



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

IA(IBC)/1220(CHE)/2023 in CP(IB)/85(CHE)/2021

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

In the matter of M/s. VME Properties Private Limited

Sapan Mohan Garg
Resolution Professional of
VME Properties Private Limited
D-54, First Floor,
Defence Colony
New Delhi – 110 024

... Applicant

-Versus-

1. Velu Manickam

Director (Power suspended) – VME Properties Pvt. Ltd.
No.33, 16th Main Road, Anna Nagar,
Chennai – 600 040

2. Kannan Manickam

Director (Power suspended) – VME Properties Pvt. Ltd.
No.33, 16th Main Road, Anna Nagar,
Chennai – 600 040

3. Karthik Manickam

Director (Power suspended) – VME Properties Pvt. Ltd.
No.33, 16th Main Road, Anna Nagar,
Chennai – 600 040

4. Janushrut Holdings Private Limited

Successful Resolution Applicant
CIN: U70101TZ2007PTC013569
126, Arts College Road,
Coimbatore – 641 018

... Respondents



Present:

For Applicant

: *Khanishk Khetan, Advocate*

CORAM:

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

Order Pronounced on 20th September 2023

ORDER

(hearing conducted through VC)

Per: SANJIV JAIN, MEMBER (JUDICIAL)

IA(IBC)/1220(CHE)/2023 is an Application filed by the Resolution Professional of the Corporate Debtor viz., **VME Properties Private Limited** (hereinafter referred to as 'Corporate Debtor') under Section 30(6) & 31 of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC, 2016') read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short, 'CIRP Regulation, 2016') seeking relief as follows;

- A. *Allow the instant Application;*
- B. *Approve the Resolution Plan dated 20.03.2023 (along with Addendum dated 24.03.2023 and 28.03.2023) submitted by Janushrut Holdings*



Private Limited in the CIRP of the Corporate Debtor, in terms of Section 31 of the IBC;

- A. *Pass such other or further and other relief(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case;*

**2. CORPORATE INSOLVENCY RESOLUTION PROCESS –
VME PROPERTIES PRIVATE LIMITED**

- 2.1. In an Application filed under Section '7' of the IBC, 2016, by the Financial Creditor, the CIRP in respect of the Corporate Debtor was initiated by this Tribunal vide order dated 02.09.2021 and the Applicant herein was appointed as the IRP. The IRP caused paper publication on 06.09.2021 in accordance with under Section 15 of IBC, 2016 r/w Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- 2.2 It is stated that on 22.09.2021, the Applicant finalized the List of Creditors containing the details of all the claims received and constituted the CoC with Alchemist Assets Reconstruction Company Limited as the sole member with 100% voting share.
- 2.3. It is stated that the 1st meeting of the CoC was convened on 29.09.2021 where the Applicant was appointed as the Resolution Professional. It is stated that after the 1st CoC



meeting, the Applicant received the claim from two other Financial Creditors of the Corporate Debtor, pursuant to which, the Applicant provisionally admitted their claims and reconstituted the CoC on 09.11.2021 as under:

S. No.	NAME OF FINANCIAL CREDITOR	CLAIM AMOUNT (Rs)	VOTING SHARE
1	Alchemist Assets Reconstruction Company Limited	98,00,12,965/-	52.90%
2	Finnish Fund for Industrial Co-operation Limited	60,27,87,635/-	32.54%
3	Dewan Housing and Finance Corporation Limited	26,96,73,968/-	14.56%

2.4. It is stated that the Applicant prepared the Information Memorandum and also appointed two Registered Valuers for conducting the valuation of the assets of the Corporate Debtor and also the transaction auditor for identifying avoidable transactions under Section 43, 45, 50 and 66 of the IBC, 2016.

2.5. It is stated that thereafter, the Applicant convened the 2nd CoC Meeting on 16.11.2021 wherein, the CoC approved the publication of Form G (Expression of Interest) and also the Eligibility Criteria for the Prospective Resolution Applicants.



