



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - 1**

ITEM No.301  
I.A/764(AHM)2021 in  
C.P./563(AHM)2018

**Order under Section 30(6) & 31 of IBC,2016**

**IN THE MATTER OF:**

Mr. Chandra Prakash Jain  
Resolution Professional of  
E-Complex Pvt. Ltd.

.....Applicant

.....Respondent

**Order delivered on: 04/12/2023**

**Coram:**

Mr. Shammi Khan, Hon'ble Member(J)  
Mr. Sameer Kakar, Hon'ble Member(T)

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-

**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

-SD-

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH - I, AHMEDABAD**

**IA/764(AHM)/2021 in  
CP(IB)/563(AHM)/2018**

*[ An application under Section 30(6) & 31 of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 39(4) of the the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016*

In the matter of ***E-Complex PVT. LTD.***

**Mr. Chandra Praksh Jain,  
Resolution Professional of  
M/s E-Complex Private Limited**

CIN: U18109GJ2003PTC053442

Reg. Off:

306, 3<sup>rd</sup> Floor, 'Gala Mart',  
Nr. Sobo Centre,  
Before Safal Parisar,  
above SBI/Union Bank/Hindmart,  
South Bopal, Ahmedabad,  
Gujarat- 380058.

*... Applicant*

**Order Pronounced On: 04.12.2023**

**CORAM:**

**SHAMMI KHAN, MEMBER (JUDICIAL)  
SAMEER KAKAR, MEMBER (TECHNICAL)**

**Appearance:**

*For Applicant(s) : Mr. Saurabh Soparkar, Ld. Sr. Adv. a.w.  
Mr. Monal Davawala, Ld. Adv.  
For the CoC : Mr. Manish Bhatt, Ld. Sr. Adv. a.w.*



*Mr. Yuvaraj Thakore, Ld. Adv*  
*For the SRA : Mr. Kunal Vaishnav, Ld. Adv*

**ORDER**

**[Per: Bench]**

1. This application is filed by the Resolution Professional of E-Complex Private Limited (Corporate Debtor) under Section 30(6) r.w. 31 of the Insolvency and Bankruptcy Code, 2016 (“Code”) seeking the following prayers:
  - A. *Pass an order approving the resolution Plan submitted by Invent Assets Securitization & Reconstruction Private Limited duly approved by the Committee of Creditors in accordance with Section 31(1) of the IBC, 2016;*
  - B. *Pass an order directing that in accordance with Section 31(1) of the code, the approved Resolution Plan shall be binding on all Stakeholders of the Corporate Debtor; and/or*
  - C. *Pass any such order or other further relief as the Hon’ble Tribunal deems fit and proper in the interest of justice.*
2. It is stated that this Tribunal vide its order dated 09.12.2020 admitted Company Petition No. 563 of 2018 filed by one M/s. A.P. Securitas Pvt. Ltd., under Section 9 of the Code and the Applicant herein was appointed the Interim Resolution Professional (“IRP”) of the Corporate Debtor.



3. It is submitted by the Applicant that in compliance with Section 13, 15 and other relevant provisions of the Code read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 made a public announcement dated 19.12.2020 in Business Standard (English newspaper), Divya Bhaskar (Rajkot), Gujarat Samachar (Gujarati newspaper) and Sandesh (Bhavnagar), and also issued a public announcement dated 31.12.2020 in Business Standard (Mumbai Edition) regarding initiation of the CIRP against the Corporate Debtor thereby inviting claims from various class of creditors of the Corporate Debtor.
4. Post receipts of the claims, the Committee of Creditors (“CoC”) was formed and thereafter various meetings were held.
5. It is stated that pursuant to the discussion in the 3<sup>rd</sup> and 4<sup>th</sup> CoC meetings and the subsequent finalization of eligibility criteria as per Section 25(h) of the Code and regulations made thereunder, the Applicant invited Expression of Interest (“EoI”) in Form-G on 17.05.2021 with the last date of submission of EoI as 27.05.2021.





6. It is stated that the Applicant apprised the CoC in its 9<sup>th</sup> meeting held on 28.05.2021 regarding various inquiries sought by the Prospective Resolution Applicants (“PRAs”) about the submission of EoI and request to extend the timeline for submission of EoI due to Covid-19 pandemic. Accordingly, the CoC resolved to extend the period of submission of EoI till 11.06.2021. Notice for extension of period of submission of EoI was published by the Applicant on 01.06.2021 which is placed at **Annexure-C** of the Application.
7. It is stated that the Applicant published a provisional list of PRAs on 14.06.2021 and final list on 18.06.2021 and the same was shared with the CoC members. Request for Resolution Plan (“**RFRP**”) along with the Information Memorandum and the Evaluation Matrix was issued on 18.06.2021.
8. It is stated that the Applicant received only 1 Resolution Plan within the timeline i.e. before 08.07.2021. Thereafter, the Applicant also received e-mails from other PRAs seeking extension of timeline for submission of the Resolution Plan by 21 days. Accordingly, in the next CoC



meeting held on 17.07.2021, the Applicant apprised the CoC that out of 5 PRAs, only 1 PRA had submitted the Resolution Plan and others had requested for time. The CoC considering the requests of PRAs and various factors including the restrictions due to Covid-19, decided to extend the due date for submission of the Resolution Plan till 28.07.2021.

9. It is stated that 14<sup>th</sup> CoC meeting was held on 29.07.2021 wherein the Applicant apprised the CoC that only M/s. GSEC Ltd. had submitted the Resolution Plan on 28.07.2021. The Applicant had again received emails from Jindal Steel & Power Limited (“JSPL”) and Invent Assets Securitization & Reconstruction Pvt. Ltd. (“INVENT”) seeking extension of the due date for submission of Resolution Plan. However, the CoC with 89.81% voting, decided not to extend the due date for submission of Resolution Plans. The PRAs were informed about the decision of CoC but nevertheless they proceeded to submit their Resolution Plans on 04.08.2021 and 05.08.2021 respectively.



10. It is stated that JSPL filed an application bearing IA No. 566 of 2021 seeking direction to CoC and the Applicant to consider the Resolution Plan submitted by them. This Tribunal vide its order dated 23.08.2021 directed the CoC and Applicant to consider the Resolution Plan submitted by JSPL.
11. It is stated that on being apprised of the said order of this Tribunal, the CoC, in the interest of fairness, took the decision to consider the Resolution Plan submitted by INVENT along with JSPL.
12. In the meantime, Citi Securities Pvt. Ltd. ("CITI") filed an application bearing IA No. 532 of 2021 before this Tribunal seeking direction for its inclusion as member of the CoC. This Tribunal vide its order dated 31.08.2021 directed the Applicant to include CITI as a member of the CoC. Accordingly, the CoC was re-constituted as under:

<i>Sr. No.</i>	<i>Name of Creditor</i>	<i>Amount of Claim admitted</i>	<i>% of Voting</i>
1	<i>Citi Securities &amp; Financial Services Pvt. Ltd.</i>	<i>2,06,16,58,500</i>	<i>72.97%</i>
2	<i>Edelweiss Rural and Corporate Services Limited</i>	<i>66,06,74,398</i>	<i>23.38%</i>



3	<i>The Karur Vysya Bank Ltd</i>	1,62,50,439	0.57%
4	<i>Union Bank of India</i>	8,69,34,224	3.08%
Total		2,82,55,17,561	100%

The CoC has been re-constituted during the CIRP due to assignment of loan by the lenders. The final reconstituted CoC members with respective shares are mentioned below:

<i>Sr. No.</i>	<i>Name of Creditor</i>	<i>Voting Share (%)</i>
1.	<i>Citi Securities &amp; Financial Services Pvt. Ltd.</i>	72.97%
2.	<i>RKG Fund-I, A scheme of RKG Trust, category II AIF, managed by RKG Asset Management LLP</i>	23.38%
3.	<i>Prudent ARC LTD</i>	3.65%
Total		100.00%

13. It is stated that the appointment of BDO LLP was done for the purpose of evaluation of the Resolution Plan. On 02.10.2021, the Applicant received the draft evaluation report from BDO LLP which was immediately shared with the CoC and later the final report was also shared by the Applicant with the CoC on 07.10.2021.

