

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

IA(IBC)/1113(CHE)2023

IN

CP(IB)/78(CHE)2021

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

*In the matter of **M/s. UCAL Products Private Limited***

Mrs. Renuka Devi Rangaswamy,
Resolution Professional of
M/s. UCAL Products Private Limited
Having office at:
Arthi Illam, No.9, Jothi Nagar, 3rd Street,
Uppilipalayam (Post),
Coimbatore-641 015.

Registered Office:
EP-2, New SIDCO Industrial Estate,
Maraimalai Nagar,
Kancheepuram-603 209

... Applicant

Order Pronounced on **25th August 2023**

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

Present:-

For Applicant : Mr. R. Ramasubramaniam Raja, Advocate
Mrs. Renuka Devi Rangasamy, RP
For Resolution Applicant : Mr.S.Murali

ORDER

Per: SANJIV JAIN, MEMBER (JUDICIAL)

This application has been filed by **Mrs. Renuka Devi Rangaswamy, Resolution Professional** of the Corporate Debtor viz., **M/s. UCAL Products Private Limited** under Section 30(6) & 31 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") read with

Regulation 39(4) of the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 seeking approval of the Resolution Plan as approved by the Committee of Creditors ("**CoC**") in the 11th CoC meeting held on 27.01.2023 with 100% voting submitted by the Successful Resolution Applicant ("**SRA**") M/s. Suja Shoei Industries Private Limited.

Brief Facts:

2. Corporate Insolvency Resolution Process ("CIRP") in respect of the Corporate Debtor was initiated by this Tribunal vide an order dated 10.12.2021 in CP(IB)/78(CHE)2021 on an application filed by the Financial Creditor viz., M/s. Integrated Data Management Services Private Limited under Section 7 of IBC, 2016. Mr. Sambasivam Kannan was appointed as an Interim Resolution Professional ("IRP") to conduct the CIRP. The IRP on 18.12,2021, made a public announcement in accordance with Section 15 of the Code read with Regulation 6 of Chapter III of the Insolvency and Bankruptcy Board of India ("**IBBI**") (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in the newspapers "**Trinity Mirror**" in English and "**Makkal Kural**" in Tamil on 18.12.2021 and also forwarded the same to IBBI to be published in its website. The IRP received the claims from the Operational Creditors and the Financial Creditors and accordingly, constituted the CoC.

3. During the process, it was found that M/s. UCAL Auto Private Limited was holding 40.90% of paid-up equity shares in the Corporate Debtor and was involved in spare parts supplying to the automobile sector under the brand of "UCAL". The Associate Company UCAL Auto Private Limited was also admitted into CIRP vide an order dated 04.06.2021 in IBA/1237/2019 filed by one of the Operational Creditors i.e. M/s. Precifine Dye & Casting under Section 9 of IBC. It was found that both UCAL Auto Private Limited ("**UAPL**") and UCAL Products Private Limited ("**UPPL**") are closely held companies, 99% of the shareholding in both companies were held by the two family members viz., Mrs. Gayathri Sriram and Mrs. Uma Narayanan. M/s. Integrated Data Management Services Private Limited was found to be the major Financial Creditor for both the companies with voting rights of 98.99% in UAPL and 88.24% in UPPL, respectively. It was thus holding the majority voting rights in both the companies. 1st CoC meeting was held on 12.01.2022 and the CoC decided to appoint Mrs. Renuka Devi Rangaswamy, the Applicant herein as the RP of the UPPL/Corporate Debtor herein who was also the RP of UAPL, for better coordination.

4. 2nd CoC meeting was held on 14.02.2022. The application IA(IBC)/105(CHE)/2022 in CP(IB)/78(CHE)/2021 to appoint the Applicant as RP was allowed by this Tribunal vide an order dated 17.02.2022. 3rd CoC meeting was held on 28.03.2022. In the 4th

CoC meeting held on 12.05.2022, it was resolved that the RP shall publish Form-G and eligibility criteria for participation in the Expression of Interest ("**EOI**") by the prospective Resolution Applicant. The RP then published the invitation of EOI in Form-G in the newspapers "**Trinity Mirror**" in English and "**Makkal Kural**" in Tamil on 28.05.2022. Form-G for UCAL was also published on 28.05.2022 along with Form-G of the Corporate Debtor.