- 2.6. It is stated that the Applicant published Form G on 20.11.2021, thereby inviting Expression of Interest ("Eol") from Prospective Resolution Applicants (PRAS") with last date for submission of Eol being 06.12.2021.
- 2.7. It is stated that, in pursuance of the same, the Applicant received 4 Eols from the Prospective Resolution Applicants (PRA's). Thereafter the Applicant convened the 3rd CoC Meeting on 13.12.2021, wherein the CoC deferred the approval of the Evaluation Matrix and Request for Resolution Plan ("RFRP").
- 2.8. In the meantime, after obtaining a Legal Opinion and on the basis of information available, the Applicant informed the CoC that the claim of Piramal Capital & Housing Finance Limited (formerly known as Dewan Housing and Finance Corporation Limited) is not a financial debt and hence rejected the claim of Piramal Capital & Housing Finance Limited (formerly known as Dewan Housing and Finance Corporation Limited) and removed it from the CoC. The CoC was accordingly reconstituted.
- 2.9. It is stated that the Applicant thereafter released the final list of PRA's on 24.12.2021. The Applicant convened the 4th CoC Meeting on 04.01.2022, wherein the CoC approved the



Evaluation Matrix and RFRP. It is stated that the last date of submission of resolution plans was fixed as 11.02.2022.

2.10. It is stated that upon request of several PRAs seeking extension of time, the CoC extended the last date of submission of resolution plans to 07.04.2022 in the 5th CoC meeting held on 04.02.2022.

2.11. It is stated that since, CIRP period was ending, the Applicant in the 5 CoC meeting on 04.02.2022 proposed to take an extension of 90 days in the CIRP period. Accordingly, the CoC members resolved, with 100% voting share, to seek an extension of 90 days beyond 180 days ending on 01.03.2022, for completion of CIRP as the Resolution Plans were yet received and it was apprehended that the time period remaining would not be adequate. Further, the CoC in its 5th meeting also approved the resolution to conduct the forensic audit of the books of accounts of Corporate Debtor for the period from 01.03.2013 to 02.09.2021.

2.12. In the meantime, it is stated that the Applicant received 2 Resolution Plans on 07.04.2022 from the following PRAs:

a. RPP Infra Projects Limited

b. Janshrut Holdings Private Limited



2.13. It is stated that the Applicant filed an IA(IBC)/208(CHE)/2022 before this Tribunal seeking extension of 90 days beyond 180 days of the CIRP period. This Tribunal vide its order dated 26.04.2022 extended the CIRP period in respect of the Corporate Debtor till 30.05.2022.

2.14. It is stated that, in the meantime, Piramal Capital & Housing Finance Limited (formerly known as Dewan Housing and Finance Corporation Limited) filed IA(IBC)/11(CHE)/2022 and IA(IBC)/53(CHE)/2022 challenging the rejection of its claim as Financial Creditor, by the Applicant. This Tribunal vide its order dated 25.04.2022 directed the Applicant to maintain *status quo* and not to proceed further with the Resolution Plans received.

2.15. It is stated that the CoC, in its 6th Meeting held on 10.05.2022, resolved to seek exclusion of the period lapsed in adjudication of the extension application. Accordingly, the Applicant on 26.05.2022, filed IA(IBC)/606/CHE/2022 seeking exclusion of 55 days which lapsed during the pendency of IA(IBC)/208/CHE/2022. This Tribunal vide its order dated 08.07.2022 dismissed IA(IBC)/606/CHE/2022.



2.16. Aggrieved by the said Order, the Applicant preferred an appeal before the Hon'ble NCLAT in Company Appeal No. (AT)(CH)Ins) No. 352/2022. On 23.09.2022, and the said Appeal was '*dismissed as withdrawn*' with an observation that the dismissal of the Appeal would not preclude the Applicant to file a fresh application before this Tribunal seeking extension/exclusion, by making necessary averments relating to such extension/exclusion and raising all factual and legal pleas.