14. It is stated that one of the CoC members ie., Citi Securities Pvt. Ltd., holding majority share of 72.97%



after its inclusion in CoC, suggested that since the Resolution Plans were received before the reconstitution of the CoC, the PRAs should be given an opportunity to suitably modify/amend the Resolution Plan, if they wish to do so. Pursuant to the same, the Applicant wrote email to PRAs intimating about the reconstitution of CoC and provided 7 days' time for submission of the modified/revised Resolution Plan on or before 12.10.2021. It was also intimated that in case no response is received, it will be assumed that the existing Resolution Plan submitted by the respective PRA will be taken up for further negotiation.

15. It is stated that JSPL and INVENT modified their Resolution Plan and submitted on 12.10.2021 which was shared by the Applicant with the CoC for their review.
16. It is stated that the 20<sup>th</sup> CoC meeting was held on 18.10.2021 wherein the Applicant asked the CoC members whether the voting on Resolution Plans should be conducted or not, whereby it was concluded by the CoC with 72.97% voting that enough time for consideration of the Resolution Plan submitted by the



PRAs had passed and the same should duly be put to vote. Accordingly, e-voting was initiated on 18.10.2021 and resolved to be kept open for a period of 48 hours considering that 19.10.2021 was a public holiday.

17. It is stated that on further requests, the e-voting was kept open till 21.10.2021 i.e. initiated at 2:30 PM on 18.10.2021 and concluded at 2:30 PM on 21.10.2021 (totalling 72 hours). Copy of relevant mails exchanged between the Applicant and the CoC with regards to the same is annexed as Annexure-L.
18. It is stated that on 21.10.2021, the CoC with 72.97% voting approved the Resolution Plan submitted by INVENT and subsequently present application was filed.
19. It is seen from Form-H that claims which were received and admitted in the CIRP of the Corporate Debtor are as under:

*(Amount in Rs.Crore)*

<i>Sr. No.</i>	<i>Category of Shareholders</i>	<i>Amount claimed</i>	<i>Amount admitted</i>
<i>1</i>	<i>Secured Financial Creditor</i>	<i>91.11</i>	<i>85.89</i>
<i>2</i>	<i>Unsecured Financial Creditor</i>	<i>252.62</i>	<i>206.17</i>



3	Operational Creditor	1.30	1.28
Grand Total		345.03	293.33

20. Key steps of the Resolution Plan are as under: -

“(ii) *This Plan proposes cancellation of the Company’s existing paid-up share capital, without any payout to the existing shareholders of the company. The necessary corporate actions (if any) for cancellation of equity shares shall be taken by the Monitoring Agent.*

(iii) **Infusion of Equity:** *A need-based amount up to a maximum of Rs. 26 lakhs (Indian Rupees twenty six lakhs only) (either in one or more tranches) shall be infused by RA (indirectly or directly, through its subsidiary(ies) / special purpose vehicle(s) / limited liability partnership/ nominees of the Resolution Applicant into the Company from its own funds, in consideration of which, the Monitoring Agency on behalf of the Company will issue to RA or its subsidiary(ies)/ special purpose vehicle(s)/ limited liability partnership/ nominees of the Resolution Applicant, as the case maybe 2,60,000 (two lakh sixty thousand) equity shares of face value of Re. 10 (ten) each (“**RA Equity Subscription Amount**”) constituting 26% (One Hundred Percent) of the issued and paid up equity share capital of the Company post cancellation of entire existing shareholding*

*All the corporate actions (if any) required to achieve the aforesaid events shall be taken by the Monitoring Agent acting on behalf of the Company and infusion of RA Equity Subscription Amount, the Company’s issued and paid up equity share capital shall stand reduced to INR 1 Cr (Indian Rupees One Crore only) held by RA directly or indirectly through subsidiary(ies)/special purpose vehicle/limited liability partnership firms including nominees and verified financial lenders of ECPL in the ratio 26:74 respectively.*

*Extinguishment of shares of Corporate Debtor will be done as per the Applicable Laws and accounting standards including through credit to Capital Reserve Account.*



The equity shareholding of the Corporate Debtor post cancellation of existing capital shall be as follows:

<b>Category of shareholder</b>	<b>% of Equity Shareholding</b>
RA directly or indirectly through subsidiary(ies)/special purpose vehicle/limited liability partnership firms including nominees	26%
Existing Promoter Group	Nil
Verified Financial Creditors	74%
<b>Total Issued, subscribed and Paid up equity Capital</b>	<b>100.00%</b>

- (iv) An outlay of Rs.549.50 Cr (Indian Rupees Five Hundred Forty-Nine Crores Fifty lakh only) is proposed under this Plan (“**Total Financial Outlay**”) in respect of insolvency resolution of the Company, which will comprise of:
- (a) Infusion of RA Equity Subscription Amount of Rs. 26 lakhs (Indian Rupees Twenty-Six Lakh only).
  - (b) An amount of Rs. 49 lakhs (Indian Rupees Forty-Nine lakh only) shall be infused by resolution applicant into the Company from its own funds, credit limits from its banks/ financial institutions, in the form of Investor loan, other debt instruments or quasi equity through relevant instruments, as per the provisions of this Plan.
  - (c) Rs. 3.01 cr (Indian Rupees Three crore one lakh only) to be paid by RA in the form of the RA Funds to be utilized in accordance with this Plan.
  - (d) Rs. 20 cr (Indian Rupees Twenty crore only) to be paid out of the lease rent receivable from Reliance Naval and Engineering Limited (RNEL), considered in CIRP cost of RNEL
  - (e) Rs. 74 lakhs by issue of 7,40,000 equity shares of Rs. 10 each by conversion of debts of verified financial creditors.





