



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH**  
**(Exercising powers of Adjudicating Authority under**  
**The Insolvency and Bankruptcy Code, 2016)**

**I.A No. 330/2023**  
**in**  
**CP (IB) No.147/BB/2018**  
**U/s. 31(1) of the IBC, 2016**

**IN THE MATTER OF:**

**Mr. Kondisetty Kumar Dushyantha,**  
Resolution Professional of  
India Brewery & Distillery Private Limited  
Having Office at: #404/2,  
7<sup>th</sup> Main, 9<sup>th</sup> Cross,  
2<sup>nd</sup> Block, Jayanagar  
Bangalore- 560 011.

... Applicant

**In the matter of:**

M/s Unistil Alcoblends Private Limited

... Operational Creditor

Versus

M/s India Brewery & Distillery Private Limited

... Corporate Debtor

**Order delivered on: 15<sup>th</sup> February, 2024**


**Coram:** Hon'ble Shri. K. Biswal, Member (Judicial)  
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the RP : Shri Chandramouli Prabhakar  
Resolution Professional : Shri K. Dushyantha Kumar

**ORDER****Per: Manoj Kumar Dubey, Member (Technical)**

1. This Application is filed by Mr. Kondisetty Kumar Dushyantha (hereinafter referred to as 'Applicant/Resolution Professional') under section 30 (6) read with section 31 and 60(5)(c) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the Regulation) and read with Rule 11 of the National Company Law Tribunal Rules, 2016, seeking approval of the Resolution Plan as approved by the CoC Members.
2. Brief facts of the case are given hereunder:
  - (a) The main Company Petition bearing CP(IB) No. 147/BB/2018 filed by Operational Creditor i.e M/s Unistil Alcoblends Private Limited u/s 9 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP) against M/s India Brewery & Distillery Private Limited was admitted by this Adjudicating Authority, vide order dated 25.02.2021, and the Applicant was appointed as the Interim Resolution Professional and he was directed to take necessary actions in accordance with relevant provisions of the Code and Regulations made thereunder.
  - (b) It is stated that IRP made a public announcement on 12.03.2021 and 23.03.2021 in the prescribed form about the commencement of CIRP against Corporate Debtor in accordance with the provisions of Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Pursuant to Section 21(1) of the Insolvency and Bankruptcy Code, 2016, financial creditors being related parties, the IRP constituted Committee of Creditors consisting of the Operational Creditors with M/s Unistil Alcoblends Private Limited holding 100% of the voting share.
  - (c) It is submitted that the 1<sup>st</sup> meeting of the CoC was held on 02.04.202, in which the continuation of the Applicant, IRP as the Resolution Professional of the Corporate Debtor was approved. Further, as per Regulation 27 of the Insolvency and Bankruptcy Board of India (CIRP) Regulation, 2016, the RP within 7 days of his appointment appointed two Registered Valuers to determine the fair market value and



liquidation value of the Corporate Debtor. The Applicant pursuant to section 29 of the Insolvency and Bankruptcy Code, 2016 has prepared an Information Memorandum and made it available to the Committee of Creditors on 20.04.2021.