2.17. Accordingly, the Applicant filed IA(IBC)/1128(CHE)/2022 before this Tribunal seeking exclusion of 170 days. During the pendency of the above application, this Tribunal heard IA(IBC)/11(CHE)/2022 and IA(IBC)/53(CHE)/2022 which were filed by Piramal Capital & Housing Finance Limited (formerly known as Dewan Housing and Finance Corporation Limited). This Tribunal vide its order dated 17.10.2022, directed the Applicant to reconstitute the CoC by including Piramal Capital & Housing Finance Limited (formerly known as Dewan Housing and Finance Corporation Limited) in the Committee of Creditors. Further the *status quo* order was also vacated.

2.18. Thereafter, this Tribunal, in the IA(IBC)/1128(CHE)/2022 filed by the Applicant seeking exclusion of 170 days, granted liberty to the Applicant to amend the prayers by



way of filing an affidavit, so as to also seek exclusion of the period lapsed during pendency of IA(IBC)/11(CHE)/2022. Accordingly, this Tribunal vide its order dated 09.01.2023, excluded the period as sought for and extended the CIRP period of the Corporate Debtor upto 15.01.2023.

2.19. Since the CIRP period came to an end on 15.01.2023, the Applicant filed an Application for Liquidation of the Corporate Debtor vide Diary No. 3305118003122023 on 24.01.2023 before this Tribunal. In the meantime, another CoC member viz. Alchemist Asset Reconstruction Company Limited preferred an Appeal as against the order dated 09.01.2023 passed by this Tribunal in IA(IBC)/1128(CHE)/2022 before Hon'ble NCLAT. The Hon'ble NCLAT vide its order dated 02.02.2023 set aside the order passed by this Tribunal and remitted back IA(IBC)/1128(CHE)/2022 matter for de-novo adjudication. The Hon'ble NCLAT also directed that till the disposal of IA(IBC)/1128(CHE)/2022, the Liquidation Application filed by the RP shall be '*deferred*'.

2.20. Thereafter, on 02.03.2023, this Tribunal in IA(IBC)/1128(CHE)/2022 and IA(IBC)/318(CHE)/2023 extended the CIRP period in respect of the Corporate Debtor for 30 days from 02.03.2023.



2.21. In the meantime, the 7th CoC meeting was convened on 06.03.2023 and the Resolution Plans of 2 Prospective Resolution Applicants were opened and discussed. It is stated that in the 8th CoC meeting held on 13.03.2023, the CoC decided to request the PRAs to improve their offer and in the 9th CoC meeting held on 28.03.2023, the RP informed the CoC that the revised Resolution Plans from the PRAs have been received.

2.22. It is stated that, after conducting due diligence the RP found that the Resolution Plan of Respondent No. 4 was the only plan which was in compliant with the provisions of the Code, whereas, the other PRA viz. RPP Infra Projects Private Limited did not modify its Resolution Plan to make it in compliant even after giving opportunity to do so. It is stated that the CoC accordingly proceeded to consider the Resolution Plan of Respondent No. 4 which was thereafter placed for voting and approved with 100% majority (through e-voting concluded on 31.03.2023).

2.23. It is stated that the Applicant accordingly issued a Letter of Intent dated 01.04.2023 to the Successful Resolution Applicant viz. the 4th Respondent herein, intimating about the approval of the Resolution Plan by the CoC and seeking fulfilment of the requirements of submission of



performance security in terms of Regulation 36B(4A) of the CIRP Regulations.

2.24. It is stated that the Successful Resolution Applicant viz. the 4th Respondent herein deposited an amount of Rs.1,00,00,000/- (Rupees One Crore only) on 06.04.2023 in the bank account of the Corporate Debtor along with Rs.50,00,000/- (Rupees Fifty Lakhs only) paid as Earnest Money Deposit on 07.04.2022, as required under Regulation 36B(4A) of the CIRP Regulations.

2.25. The Applicant has filed the Compliance Certificate 'Form – H' as required under Regulation 39(4) of the CIRP Regulations, along with this Application.