*Verified Financial creditors at their options can sell the Equity shares allotted to them to RA (acting directly or through its subsidiary(ies)/affiliates/special purpose vehicle/limited liability partnership firms), at the end of five years from the allotment of such shares. The shares will be bought by RA on a proportionate basis at a total consideration of Rs. 525 cr for 74% of the paid-up equity share capital issued to verified financial creditors, in terms of this plan.*

- (v) *RA had deposited an amount of Rs. 10 lakhs (Indian Rupees Ten lakhs only) in ECPL as Earnest Money Deposit, as set out in the Request for Resolution Plan (RFRP) and same amount had been submitted by the Resolution Applicant during EOI submission. RA has also submitted Rs. 45 lakhs as Earnest Money Deposit (both referred as “**EMD**”). If RA is the Successful Resolution Applicant, then the EMD of Rs. 55 lakhs (Indian Rupees Fifty-Five lakhs) which has already been deposited shall be utilised towards the settlement of Priority Amount and Financial Creditors Settlement Amount (defined in Clause 1.2 (vii) below).*

*If RA is not declared as the Successful Resolution Applicant, then the EMD (i.e. Rs. 55 lakhs) will stand immediately released on and from the date as stipulated in the RFRP, without requiring any action on behalf of the Resolution Applicant.*

*Further, on approval of the Resolution Plan by the CoC in terms of the provisions of IBC, if Resolution Applicant submits the Performance Guarantee by way of direct deposit in a designated bank account (as provided by Resolution Professional), then the said amounts along with any amount generated in the nature of interest therein (calculated from the date of deposit of Performance Guarantee till the date on which the last tranche payment of Financial Creditors is made under this Resolution Plan) shall be accrued and accumulated and shall be adjusted against the payment of last tranche to Financial Creditors under this Resolution Plan.*

- (vi) *Payments under this Plan will be made in the following manner:*



- a) An amount of Rs. 3.76 Cr (Indian Rupees Three Crore seventy-six lakh only) on or before the expiry of 90 days from the Effective Date, towards (i) payment of CIRP Cost remaining unpaid as on the NCLT Approval Date to an extent of Rs. 50 lakhs (Indian Rupees Fifty Lakh only) ("**Estimated CIRP Costs**") in priority to all other payments under this Resolution Plan; (ii) payment of Rs. Nil (Indian Rupees Nil only) towards full and final settlement of Company's workmen & employees as on the Insolvency Commencement Date (including the minimum amount owed to such workmen and/or employees as calculated in terms of Section 30(2)(b) of IBC) amounting to Rs. Nil (Indian Rupees Nil only) proportionately.
- b) On the NCLT Approval Date, the entire Outstanding Verified Financial Debt of Rs. 282.55 Crores (as outstanding on the NCLT Approval Date) shall stand restructured for the Corporate Debtor and the Financial Creditors ("**Restructured Debt**") and the Restructured Debt shall be settled by the Resolution Applicant to the Financial Creditors as per the following clauses.
- c) Rs. 3.01 cr (Indian Rupees Three crore one lakh only), less (i) any unpaid CIRP Costs as on the NCLT Approval Date over and above Estimated CIRP Costs and (ii) any amount paid to the workmen and employees under the Resolution Plan in terms of Section 30(2)(b) of the IBC over and above the proposed payout of Rs. Nil (Indian Rupees Nil only) to the workmen and employees ("**Financial Creditors Settlement Amount**"), towards repayment to the Financial Creditors funded from Funds as mentioned below:
1. An amount of Rs. 3.01 Cr (Indian Rupees Three Crore one lakh only) towards repayment to the Financial Creditors, less (i) any amount by which the aggregate of actual CIRP Costs exceeds the Estimated CIRP Costs; and (ii) any amount paid to the workmen and employees under the Resolution Plan in terms of Section 30(2)(b) of the IBC over and above the proposed payout of Rs. Nil (Indian Rupees Nil only) to the Workmen and



*employees, shall be paid on or before the expiry of 90 (ninety) days from the Effective Date.*

*Notwithstanding anything to the contrary contained herein, the said amount of Rs. 3.01 Cr (Indian Rupees Three crore one lakhs only) shall be deposited in an escrow account (if applicable) with the condition that, such money shall be available for utilization by the Financial Creditors in terms of the Plan, on and after the Effective Date but not later than 90 days from the Effective Date. A detailed escrow agreement (if applicable), in this regard, may be entered into with the Financial Creditors after mutual discussions.*

*It is clarified that actual CIRP Costs over and above the Estimated CIRP Costs and any amount paid to the workmen and employees under the Resolution Plan in terms of Section 30(2)(b) of the IBC over and above the proposed payout of Rs. Nil (Indian Rupees Nil only) to the workmen and employees, shall be met or adjusted out of the Financial Creditor Settlement Amount, in priority to payment of the Financial Creditor Settlement Amount.*

*Upon payment of Rs. 3.01 Cr (Indian Rupees Three crore one lakh only), to be paid by Resolution Applicant to the Financial Creditors, entire Restructured Debt shall stand transferred/assigned by the Financial Creditors to RA ("**Assigned Debt**") along with all underlying security interests including (i) any security interests created exclusively in favour of one or more of the Financial Creditors, (ii) share pledges, (iii) any third party security interests and any other rights and claims in relation to the Outstanding Financial Debt, including all personal guarantees given by third parties in association with the Outstanding Financial Debt of Financial Creditors ("**Personal Guarantees**"), corporate guarantees given by the promoters / third parties in association with Outstanding Financial Debt ("**Corporate Guarantees**") and third party collateral securities given exclusively. Simultaneously, the Debt amounting to Rs. 74 lakhs (Indian Rupees*



*seventy-four lakhs only) will get converted into 7,40,000 Equity Shares of Rs. 10 each representing 74% of the paid-up capital of corporate debtor and will be issued by Corporate Debtor to the Financial Creditors in pro rata manner.*

*RA shall acquire the Assigned Debt of the Corporate Debtor from the Financial Creditors along with all underlying Securities (including Personal Guarantees, Corporate Guarantees and Third-Party Collateral Securities issued for and on behalf of the Corporate Debtor by the Existing Promoter groups or their respective affiliates) and that the Financial Creditors shall simultaneously with the payment of upfront amount of Rs. 3.01 Crores, assign and all the obligors shall be deemed to acknowledge and accept such assignment of rights under the Assigned Debt without any recourse and security documents in favour of RA or any financial institutions designated by RA and relinquish all rights thereof.*

#### **PRIMARY SECURITIES**

*It is further clarified that all the fixed assets including immovable assets and current assets of the company shall be given as securities against the loan given by/assigned to RAs*

*Payment of the Financial Creditors Settlement Amount to the Financial Creditors shall constitute full and final settlement of the Outstanding Financial Debt owed by the Company to the Financial Creditors, and upon assignment of the Assigned Debt to RA, all Security Interest and all other rights and claims (including Personal Guarantees, Third Party Collateral Securities and Corporate Guarantees) in relation to the Outstanding Financial Debt shall stand assigned to RA in the manner set out in Section 1.2 (vii)(c) above and shall automatically stand charged in the manner set out in Section 1.2***Error! Reference source not found.** *below.*

- d) Subject to the determination of the CoC, the Financial Creditors Settlement Amount shall be distributed and will form part of the Resolution Plan.*



- e) *The Resolution Applicant shall be free to deal with new asset/capex to be financed by the new capex lender and created by the Corporate Debtor by way of Capex, including creating exclusive first charge over such assets without seeking any consent/no objection from the CoC/Financial Creditors.*
- f) *New working capital lender, if any will have the exclusive first charge on the future current assets created after the NCLT Approval Date.*
- (vii) *Upon assignment of Assigned Debt along with existing security interests held by the Financial Creditors to RA as specified in Section 1.2(vii)(c), all such security interests including any security interests created exclusively in favour of one or more of the Financial Creditors and any other rights, title, interest and claims hitherto held by the Financial Creditors in relation to the Outstanding Financial Debt shall stand assigned to RA in the manner provided in Section 1.2 (vii)(c) and all such assets (movable and immovable) shall automatically stand charged in favour of RA as security for the Assigned Debt by way of a first charge.*
- (viii) *After completion of all the steps outlined above in this Plan, the shareholding of the Company shall be as follows:*

