



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

ITEM No.302

IA/156(AHM)2022 in CP(IB) 387 of 2020

Proceedings under Section 30(6) & 31 IBC,2016

IN THE MATTER OF:

Jaykumar Pesumal Arlani RP of Decent Laminates Pvt Ltd**Applicant**

V/s**Respondent**

Navnitkumar Dahyabhai Patel & Ors

Order delivered on: 30/10/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

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

PRESENT:

For the Applicant :

For the Respondent :

ORDER

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

-sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-sd-

SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH COURT-1**

IA/156/AHM/2022 in CP (IB)387/AHM/2020

*(Filed under Sec. 30(6) and Section 31 (1) of the Insolvency &
Bankruptcy Code, 2016 for approval of resolution plan)*

In the matter of **Decent Laminate Private Limited**

JAYKUMAR PESUMAL ARLANI

Resolution Professional of
Decent Laminates Pvt. Ltd.

Having Office at:

Arlani Niwas, 10, Gayakwadi, Junction Plot,
Rajkot, Gujarat – 36001

arlanivijay@gmail.com

... Applicant

VERSUS

1. Navnitkumar Dahyabhai Patel & ors.
Survey No. 43/1, Kalol Mehsana Highway,
Taluka Kadi, Dist. Mehsana
2. Prakashchandra Dahyabhai Patel
18, Indraprasth Bunglows, Opp.
Management Enclase,
Vastrapur, Ahmedabad – 380015
3. Mukundbhai Dahyabhai Patel
18, Indraprasth Bunglows, Opp.
Management Enclase,
Vastrapur, Ahmedabad - 380015

...Respondent



In the matter of :-

Royal Synthetics

... Applicant

Versus

Decent Laminates Pvt. Ltd.

... Respondent

Appearance:

For the Applicant/RP: Mr. Dheeraj Garg, Adv.
: Mr. Jay Arun, RP
For the CoC : Mr. Javal Belani
For the SRA : Mr. Jaimin Dave, Adv. a/w.
Ms. Hirva Dave, Adv. &
Mr. Priyank Dave, Adv.

CORAM:

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

Order Pronounced on 30.10.2023

O R D E R

(Per: Bench)

1. IA/156/AHM/2022 is an application filed U/s 30(6) & 31 of IBC read with Regulation 39(4) of the Insolvency Resolution Regulations, 2016 by the Resolution



Professional of the Decent Laminate Private Limited
(Corporate Debtor) seeking the following prayers:-

- a. To allow the present application:*
- b. To approve the Resolution Plan (read with its addendums / Clarification of M/s Rare Asset Reconstruction Limited;*
- c. Declare that the Resolution Plan to be binding upon all the stakeholders including the government bodies;*
- d. Discharge the applicant from the office of the Resolution Professional and appoint the “implementation and Monitoring Committee” to supervise the implementation of the approved resolution plan.*
- e. Pass any other order(s) that this Hon’ble Adjudicating Authority deems fit in the interest of justice.*

2. It is stated that CIRP was ordered in CP(IB) No.387/AHM/2020 titled Royal Synthetics Vs. Decent Laminate Pvt. Ltd. filed under Section 9 of IBC, 2016, vide order dated 03.05.2021, and the applicant herein was appointed as the IRP in the matter.



3. It is stated that public announcement was made in Form-A in The Financial Express (English and Gujarati) and on web-portal of the IBBI on 07.05.2021. Based on the claims received CoC was constituted and report in this regard was filed in the Registry of this Tribunal on 29.05.2021.
4. The first meeting of CoC was conducted on 07.06.2021, and applicant herein was appointed as RP.
5. It is stated that in consultation with the CoC, the applicant appointed registered Valuers namely Sh. Darshan Patel and Sh. Vipul Mittal and Sh. Hemant Patel and Sh. Hirak Patel to evaluate the assets of the corporate debtor.
6. It is stated that the claims based upon the revised claims, the CoC was reconstituted.
7. It is stated that the position of the CoC as on the date of approval of the Resolution Plan is as under:-