3. ABOUT THE RESOLUTION PLAN

3.1. The Resolution Plan dated 20.03.2023 (along with Addendum dated 24.03.2023 and 28.03.2023) submitted by the Successful Resolution Applicant, the 4th Respondent herein viz. **Janushrut Holdings Private Limited** provides for the following payments:



Sl. No.	Category of Stakeholder	Name of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
1.	Secured Financial Creditors	Alchemist Assets Reconstruction Company Limited	9800.13	9255.03	739.25	7.99%
		Finnish Fund for Industrial Co-operation Limited (FinnFund)	6275.84	6155.29	491.65	7.99%
		Piramal Capital & Housing Finance Limited	2696.74	2696.74	215.40	7.99%
		Total	18772.71	18107.06	1446.30	7.99%
2	Unsecured Financial Creditors	NIL	-	-	-	-
3	Operational Creditors	Government -- Income Tax Dues	46.34	46.43	3.70	7.99%
		Workmen/Employees	-	-	-	-
		Other Operational Creditors	-	-	-	-
		Total	46.34	46.34	3.70	7.99%
4	Other debts and dues		-	-	-	-
Grand Total			18819.05	18153.40	1450.00	7.99%

3.2. The Resolution Plan provides for payment of the CIRP Costs on actual basis and on priority to any other creditor of the Corporate Debtor on the transfer date, the unpaid CIRP costs, estimated at INR 50.00 lakh. In case of contingencies, the RA is keeping additional INR 15.00 lakh to pay the CIRP cost. In case the CIRP cost exceeds 65 lakhs, then the excess amount shall be adjusted from the resolution amount proposed to Secured Financial Creditors on proportionate basis to their admitted claims. In case the

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CIRP cost is below INR 50 lakhs, the excess amount shall be transferred to the Secured Financial Creditors on proportionate basis to their admitted claims. The treatment of CIRP costs is disclosed in Clause 4.2 of the Resolution Plan.

- 3.3. The Resolution Applicant proposes to pay a sum of Rs.3.70 Lakhs to all Statutory / Government Liabilities in full and final settlement of all their dues/claims. It is clarified that upon approval of this Resolution Plan, all Statutory / Government liabilities relating to the period up to the Transfer Date (whether assessed or not assessed, disputed or undisputed, disclosed or undisclosed, reflected in the Balance Sheet or not) shall stand terminated / waived / written off and extinguished in full and no liability / dues shall be payable by the Corporate Debtor / RA to these creditors / claimants. Operational Creditors related to government liabilities are discussed in clause 4.5.3 of the Resolution Plan.

4. SOURCE OF FUND

- 4.1. The Resolution Applicant seeks to fund the Resolution plan from themselves or through their shareholders and nominees. They will induct an amount of INR 3015.00 Lakh to implement the resolution plan further/ Additional funds



to implement the resolution plan would be inducted by way of equity / Quasi Equity / Debt by the RA (themselves or through their shareholders and nominees) as may be warranted from time to time. In addition to the same, the Source of Funds, at the time of submission of the Resolution Plan are disclosed in clause 4.12 of the Resolution Plan.

5. CAPITAL RESTRUCTURING

- 5.1. The current authorised share capital of the Corporate Debtor is INR 10,00,000 and the issued, subscribed and paid-up share capital is INR 2,00,000. On approval of the Resolution Plan, the entire paid up Equity Share Capital of the company will be cancelled / extinguished / written down to zero and no amount will be paid to the existing shareholders.
- 5.2. The Corporate Debtor will issue and allot equity shares to the Resolution Applicant, and the entire shareholding will be held by the Resolution Applicant/Nominees. The Corporate Debtor can file an order to inform the Registrar of Companies, and the RA will induct an amount of INR 3015.00 lakh to implement the Plan. The RA will induct INR 800.00 lakh upfront on the Transfer Date as equity capital. Capital Restructuring is disclosed in clause 4.11 of the Resolution Plan.



6. IMPLEMENTATION, MANAGEMENT AND SUPERVISION OF THE RESOLUTION PLAN

6.1. The term of the Resolution plan is 6 months from the Transfer Date. The RA proposes to provide for the supervision of the implementation of the Resolution plan in the following phases:

(i) Supervision by Monitoring committee

Monitoring Committee will come into force on the date of approval of Resolution Plan by NCLT. Monitoring Committee shall be constituted by Committee of Creditors in consultation with the Resolution Applicant, which would comprise of one IP (who will be compliant as per section 29A of IB Code), one representative of the RA and one representative from Secured Financial Creditors of the Corporate Debtor. This committee shall continue the operations of the CD till the Transfer Date when control and management of the CD will be handed over to the RA.