<b>Category of shareholder</b>	<b>% of Equity Shareholding</b>
RA directly or indirectly through subsidiary(ies)/limited liability partnership firms including nominees*. *For the purpose of implementation of this Plan, such subsidiary(ies)/ limited liability partnership firms, including nominees (if any) shall also remain in compliance with Section 29A of the IBC.	26%
Existing Promoter Group	Nil
Verified Financial Creditors	74%
<b>Total Issued, Subscribed and Paid up equity Capital</b>	<b>100%100%</b>



1.1. **Distribution of the Total Financial Outlay**

The order of priority of distributions using the Total Financial Outlay, is set out below:

<b>Order of priority</b>	<b>Total Financial Outlay</b>	<b>Amount (Rs. Crore)</b>
<i>First</i>	<i>Estimated CIRP Costs</i>	<i>0.50</i>
<i>Second</i>	<i>Actual CIRP Costs over and above Estimated CIRP Costs to be determined in terms of Section 3.2.2.</i>	
<i>Third</i>	<i>Amount payable to workmen and employees in the manner prescribed in Section 1.2(vii) (a).</i>	<i>Nil</i>
<i>Fourth</i>	<i>Amount payable to Operational Creditors (other than workmen and employees) in the manner prescribed in Section 1.2(vii) (a).</i>	<i>0.25</i>
<i>Fifth</i>	<i>Subject to the adjustments in Section 3.2.2, and Section 1.2(vii)(b) and (c), payment of the Financial Creditors Settlement Amount.</i>	<i>3.01</i>
<i>Sixth</i>	<i>Subject to the adjustments in Section 3.2.2, and Section 1.2(vii)(b) and (c), payment of the Financial Creditors against lease rental (considered part of CIRP cost recovery) from RNEL.</i>	<i>20.00</i>
<i>Seventh</i>	<i>Capital expenditure of the Company</i>	<i>Note</i>
<i>Eight</i>	<i>Need based cash flow requirement for operations of corporate debtor / Company i.e. Cash flow required to meet initial startup cost</i>	



<b>Order of priority</b>	<b>Total Financial Outlay</b>	<b>Amount (Rs. Crore)</b>
	<i>Note: The RA does not specify any amount however for Capital expenditure and running the operations post-Handover Date, if any capital is required, RA shall provide the same to the Corporate Debtor in form of ICD upto Rs. 40 Cr approximately</i>	
<b>TOTAL FINANCIAL OUTLAY</b>		<b>23.76</b>

***In addition to the above:***

***Verified Financial creditors at their options can sell the Equity shares allotted to them to RA (acting directly or through its subsidiary(ies)/affiliates/special purpose vehicle/limited liability partnership firms), at the end of five years from the allotment of such shares. The shares will be bought by RA on a proportionate basis at a total consideration of Rs. 525cr for 74% of the paid-up equity share capital issued to verified financial creditors, in terms of this plan.***

21. Perusal of Form-H reveals that the SRA will provide Rs. 3.01 crore upfront payment to the Financial Creditors and infuse equity of Rs. 74 Lakhs by issue of 7,40,000 equity shares of Rs.10/- each by conversion of debts of verified Financial Creditors. The summary of which are as follows:



(Amount in Rs. Crore)

Sr. No.	Particulars of Creditors	Upfront Payment of 3.01	Equity Infusion of 0.74
1.	Secured Creditors [RK Fund-1 Prudent ARC]	0.70 0.11	0.17 0.03
2.	Unsecured Creditors with Voting Rights [Citi Securities & Financial Services Pvt. Ltd.]	2.20	0.54
3.	Unsecured Creditors with no voting rights [SKIL Infrastructure Ltd. (Related Party) SKIL Shipyard Holdings Pvt. Ltd.(Related Party)]	Not Eligible Not Eligible	- -

22. Since SKIL Infrastructure Ltd and SKIL Shipyard Holdings Pvt Ltd., are related parties of the Corporate Debtor, they are not eligible for any payment in this Resolution Plan.

23. It is stated that by the way of Affidavit dated 28.10.2021 an undertaking regarding Performance Security for Resolution Plan by the Resolution Applicant was submitted, which stated that the Earnest Money Deposit (**“EMD”**) money of Rs. 55,00,000/- along with the additional payment of Rs. 2,00,000/- vide RTGS dated 28.10.2021 sums up to a





total amount of Rs. 57,00,000/- (Rupees Fifty-Seven Lakhs Only) is to be considered as Performance Security towards execution of the Resolution Plan as per terms of RFRP.

24. On 16.01.2023 an additional affidavit was filed placing on record the minutes of the 24<sup>th</sup> CoC meeting held on 10.01.2023.
25. It is stated that an application bearing IA No. 133 of 2023 was filed before this Tribunal seeking stay of IA No. 764 of 2021 till final disposal of Civil Appeal No.(s) 5768 of 2022 which was filed by Reliance Naval and Engineering Limited ("**RNEL**") before the Hon'ble Supreme Court seeking the status Quo of the CIRP. During the course of the hearing on 17.01.2023, it was brought to the notice of this Tribunal that Hon'ble Supreme Court has directed to maintain *status quo* relating to CIRP of the Corporate Debtor.
26. Since the Civil Appeal No. 5768 of 2022 filed before Hon'ble Supreme Court was dismissed as withdrawn on 04.03.2023, this Tribunal vide its order dated 01.09.2023 dismissed IA No. 133 of 2023 as infructuous.



27. The matter was heard from time to time and clarifications were sought. From the clarification order dated 19.04.2023., it is seen that the Successful Resolution Applicant (SRA) is an Asset Reconstructions Company (ARC) and is not permitted to carry on any business other than the securitization or asset reconstruction or the business referred to in Section 10(1) of SARFAESI Act, without prior approval of the RBI.
28. An additional affidavit was filed by the RP on 08.05.2023 submitting that the successful Resolution Applicant, Invent, filed an IA no. 1 of 2023 in IA no. 764 of 2021 for substitution of its name as the Resolution Applicant by the name of WestEnd Investment and Finance Consultancy Private Limited ("WestEnd") (Sponsor Company of Invent) in view RBI's circular dated 11.10.2022, published after the date of submission of the Resolution Plan by Invent. The IA 1 of 2023 was withdrawn with the liberty to move appropriate representation before the CoC.
29. The minutes of 25<sup>th</sup> and 26<sup>th</sup> meeting of CoC were filed vide Additional Affidavit on 08.05.2023 under Diary No.



1679. At the 25<sup>th</sup> Meeting of the CoC, it was stated that the CoC had approved the resolution Plan, there is no change in terms of the resolution Plan except the Substitution of “WestEnd”. At the 26<sup>th</sup> Meeting of COC, the CoC had passed the following resolutions:

*... "RESOLVED THAT, the Committee of Creditors of E Complex Private Limited hereby approves the designation of West End Investment and Finance Consultancy Private Limited and its sponsor as nominee of Resolution Applicant Invent Assets Securities & Reconstruction Company Private Limited for the purpose of implementation of the approved Resolution Plan.*

*Resolved further that West End Investment and Finance Consultancy Private Limited ("West End") henceforth be considered as the Resolution Applicant implementing the Resolution Plan approved by the COC in meeting held on October 21, 2021 and filed for Approval by the Hon'ble NCLT, Ahmedabad Bench vide IA no.764 of 2021 dt. October 28, 2021.*

This resolution was approved with 100% majority of the CoC.

30. It is submitted by the Applicant that an Affidavit was filed on 05.06.2023 for taking on record The Modified Resolution Plan. It is mentioned that the Resolution Plan was duly approved by the CoC, and a resolution was passed for the substitution of the name.