Category	Amount Claimed	Amount Admitted
Financial Creditor (including Related Parties	25,46,35,671	24,68,71,703
Operational Creditor (including Employees)	9,31,26,690	7,72,63,412
Other class of Creditors	-	-

8. It is stated that in the 3rd meeting of the CoC, guidelines were laid down for eligibility criteria for the Resolution Applicant. Accordingly, Form-G was published on 07.08.2021, and eight Prospective Resolution Applicants expressed their interest, out of which five Resolution Applicants submitted their Plans.



9. It is stated that the CoC approved the Evolution Matrix and request for Resolution Plan in the 4th meeting held on 04.09.2021.
10. It is stated that the CoC in its 8th meeting decided to proceed for a second round of issuance of Form-G and accordingly, the applicant issued a fresh Form-G on 26.11.2021
11. In the meanwhile, the applicant filed an i.e. IA 785/2021, seeking extension of the CIRP by another 90 days, which was ordered on 01.12.2021, and the CIRP period was extended.
12. It is stated that in response to Form-G published on 26.11.2021, the applicant received Expression of Interest from 4 new Prospective Resolution Applicants (PRA). The CoC directed all the PRA's (old and new Form-G) to submit their Resolution Plan, and accordingly two new Resolution Plans were received by the applicant.



13. It is stated that the CoC in its 9th meeting held on 18.01.2022, evaluated the Resolution Plans received from “Rare Asset Reconstruction Limited” and “Palakshree Foresights Ltd”, and Certain clarification were sought which were provided by the PRA’s.
14. The 10th meeting of the CoC was held on 27.01.2022. The CoC ultimately decided to put to vote both the Plans. The voting concluded on 28.01.2022. Pursuant to the e-voting results, the CoC, with a majority of around 87.71% approved the Resolution Plan of M/s. Rare Asset Reconstruction Company Limited. The copy of Resolution Plan, addendums, clarifications, affidavit under section 29A of the Successful Resolution Applicant and the Resolution of e-voting are attached at annexure A10 Colly, hence, the present application is being filed.
15. It is stated that that the approved Resolution Plan provides for payment of **Rs.707.54 lakhs** to the stakeholders over a period of **120 days** from the date of



approval of the resolution plan by this adjudicating authority and infusion of **Rs.600.00 lakhs** in the corporate debtor over a period of 6 months from the date of handover of corporate debtor.

16. The RP has filed updated Form-H under inward Diary No. D-3776 dated 29.09.2023. A perusal of the Form-H reveals that the fair value of the corporate debtor is Rs. 12,32,06,761/- and the Liquidation value is Rs.9,37,88,540/-. It is also seen that total 17 meetings of CoC held in the matter.

17. The distribution of the various amounts under the Resolution Plan is provided on page nos. 15, 16 & 17 in the Form-H, which is reproduced below:-

(Amount in Rs. lakh)						
Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the	Amount Provided to the Amount



					Plan#	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:				
		(i) who did not vote in favour of the resolution Plan	4.58	4.46	4.46 (Note 1)	100.00%
		(ii) who voted in favour of the resolution plan	766.98	745.69	556.43 (Note 2)	74.62%
		Total[(a) + (b)]	771.56	750.15	560.89	74.77%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	791.82	791.80	NIL	NIL
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	212.25	201.83	10.89	5.40%
		(ii) who voted in favour of the resolution plan	770.72	724.94	39.11	5.40%
		Total[(a) + (b)]	1774.79	1718.56	50.00	2.91%
3	Operational Creditors	(a) Related Party of Corporate Debtor	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				
		(i) Government	87.01	73.63	54.94 (Note 2)	74.62%
		(ii) Workmen	NIL	NIL	NIL	NIL
		(iii) Employees	11.58	6.58	6.58	100%

		(iv) Others	832.68	692.43	10.00	1.44%
		Total [(a) + (b)]	931.27	772.64	71.52	9.26%
4	Other debts and dues		NIL	NIL	NIL	NIL
	Grand Total		3477.62	3241.35	682.41	21.05%

*If there are sub-categories in a category, please add rows for each sub-category.

Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.]

Notes:

(1) Amount provided under the Plan enhanced by 0.83 Lacs (3.63 to 4.64 Lacs) to provide 100% of Liquidation Value to Dissenting Secured Financial Creditors.

(2) Secured Financial Creditor, Piramal Capital (Previously DHFL) provided additional amount from its share for Government Dues to comply with the Rainbow Paper Judgement.

18. The compliances of the Resolution Plan is stated to be as under:-



Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	1.1.5 & 1.1.6	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?		Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Separately provided along-with Resolution Plan	Yes
Section 30(2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs?	5	Yes

	(b) provides for the payment to the operational creditors?	2 & 2.6	Yes
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	2 & 2.4	Yes
	(d) provides for the management of the affairs of the corporate debtor?	2 & 6	Yes
	(e) provides for the implementation and supervision of the resolution plan?	7	Yes
	(f) contravenes any of the provisions of the law for the time being in force?	2 & 9	Yes
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?		Yes Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?		Yes
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	2 & 2.6	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	2	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?	2	No N.A.
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?	2 & 2.2 2 & 6 7	Yes Yes 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?	2 & 8.1 2 & 8.1 2 & 8.1 2 & 9 2 & 8.1	Yes Yes Yes Yes Yes



39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Guarantee of Rs. 2 crores dated 04-02-2022 by Yes Bank Ltd. Extended on 04-09-2023	Yes

19. The Bank Guarantee provided by Yes Bank Ltd. is extended by letter of amendment dated 04.09.2023 the said guarantee is extended upto 31.12.2023. The letter of amendment dated 04.09.2023 is placed on record.
20. The Resolution Plan provides that upon approval of the plan and allotment of shares as per Resolution plan, the entire existing equity share capital of the company shall without any further action shall stand cancelled. The Pre-CIRP and Post CIRP equity share capital of the company is as follows:

Sr. No.	Category of shares	No. of Shares before CIRP	No. of shares after CIRP
1.	Equity Shares	75,000	50,000



21. The matter was heard from time to time and was reserved for order subsequent to which the matter was reopened and clarifications were sought on 20.06.2023. From the clarification order, it is seen that the Successful Resolution Applicant (SRA) is an Asset Reconstructions Company (ARC) and are not permitted to carry on any business other than the securitization or asset reconstruction or the business referred to in Section 10(1) of SARFAESI Act, without prior approval of the RBI.
22. An additional affidavit was filed by the RP on 19.08.2023, attaching there with letter dated 14.08.2023, from the SRA stating that “we confirm that MFPL Commercial Private Limited” is a co-resolution applicant in the Resolution plan submitted by us.
23. It is further stated that the meeting of the CoC was held on 16.08.2023, and with requisite majority the CoC has approved the inclusion of “MFPL Commercial Private Limited “as co Resolution Applicant “under para 5 of the



said affidavit. The applicant states that, there would not any probability of Resolution Plan being in violation of any other applicable laws in light of the judgement rendered by the Hon'ble NCLAT in the matter of "*Puissant Towers India Pvt. Ltd. vs. Neyeib Towers Limited & ors*". Along with the additional affidavit 29A compliance of NPFL Commercial Private Limited was attached.

24. The matter was again taken up on 25.08.2023, and further on 07.09.2023, upon perusal of the RFRP filed by the applicant herein, it was seen that RFRP has no condition regarding induction of co-applicant.
25. Another CoC meeting was held wherein the CoC decided to ratify the RFRP and rectified inclusion of MFPL Commercial Private Limited as co Resolution Applicant. The relevant resolution was passed with 78.18% members voting in favour in the 17th CoC meeting held on 23.09.2023.
26. We have heard the Learned Counsel for the applicant, RP, CoC and SRA. The primary question is whether the



ARC can be considered, as Successful Resolution Applicant.