5. Pursuant to the publication of Form-G, the RP on 13.06.2022 received EOI from Suja Shoei Industries Private Limited. Pursuant to the approval by CoC in the 5th CoC meeting held on 23.06.2022, the Applicant issued a Request for Resolution Plan ("**RFRP**") for UPPL and Evaluation Matrix as per Regulation 36B of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016 to the Prospective Resolution Applicant ("**PRA**"). The PRA requested an extension of time to submit the Resolution Plan. In the 6th CoC meeting held on 12.07.2022, the CoC extended the time till 03.08.2022. A decision was taken to file an application for exclusion of the lockdown period due to the COVID-19 pandemic from the CIRP timeline. 7th CoC meeting was held on 06.08.2022. The PRA further sought extension of time which was extended till 16.08.2022. Again, in the 8th CoC meeting held on 20.08.2022, the PRA sought further extension of time which was allowed till 23.08.2022. The PRA submitted the Resolution Plan on 22.08.2022 which was in the nature of merger of the Corporate Debtor with



M/s. Suja Shoei Industries Private Limited i.e. PRA. The plan also provided for issue of Non-Convertible Redeemable Debentures, interest @ 10% per annum with a redeemable period of 365 to 385 days by the PRA to the Financial Creditors voted in favour and to other creditors, upfront payment.

6. During scrutiny, it was found by the RP that one of the suspended Directors of the Corporate Debtor was related to the PRA. Since the Corporate Debtor was MSME unit, in terms of Section 240A of the Code, it was found to be eligible to submit the plan in view of Section 29A(c) and (h) of the Code. The Resolution Plan was submitted in the 9th CoC meeting held on 25.08.2022 for consideration. The CoC sought additional documents from the Resolution Applicant for final consideration of the Resolution Plan.

7. Revised Resolution Plan was received on 22.09.2022 which was circulated to the CoC. In the meantime, claim of M/s. Sundaram Finance Limited was admitted and M/s. Sundaram Finance Limited was included in the CoC as the Financial Creditor with 3.54% voting rights. CoC was reconstituted. Resolution Plan was revised and submitted on 05.10.2022. The RP verified the revised Resolution Plan and confirmed that it is not in contravention with any other prevailing applicable laws in India.

8. The Resolution Plan was placed before the CoC in the 10th CoC meeting held on 07.10.2022 where the feasibility and

viability of the plan was discussed. The CoC deliberated on the plan and approved the plan with 96.55% voting rights. M/s. Sundaram Finance Limited holding 3.55%, however, gave the dissenting vote.

9. The RP filed the application for approval of the Resolution Plan, however, during the hearing on 16.01.2023, it was noticed that there is a difference of Rs.6,860/- (Rupees Six Thousand Eight Hundred and Sixty only) offered to the Operational Creditor in Schedule-3 dated 05.10.2022 of the 10th CoC meeting and Schedule-3 filed before this Tribunal. The Tribunal vide its order dated 16.01.2023, rejected the application with liberty to the RP to file fresh application observing as under:

"It is seen from the application that this application has been filed for approval of the Resolution Plan. Apparently, as per the application, the last CoC Meeting was held on 07/10/2022. The total amount offered in the Resolution Plan is Rs.58,45,215/- at page no.10. of the application. The total amount as indicated under paragraph 33 is an excess of what is mentioned in page no.10. Ld. RP states that there was one more CoC meeting held on 07/10/2022, the minutes of the meeting have not been attached. Ld.RP seeks to modify the present application as the application is incomplete.

The said request to modify the present application is rejected and is returned to the Applicant with a leave to file a fresh application".

10. The Resolution Plan was once again placed before the CoC in the 11th CoC meeting held on 27.01.2023 which the CoC approved with 100% voting.

11. Time Frame:

CIRP of the Corporate Debtor was initiated on 10.12.2021. The CoC approved the Resolution Plan on 27.01.2023. This Tribunal vide following orders extended and excluded the CIRP period.

Date	Application No.	Extensions/ Exclusions
05.09.2022	IA(IBC)/918(CHE)/2022	excluded the period from 10.12.2021 to 28.02.2022
15.09.2022	IA(IBC)/980(CHE) /2022	granted 90 days extension to the CIRP period till 26.11.2022
09.08.2023	IA(IBC)/1212(CHE)/2023	Extended the CIRP period till 14.02.2023

This Present application has been filed before this Tribunal on 14.02.2023.