31. It is stated that an Affidavit is filed under Diary No. 2395 dated 28.06.2023 to place on record revised Form H and revised distribution to Creditors under the Resolution Plan.

32. It is stated that an affidavit under Diary No. 2668 dated 18.07.2023 was filed placing on record certain subsequent development/clarification which has recently taken place during the 27<sup>th</sup> CoC meeting held on 15<sup>th</sup> July 2023 after the last hearing before this Tribunal on 05.07.2023 as under: -

- a. *The Implementation of Resolution Plan is in no way contingent or dependent on implementation of Resolution Plan of Reliance Naval and Engineering Limited ("**RNEL**").*
- b. *In the event the lease rent of Rs. 20 crore receivable from RNEL are delayed or not received for any reason whatsoever, Resolution Applicant shall infuse the requisite proceeds into the Corporate Debtor to be able to meet the obligation under the Resolution Plan as envisaged under its para 1.1.4(iv)*
- c. *Payment to operational creditors, while Resolution Applicant believes that the Resolution Plan appropriately complies with the requirement of law, the Resolution Applicant shall infuse further additional funds to meet the obligation as may be directed by Hon'ble NCLT.*
- d. *The use/development of the land parcels available with the Corporate Debtor, Resolution Applicant has a detailed plan. It may be noted that, as per the Resolution Plan, the Financial Creditors will hold 74% equity stake in the Corporate Debtor.*



*Resolution Applicant as Successful Resolution Applicant ("SRA") are confident that the said development plan will not only give equity upside to the Financial Creditors, but will also be sufficiently enable SRA to meet the obligation to successfully implement the Resolution Plan.*

- e. Irrespective of the above clarifications, Resolution Applicant has their own financial and execution strengths to infuse requisite funds or otherwise to effectively implement the Resolution Plan.*

33. It is stated that in the same Additional Affidavit dated 18.07.2023, the Successful Resolution Applicant had given undertaking stating that: -

- (a) To infuse Rs. 20 crores into the Corporate Debtor in case of delay or non-recovery of Lease Rent from M/s. Reliance Naval and Engineering Limited "(RNEL")*
- (b) Payment to Operational Creditor as may be directed by Hon'ble NCLT; and*
- (c) Business plan for the development of the freehold land which is not given to RNEL on lease admeasuring 186 Acres and lying infused to sustain the Resolution Plan.*

34. It is stated in an Additional Affidavit filed on 08.08.2023 for placing on record minutes of the 28<sup>th</sup> Meeting of CoC and the background of SRA along with its Net worth. It is reiterated by the SRA (WestEnd) that its Resolution Plan is in no way contingent/ dependent on the implementation of the Resolution Plan of RNEL. Details



and background of “WestEnd” along with its experience in the turnaround of stressed assets is placed on page 5-7 of the said Affidavit.

35. This Tribunal passed the order on 09.08.2023 directing the applicant to file the Tentative Balance Sheet on Implementation of the Plan. In compliance to the above stated order the Applicant filed an Additional Affidavit under diary no. 3312 on 31.08.2023 for placing on record the Tentative Balance Sheet post-approval and implementation of the Resolution Plan.
36. This Tribunal vide its order dated 01.09.2023 directed the RP to file the Request for Resolution Plan (“**RFRP**”) and point out the relevant provisions whereby the Resolution Applicant could be changed after Resolution Plan is approved. RP was also directed to place on record the relevant resolution of CoC, where at the feasibility and viability of the Plan was duly verified by the CoC. Liberty was given RP to hold one more CoC meeting, if it is not clearly recorded in the previous meeting.
37. In compliance of the order dated 01.09.2023 of this Tribunal, an Additional Affidavit was filed on 14.09.2023



under Diary No. 3561 placing on record RFRP and the viability of the Resolution Plan examined by the CoC. Thereafter, at the 29<sup>th</sup> Meeting of CoC held on 12.09.2023, the CoC has examined the feasibility and viability of the Resolution Plan and by exercising its commercial wisdom approved the Resolution Plan by 100% voting.

38. It is stated that this Tribunal vide its order dated 11.10.2023 directed the RP to hold another CoC meeting to pass various issues involved during the process.
39. In compliance of the order of this Tribunal dated 11.10.2023, an Additional Affidavit filed under Diary No. D4197 dated 25.10.2023 placing on record the details on various issues discussed in the 30<sup>th</sup> CoC Meeting held on 20.10.2023. In the said affidavit, it is stated that the Applicant had issued a letter dated 17.10.2023 to the SRA i.e., WestEnd Investment & Finance Consultancy Pvt. Ltd., asking for clarifications required in the matter for Approval of Resolution Plan. The applicant put forth the following for clarification:



1. *"The Resolution Plan mentions payment of Rs 525 Crores after 5 years to the Financial Creditors who will have option to sell their Equity Share and the SRA will buy back 74% Equity Shares.*

*Observation: Please provide time frame of repayment of Rs 525 Crores to the Financial Creditors by the SRA which is not clearly mentioned in the Resolution Plan.*

2. *To confirm that the SRA will not be paid anything for the period of 5 years till the Financial Creditors are paid off fully. Further the Corporate Debtor will have the benefit of the funds until the Financial Creditors are paid fully.*

3. *To confirm that the amount of Rs 525 Crores will not carry any interest until the period of 5 years and also until the option of selling of Equity shares is fully executed by the financial creditors.*

*Further Please confirm that after expiry of 5 years when the payment of Rs 525 Crores becomes due and in case the company is not in position to buy back the shares for Rs 525 Crores then what would be the option available with the Financial Creditors."*

40. It is stated that the SRA vide its Affidavit dated 20.10.2023 gave the clarification/undertaking for the above questions raised by the Resolution Professional are as under:

- a) *The above exit option to the Financial Creditors at the exit price of Rs. 525 Crs is in relation to 7,40,000 Equity Shares to be allotted to the Financial Creditors in terms of our Resolution Plan and each*





*admitted Financial Creditors will be entitled to receive the same in proportion of their respective shareholding.*

*b) In terms of the above provision of the Resolution Plan, in case the financial creditors opt to sell their shares, the same shall be purchased by us on the stipulated date being the date of expiry of five years from the date of allotment of the said shares to the Financial Creditors.*

*c) I submit that as per the letter dated 12/9/2023 (Copy at Annexure "B" hereto) whereby the Successful Resolution Applicant ("SRA") had undertaken and confirmed to the COC that the unsustainable Debt to be taken over by us in terms of our Resolution Plan ("Unsustainable Debt") will be subordinated to the liability towards Financial Creditors for buy back of their shares as per the Resolution Plan and that such unsustainable debt will not be repayable by the Corporate Debtor unless the liability to buy back the shares from Financial Creditors is fully exhausted.*

*d) I submit that notwithstanding the above or anything contrary contained in the Resolution Plan, if any, we hereby further undertake and confirm that the said Unsustainable Debt shall have the following terms and conditions:*

*i. The unsustainable debt shall not carry any interest;*

*ii. The Unsustainable Debt shall not be repayable:*

*1. Unless the liability of the SRA to buy back the shares from Financial Creditors is fully exhausted; or*



2. *Until the expiry of six years from the date of Implementation of the Resolution Plan.*

3. *The same will be paid in 10 equal instalments and the first installment shall commence at the expiry of 7th year from the date of said subordinate debts taken over.*

iii. *Repayment of the said Unsustainable Debt shall be subject to availability of adequate resources with the Company (after exhausting the liability to buy back shares from Financial Creditors as per the Resolution Plan), in the absence whereof the Unsustainable Debt shall be dealt, as may be deemed appropriate, without affecting the interests of the Financial Creditors, including, if so advised by converting it into Shares.*