27. From the facts of the present case, it is seen that MFPL Commercial Private Limited was introduced as a co Resolution Applicant. However, the CoC has modified the RFRP for which it has all the rights and that ratify the decision though at belated stage.
28. Our attention was also drawn to the judgment by the Hon'ble NCLAT in the matter of "*Puissant Towers India Pvt. Ltd. vs. Neueon Towers Limited*" (supra) in Company Appeal (AT) (CH) (Ins) No. 181/2022 dated 12.06.2023, deem it at reproduced to para 9 to 12 of the said order of the said judgment of Hon'ble NCLAT.

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



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

10. It is significant to mention that Section 238 of the Code, will prevail over any of the provisions of the SARFAESI Act, 2002, if it is inconsistent with any of the Provisions of the ‘I&B Code, 2016’ and therefore the Adjudicating Authority ought not to have placed reliance on Section 10(2) of the SARFAESI Act, 2002. It is also pertinent to mention that the CoC has approved the Resolution Plan by the majority of 98.70% in its 27th meeting, held on 19/10/2020. The Hon’ble Supreme Court in a IBC Laws| www.ibclaw.in 25.10.23 Page: 6 Catena of Judgments has held that the commercial wisdom of the CoC is non-justifiable and in the instant case, we do not see any material irregularity, under Section 30(2) of the ‘IBC Code, 2016’.

11. Keeping in view, the clarification given by the Counsel for RBI that the ‘prior permission’ is not required, this ‘Tribunal’ is of the considered view that the Adjudicating Authority ought not to have rejected the Resolution Plan, more so, when the principal objective of the Code is that ‘revival of the Corporate Debtor and Resolution’. Liquidation ought to be the last resort, keeping in view the scope and spirit of the Code. 12. For all the aforementioned reasons, this Company Appeal (AT) (CH) (Ins) No. 181/2022 is allowed



and the Order of the Adjudicating Authority directing 'Liquidation' is set aside and the matter is remanded to the Adjudicating Authority for approval of the Resolution Plan under Section 31(1) of the IBC Code, 2016. As precious time has lapsed and the IA is of the year 2020, it is hoped and requested that the Adjudicating Authority shall decide the matter of approval of Resolution Plan within 'one week' from the date of this Order. All parties shall appear before the Adjudicating Authority on 14/06/2023. No further 'Notice' is required in this matter. Connected pending Interlocutory Applications, if any, are 'closed'.

29. As such we are of the view that given the circumstances of the present case ARC and in its co Resolution Applicant can be treated as Successful Resolution Applicant in the matter.

30. **RELIEFS AND CONCESSIONS**

Sr . N o.	Particulars	Concessions / Reliefs / Directions sought	Orders thereon
1	Permission to Modify/ construct/ furnish/ /expand/ extend the construction in the properties under the Corporate Debtor whether in	To be permitted, subject to compliance of applicable guidelines.	Granted



	merged form or demerged form		
2	Sale of part of the properties in case resorted to by the RA for raising funds subsequently	GST and Stamp duty on the sale of properties to be waived	Not granted as relief is prospective
3	Bank guarantee, if any	No obligation on CD, if any undevolved guarantees remain, upon payment as per the proposed resolution plan	Not granted
4	Water supply requirement	To be provided by the respective water authorities to sustain the operations of the CD	Applicant to approach respective authorities.
5	Pollution Control Consent	To issue Consent to Operate by the respective pollution authorities to sustain the operations of the CD within 15 days of receipt of application from the Corporate Debtor.	Applicant to approach concerned authority
6	Ability to utilise Cenvat credit, Service Tax credit etc in the books of the Company	In case of non-maintenance of requisite records by the Corporate Debtor, which has resulted in lapsing/ineligibility of the said benefits, under the new GST regime, benefits to be available	Applicant to approach concerned authority