12. Details of the Corporate Debtor:

12.1. The Corporate Debtor was incorporated under the Companies Act, 1956 on 05.01.1979. Its registered office is at #EP 2, New SIDCO Industrial Estate, Mari Malai Nagar, Kancheepuram – 603 209. The Corporate Debtor was registered and categorized as Micro Manufacturing Entity under MSME Act, 2006 having Registration No. UDYAM-TN-34-0005079.

12.2. The Corporate Debtor provides manufacturing services and supplies of automotive assemblies like Oil Pump Assemblies, Electronic Oil Pumps by entering into long terms contracts with customers like Mahindra & Mahindra, Tata Motors etc.,

13. Details of the Successful Resolution Applicant (SRA):

13.1. Suja Shoie Industries Private Limited, was incorporated under the Companies Act, 1956 on 29.07.1985. It has its registered office at #45, Pattamangalam Street, Mayiladuthurai, Mayiladuthurai District, Tamil Nadu – 609 001.

13.2. The SRA is into the business of manufacturing all kinds of seals made of rubber, nylon and other synthetic products from compressed air, water, steam, fluid and drives. The complete details of the objects are annexed at page 336 of the typeset filed with the application.

14. Eligibility of SRA:

14.1. Although it is stated that one of the suspended Board of Directors of the Corporate Debtor is a related party to the Resolution Applicant but the Corporate Debtor is an MSME unit as is seen from the affidavit filed under Section 29A of IBC in Appendix-2A placed at page 257 of the typed set, the Resolution Applicant is eligible to submit a Resolution Plan under Section 240A read with Section 29A(c) and (h) and the bar shall not be applicable in the case of the Resolution Applicant.

14.2. Performance Bank Guarantee bearing Ref No.407GT02221640001 dated 13.06.2022 from HDFC Bank for Rs.25,00,000/- has been filed at page 274 of the typed set filed with the application.

15. Features of the Resolution Plan:

15.1. It is stated that the Resolution Plan submitted by the SRA i.e. Suja Shoei Industries Private Limited deals with the interest of all the stakeholders and is in compliance with the Code and its Regulations. Schedule-3 extracted from the Resolution Plan dealing with the cost of the Resolution Plan is as below

SCHEDULE-3					
Cost of the Resolution Plan					
(Amount in Rs)					
Category of Creditors	Claim Received	Admitted Claims	Admitted %	Amount Offered In the Resolution Plan	Offered % in The Resolution Plan
CIRP Cost	2,80,000	2,80,000	100.00%	2,80,000	100.00%
Financial Creditors***	14,78,26,147	14,78,26,147	100.00%	55,00,000	3.72%
Total Financial Debtors =	14,78,26,147	14,78,26,147	100.00%	55,00,000	3.72%
Operational Workmen and Employee Creditors	-	-	0.00%	-	0.00%
Operational Statutory Creditors	5,66,36,760	5,66,36,760	100.00%	56,637	0.10%
Operational Trade Creditors	1,28,08,197	85,77,921	66.97%	8,578	0.10%
Total Operational Debtors =	6,94,44,957	6,52,14,681	93.91%	65,215	0.10%
TOTAL LIABILITIES ADMITTED AND AMOUNT OFFERED IN RESOLUTION PLAN =	21,72,71,104	21,30,40,828	98.05%	58,45,215	2.74%

*** The Resolution Applicant does not offer any amount to UCAL Auto Private Limited for the financial claim of Rs. 7,48,74,866/- By excluding this Financial claim, other financial creditors claim of Rs.7,29,51,281/- is offered with 7.54% of the claims admitted.

- 2.74%

15.2. It is stated that the admitted financial claim of UCAL Auto Private Limited for an amount of Rs.7,48,74,866/- (Rupees Seven Crores Forty-Eight Lakhs Seventy-Four Thousand Eight Hundred

and Sixty-Six only) was not offered with any consideration in the Resolution Plan.