*I submit that the query raised by the RP on the SRA's ability to meet with the obligation to buy back the said shares upon exercise of the option by the Financial Creditors on the date of expiry of 5 years when such the payment of Rs. 525 Crores becomes due, we draw your kind attention to the details furnished vide our letter dated August 4, 2023, demonstrating our financial and execution strength to infuse requisite funds as may be required for effective and timely implementation of the Resolution Plan including meeting our obligation to buy back equity shareholding from the Financial Creditors at their option. In this connection, we further submit as under:*



- a) *SRA is a Non-Banking Financial Company registered with the Reserve Bank of India. Our Company is also Sponsor of an Asset Reconstruction Company Namely Invent Assets Securitisation and Reconstruction Private Limited ("Invent") which handles net Asset Under Management (AUM) in excess of Rs. 3,900 Cr and has net worth of Rs. 148 Crore as on March 31, 2022.*
- b) *SRA Group had acquired assets (Principal gross outstanding) in excess of Rs. 20,000 crores and by focusing on Medium and Small enterprises, we are already amongst the leading players in this segment in the country. Our Group has concluded successful turnaround and reconstruction for Companies like Garden Silk Mills Ltd, Kiri Industries Ltd, etc.*
- c) *SRA's robust team of professionals is widely acknowledged for its experience in debt/business restructuring as well as strong executional capabilities. We identify case-specific appropriate resolution strategy to unlock maximum value from financially stressed or distressed companies for the benefit of all stake holders. Our primary focus has been on the revival and turnaround of potentially viable industrial enterprises.*
- d) *We have successfully managed to drive growth of our group companies by infusion of capital for their businesses as and when required. Our future plans include further expansion beyond the current sectoral verticals.*
- e) *Needless to add, considering our core competence as a credible regulated financial institution, we will have the ability to meet all our*



*obligations through our own internal resources including future earnings apart from our financial standing to be able to raise requisite external funds, as may be required including to fully honor our commitments in the event Financial Creditors opt to exercise the said buy-back option.*

- f) *It is also to be noted that as per our Resolution Plan, the Financial Creditors shall own the controlling stake with 74% equity shareholding in the Corporate Debtor and shall not only control and monitor but will also avail the benefit of future growth and development plans of the Company. With significant controlling majority shareholding in the Corporate Debtor, the Financial Creditors will have the ability to take all decisions. We as SRA are committed to abide by the decisions of the COC and implement the Resolution Plan in letter and spirit.*

41. It is stated by the applicant that after a discussion between the CoC members, the CoC asked the RP to put forth a Resolution authorizing the RP to amend RFRP (Request for Resolution Plan) and to include substitution/replacement of the Resolution Applicant. The RP put forth the Resolution for voting by mail on 20.10.2023 to the COC members. The Resolution was passed by 100% assent. Copy of the Resolutions passed



through email is placed at "**ANNEXURE-D**" of the said affidavit.

42. The RP has filed updated Form-H under inward Diary No. D-4643 dated 24.11.2023. A perusal of the Form-H reveals that the Fair Value of the Corporate Debtor is Rs. 1048,89,00,000/- and the Liquidation Value is Rs.255,58,00,000/-. It is also seen that total 30 CoC meetings were held in the matter.
43. The distribution of the various amounts under the Resolution Plan is provided in the Form-H, which is reproduced below: -

7. The amounts provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rs. Crores)

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	9.90	9.50	N.A.	N.A.

*(Circular stamp: Chartered Accountant, Membership No. 112A-021 RP, 27/2014, 10311)*



		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan				
		(ii) who voted in favour of the resolution plan	81.21	76.39	148.35	
		Total[(a) + (b)]	91.11	85.89	148.35	
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	0	0	N.A.	N.A.
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	0	0	N.A.	N.A.
		(ii) who voted in favour of the resolution plan	252.62	206.17	400.40	
		Total[(a) + (b)]	343.73	292.06	548.75	
3	Operational Creditors	(a) Related Party of Corporate Debtor	0	0	N.A.	N.A.
		(b) Other than (a) above:				
		(i) Government	0.21	0.18	0.04	
		(ii) Workmen		0	0	
		(iii) Employees		0	0	
			1.09	1.09	0.21	



		(iv) .....				
		Total[(a) + (b)]	1.30	1.28	0.25	
4	Other debts and dues					
	Grand Total		345.03	293.33	549.00	


\*If there are sub-categories in a category, please add rows for each sub-category.  
 # Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.]



44. The compliances of the Resolution Plan are stated to be as under: -

9. The compliance of the Resolution Plan is as under:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?		Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Undertaking submitted by PRA and also 29A Certification taken by RP	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	-	Yes
Section 30(2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment to the operational creditors? (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Clause 1, 1.2 Distribution of Total Financial Outlay	Yes Yes Yes Yes







	(d) provides for the management of the affairs of the corporate debtor?		Yes
	(e) provides for the implementation and supervision of the resolution plan?		No
	(f) contravenes any of the provisions of the law for the time being in force?		
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?		Yes Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?		Yes
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	The RP has filed IA with Hon'ble Aa on not within 115 <sup>th</sup> day due to delay in submission report due to COVID-19 lockdown	Yes
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Annex.8 Sr.3	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?		Yes
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code.  (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?		No  NA
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?		Yes  Yes  Yes
38(3)	Whether the resolution plan demonstrates that –		Yes





	(a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?		
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.		The Resolution Applicant informed RP on 27.10.2021 via email that to consider their EMD as Performance Security. The RA signed affidavit dated 28.10.2021 for the same.

45. The interest of existing shareholders has been altered by the Resolution Plan as under:

8. The interests of existing shareholders have been altered by the Resolution plan as under:

Sl. No	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity-Existing Promoter Group	2,17,09,327	-	100%	-
2	Equity- PRA	-	2,60,000	-	26%
3	Verified Financial Creditors	-	7,40,000	-	74%
4	Preference		10,00,000	-	100%



46. Relief and Concession:

<b>Sr. No.</b>	<b>Particulars</b>	<b>Concessions / Reliefs / Directions sought</b>	<b>Orders thereon</b>
1	<i>A reasonable period of time and Waiving/Cancelling of fees, cost or any other amount prior NCLT approval date by Govt. Authorities.</i>	<i>The relevant Governmental Authorities will provide a reasonable period of time after the NCLT Approval Date (as available under applicable laws or 12 (Twelve) months following the NCLT Approval Date, whichever is longer) in order for the Resolution Applicant to assess the status of licenses and approvals required by the Company and to procure that the Company applies for the same and for regularizing any non-compliances under the Applicable Law existing prior to the NCLT Approval Date. Further, at the time of renewal or fresh application for licenses and approvals, the Governmental Authorities will not charge any fee, cost, Interest, penalty, fine or any other amount in the same nature pertaining to the period prior to the NCLT Approval Date and such amounts, if any, due shall have been waived off</i>	Granted in terms of objective of clean slate principle.