		on retrospective basis / reinstated, without fees / penalties.	
7	Issuance / Renewal of all kinds of Licenses / Permissions / Approvals required for operation of the Business / Factory Operations	a) Central / State Government Departments / Local Bodies to Renew / Issue Fresh licenses/ permissions / approvals on application of the same within 30 days of the Application. b) Temporary License shall be granted / provided to operate the Business / Factory Operations within 30 days of application for the Interim Period if required. c) In case of expiry of any approval considered essential for CD's continued operations, such approval shall be extended by government agencies in time bound manner.	Applicant to approach concerned authority
8	Grace period to comply with various future	a) Six (6) months grace period (from the date of NCLT approval) to	Granted



	statutory / regulatory requirements	be provided to the Corporate Debtor to comply with the provisions of the various Acts / Regulations, to enable Corporate Debtor to ascertain the status of various compliances and take necessary steps to regularize the same. b) During grace period, no additional charges/ fees etc to be levied including on account of Interest, Penal Interest, Penalty, Interest on Penalty, any kind of Late Fee or Damages.	
9	Extinguishing of existing Onerous contracts by Corporate Debtor	Any onerous contract made by the Corporate Debtor subsisting before the approval of Resolution Plan shall be duly extinguished and be ineffective.	Granted in terms of Ghanshyam Mishra
1 0	Termination of all existing Negotiable Instruments	As on the insolvency commencement date, all outstanding negotiable instruments, issued by Corporate Debtor or any other person on behalf of Corporate Debtor shall	Granted in terms of Ghanshyam Mishra



		stand terminated and no liability shall arise on the same.	
1 1	Revocation of Power of Attorneys	All the power of attorneys provided to any person by the Corporate Debtor stands revoked with effect from the date of NCLT approval.	Granted in terms of Ghanshyam Mishra
1 2	Waiver/Exemption from requirement of No Objection Certificate under Sec 281 of the Income Tax Act, 1961	Waiver/Exemption from requirement of No Objection Certificate under Sec 281 of the Income Tax Act, 1961 by the Selling Shareholders and provision of taking over predecessor's tax liability under Sec 170 of the Income Tax Act, 1961 and Specific Order for treating such Transactions as VOID under Sec 281 of the Income Tax Act, 1961 for any claims in respect of tax or any other sum payable by Selling Shareholders.	Applicant to approach concerned authorities.
1 3	Waiver of Valuation of Pricing of Shares by Registered Valuer –	Approval of Resolution Plan by NCLT will be treated as waiver of the requirements of deriving valuation of shares by registered valuer to be	Granted



		<p>computed for issuance of Equity Shares as part of the Resolution Plan and making further issue through preferential allotment / warrants / preference shares / convertible securities to RA / Associates / Investors for a period of 24 Months from the date of approval of Resolution Plan. The request for such waiver is due to the fact that current valuation of the Company on the basis of Book Value or Net Assets Value Basis / Realizable Valuation of Assets adjusted to Current Liabilities or Discounted Cash Flow of the Business will be “Negative”, whereas the RA is infusing funds towards equity on face value considering the future potential of the business.</p>	
1 4	Liabilities that may accrue under Various Corporate Laws and Acts, Rules	Approval of the Resolution Plan will be treated as waiver by NCLT for any past liabilities, penalties and	Granted as per Ghanshyam Mishra