15.3. As to above discrimination in payment to the Related parties are concerned, the judgment of the Hon'ble Supreme Court in the case of **M.K. Rajagopalan -Vs- Dr. Periasamy Palani Gounder & Anr** in *Civil Appeal Nos. 1682 – 1683 of 2022* clearly reason the discrimination of payment to the related party in the Resolution Plan wherein in para 52 to 54, it is held as follows;

"52. Another factor taken into consideration by the Appellate Tribunal has been in relation to the so-called discrimination in the resolution plan in relation to a related party of the corporate debtor.

53. Learned counsel for the appellant in Civil Appeal No.1827 of 2022 has referred to several decided cases to submit that therein, even when certain dues of related parties were admitted, the resolution plans not providing for any payment to such related parties were upheld by this Court; and that the principles of non-discrimination would not be applicable to the decision of CoC. It has been argued on behalf of the resolution professional that none of the statutory requirements are of any mandate that a provision has to be made in the resolution plan for payment to the related parties. According to the learned counsel, the need is, essentially, to ensure that the plan provides for payment to financial creditors (including dissenting financial creditors) entitled to vote. Thus, the plan in question cannot be said to be standing in contravention of any mandatory requirements. Per contra, the learned counsel appearing for the related party would submit that even when related party is to be treated as a separate class in terms of the principles laid down by this Court in Phoenix ARC (supra), so as to be excluded from CoC, there is no reason that they be treated as separate class when it comes to payment of dues under the resolution plan. It is submitted that failure to provide for discharge of debt of the related party is in violation of Section 30(2)(b), (e) and (f) of the Code. The submissions made on behalf of the related party and the



observations of the Appellate Tribunal are difficult to be accepted.

54. The lengthy discussion of Appellate Tribunal in regard to the related party (the parts whereof have been reproduced in paragraph 19.7 hereinabove) depict rather unsure and irreconcilable observations of the Appellate Tribunal.

54.1. After taking note of the fact that related party is prohibited to be a part of CoC and is further prohibited to be a resolution applicant or an authorized representative etc., the Appellate Tribunal has rightly observed that involvement of a related party in CIRP in any capacity was seen as giving unfair benefit to the corporate debtor; and that the statutory recognition of related party as a different class would apply even to resolution plan when CoC would decide whether in its commercial wisdom it should pay to related party at all because that would mean paying to the same persons who are behind the corporate debtor. However, thereafter the Appellate Tribunal proceeded to observe that related party was required to be equated with the promoters as equity share-holders and then, further made certain observations about discrimination between related party unsecured financial creditor and other unsecured financial creditors as also between related party operational creditor and other operational creditors. Such far-stretched observations of the Appellate Tribunal are difficult to be reconciled with the operation of the statutory provisions.

54.2. **It has rightly been argued on behalf of the appellants and had rightly been observed by the Adjudicating Authority (vide extraction in paragraph 15.4.1 hereinabove) that there was no provision in the Code which mandates that the related party should be paid in parity with the unrelated party. So long as the provisions of Code and CIRP Regulations are met, any proposition of differential payment to different class of creditors in the resolution plan is, ultimately, subject to the commercial wisdom of CoC and no fault can be attached to the resolution plan merely for not making the provisions for related party. "**
(emphasis supplied)

15.4. The plan envisages the Mode of Contribution of fund which is tabulated below:

Mode Of Contribution In The Resolution Plan Of UCAL Products Private Limited	
Issue of 18836 numbers of Non-convertible Redeemable Debentures @10% interest / year, Repayable after 365 days within 380 days	Rs.55,00,000
Loan Amount on account of UPPL Resolution Plan to settle the creditors in the cash mode	Rs.65,215
Cash payments CIRP unpaid (RP Fee) If any unpaid	Rs.2,80,000
Total Fund Infusion Through the Resolution Plan =	Rs.58,45,215
Post the Transfer Date, but within 1 (one) year of the Approval Date, the Resolution Applicant will infuse, in one or more tranches, additional funds in the Merged Entity, in the form of appropriate instruments of equity, debt or otherwise, towards capex and working capital to increase the commercial operations of the Merged entity.	Rs.20,00,000

