the dispositive reasoning as mentioned supra, the objections raised by the objectors in this regard do not hold any merit and accordingly stands **rejected**.

12.20. IA(IBC)/1022(CHE)/2023 and IA(IBC)/1095(CHE)/2023 accordingly stand **dismissed**.



### 13. ANALYSIS AND FINDINGS OF THIS TRIBUNAL

13.1. It is seen from Form – H that the Liquidation value of the Corporate Debtor has been arrived at Rs.14.87 Crores and the corresponding Fair value has been arrived at Rs.18.85 Crores and the Resolution Plan value is Rs.25.01 Crores.

13.2. It is also seen from Form – H, that the RP has filed an Application under Section 66 of IBC, 2016 and the same is pending adjudication before this Tribunal in IA(IBC)/1384(CHE)/2022. In so far as the fate of this Application is concerned, it is significant to refer to the decision of the Division Bench of the Hon'ble High Court of Delhi in the matter of **Tata Steels BSL Limited -Vs- Venus Recruiters Private Limited & Ors.; 2023/DHC/000257** while dealing with the continuation of PUFEE transaction Applications after the completion of CIRP, wherein it has been held as under;

#### **"89. Conclusion**

a) .....

b) CIRP and avoidance applications, are, by their very nature, a separate set of proceedings wherein, the former, being objective in nature, is time bound whereas the latter requires a proper discovery of suspect transactions that are to be avoided by the Adjudicating Authority. The scheme of the IBC reinforces this difference. Accordingly, adjudication of an avoidance application is independent of the resolution of the corporate debtor and can survive CIRP





c) The endeavour of the IBC and its rules and regulations is to ensure that all processes within the insolvency framework are time efficient. While the law mandates a resolution plan to necessarily provide for the treatment of avoidance applications if the same are pending at the time of submission of resolution plans, it cannot be accepted that avoidance applications will be rendered infructuous in situations wherein the resolution plan could not have accounted for avoidance applications due to exigencies that delayed initiation of action in respect of avoidable transactions beyond the submission of a resolution plan before the adjudicating authority. This is because such an interpretation will render the provisions pertaining to suspect transactions otiose and let the beneficiaries of such transactions walk away, scot-free. Money borrowed from creditors is essentially public money and the same cannot be appropriated by private parties by way of suspect arrangements. Therefore, in cases such as the present one, wherein such transactions could not be accounted, the Adjudicating Authority will continue to hear the application. Such benefit cannot be given in cases where the RP had already applied for prosecution of avoidance applications and the applicant ought to have been cognizant of pending avoidance applications but did not account for the same in its resolution plan.

- d) .....
- e) .....
- f) ....."

13.3. In the present case, as per Clause 14 of the Resolution Plan the proceeds of the Application filed under Section 66 of IBC, 2016 would accrue to the Operational Creditor – Govt. Dues i.e. Income Tax Department. As against the admitted claim of the Income Tax Department to the tune of Rs.33.51 Crores a sum of Rs.7.80 Crores is being paid by the Resolution Applicant. In the application filed under Section 66 of IBC, 2016, the RP has sought reversal of an amount of Rs.33.49 Crores. In the said circumstances, we direct the Corporate Debtor, represented by





the SRA to prosecute the Application under Section 66 of IBC, 2016 and the proceeds of the same shall, if any, shall be distributed to the Income Tax Department to the satisfaction of their admitted claim ( $Rs.33.51Cr - Rs.7.80Cr = Rs.25.71Cr$ ) and the remaining amount ( $Rs.33.49 Cr - Rs.25.71 Cr = Rs.7.78 Crores$ ) shall come to the coffers of the Corporate Debtor.

13.4. 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.”

13.5. 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).

13.6. 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)*





13.7. 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)

13.8. 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.

13.9. 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 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.

13.10. 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. 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,



13.11. The Resolution Plan 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.

13.12. 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 12 OF RESOLUTION PLAN)	ORDERS THEREON
1	It is hereby prayed that all the action initiated and pursued against the Corporate Debtor under the provisions of the Prohibition of Benami Property Transactions Act, 1988, including any order of attachment, whether provisional, final or unconditional, shall be completely annulled and all or any action whether already commenced or proposed against the Corporate Debtor shall forthwith be withdrawn, abated and declared ineffectual against the Corporate Debtor, in consistence with the provisions of Section 32A of IBC, 2016.	<b>Granted in terms of Section 32A of IBC, 2016 in respect of the Corporate Debtor.</b>
2	Apart from relief sought under Section 32A of the IBC, 2016, It is hereby sought by the Resolution Applicant for securing the release of all Bank accounts of the Corporate Debtor which have been frozen Income Tax Department, for recovery of dues counts free from any lien, attachment, seizure, restriction or any other impediment of any kind imposed any authority, Government Department, Bank or any Institution.	<b>Granted in terms of provisions of IBC, 2016 and also in view of clean slate principle enshrined under IBC, 2016.</b>
3	It is hereby prayed that appropriate orders be passed by the Hon'ble NCLT on the different agencies and Departments like CMDA, Fire Department and other Agencies for continuation of approvals granted to the Corporate Debtor in connection with the construction and	<b>This is for the appropriate authorities to consider keeping in view</b>





	operation of the mall and all its facilities, in consistence with the original norms, rules and regulations, which were in force at the time of the original construction of the mall structure, its accessories and annexures, and the compliance of which was then sufficient and appropriate.	the clean slate principles enshrined under IBC, 2016
4	Cancelling all legal proceedings, Initiated, contemplated, or which are under legal process before any adjudicating authority or the Courts of Law and rendering the Corporate Debtor and the Resolution Applicant free from the legal consequences of any kind arising from any transaction, breach of covenant, delinquency of any nature, non-compliance with the provisions of any Statute of Central or State Legislation, Dispute, Arbitration, Award, Fines, Penalty or any such adverse charge, prosecution or Impeachment of any nature, and rendering the Corporate Debtor and Resolution Applicant free from the consequences of any transaction, non-compliance or breach of law under any statute in respect of any period prior to the approval of the Resolution Plan by NCLT.	Granted
5	To exempt the Corporate Debtor from the applicability of Section 115 (JB), Section 41 or any other Section of the Income Tax Act, purporting to bring to tax any waiver of outstanding amounts by the Financial or Operational Creditors of the Corporate Debtor.	This is for the appropriate authorities to consider, keeping in view the clean slate principles enshrined under IBC, 2016
6	To exempt the Corporate Debtor from any penal, prosecution or any other consequences in respect of any defaults, omissions, non-compliances, violations or any other acts of the Corporate Debtor or its erstwhile management under any Statute or Statutes in respect of the period prior to the approval of the Resolution Plan by NCLT.	Granted
6	To exempt the Corporate Debtor from liability under direct and indirect tax laws in respect of all or any transactions prior to the commencement of CIRP proceedings.	Granted





13.13. 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.

13.14. 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.

13.15. The Resolution Applicant is directed to make payment of the entire Resolution Plan amount within the time period stipulated under the Resolution Plan, 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.

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

13.17. Liberty is hereby granted to move any Application if required in connection with the implementation of this Resolution Plan.



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

14. IA(IBC)/1556/CHE/2022 shall stand **disposed of** accordingly.

15. IA(IBC)/1022(CHE)/2023 and IA(IBC)/1095(CHE)/2023 accordingly stand **dismissed**.

16. 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. Files be consigned to the record.

— Sd —

**VENKATARAMAN SUBRAMANIAM**  
MEMBER (TECHNICAL)

— Sd —

**SANJIV JAIN**  
MEMBER (JUDICIAL)

*Raymond*