(ii) Cost Of Monitoring Committee:

The Cost of the Monitoring Committee would be paid by the RA on actual basis as may be negotiated / settled by mutual consent.

S. Subin *gp*



(iii) Dissolution of the Monitoring Committee:

Upon payment of proposed settlement amounts to the financial creditors of the CD and handing over the possession of assets of CD to RA, as contemplated in this resolution plan, the Monitoring Committee shall issue a Completion Certificate to the CD/ RA, as the case may be and this certificate shall be final in terms of discharge of duties of RA in relation to implementation of the Resolution Plan. Further, upon issuance of the Completion Certificate, the Monitoring Committee shall stand dissolved.

(iv) Management Of Corporate Debtor Post Transfer Date:

Within 30 days from the NCLT Approval date all the existing Directors of the CD shall be deemed to have demitted office and shall stand removed as Directors of the CD and the Resolution Applicant shall appoint two directors on the Board of Directors of CD "Reconstituted Board of Directors of CD" or "Reconstituted BOD" which would consist of two nominees of RA and accordingly, the business of CD shall be carried on by the new management. It is clarified that Monitoring Committee which will be formed on the NCLT Approval Date will supervise the operations of the CD from the NCLT Approval Date till its Dissolution as per clause 6.4 above.

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The Registrar of the Companies will remove the names of the existing Directors of the CD on presentation of the order of the Adjudicating Authority approving this Resolution Plan without any further act or deed on behalf of the existing Directors and permit the authorised Representative of the Reconstituted Board of Directors to file/upload the documents relating to their appointment as Directors.

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

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

CLAUSE OF S.30(2)	REQUIREMENT	HOW DEALT WITH IN THE PLAN
(a)	Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	Clause 4.2 at page 13 of the Resolution Plan.
(b)	Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53; or Plan must provide for repayment of debts of OCs in such manner as may be	Clause 4.5 at Page 15 of the Resolution Plan, along with the Addendum dated 24.03.2023.



	specified by the Board which shall be not less than amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher and (iii) provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such manner as may be specified by the Board.	
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause 6.5 at Page 23 of the Resolution Plan.
(d)	Implementation and Supervision.	Clause 6.2 at Page 23 of the Resolution Plan.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Clause 5.4 at Page 21 of the Resolution Plan.
(f)	Conforms to such other requirements as may be specified by the Board.	Clause 5.4 at Page 21 of the Resolution Plan.

8. MEASURES REQUIRED FOR IMPLEMENTATION OF THE RESOLUTION PLAN IN TERMS OF REGULATION 37 OF CIRP REGULATIONS

PARTICULARS	RELEVANT PAGE OF THE RESOLUTION PLAN DEALING AFORESAID COMPLIANCE WITH REGULATION
<i>A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximisation of value of its assets, including but not limited to the following: -</i>	
(a) transfer of all or part of the assets of the corporate debtor to one or more persons;	The Plan does not propose such clause



(b) sale of all or part of the assets whether subject to any security interest or not;	The Plan does not propose such clause
(c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	The Plan does not propose such clause
(d) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	The RA has provided that the existing share capital shall stand extinguished and fresh issue of shares shall be made in favour of the RA
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	The RA has provided that the existing share capital shall stand extinguished and fresh issue of shares shall be made in favour of RA
(f) satisfaction or modification of any security interest;	The RA has provided for the satisfaction of all existing encumbrances and security interest in favour of SFCs on the assets of the Corporate Debtor.
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	The RA has provided that any default / breach of the Corporate Debtor prior to the CIRP shall be written off in full and shall stand permanently extinguished.
(h) reduction in the amount payable to the creditors;	-
(i) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	The Plan does not propose such clause
(j) amendment of the constitutional documents of the corporate debtor;	The Plan does not propose such clause



(k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	The Plan does not propose such clause
(l) change in portfolio of goods or services produced or rendered by the corporate debtor;	The Plan does not propose such clause
(m) change in technology used by the corporate debtor; and	The Plan does not propose such clause
(n) obtaining necessary approvals from the Central and State Governments and other authorities.	The RA undertakes to take appropriate steps for obtaining necessary approvals from the Central and State Governments and other authorities.