15.5. Distribution to the various stakeholders under the resolution plan is reproduced as under:

Appendix – 1C

Summary of the Resolution Plan

UCAL PRODUCTS PRIVATE LIMITED						
Class Of Creditors	Sub-Class of Creditors	Amount Claimed	Claim Admitted	Amount Offered In The Resolution Plan	Mode of Dispersal	
					Redeemable debentures @ 10%	Total Allotment in the Resolution Plan
CIRP Cost	RP Remuneration (18/2/2022 to 17/9/2022)	2,80,000	2,80,000	2,80,000	-	2,80,000
Financial Creditors' Claims (Schedule-1)	Financial creditors	14,78,26,147	14,78,26,147	55,00,000	18,836	55,00,000
Operational Creditors' Claims (Schedule-2)	Workmen & Employees	-	-	-	-	-
	Government dues	5,66,36,760	5,66,36,760	56,637	-	56,637
	Trade Creditors	1,28,08,197	85,77,921	8,578	-	8,578
Total =		21,75,51,104	21,33,20,828	58,45,215	18,836	58,45,215

In respect of CIRP cost it is stated that no funds are available with the Corporate Debtor. The unpaid CIRP cost will be settled by the SRA on the approval of the Resolution Plan. An affidavit has been filed by the RP vide S.R. No.3020 dated 20.07.2023. It is stated that the claims of the Financial Creditors will be settled by issuing debentures by PRA M/s. Suja Shoei Industries Private Limited.

15.6. In so far as the government dues are concerned, this Tribunal on 13.07.2023 had directed the RP to analyse the impact of judgment in Civil Appeal No. 1661 of 2020 in the case of **"Rainbow Papers Limited"**. The RP in compliance thereof, filed an affidavit vide S.R.No.3020 dated 20.07.2023 submitting the list of Operational Creditors (Government dues) as below:

PART-B OF SCHEDULE-2					
List of operational creditors (Government dues)					
(Amount in Rs)					
Sl No.	Department	Nature of Claims	Amount Claimed	Claim Admitted	Amount Offered In The Resolution Plan
1	Income Tax Department	Outstanding arrear for the F/Ys: 16-17 & 18-19	10,184	10,184	10
2	Sales Tax Officer, Alwarpet Assessment Circle, Nandanam, Chennai	Demand against Tax, pendalty and Interest raised under GST Act 2017 for the period of 2018-	1,38,94,626	1,38,94,626	13895

		2019, 2019-2020 & 2020-2021			
3	The Asst.Commissioner (ST), Anna Salai Asst.Circle, Chennai.	Demand raised under CST Act for the A/Y-2017-2018 and TN VAT Act for the A/Y-2015-16 and Demand raised under GST Act for the period Dec-2017-Aug-2018	3,17,90,862	3,17,90,862	31791
4	ESI - Regional Office, Chennai	Non-payment of contribution and penalty for the delayed payments till 2014 to 2021	9,64,975	9,64,975	965
5	Office of Asst.Commissioner of CGST & Central Excise (Marai Malai Nagar Division), Chennai Outer Commissionerate, No.40, Ranga Colony, Rajakilpakkam, Chennai- 600 073.	Short payment of Central Excise duty & Service Tax payable and late fee with interest for the F/Ys: 2008-2009 and @015 to 2017	99,76,113	99,76,113	9976
Total =			5,66,36,760	5,66,36,760	56,637

15.7. It is stated that while collating the claims, it was found that there was no security against the government dues. Accordingly, statutory dues were categorized as Operational debts without security. Even the departments mentioned "**NIL**" security in the claim form submitted by them towards the statutory dues. It is stated that since the government dues are without security, their claims would rank below the claims of the Financial Creditors under the waterfall mechanism under Section 53(2) of the Code. It is stated that since the Resolution Plan value will be fully adjusted against the dues of the Financial Creditors' "admitted claims", no amount would be payable to the Operational Creditors in the event

of the liquidation of the Corporate Debtor if the distribution is made in accordance with the order of priority in terms of Section 53(1) of IBC. However, the present Resolution Plan provides for the payment of outstanding statutory dues. Reference is placed on the case in ***Paschimanchal Vidyut Vitran Nigam Ltd. Vs. Raman Ispat Pvt. Ltd. & ors.*** (2023 SCC Online SC 842) to contend that the judgment passed in ***Rainbow Papers*** *supra* would not be applicable. As regards the ESI claim, it is stated that the present Resolution Plan provides for the payment of outstanding dues.