	and Regulations	<p>any form of payment by way of late fees, damages/proceedings/penalties/recovery etc which occurred or become due because of any non-compliances related to the below stated Acts from Commencement of Insolvency Process till 6 months from the date of the NCLT Approval of proposed Resolution Plan as it will provide Resolution Applicant, the time period to review the current compliance status of the Corporate Debtor under these Acts, Rules and regulations in terms of Compliances and action to be taken in this regard. The stated list is inclusive but not exhaustive of –</p> <ul style="list-style-type: none"> • The Companies Act, 1956 (the Act) and the Rules made there under; • The Companies Act, 2013 (the Act) and the Rules made there under; 	
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		<ul style="list-style-type: none"> • Foreign Exchange Management Act, 1999 and the Rules and Regulations made there under to the extent of Overseas Direct Investment; • DRI, DGFT, ED/PMLA etc 	
1 5	Liabilities accrued/may accrue under Various Acts & Laws	<p>Approval of the Resolution Plan will be treated as waiver from past liabilities, payments of fees and all dues including any penalties as well as any form of payment by way of interest, late fees, damages etc, related to all Government Authorities with regard to non-compliances of various Statutes to be adhered related to consent, fees, certification etc. by the Corporate Debtor prior to the Effective Date which is inclusive but not exhaustive of –</p> <ul style="list-style-type: none"> • Factories Act, 1948 • Industrial Disputes Act, 1947 	Granted as per Ghanshyam Mishra



		<ul style="list-style-type: none"> • Payment of Wages Act, 1936 • The Minimum Wages Act, 1948 • The Employees State Insurance Act, 1948 • The Employees Provident Fund and Miscellaneous Provisions Act, 1952 • The Bonus Act, 1965 • The Payment of Gratuity Act, 1972 • Legal Metrology Act, 2009 • Negotiable Instruments Act, 1881 • Environment (Protection) Act, 1986 • Water (Prevention and Control of Pollution) Act, 1981 • Air (Prevention and Control of Pollution) Act, 1974 • Hazardous Waste (Management and handling) Rules, 1989 • State Fire Safety Act 	
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		<ul style="list-style-type: none"> • The MSME Act • Electricity Act, 2003 • Trademarks Act, 1999 <p>The waiver also includes any dues relating to interest, penal interest, penalty, interest on penalty, any kind of late fee as well as damages.</p>	
1 6	Liability which may accrue to Provisions of MAT and Other Sections of Income Tax Act	Approval of the Resolution Plan will be treated as waiver for any past liabilities (includes Tax, MAT, interest, fine, penalty etc) on Corporate Debtor/ RAs on account of various actions proposed in the Approved Resolution Plan including but not limited to liabilities, if any, under Sec 56, Sec 43, Sec 28, Sec 115JB and Section 79 of the Income Tax Act, 1961.	Applicant to approach concerned authorities
1 7	Claims by Government Authorities	Approval of the Resolution Plan will be treated as that claims of government authorities including DGFT, in relation of all taxes etc. for period pertaining prior to the insolvency	Granted as per Ghanshyam Mishra



		commencement date and till the date of NCLT orders, shall stand extinguished and ineffective, except to the extent provided for under the Resolution Plan.	
1 8	Extinguishment/ Revocation of Workmen Contract	Approval of the Resolution Plan will be treated as Specific Order and Approval by NCLT that any contract subsisting with respect to Workmen / contractual labor before the approval of Resolution Plan shall be duly extinguished and be ineffective. Any litigation by the workmen for any claim and/or dues prior to the Resolution Plan implementation date which has the effect of increasing the amount beyond what has been disclosed in the IM or results in submitting fresh claims shall be dismissed without any liability on any party.	Granted as per Ghanshyam Mishra
1 9	Proceedings against the CD by operational	All proceedings against the CD by any operational creditor in	Granted as per Ghanshyam



	creditors	any court of law / forum / panel of arbitrators or any other adjudicating authority in India or elsewhere shall stand dismissed and no fresh / further proceedings can be commenced against the Company for any cause of action occurring on or before the date of approval of the Resolution Plan.	Mishra
20	Award/order/Judgement/Decree etc	Any award / order / judgment / decree in any court of law / forum / panel of arbitrators or any other adjudicating authority in India as well as outside India against the Company shall stand discharged. No execution proceedings for any such award / order / judgment / decree shall remain pending or can be given effect to or allowed against the company in India or elsewhere.	Granted as per Ghanshyam Mishra
21	Liability to earlier promoters / recourse against the Personal or	It is to be noted that Post approval of the Resolution Plan by the NCLT, the RAs/New	Granted as per Ghanshyam Mishra