		<i>or cancelled and the Resolution Applicant shall not be liable to pay any such amounts at the time of renewal or fresh application for licenses and approvals.</i>	
2	Exemption from taxes.	<i>The Central Board of Direct Taxes shall grant an exemption to the Company from the requirement of amounts in respect of taxes (including TDS) being withheld from payments made to the Company for a period of 1 (One) year from the NCLT Approval Date.</i>	This is for respective authorities to grant in view of object of IBC, 2016
3	<i>Annual General Meeting</i>	<i>Registrar of Companies, Ministry of Corporate Affairs, and/or the NCLT to grant approval for holding annual general meeting of the Company</i>	Granted
4	<i>Reconstitution of Board of Directors of the Company</i>	<i>Registrar of companies to take on record such appointments and resignations of directors of the Company</i>	Granted
5	<i>Reduction/cancellation of shares</i>	<i>Ministry of Corporate Affairs and NCLT shall permit the extinguishment of existing Shareholding in the manner contemplated in this Plan, by exempting compliance with the</i>	Granted



		<i>requirements set out in Companies Act, 2013.</i>	
6	<i>Levy of stamp duty and fees</i>	<i>The Department of Registration and Stamps of the relevant states and the Ministry of Corporate Affairs shall exempt the Resolution Applicant and the Company, from the levy of stamp duty and fees applicable in relation to this Plan and their Implementation.</i>	Granted
7	<i>Relief, Concession, or Dispensation for the implementation of the transactions contemplated under the Plan.</i>	<i>All Governmental Authorities shall grant any relief, concession, or dispensation as may be required for implementation of the transactions contemplated under the Plan in accordance with its terms and conditions including any stamp duty payable in respect of any documents executed in relation to such transactions.</i>	Granted as per Clause (6) above.
8	<i>Prior approval of the counterparties shall not be required to be obtained for change in control /constitution of the Company</i>	<i>Pursuant to the terms of this Plan and such counterparties: (i) shall waive all objections / liabilities of the Company arising out of the initiation of corporate insolvency resolution/bankruptcy proceedings involving the Company, appointment of the Resolution Professional and in</i>	Granted



		<i>respect of the Implementation of this Plan; (ii) shall waive the right to suspend these agreements due to any previous delays / failures by the Company to make payments under such agreements; and (iii) shall not terminate the relevant agreements or take any adverse actions against the Company.</i>	
9	<i>Resolution Applicant submitting an undertaking in the manner required by Appendix 5 of the Request for Resolution Plan (RFRP)</i>	<i>The submission of this Plan shall not in any manner prejudice or affect the ability of the Resolution Applicant (or its affiliates) to be a 'resolution applicant' under the IBC in respect of any other person or in respect of any other corporate insolvency resolution process under the IBC.</i>	Granted
10	Termination of previous agreements and arrangements	<i>All agreements/ arrangements between the Company and the persons currently classified as promoter or promoter group (including the Existing Promoter Group). persons acting in concert with promoters, holding companies, subsidiary companies, associate companies, group companies, and/or their</i>	Granted



		<i>respective affiliates/associates, including without limitation the agreements forming a part of the data uploaded in the data room by the Resolution Professional, except the business contracts/agreements which provides the business continuation, shall stand terminated, with no Liability to the Company (including but not limited to with regard to any previous breaches). However, it is clarified that all claims of the Company against such Related Parties (and all Liabilities of such Related Parties towards the Company) shall remain outstanding. Due and payable in accordance with their terms.</i>	
11	<i>Any amendments are notified or exemptions are granted before the NCLT Approval Date</i>	<i>The Resolution Applicant shall be entitled to avail the benefits of such amendments or exemptions, provided that it shall not affect the proposed treatment of any stakeholders as of the date of this Plan. Including in particular: (i) if the RBI permits assignment to residents, of debts owed by corporate debtors to non-</i>	<i>This is for respective authorities to grant in view of object of IBC, 2016</i>



		<i>resident creditors, in terms of resolution plans under the IBC, then this Plan shall be deemed to be amended to the extent that the debts owed by the Company to non-resident creditors will be assigned to RA (without payment of additional amounts as consideration for such assignment).</i>	
12	<i>Regularize all the loan accounts of the Company</i>	<i>The Financial Creditors of the Company shall regularize all the loan accounts of the Company and shall ensure that the assets classification of such loan accounts is "standard" in their books with effect from the Closing Date.</i>	Granted
13	<i>Withdraw all legal proceedings commenced against the Company for the period prior to NCLT Approval Date</i>	<i>All creditors (including the Financial Creditors) of the Company shall withdraw all legal proceedings commenced against the Company for the period prior to NCLT Approval Date, in relation to Claims including proceedings under Section a Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Recovery of Debt and Bankruptcy Act, 1993 and shall</i>	Granted



		<i>get all criminal proceedings quashed, including proceedings under Section 138 of the Negotiable Instruments Act. 1881 immediately after the NCLT Approval Date.</i>	
14	<i>Waived all the procedural requirements in terms of Section 66, Section 42 and other provisions of Companies Act 2013, the NCLT (Procedure for Reduction of Share Capital) Rules, 2016</i>	<i>The approval of this Plan by the NCLT shall be deemed to have waived all the procedural requirements in terms of Section 66, Section 42 and other provisions of Companies Act 2013, the NCLT (Procedure for Reduction of Share Capital) Rules, 2016, and under any other Applicable Laws for extinguishment of existing share capital by way of reduction of share capital and issuance of equity shares to Resolution Applicant.</i>	Granted
15	No initiation of Investigation, actions or proceedings against RA.	<i>The relevant Governmental Authorities shall not initiate any investigations, actions or proceedings against the Resolution Applicant or the new management (upon acquisition of the Company) including the board of directors, in relation to any non-compliance with Applicable Laws by the Company pertaining to any</i>	Granted as per Section 32A of IBC, 2016





		<i>period up to NCLT Approval Date.</i>	
16	Liability which may occur due to the conduct of Ex-Management.	<i>The Resolution Applicant assumes that, in compliance with its duties under Regulation 35A of the CIRP Regulations, the Resolution Professional had determined whether the Company has been subjected to any transactions covered under sections 43, 45, 50 or 66 of the IBC or not and applied to the Adjudicating Authority for seeking appropriate relief. Accordingly, though the Resolution Applicant reserve its right to institute any investigation pertaining to any transaction(s) carried out by the ex-management of the Company or to file appropriate applications before the court/tribunal of competent jurisdiction, the Resolution Applicant and its officers, directors, employees and the new management of the Company shall never be liable/responsible for any such transactions carried out by the ex-management of the Company. And in the event,</i>	Only application filed till date of approval of this Plan will be considered in terms of the approval of the CoC.



		<i>any application filed by the Resolution Professional under Section 43 to 51 or 66 of the IBC, continues even after NCLT Approval Date, then the related costs shall be paid from the cash flows of the Company. In case, there are no sufficient cash flows in the Corporate Debtor, then the Resolution Applicant shall contribute to the remaining costs amount payable in relation to the legal proceedings. It is further clarified that, the proceeds arising out of the aforementioned litigations shall be to the sole benefit of the Corporate Debtor/Resolution Applicant and the COC or any other Creditor will not have any right over such proceeds.</i>	
17	<i>All assets of the company to remain vested with the company</i>	<i>All assets (including properties, whether freehold, leasehold, or license basis) of the Company shall continue to remain vested in the Company free and clear from all encumbrances, except such charges and encumbrances, which will be created pursuant to the terms of this Resolution Plan.</i>	Granted



18	<i>All domain names, servers available for the use of the Company</i>	<i>All domain names, servers, being currently used by the Company to the extent not owned shall continue to be available for use by the Company for a period of 6 months from the NCLT Approval Date.</i>	Granted
19	<i>Relief from payment of stamp duty and applicable fees</i>	<i>Ministry of Corporate Affairs/Registrar of Companies, to grant relief from payment of stamp duty and applicable fees (including fees payable to the jurisdictional Registrar of Companies) for extinguishment of existing shares, any increase in authorised share capital, issuance of shares in terms of this Resolution Plan.</i>	Denied

47. The IA 44No.755 of 2021 is filed under section 43,44,45,50, and 66 of IBC, 2016 is pending before this Hon'ble Tribunal. In view of the clause 9.1.16 of the Modified Resolution Plan filed vide Additional Affidavit dated 05.06.2023 under Diary No. D1973 I is seen that in the event of any application filed by the Resolution Professional under section 43 to 51 & 66 of the IBC,



continues even after the approval date given by this Tribunal, then the related costs shall be paid from the cash flows of the Company. It is further clarified that, the proceeds arising out of the aforementioned litigations shall be to the sole benefit of the Corporate Debtor/Resolution Applicant and the CoC or any other Creditor will not have any right over such proceeds.