15.8. On a perusal of the record, we find that the government departments had submitted the claim forms with the RP expressly mentioning that there is no security against the dues. We are in agreement with the contention of the RP that these statutory dues would be categorized as operational dues without security and would rank below the claims of the Financial Creditors under the waterfall mechanism under Section 53(2) of the IBC. The resolution plan still provides for the payments of outstanding dues even though no amount would be payable to the Operational Creditors in the event of liquidation of the Corporate Debtor. The CoC which included the Financial Creditors has approved this plan with 100% voting without any dissent. In the case of ***Rainbow Paper***, the VAT department had proceeded to attach the property of the Corporate Debtor and encumbered the asset of the Corporate Debtor. On the basis of that attachment/encumbrance,

the department had claimed to be a Secured Creditor and sought priority in the distribution as per Section 53(1) at par with the Secured Creditor. This proposition was clarified by **the Hon'ble Supreme Court of India** in the case of ***Paschimanchal Vidyut Vitran Nigam Ltd. Vs Raman Ispat Private Limited & others*** in Civil Appeal No.7976 of 2019 dated 17.07.2023 where it is held as follows,

"49. Rainbow Papers (Supra) did not notice the 'waterfall mechanism' under Section 53 – the provisions had not been adverted to or extracted in judgment.... the judgment has not taken note of the provisions of IBC which treat the dues payable to secure creditors at a higher footing than dues payable to Central and State Government" ...

In the present case also, there is no security interest created in favour of the government departments against the statutory dues nor the government has made any attachment or created encumbrance over the property. Taking recourse of the judgment in the case of ***Paschimanchal Vidyut Vitran Nigam Ltd supra***, we are of the view that dues of the government in the absence of security cannot be treated as the dues at par with the secured creditors.

15.9. As regards the ESI claim, the CoC in the meeting held on 07.10.2022 had examined this aspect and approved the plan which provides for payment of outstanding dues. The RP has also filed an affidavit of the Resolution Applicant whereby the Resolution Applicant has undertaken to pay the balance sum of dues to ESI

over the amount provided in the Resolution Plan vide an undertaking filed under S.R. No.3020 dated 20.07.2023.

15.10. The timelines envisaged under the resolution plan for the payment to the various stakeholders are placed as Annexure-2 at page 296 which is reproduced under:

ANNEXURE 2			
IMPLEMENTATION SCHEDULE			
UCAL PRODUCTS PRIVATE LIMITED			
S. No	Activity	Days	Time Period
1	Receipt of the Approval for the Resolution Plan from the Adjudicating Authority	0	
2	Payments to the creditors mentioned in the Resolution Plan	15	Within 15 Days from the date of the Approval of the Resolution Plan by the Adjudicating Authority
3	Issue of Non-Convertible redeemable Debentures to the consenting Unsecured Financial Creditors	60	Within 60 Days from the date of the Approval of the Resolution Plan by the Adjudicating Authority

15.11. Scheme of Merger in Resolution Plan:

15.11.1. It is stated that the Resolution Plan envisaged a Scheme of Merger i.e. the Corporate Debtor (Transferor Company) is amalgamated with the SRA (Transferee Company). Section 30(2)(e) of IBC, 2016 and Regulation 37(ba) of IBBI (Insolvency Resolution Process of Corporate Person) Regulation, 2016 permits SRA to submit a plan envisaging a merger. Vide Notification No.IBBI/2019-20/GN/REG052, dated 27.11.2019 with effect from 28.11.2019, the aforementioned clause (ba) was inserted in Regulation 37 so as to allow that the Resolution Plan may also provide for merger, amalgamation and demerger.

15.11.2. The Rationale of the Scheme provided in the Resolution Plan is extracted hereunder.

The Rationale of the Scheme:

- i) UCAL Products Private Limited ("UPPL") or the Corporate Debtor is currently undergoing Corporate Insolvency Resolution Process ("CIRP") as per the provisions of the Insolvency and Bankruptcy Code, 2016 ("Code") Pursuant to an order of the Hon'ble NCLT, Chennai (the Adjudicating Authority) vide CP (IB)/78 (CHE)/2021, Dated- 10/12/2021. (NCLT Order").
- ii) The Corporate Debtor is an associate company of UCAL Auto Private Limited ("UAPL") which is also in the Corporate Insolvency Resolution Process ("CIRP"), by order of the Hon'ble NCLT, Chennai. Vide: IBA/1237/2019, dated- 04/06/2021.
- iii) Mrs. Renuka Devi Rangaswamy (Reg. No: IBBI/IPA-001/IP-P-01863/2019 -2020/12871) is the Resolution Professional of UPPL to conduct the CIRP.
- iv) In accordance with the provisions of Section 25(2)(h) of the Code read with Regulation 36A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations"), the Resolution Professional published Form-G- Expression of Interest through Newspapers advertisements in "Trinity Mirror:- English Newspaper and "Makkal Kural"- Tamil Newspaper published on 28.05.2022 from interested and eligible prospective resolution applicants for the purpose of submission of resolution plans that are compliant with the requirements of the Code for