Corporate Guarantees Right Subrogation	/ of	<p>Management by virtue of the Approved Resolution Plan will have no obligation or any liability towards the earlier promoters under any circumstances whatsoever.</p> <p>It is to be noted that the recourse against the Personal or Corporate Guarantees shall be free from any subrogation rights of the Guarantors. This arrangement in relation to the Personal or Corporate Guarantees relies that it shall in no way or manner permit the Guarantors to claim any right of subrogation, indemnity, security, recompense or any Claim of whatsoever nature (whether under contract, equity or Applicable Law) against the Corporate Debtor or the RA, and all such rights and obligations stand irrevocably and unconditionally extinguished in</p>	
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		<p>perpetuity.</p> <p>In case at any stage, the extinguishment or cancellation, as per this Plan, of the right of subrogation available to any person other than the Corporate Debtor which has guaranteed / secured the existing debts availed by the Corporate Debtor, is held to be invalid or not sustainable in law by a court or tribunal of competent jurisdiction, and such persons take any action to enforce their right of subrogation against the Corporate Debtor and the Corporate Debtor makes such payment (on account of binding legal obligation as decided by a court of competent jurisdiction), the Resolution Applicant and the Corporate Debtor shall be entitled to claim such amount as paid by the Corporate Debtor to such persons, from the</p>	
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		<p>respective Financial Creditors who have received the corresponding amounts as invoked under the Guarantees / Securities. Each such Financial Creditor shall immediately and in any event within 15 (fifteen) days of demand, without protest or demur, pay such amounts to the Corporate Debtor. Notwithstanding the above, the Resolution Applicant / Corporate Debtor shall however, not make any payments to any person other than the Corporate Debtor which has guaranteed / secured the existing debts availed by the Corporate Debtor, unless it is legally compelled to do so.</p> <p>No liability of any kind in this regards shall lie against them in any manner whatsoever.</p> <p>In the event, any transaction is avoided/ set aside by the NCLT in</p>	
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		<p>terms of Sections 43, 45, 47, 49, 50 or 66 of the Insolvency and Bankruptcy Code, 2016 and any amount is received by the resolution professional or the corporate debtor in furtherance thereof, such sum shall be deemed to have been received for the benefit of the Secured Financial Creditors and shall be paid to the Secured Financial Creditors (“Pass-Through Amount”). For the avoidance of doubt, the Pass-Through Amount shall be paid to the Secured Financial Creditors in addition to the pay-out envisaged for the Secured Financial Creditors under this Resolution Plan. Further, the RA shall ensure that all the actions initiated pursuant to Sections 43, 45, 47, 49, 50 or 66 of the Insolvency and Bankruptcy Code, 2016 shall be pursued and the Corporate Debtor and</p>	
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		the RA shall ensure all cooperation is provided for such actions being pursued, at all times even after the approval of the resolution plan by the Adjudicating Authority. It is to be noted that any such Pass-Through Amount will be allocated to Secured Financial Creditors in proportion of their Admitted Claims to Total Admitted Claims of Secured Financial Creditors.	
2 2	VAT/IncomeTax/ Customs Duty/ waiver	Upon payment to statutory authorities as proposed under the plan, no further amounts will become due and payable by the CD after the plan is approved by NCLT. These Authorities will be required to drop all proceedings against the company upon approval of the plan by NCLT.	Granted as per Ghanshyam Mishra
2 4	Force Majeure	“Force Majeure” shall include all such acts which are beyond the reasonable control of the Resolution Applicant	Liberty Given to raise this issue on accordance of any, event.