- (d) Moreover, the invitation for Expression of Interest in Form –G was issued on 27.06.2021, which was published on the IBBI website and the last date for submission of Expression of Interest was 12.07.2021. The Applicant had received Expression of Interest from Prospective Resolution Applicants namely M/s Greenergy Wind Corporation Private Limited on 12.07.2021 and Mr. Sanjay G Kheny on 12.07.2021. The provisional list of prospective resolution applicants was issued on 14<sup>th</sup> July 2021. Further 5 days' time was provided to raise any objections if any. However, as there was no objection received by the Applicant and the final list of Prospective resolution applicants was issued on 20.07.2021 with Greenergy Wind Corporation Private Limited and Mr. Sanjay G Kheny as the PRAs.
- (e) It is submitted that the 5<sup>th</sup> CoC held on 17.09.2021 approved with 99.99% the Resolution Plan submitted by Greenergy Wind Corporation Private Limited for revival of the Corporate Debtor with rejection from United Spirits Limited with 0.00001% votes. Further, I.A No. 326 of 2021 was filed before this Tribunal for the Approval of the Resolution Plan. However, an Operational Creditor, United Spirits Limited filed its objections to the Resolution Plan seeking it to be set aside and consider their claim under the process. This Tribunal vide order dated 25.11.2022 in I.A No. 307 of 2021 directed the Resolution Professional to admit their claim subject to the outcome of the proceeding which is pending before the Commercial Court. Moreover, Karnataka State Excise Department filed an application vide I.A 51 of 2022 for condoning their delay in filing of claim and this Tribunal vide order dated 24.08.2022 condoned the delay and directed the RP to admit the claim of the Excise Department.
- (f) Moreover, this Tribunal on 03.01.2023 directed the Resolution Professional to consider the Resolution Plan afresh and allowed the RP to withdraw the application for approval of Resolution Plan with liberty



to file fresh application due to the admission of claim of United Spirits Limited in I.A No. 307 of 2021. Subsequently, the 8<sup>th</sup> CoC meeting held on 24.04.2023 approved the Resolution Plan with 94.58% of the votes favouring the Resolution Plan submitted by Greenergy Wind Corporation Private Limited for revival of the Corporate Debtor. Accordingly, the RP filed this I.A on 11.05.2023 for approval of Resolution Plan approved on 20.04.2023; along with revised Form H, being the compliance certificate as provided under Reg. 39(4) of IBBI (Insolvency Regulation Process for Corporate Persons) Regulations, 2016.

- (g) It is submitted that as per Regulation 35(1) (c ) of the IBBI (CIRP) Regulations, 2016 the fair value and liquidation value of the Corporate debtor is as follows:

S 1 . N o .	Name of the Registered Valuer	Value arrived at		Average	
		Fair Value (in INR)	Liquidation Value (in INR)	Fair Value (in INR)	Liquidation Value (in INR)
1	Mr. S Lakshman Land & Building	3,50,00,000	2,70,00,000	3,38,14,813	2,57,36,250
2	Mr. Inturi Veeraiah Land & Building	3,26,29,625	2,44,72,500		
3	Mr. Chandrashekar Thoolahalli Shetru Plant & Machinery	39,50,000	39,50,000	37,75,250	36,85,238
4	Mr. Aswartha M Plant & Machinery	36,00,500	34,20,475		
5	Ms. Kusumadevi R H Securities & Financial Assets	16,717	16,717	17,042	17,042
6	Mr. Laxminarayana Joisa H	17,366	17,366		



Securities & Financial Assets				
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Fair Value is Rs. 3,76,07,104/-

Liquidation value is Rs. 2,94,38,530/-

- (h) It is submitted that the Resolution Plan approved by the CoC is presented by a Private Limited Company called Greenergy Wind Corporation Private Limited (GWCPL), (hereinafter referred to a Resolution Applicant) which is promoted by The Golden group which is operationally located in the state of Karnataka. It is submitted that the Successful Resolution Applicant is an independent power producer in Karnataka.
- (i) Further, as per the Resolution Plan submitted, the total payout towards settlement of CIRP costs and claims of creditors is as below:


Cost Head	Claim Amount Admitted (INR)	Proposed Amount (INR)	% Wise payment as compared to the admitted claims
CIRP Cost	1,06,43,009.00	1,06,43,009.00 CIRP expenses up to 12.05.2023 (including RP Fees) shall be paid on actual basis. *	100%
Secured Creditors (Employees Provident Fund Organisation and State Excise Department Bidar District) Secured as per Rainbow paper judgment.	88,26,755.00	88,26,755.00	100%
Operational Creditors	16,96,50,931.00	2,55,30,236.00	15.05%
Unsecured Financial Creditors (Related Party)	4,49,86,149.00	0	0%
<b>TOTAL</b>	<b>23,35,76,113.00</b>	<b>4,50,00,000.00</b>	