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

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Resolution Plan</i>
38(1)	The amount due to the Operational Creditors under a Resolution Plan shall be given priority in payment over Financial Creditor.	Addendum of the Resolution Plan.
38(1A)	A Resolution Plan shall include a statements as to how it has dealt with the interest of all stakeholders, including Financial Creditors and Operational Creditors of the Corporate Debtor	Part 4 at page 12 of the Resolution Plan
38(1B)	A Resolution Plan shall include a statement giving details if the resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the	Clause 5.5 at page 22 of the Resolution Plan



<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Resolution Plan</i>
	Adjudicating Authority at any time in the past.	
38(2)	A Resolution Plan shall provide (a) the term of the plan and its implementation schedule	Clause 6.1 and 6.6 at Page 23 and 24 of the Resolution Plan.
	(b) the management and control of the business of the Corporate Debtor during its terms; and	Clause 6.5 at page 23 of the Resolution Plan
	(c) adequate means for supervising its implementation	Clause 6.2 at page 23 of the Resolution Plan
38(3)	A Resolution Plan shall demonstrate that (a) It addressed the cause of default;	Part 2 at page 9 of the Resolution Plan
	(b) It is feasible and viable;	The Net-worth Certificate is produced along with the Addendum
	(c) it has provisions for its effective implementation;	Clause 6.2 at page 24 of the Resolution Plan
	(d) it has provisions for approvals required and the timeline for the same; and	In the addendum, the RA undertook to take appropriate steps for the same
	(e) the Resolution Applicant has the capability to implement the Resolution Plan	The Net-worth Certificate is produced along with the Addendum.

10. The successful Resolution Applicant has submitted a Certificate of Eligibility under Section 29A of IBC, 2016 to submit a Resolution Plan under the provisions of IBC, 2016 and the same is filed by way of additional document to the typed set filed along with the Application.



12. ANALYSIS AND FINDINGS OF THIS TRIBUNAL

12.1. It is seen from Form – H that the Liquidation value of the Corporate Debtor is arrived at Rs.11,50,54,032/- and the corresponding Fair value is arrived at Rs.15,33,71,569/-.

12.2. Further, it is seen from Form – H, that the RP has filed an Application under Section 66 of IBC, 2016 and the same is pending adjudication. In so far as the fate of this Application is concerned, it is significant to refer to the Division Bench of the Hon'ble High Court of Delhi in the matter of **Tata Steels BSL Limited -Vs- Venus Recruiters Private Limited & Ors;** 2023/DHC/000257 while dealing with the continuation of PUF transaction Applications after the completion of CIRP, in which it has been held as follows;

"89. Conclusion

a)

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

c) The endeavour of the IBC and its rules and regulations is to ensure that all processes within the insolvency framework are time efficient. While the law mandates a resolution plan to



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

- d)
- e)
- f)"

12.3. As per Clause 4.7 of the Resolution Plan, the Secured Financial Creditors shall have the right over the recovery, award or benefit which accrues in favour of the Corporate Debtor in relation to Section 66 Application. It is stated that the RA shall transfer to the Secured Financial Creditors on pro rata basis as per their admitted claims after deducting litigation costs (if any). The Secured Financial Creditors shall prosecute the Application filed under Section 66 of IBC, 2016

12.4. In so far as the approval of the Resolution Plan is concerned, this Authority is convinced on the decision of the



Committee of Creditors, following the much-celebrated Judgment of the Hon'ble Supreme Court in the matter of **K. Sashidhar –Vs– Indian Overseas Bank (2019) 12 SCC 150**, wherein in para 19 and 62 it is held as under;

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

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

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



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

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

"55. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite per cent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides: (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of



the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.

58. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with Section 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters "other than" enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers."

(emphasis supplied)

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

"73. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or sub-class of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution



plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal."