		<p>such as Acts of God, statutory orders or restrictions, orders/ circulars of any state or central government, war or warlike conditions, hostilities, sanctions, mobilizations, blockades, embargoes, detentions, revolutions, riots, looting, strikes, pandemic or epidemic or any natural disasters or other natural calamities.</p> <p>Upon the occurrence of any Force Majeure event which adversely impacts the operations of the CD , the time lines in this resolution plan shall be suitably extended so as to enable the Resolution Applicant/CD to meet its approved commitments.</p>	
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31. The Resolution Plan provides for replacement of exiting Board of Corporate Debtor by Rare ARC/ Investors nominees on the Board to manage the Company. Rare ARC/Investor shall identify and appoint a suitable professional to manage the affairs of the company on a day-to-day basis, with the support of key managerial



personnel of the company and with guidance from the Board of Directors.

The Nominee Director and key managerial personnel to be inducted are tentatively proposed as under:

Sr. No.	Name	Proposed Designation
1.	Rajesh Swarup	Nominee Director
2.	----	Director

*To be appointed in consultation with investor.

32. The Implementation and Monitoring Committee shall supervise the implementation of the Resolution Plan with the help of newly constituted board till the implementation of the proposed transaction under the Resolution Plan i.e. payment of the committed cash payment amount to the Secured Financial Creditor (Lenders). The Committee shall include a total of 3 members comprising 1 nominee from the secured financial creditors, to safeguard the concern/interests of the Lenders, 1 nominee from Resolution Applicant (Rare ARC) including that of Investor and RP/nominee shall also be part of the IMC and his fee be decided in consultation with the members of the IMC.

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

33.1. It is seen from Form – H that the Liquidation value of the Corporate Debtor is arrived at



Rs.9,37,88,540/- and the corresponding Fair value is arrived at Rs.12,32,06,761/-. The Resolution Plan is for an amount of Rs.7,07,54,000/-.

33.2. Further, it is seen from Form – H, that presently no Application under Section 43, 45, 49 and 66 of IBC, 2016 in the present matter is pending on the file of this Tribunal.

33.3 In the present matter the liquidation value of the Corporate Debtor is Rs.9,37,88,540/- and the approved resolution plan provides for payment of Rs. 7,07,54,000/-. The liquidation value is higher as compared to approved plan value. Therefore, this Adjudicating Authority relies on the decision in the matter of **Maharashtra Seamless Limited Vs. Padmanabhan Venkatesh & Ors. (Civil Appeal No. 4242 of 2019)** wherein in para 26 it is held as follows:

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

33.4 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 Judgment of Hon’ble Supreme Court in the matter of **K.**



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150, wherein in para 19 and 62 it is held as follows;

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

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



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

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

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

“55. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite per cent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides: (i) the payment of insolvency resolution process costs in a specified manner in priority to the



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

58. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with Section 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly



circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters “other than” enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers.”

(emphasis supplied)

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

“73. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or sub-class of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into



account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal.”

(emphasis supplied)

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

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



same is not approved by votes of at least 66% of the voting share of financial creditors. Thus, broadly put, a resolution plan is approved only when the collective commercial wisdom of the financial creditors, having at least 2/3rd majority of voting share in the Committee of Creditors, stands in its favour.

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

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



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

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

78. To put in a nutshell, the Adjudicating Authority has limited jurisdiction in the matter of approval of



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

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

33.9. On hearing the submissions made by the Ld. Counsel for the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with **87.71%** 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.

33.10. 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.

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

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



failing which the entire amount paid by the Resolution Applicant (*including the Performance Bank Guarantee*) as on the said date would stand automatically forfeited, without any recourse to this Tribunal.

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

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

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

34. IA/156/AHM/2022 shall stand **disposed of** accordingly.

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

-sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

Vinit/Arati