- (j) It is submitted that in accordance with Section 30(1) of the Code the successful resolution applicant has submitted an affidavit, dated 20.09.2023 declaring that they are eligible under Section 29A of the Code to submit the Resolution Plan.
- (k) The resolution applicant proposes to pay CIRP Cost in full at actuals and in priority to all other claimants/stakeholders, on actual basis and pay 100% of the admitted claims of Secured Creditor of the corporate Debtor. Further the resolution applicant proposes to pay the Operational Creditors in priority an amount of Rs. 2,55,30,236/- other than the Secured Creditors which amounts to 15.05% of their admitted claims.
- (l) It is submitted that the CoC consist only of Operational Creditors and there are no dissenting Financial Creditors. Further, the Unsecured Financial Creditors shall not be paid any amount under the Resolution Plan as he is a related party to the Corporate Debtor. moreover, with regard to other claimants, since no claim has been received, no amount is reflecting in the books of the Corporate Debtor, no amount is payable in terms of the mandate of Sec 30(4) of the Code.
- (m) It is submitted that the Resolution Applicant proposes to make a total payment of an amount of INR 6.5 Crore under this Resolution Plan. The proposed payment of a total of INR 4.50 Crores shall be deemed to be in full and final settlement of all Claims against the Corporate Debtor (including but not limited to, unpaid CIRP Cost, the Claims of the Financial Creditors, Employees and Workmen, EPFO, Gratuity, Government and Statutory Authorities, and Other Operational Creditors), whether asserted or unasserted, whether admitted or otherwise, crystallized or uncrystallized, known or unknown, secured or unsecured, disputed or undisputed, whether or not set out in the Information Memorandum or the books of accounts or financial statements of the Corporate Debtor. It has been further mentioned that a further amount of Rs. 50 lakhs has been proposed as infusion for working capital requirement and Rs. 1.50 Cr as Capital Expenditure for Implementation of the Resolution Plan.




- (n) It is contended that upon payment in the manner as set out in this Plan, the Corporate Debtor or the Resolution Applicant shall have no liability to make any payments, other than payments specified in this Resolution Plan, to any stakeholder of the Corporate Debtor, including any Creditor, whether they be Financial Creditors, Employees, Workmen, Government and Statutory Authorities, Other Operational Creditors, shareholders or any other stakeholder, and all liabilities of the Corporate Debtor or the Resolution Applicants, towards the Creditors and other stakeholders, shall be deemed to be settled at NIL amount and extinguished.
- (o) It is submitted that the Resolution Plan provides for the management of the affairs of the corporate debtor after approval of the Resolution Plan as follows:
- (i) The existing directors shall vacate their office of directorship from the date of approval of Resolution Plan by the adjudicating authority and the Corporate Debtor shall be managed by the Mr. Syed Fahad (DIN: 01865406) and Mr. Syed Mustafa Kamal Pasha (DIN: 01829374) directors whose appointment shall be effective from the date of approval of Resolution Plan by the adjudicating authority.
  - (ii) The entire existing subscribed and paid-up share capital of the Corporate Debtor as on Approval Date shall be cancelled and extinguished without any payment to existing shareholders (“Capital Reduction”). Post extinguishing and cancelling the existing shareholding, the Resolution Applicant shall hold 100% share capital of the Corporate Debtor by subscribing to fresh equity of Rs.1,00,00,000.00 proposed to be issued as per the Resolution Plan. The nature of the remaining amount of consideration shall be decided post approval of this plan.
  - (iii) The resolution applicant shall form monitoring committee which shall act as supervisor for monitoring of the implementation of Resolution Plan for a period of 360 days from the date of approval of the NCLT order. The monitoring committee shall comprise of (a) Resolution Professional (b) One member from the



team of Resolution Applicant (c) One member from the Committee of Creditor.