(emphasis supplied)

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

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



resolution plan is approved only when the collective commercial wisdom of the financial creditors, having at least 2/3rd majority of voting share in the Committee of Creditors, stands in its favour.

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

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

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

77.6.1. The assessment about maximisation of the value of assets, in the scheme of the Code, would always be subjective in nature



and the question, as to whether a particular resolution plan and its propositions are leading to maximisation of value of assets or not, would be the matter of enquiry and assessment of the Committee of Creditors alone. When the Committee of Creditors takes the decision in its commercial wisdom and by the requisite majority; and there is no valid reason in law to question the decision so taken by the Committee of Creditors, the adjudicatory process, whether by the Adjudicating Authority or the Appellate Authority, cannot enter into any quantitative analysis to adjudge as to whether the prescription of the resolution plan results in maximisation of the value of assets or not. The generalised submissions and objections made in relation to this aspect of value maximisation do not, by themselves, make out a case of interference in the decision taken by the Committee of Creditors in its commercial wisdom

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

12.9. Thus, from the catena of judgments rendered by the Hon'ble Supreme Court on the scope of approval of the Resolution Plan, it is amply 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.

12.10. On hearing the submissions made by the Ld. Counsel for the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with **100%** voting share. As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Bench. 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,

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



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

Sl. No	RELIEF AND/OR CONCESSIONS AND APPROVAL SOUGHT BY RESOLUTION APPLICANT (CHAPTER 12 OF RESOLUTION PLAN)	ORDERS THEREON
1	Post the settlement of Debt of FCs as provided in this Resolution Plan, the amount of debt outstanding towards FCs (in the books of CD) in excess of the Resolution Amount, to be paid to the FCS/OCS/etc. as per this Resolution Plan, shall be written off and any liability in respect of MAT or any other Tax Liabilities arising pursuant to such write off shall be waived and no demand pertaining to the said write off shall be raised against the CD or the RA by the Income Tax Authorities. Further CD shall also be exempted from any tax liability (including on account of MAT) as may arise on account of various steps as proposed in the Resolution Plan, including but not limited to tax liabilities, if any (under Section 41 (1), Section 56, Section 28, Section 115JB of the Income Tax Act, 1961 arising on account of write back assignment/ resolution of book value of debt of FCS/OCs in excess of the settlement consideration to those creditors), levies, fees, transfer charges, transfer premium, cess and surcharge that arise from or relate to implementation of the Resolution Plan; without any impact on carry forward of/ brought forward tax and book loss/ depreciation	This is for the appropriate authorities to consider.
2	The CD shall be allowed to carry forward and set off the accumulated business losses, unabsorbed depreciation, accumulated capital losses etc., as per as per Section 79 of the Income-tax Act, 1961, and also the business/	This is for the CBDT and other appropriate authorities to



	capital losses lapsed during the last five assessment years; for a further period of eight assessment years subsequent to the relevant assessment year in which the Resolution Plan is approved by the Hon'ble AA	consider keeping in view the object of IBC, 2016
3	The Registrar of Companies having jurisdiction over the CD to take on record and implement the Plan, upon approval of the Plan by NCLT, without any further compliances, re-instate all the approvals and waive all the financial or other penalties / interest / prosecution of all or any type and nature including in respect of restructuring of capital as per this Resolution Plan.	Granted, in view of the clean slate principle envisaged under IBC, 2016
4	As the Resolution Applicant is required to take over the Corporate Debtor's Business on a 'going concern' basis, all consents, licenses, approvals, clearances, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to, shall continue to remain valid, notwithstanding any provision to the contrary in their terms, and provided that in case of consents, licenses, approvals, rights, entitlements, benefits and privileges that have expired or lapsed, notwithstanding that they may have already lapsed or expired due to any breach, non-compliance or efflux of time, be deemed to continue without disruption for the benefit of the Corporate Debtor, for a period of 12 (twelve) months from the Transfer Date or such other period as required under Applicable Law.	Not Granted
5	Credit in respect of minimum alternate tax paid by the Corporate Debtor shall continue with the Corporate Debtor on a going concern basis and shall be available for the benefit of the Resolution Applicant or the Corporate Debtor, as the case may be	Granted, subject to the provisions of IBC, 2016
6	In the interest of keeping the Corporate Debtor a going concern, unless otherwise specified in this Resolution Plan, all contracts and agreements shall continue to remain valid and notwithstanding any lapse, non-	Not Granted