48. The Resolution Plan provides for the replacement of exiting Board of Corporate Debtor by Investors nominees on the Board to manage the Company. Investor shall identify and appoint a suitable professional to manage the affairs of the company on a day-to-day basis, with the support of key managerial personnel of the company and with guidance from the Board of Directors.
49. The Implementation and Monitoring Committee shall supervise the implementation of the Resolution Plan with the help of the newly constituted board till the implementation of the proposed transaction under the Resolution Plan i.e. payment of the committed cash payment amount to the Secured Financial Creditor (Lenders). The Committee shall include a total of 3



members comprising of One from CoC member, having the most Shares, One from Resolution Applicant/Representative of Resolution Applicant, and Resolution Professional. The Resolution Professional shall be the Chairperson of the IMC and his fee be decided in consultation with the members of the IMC.

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

- I. It is seen from Form – H that the Liquidation value of the Corporate Debtor is arrived at Rs.2,55,58,00,000/- and the corresponding Fair value is arrived at Rs.10,48,89,00,000/- The Resolution Plan is for an amount of Rs.5,49,50,00,000/-.
- II. Further, it is seen from Form – H, that presently Application under 66 of IBC, 2016 in the present matter is pending on the file of this Tribunal.
- III. Our attention was also drawn to the judgment by the Hon’ble NCLAT in the matter of **“Puissant Towers India Pvt. Ltd. vs. Neueon Towers Limited” (supra)** in Company Appeal (AT) (CH) (Ins) No. 181/2022 dated 12.06.2023, deem it at reproduced to para 9 to



12 of the said order of the said judgment of Hon'ble NCLAT.

*9. Without going into the aspect of whether RBI ought to be 'impleaded' or not, this Tribunal finds it relevant to place reliance on the submissions of the Learned Counsel regarding whether prior approval of RBI is required for participating as a Resolution Co-Applicant under the Code. It is submitted in Para 4 of the Notes of Submissions that ARC does not require prior approval of RBI for participating as a Resolution Co-Applicant. The relevant Paragraph is reproduced as herein:*

*"It is further submitted that an ARC does not require prior approval of RBI for participating as a 'resolution co-applicant' under IBC provided any of the activities undertaken by the ARC as part of the resolution plan submitted by it is not prohibited under SARFAESI Act. Hence, prima facie, when an ARC is a resolution "co-applicant", as is in the instant case, RBI's prior approval is not always required. Thus, there is no need to make RBI a party in the present appeal."*

*10. It is significant to mention that Section 238 of the Code, will prevail over any of the provisions of the SARFAESI Act, 2002, if it is inconsistent with any of the Provisions of the 'I&B Code, 2016' and therefore the Adjudicating Authority ought not to have placed reliance on Section 10(2) of the SARFAESI Act, 2002. It is also pertinent to mention that the CoC has approved the Resolution Plan by the majority of 98.70% in its 27th meeting, held on 19/10/2020. The Hon'ble Supreme Court in a IBC Laws| [www.ibclaw.in](http://www.ibclaw.in) 25.10.23 Page: 6*



*Catena of Judgments has held that the commercial wisdom of the CoC is non-justifiable and in the instant case, we do not see any material irregularity, under Section 30(2) of the 'IBC Code, 2016'.*

*11. Keeping in view, the clarification given by the Counsel for RBI that the 'prior permission' is not required, this 'Tribunal' is of the considered view that the Adjudicating Authority ought not to have rejected the Resolution Plan, more so, when the principal objective of the Code is that 'revival of the Corporate Debtor and Resolution'. Liquidation ought to be the last resort, keeping in view the scope and spirit of the Code. 12. For all the aforementioned reasons, this Company Appeal (AT) (CH) (Ins) No. 181/2022 is allowed and the Order of the Adjudicating Authority directing 'Liquidation' is set aside and the matter is remanded to the Adjudicating Authority for approval of the Resolution Plan under Section 31(1) of the IBC Code, 2016. As precious time has lapsed and the IA is of the year 2020, it is hoped and requested that the Adjudicating Authority shall decide the matter of approval of Resolution Plan within 'one week' from the date of this Order. All parties shall appear before the Adjudicating Authority on 14/06/2023. No further 'Notice' is required in this matter. Connected pending Interlocutory Applications, if any, are 'closed'.*

IV. In the present matter the liquidation value of the Corporate Debtor is Rs. 2,55,58,00,000/- and the approved resolution plan provides for payment of Rs.5,49,50,00,000/-. The liquidation value is higher



as compared to approved plan value. Therefore, this Adjudicating Authority relies on the decision in the matter of **Maharashtra Seamless Limited Vs. Padmanabhan Venkatesh & Ors. (Civil Appeal No. 4242 of 2019)** wherein in para 26 it is held as follows:

*“26. No provision in the Code or Regulations has been brought to our notice under which the bid of any Resolution Applicant has to match liquidation value arrived at in the manner provided in Clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.”*

V. 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 Judgment of 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 follows;

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





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

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

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



VII. Further the 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 follows;

*“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)*

VIII. Also, the Supreme Court of India 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)*



IX. The 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 exposited by this Court.*



- X. The Hon'ble Supreme Court in the case of **Ramkrishna Forgings Limited vs. Ravindra Loonkar, Resolution Professional of ACIL Limited & Anr in Civil Appeal No. 1527 of 2022** also has reiterated that CoC wisdom is supreme.
- XI. In consideration of all judgments of Hon'ble Supreme Court, this Tribunal has referred the matters back to the CoC for deciding the various commercial aspects which in terms of the above judgment are the sole discretion of the CoC. The CoC with requisite majority has approved the various amendments to the plan and has ultimately voted in the 30<sup>th</sup> CoC meeting for the approval of the plan with requisite majority.
- XII. Thus, from the catena of judgments rendered by the 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.

- XIII. 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.
- XIV. 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.

- XV. The Resolution Plan in question 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.
- XVI. 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 Bank Guarantee*) as on the said date would stand automatically forfeited, without any recourse to this Tribunal.
- XVII. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
- XVIII. Liberty is hereby granted for moving any Application if required in connection with the implementation of this Resolution Plan.



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

51. **IA/764/AHM/2021** shall stand **disposed of** accordingly.

52. 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-**

**SAMEER KAKAR  
MEMBER (TECHNICAL)**

**-SD-**

**SHAMMI KHAN  
MEMBER (JUDICIAL)**

*Shubhanshu/Rajeev*