- (p) It is submitted that in accordance with Section 30(2)(e) of the Code the Resolution Plan does not contravene any of the provisions of the law for the time being in force.
- (q) It is submitted that the Resolution Plan provides that operational creditors will be paid in priority over the financial creditors in accordance with Regulation 38(1)(a) and further there are no financial creditors who did not vote in favour of the Resolution Plan.
- (r) Further, the plan deals with the interest of the stakeholders, including financial creditors and operational creditors of the corporate debtor in accordance with Regulation 38(1A). The Resolution Plan confirms that neither the Resolution Applicant nor any of its related parties have failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past in accordance with Regulation 38 (1B).
- (s) It is submitted that the Resolution Plan provides that the term of the plan shall be 360 days from date of receipt of order from this Tribunal and further the Resolution Plan provides for the implementation schedule in accordance with Regulation 38(2)(a).
- (t) The Resolution Plan provides for the management and control of the business of the corporate debtor during its term in accordance with Regulation 38(2)(b). Further, the Resolution Plan provides for adequate means for supervising its implementation through appointing of an insolvency professional as a monitoring professional and the composition of the MCIRP in accordance with Regulation 38(2)(c).
- (u) It is submitted that the Resolution Plan, in accordance with Regulation 38(3), demonstrates that it (a) 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; and (e) the resolution applicant has the capability to implement the Resolution Plan.
- (v) It is submitted that the CoC has passed a favourable resolution with 94.58% of the voting share approving the Resolution Plan in the 8<sup>th</sup>





meeting of the CoC and as such, hence the requirements of Section 30(4) of Insolvency and Bankruptcy Code, 2016 have been complied with.

(w) It is submitted that the period of completion of the CIRP of the Corporate Debtor has not expired and as such the present Application is filed within time. Further, all requirements under the Insolvency and Bankruptcy Code, 2016 and The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been duly complied with, and that the Resolution Plan may be approved in accordance with law. Moreover, in accordance with Regulation 36B(4A) of the CIRP Regulations, the Resolution Applicant, vide compliance memo filed on 10.07.2023 has furnished the performance security of Rs. 10,00,000/- that expires on 04.07.2024 and can be claimed on or before 04.07.2025.

3. On 23.11.2023 the matter was reserved for orders. However, on perusal of records, it was observed that in the Form-H filed along with the Application, as regards Regulation 38 (1B), that 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, the answer given was 'Yes'. Further, with regard to the distribution of funds to the Operational Creditors the total amount provided in the Plan is stated as Rs. 2,55,30,236/-, the party-wise break-up along with the claim amount and nature of claim for distribution of said amount was not mentioned. Hence the matter was de-reserved on 19.12.2023 for clarification and compliance of the above. The Learned Counsel for the petitioner has filed compliance to the above direction vide diary no. 296 dated 12.01.2024 and the same is taken on record.
4. Heard learned Counsel for the RP and carefully perused the pleadings on record.
5. The Corporate debtor herein, namely, M/s India Brewery & Distillery Private Limited established its production in 1970 and is also engaged in the business of trading in food, beverages and tobacco. CIRP proceedings were initiated against the Corporate Debtor by this Adjudicating Authority, vide order dated 25.02.2021 passed in CP(IB) No. 147/BB/2018. The

present application is filed for approval of the Resolution Plan submitted by Greenergy Wind Corporation Private Limited. The approval has been sought under the provisions of Section 31(1) of the Insolvency and Bankruptcy Code, 2016.

6. Pursuant to the public announcement inviting claims from the creditors of the Corporate Debtor, the Resolution Professional had constituted the COC. The details of the Operational creditors, the distribution of voting share among them and the position of voting for the Resolution Plan is as under (Para 5 of Form H) :-

S. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	United Spirits Limited	89.90%	Voted in Favour
2	Employees Provident Fund Organization EPFO	03.70%	Voted in Favour
3	Karnataka State Excise Department	01.25%	Voted in Favour
4	Unistil Alcoblends Private Limited	05.15%	Voted Against
<b>Total</b>		<b>100.00</b>	

7. The details of stakeholders and the amounts provided for them under the Resolution Plan given in Para No. 7 of Form H. (Rs in Lakhs); along with revised Form H filed on 22.12.2023/12.01.2024