	compliance, breach or expiry of underlying terms of such contracts and agreements, these contracts and agreements shall be deemed to continue without disruption for the benefit of the Corporate Debtor for their original tenure. It is clarified that any security deposits, payments or advances provided by the Corporate Debtor under such contracts and arrangements shall continue to remain valid.	
7	All contractual arrangements (except for any contracts that vest any Claim or property rights in the Corporate Debtor) entered into by the Corporate Debtor with the Related Party of the Corporate Debtor, including (including any contracts of employment or consultancy with, and any benefits, fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages or any policy of providing such benefits, fees, commissions, perquisites or profits extended by the Corporate Debtor) shall be deemed to be terminated on and from the NCLT Approval Date. Any claims or financial liabilities arising as a consequence of any termination of such contracts till the NCLT Approval Date shall be permanently extinguished and written-off on the NCLT Approval Date	Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i> 2021 SCC Online SC 313
8	Any and all other claims, rights and entitlements of any Person, including any actual or potential Creditors of the Corporate Debtor (including but not limited to all Financial Creditors, Operational Creditors, Other Creditors, and Government and Statutory Authorities and any person who may claim to be a creditor by way of exercise of rights under Applicable Laws or equity), whether or not such claims rights or entitlements (including any demand for any losses or damages, principal, interest, compound interest, penal interest, liquidated damages, and other charges already accrued/accruing or in connection with any third party claims) have been filed before the Resolution	Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i> 2021 SCC Online SC 313



	Professional or not, whether admitted by the Resolution Professional or not, whether or not set out in the Information Memorandum, the Virtual Data Room, the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor, being due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, disputed or undisputed, in relation to any period prior to the Transfer Date, shall be deemed to be written-off and permanently extinguished with effect from the Transfer Date. The Corporate Debtor or the Resolution Applicant shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto	
9	Extinguishment of any other liability, investigations, Inquiry pending against the Corporate Debtor due to non-compliance with any environmental clearance or any penalties due to the lapse of the Development License issued by any Government and Statutory Authorities	Granted, only in respect of past liabilities
10	All Disputes to be initiated against the Corporate Debtor (including those proceedings that relate to the Corporate Debtor) at any time till the Transfer Date shall stand automatically abated, revoked, released, cancelled, withdrawn, dismissed and deemed null and void (as the case may be) and all financial obligations in relation to such Dispute shall be permanently extinguished on the NCLT Approval Date, after payments being made to any such Creditors if mandatorily required in accordance with the provisions of the Code.	Granted, in view of the clean slate principles enshrined under the provisions of IBC, 2016
11	All benefits and incentives, including but not limited to, under all such incentive schemes, subsidy schemes and policies that the Corporate Debtor is entitled under, and all such benefits shall remain vested in the Corporate Debtor with effect from the Transfer Date.	Granted

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12	For such further or other relief/s be granted and/or directions be given as the NCLT may deem fit and proper in the facts and circumstances of the case and in the interests of resolution of the insolvency of the Corporate Debtor;	Not Applicable
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12.13. As far as the question of granting time to comply with the statutory obligations / seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.

12.14. In case of non-compliance with this order or withdrawal of the Resolution Plan by the Successful Resolution Applicant, the Monitoring Committee shall forfeit the Performance Security furnished by the Resolution Applicant in the form of Performance Bank Guarantees.

12.15. The Resolution Applicant is directed to make payment of the entire Resolution Plan amount within the time period stipulated under the Resolution Plan i.e. 6 months, , failing which the entire amount paid by the Resolution Applicant (*including the Performance Guarantee*) as on the said date would stand automatically forfeited, without any recourse to this Tribunal.



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

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

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

13. IA(IBC)/1220/CHE/2023 shall stand **disposed of** accordingly.

14. 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.



VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)



SANJIV JAIN
MEMBER (JUDICIAL)

Raymond