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	NIL	NIL	NIL	NIL
		(b) Other than (a) above:	NIL	NIL	NIL	NIL
		(i) who did not vote in favour of the Resolution Plan				
		(ii) who voted in favour of the Resolution Plan				



		Total[(a) + (b)]	NIL	NIL	NIL	NIL
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	4,49,86,149.00	4,44,55,418.00	NIL	NIL
		(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	NIL	NIL	NIL	NIL
		Total[(a) + (b)]	4,49,86,149.00	4,44,55,418.00	NIL	NIL
3	Operational Creditors	(a) Related Party of Corporate Debtor	NIL	NIL	NIL	NIL
		(b) Other than (a) above (i)Government				
		A. Karnataka State Excise Department (Treated as Secured Pursuant to Rainbow Papers Judgement)	65,99,837.00	65,99,837.00	65,99,837.00	100%
		B. Employees Provident Fund Organization Kalburgi (Treated as Secured Pursuant to Rainbow Papers Judgement)	22,26,918.00	22,26,918.00	22,26,918.00	100%
		(ii)Workmen	NIL	NIL	NIL	NIL
(iii)Employees	NIL	NIL	NIL	NIL		



		(iv)Other operational creditors				
		A. Unistil Alcoblends Private Limited	2,99,40,610.00	91,98,067.00	13,84,188.23	4.62%
		B. United Spirits Limited	16,04,52,864.00	16,04,52,864.00	2,41,46,047.77	15.05%
		Total[(a)+ (b)]	16,04,52,864.00	16,04,52,864.00	2,55,30,236	15.05%
4	Other debts and dues	NIL *	NIL	NIL	NIL	NIL
<b>Grand Total</b>			<b>24,42,06,378.00</b>	<b>22,29,33,104.00</b>	<b>3,43,56,991.00</b>	<b>14.06%</b>

8. The compliance of the Resolution Plan has been given in Para No. 9 of Form H (vide diary no. 296) are as follows:-

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?	Annexure - 26	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?	Annexure - 18	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Annexure- 18	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? (d) provides for the management of the affairs of the corporate debtor? (e) provides for the implementation and supervision of the Resolution Plan? (f) contravenes any of the provisions of the law for the time being in force?	Para VI - VII Para VI - VIII Para X Para XII XII Para III D	Yes Yes Yes Yes No
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?	Para XI Approved by 94.58%	Yes



		Votes	
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Para XII	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?	Para XII	Yes
Regulation 38(1A)	Whether the Resolution Plan includes a statement as to how it has dealt with the interests of all stakeholders?	Para VIII	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?	Para III-F	No
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?	Para XII	Yes
38(3)	Whether the Resolution Plan demonstrates that (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?	Para XI	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Nil	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Annexure - 21	

9. It is submitted by the Resolution Professional that the COC in its 8<sup>th</sup> meeting held on 24.04.2022 has approved the Resolution Plan with 94.58% voting share and the conditions provided for Section 30 (4) of the Code are satisfied.

10. At this juncture it is necessary to refer to sec 30(2). The Provisions of Section 30(2) of the I&B Code, 2016 are as follows:

*“The resolution professional shall examine each Resolution Plan received by him to confirm that each Resolution Plan –*

*(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the 3 [payment] of other debts of the corporate debtor;*



- (b) *provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-*
- i.) *the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or*
  - ii.) *the amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the Resolution Plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.*

*Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.*

*Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-*

- (i) *where a Resolution Plan has not been approved or rejected by the Adjudicating Authority;*
  - (ii) *where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or*
  - (iii) *where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a Resolution Plan;*
- (c) *provides for the management of the affairs of the Corporate debtor after approval of the Resolution Plan;*
- (d) *The implementation and supervision of the Resolution Plan;*
- (e) *does not contravene any of the provisions of the law for the time being in force*
- (f) *Conforms to such other requirements as may be specified by the Board.”*

11. The compliance of Section 30(2) of the Code is given in Para No.09 of Form-H (supra). The same is being further examined as under:



- a. **Section 30(2)(a):** The Resolution Plan in Point VI provides for the payment of Insolvency resolution process costs. An amount of Rs. 1,06,43,009.00/- is admitted as the CIRP Cost ( CIRP Cost up to 12.05.2023 including RP Fees of Rs. 1,06,43,009/- shall be paid on actual basis (estimated conclusion date). Beyond 12.05.2023 the RP foregoes his fee and only the CIRP Cost on maintenance of factory and necessary expenses shall be paid out of the amount proposed on pro rata basis from all creditors.) and the proposed amount in the Resolution Plan for CIRP cost is Rs. 1,06,43,009.00/- (CIRP expenses up to 12.05.2023 (including RP Fees) shall be paid on actual basis. The Resolution Plan proposed 100% of the settlement of the CIRP Cost.
- b. **Section 30(2)(b ):** The Resolution Plan in Point VI provides for the following settlement:

<b>Cost Head</b>	<b>Claim Amount Admitted (INR)</b>	<b>Proposed Amount (INR)</b>	<b>% Wise payment as compared to the admitted claims</b>
CIRP Cost*	1,06,43,009.00	1,06,43,009.00 CIRP expenses up to 12.05.2023 (including RP Fees) shall be paid on actual basis. *	100%
Secured Creditors	88,26,755.00	88,26,755.00	100%
Operational Creditors**	16,96,50,931.00	2,55,30,236.00	15.05%
Unsecured Financial Creditors (Related Party)	4,49,86,149.00	0	0%
<b>TOTAL</b>	<b>23,35,76,113.00</b>	<b>4,50,00,000.00</b>	



- c. **Section 30 (2)(c)** : Resolution Plan Para XII deals with the management and control during the term of Resolution Plan it states that, the existing directors shall vacate their office of directorship from the date of approval of Resolution Plan by the adjudicating authority and the corporate debtor shall be managed by Mr. Syed Fahad and Mr. Syed Mustafa Kamal Pasha, directors whose appointment shall be effective from the date of approval of Resolution Plan by the adjudicating authority.
- d. **Section 30(2)(d)**: The Resolution Plan Para XII deals with implementation and supervision of the Resolution Plan. The resolution applicant shall form monitoring committee which shall act as supervisor for monitoring of the implementation of Resolution Plan for a period of 360 days from the date of approval of NCLT order.
- Section 30 (2)(e)** : The Resolution Applicant declares that the Resolution Plan does not contravene any of the provisions of the Law for the time being in force.
- e. **Section 30 (2)(f)**: The Insolvency and Bankruptcy Board of India has notified the requirements under Regulation 38 of Insolvency and Bankruptcy Board of India (Insolvency resolution process for corporate persons) Regulations, 2016. It is submitted that Resolution Plan complied with all the regulation provided under the Code. The compliance thereof is stated in subsequent paragraphs:
- (1) Regulation 38 (1)**: As per Regulation 38 (1) of the insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the amount due to the operational creditors under the Resolution Plan has been given priority in payment over financial creditors. It is submitted by the Applicant that per the terms of the Resolution Plan (Point XII), the amount due to the Operational Creditors shall be given priority in payment over financial creditors.
- (2) Regulation 38 (1A)**: It is submitted that the Resolution Applicant has considered the interest of all the stakeholders and accordingly has proposed to make payment in the following manner to the stakeholders.





Type of Stakeholder	Amount of debt in INR	Proposed repayment Amount in INR	Proposed repayment as % to the amount admitted
CIRP Costs	1,06,43,009.00	1,06,43,009.00	100%
Secured Creditors	88,26,755.00	88,26,755.00	100%
Other Operational Creditors	16,96,50,931.00	2,55,30,236.00	15.05%
Unsecured Financial Creditors (Related Party)	4,49,86,149.00	0.00	0%
<b>Unclaimed outstanding debt</b>	-	-	-
<b>Total Outstanding/Settlement Amount – (A)</b>	<b>23,35,76,113.00</b>	<b>4,50,00,000.00</b>	
Working Capital reserved		50,00,000.00	-
Capital expenditure		1,50,00,000.00	-
<b>Total provisions (B)</b>		<b>2,00,00,000.00</b>	-
<b>TOTAL (A+B)</b>	<b>25,35,76,113.00</b>	<b>6,50,00,000.00</b>	-

**(3) Regulation 38(1B):** As mandated under Regulation 38 (1B) of the CIRP Regulations, the Resolution Applicant confirms that neither the Resolution Applicant nor any of its related parties have failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past.

**(4) Regulation 38(3)(a):** The Resolution Applicant submits that the cause of default has been from mismanagement, lack of working capital and outdated and obsolete machinery which has not been maintained properly.

**(5) Regulation 38(3)(b):** The Business Plan of the Resolution Applicant proposes to invest 1.50 Crore rupees towards repair and maintenance and up gradation of the existing machinery and another 50.00 Lakhs rupees towards working capital

requirements once all liabilities of various existing stakeholders have been cleared.

**(6) Regulation 38(3)(c):** It is submitted that the Monitoring Committee shall be formed which shall act as supervisor for monitoring of the implementation of the Resolution Plan.

**(7) Regulation 38(3)(d):** The time line for approval of Resolution Plan is as follows:

<b>INDICATIVE TIMELINE OF EVENTS</b>		
<b>S. No</b>	<b>Activity</b>	<b>Indicative Timeline</b>
<b>I - Approval Process</b>		
1.	Presentation of Resolution Plan to the COC	To be completed prior to NCLT approval of the Resolution Plan
2.	Approval of Resolution Plan by COC	
3.	Application to the NCLT for approval of the Resolution Plan	
4.	Receipt of order approving the Resolution Plan by the NCLT	T
<b>II - Interim Period</b>		
5.	Intimation to all Financial Creditors and Operational Creditors, existing shareholders and other stakeholders by way of letters	T + 7
<b>INDICATIVE TIMELINE OF EVENTS</b>		
<b>S. No</b>	<b>Activity</b>	<b>Indicative Timeline</b>
6.	Formation and appointment of the Monitoring Committee	T + 7
7.	Reconstitution of Board	T + 45
8.	Writing off of dues in the books of the Corporate Debtor in accordance with the Resolution Plan and Code, as on the NCLT Approval Date, as set out in Chapter / Section " <i>Treatment of Stakeholders</i> "	T + 90
<b>III - Infusion of Funds and Acquisition Actions</b>		
9.	Infusion of Upfront Amount for payment of CIRP costs	T + 30
<b>IV - Settlement of Creditors</b>		
10.	Making of payments to the creditors as per this plan	T + 360



**(8) Regulation 38 (3)(e).** With regard to the capability of the resolution applicant to implement the Resolution Plan, the SRA has submitted its Audited financials for the year 2021-2022 and Provisional Financials for the year 2022-2023. Further it has been submitted that the Resolution applicant has a net worth of 77.37 Crores and can bring requisite funds, as per the net worth certificate attached to the Company Petition (diary No. 5004 dated 27.09.2023)

12. It is observed that in Para 4 of Form H, the resolution professional has certified that the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and does not contravene any of the provisions of the law for the time being in force. Further, the resolution applicant Greenergy Wind Corporation Private Limited has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under Section 29A of the Code to submit Resolution Plan. The content of the said affidavit are in order. The affidavits are attached as Annexure II to diary no 5004 dated 27.09.2023. It is further certified that the Resolution Plan has been approved by the COC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 94.58% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

13. It is further observed that in accordance with regulation 36B(4A), the resolution applicant has furnished the Corporate Guarantee of Rs. 10,00,000/- by way of a Bank Guarantee. And the Guarantee shall remain in force up to 04.07.2024. The said Bank Guarantee is attached as Annexure 2 to diary No 3641 of the Application.

14. It is noted from the plan that the Corporate Debtor shall continue as a going concern.

15. It is further observed from the plan that in Point VII the sources of funds have been given as follows:

Sl. No.	Payments to be made	Amounts Payable	Source of Funds	Description of Proposal
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		(INR)		
1	CIRP Cost	1,06,43,009.00	Net owned funds of Resolution Applicant	100% shall be paid upfront within 30 days of receipt of order of NCLT.  <b><i>CIRP Cost up to 12.05.2023 including RP Fees of Rs. 1,06,43,009/- shall be paid on actual basis (estimated conclusion date). Beyond 12.05.2023 the RP foregoes his fee and only the CIRP Cost on maintenance of factory and necessary expenses shall be paid out of the amount proposed on pro-rata basis from all creditors.</i></b>
2	Secured Creditors	88,26,755.00	Net owned funds of Resolution Applicant	100% of the claim admitted shall be paid within 360 days of receipt of order of NCLT.
3	Other Operational Creditors	2,55,30,236.00	Net owned funds of Resolution Applicant	15.05% of the claim admitted shall be paid within 360 days of receipt of order of NCLT.
5	Working capital reserved for implementation of Resolution Plan and Capital Expenditure	50,00,000.00	Fund infusion by the resolution applicants in the proposed company in the form that shall be agreed at a later date	The Resolution Applicant proposes to invest 50 lakhs towards working capital requirements once all liabilities of various existing stakeholders have been cleared.
6	Capital expenditure	1,50,00,000.00	Fund infusion by the resolution applicants in the form that shall be agreed at a later date	The Resolution Applicant proposes to invest 1.50 crore rupees towards repair and maintenance and up gradation of the existing machinery and another.

16. In respect of reliefs and concessions at Point XIII of the Plan, it is observed that the relief and concessions claimed by the Resolution Applicant by with the approval of the plan, are to be allowed only in accordance with Law, it is clarified that it is not possible for us to issue any blanket direction except to say that the Resolution Applicant may take necessary steps in accordance with Law in respect of the said claims of reliefs and concessions




and the public authorities / government authorities / Taxation department would duly consider the said requests / applications of the Resolution Applicant and take appropriate decision in accordance with Law.

17. Vide order dated 14.09.2023 this Tribunal directed the applicant to file revised affidavit for Section 29A along with proper annexures and proper explanation in a Chart/Tabular Form, explaining the figures of the Source of Fund. Further, also directed to file Due Diligence certificate from a Professional covering the mandatory contents under Regulations 38(3)(b) & 38 (3) (e ) of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 along with audited Balance Sheet for F.Y 31.03.2022 and audited/unaudited for F.Y 31.03.2023 for the SRA; and it was also stated that the net worth of the S.R.A as certified by a C.A showed that it was Rs.77.37 Cr. this certificate has been attached with the C.P. further, it is stated that the R.A has given details of its profile in Part IV of the Plan, which explains its capability to Implement the Plan. It is explain that the R.A is engaged in the Business of Manufacturing of ethanol, bio refineries and operating a 175 MW Power plant. The compliance to the above order was made vide diary No. 5004 dated 27.09.2023 and the same was taken on record.

18. In the circumstance and for the aforesaid reasons, the instant IA bearing **I.A. No.330 of 2023 is allowed** and accordingly, the Resolution Plan dated 27.04.2023 (Annexure 15) submitted by M/s. Greenergy Wind Corporation Private Limited is hereby approved. The Resolution Plan as approved shall be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the Resolution Plan. Under the provisions of section 31(3) of the Code, we also direct as under:

- a. The moratorium imposed vide order dated 25.02.2021 in the main CP shall cease to have effect from the date of communication of this order.

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- b. The resolution professional shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the Board to be recorded on its database.

Further, the Resolution Professional is directed to handover the management, control and all the assets, documents/records in physical and/or digital form to the Resolution Applicant immediately and the resolution professional will cease to be resolution professional.

**-Sd-**

**(MANOJ KUMAR DUBEY)**  
**MEMBER (TECHNICAL)**

**-Sd-**

**(K. BISWAL)**  
**MEMBER (JUDICIAL)**