presentation to the Committee of Creditors for its consideration and approval.

- v) Based on the aforesaid invitation of the Resolution Professional, a Resolution Plan is being submitted by Suja Shoei Industries Private Limited ("Resolution Applicant") to the Resolution Professional, for the consideration and approval of the Committee of Creditors.
- vi) In the Resolution Plan, the Resolution Applicant has detailed the plan and approach in accordance with the provisions of Section 30, 31 of the Code read with Regulations 37, 38 and 39 of the CIRP Regulations for the consideration and approval of the Committee of Creditors.
- vii) The Resolution Applicant proposes acquisition of full ownership and control over the management of the Corporate Debtor and its associated company by Merger by absorption.
- viii) This scheme provides in detail the terms and process of Merger of the Corporate Debtor ("UPPL") with Suja Shoei Industries Private Limited (Transferee Company).
- ix) The scheme of Merger of UCAL Auto Private Limited, an associate company of UPPL with Suja Shoei Industries Private Limited is dealt in a separate scheme.
- x) The order of the Adjudicating Authority sanctioning the Resolution Plan shall be deemed to be an order under Section 230 to 234 of the Companies Act 2013 confirming such Merger between the Transferor Company together with their business and undertakings, with the Transferee Company, so as to achieve the following:
 - a. The Transferor Company ("UPPL") currently is a manufacturer of oil pump, Oil filter brackets, Oil filter body, Electronic fuel pump, Mechanical Fuel Pump and



various other die cast aluminum components and machined components as original equipment to leading 4 wheelers and light commercial vehicles in India. UPPL partners with UAPL for machining and assemblies and ensure success over the full supply of services and Goods.

- b. The Transferee Company ("SSIPL"), is a leading manufacturer of Rubber products like Diaphragms, Metal to rubber bonded products, Gaskets, Valve-combination, Oil Seals, packing which is an essential input for the manufacture/assembly of products developed by the Transferor Company which would lead to a forward integration.
- c. The aforesaid synergistic benefits accruing from the consolidation would ultimately contribute to the future business and profitability of the merged entity.
- d. Both the Transferor Company and Transferee Company can achieve larger product portfolio, access new domestic and export markets, increase market share, economies of scale, efficiency, and other related economies through this Merger. This Scheme intends to merge the operations of the Transferor Company with that of the Transferee Company to fulfil this objective.

xi) Thus, the Merger of the Transferor Company with the Transferee Company in terms of the Scheme will be beneficial to all the stakeholders involved in the Insolvency Resolution of the CD.

15.11.3. **Consideration in the Scheme:**

Consideration agreed in the scheme is as follows:

- a. Dissolution of the board of the Corporate Debtor. The directors of the Corporate Debtor shall be discharged without any additional actions;
- b. cancellation of entire paid-up share capital (equity and preferential) of the Corporate Debtor,



c. issue of Non-convertible Redeemable Debentures, Interest rate @10% per annum, redeemable period 365 to 385 days by the Resolution Applicant from the date of Scheme approved by the Hon'ble NCLT Approval Date or 01/04/2023 to 31/03/2024 to the Financial Creditors, having voting rights and voting in favour of this Resolution Plan and for others settled by upfront payment by the Resolution Applicant.

The method of issuing consideration is explained in part IV of the Scheme at page 319 of the typed set filed with the application.

16. **Management and Supervision of Corporate Debtor:**

Clause 5.6.2 of the Resolution Plan provides for a procedure for the management of the Corporate Debtor, wherein the RP (subject to her consent) or such other person agreed by the CoC be appointed as the **Monitoring Professional**. After approval of this plan by this Adjudicating Authority, there shall be the constitution of a **Monitoring Committee** comprising one representative from the Financial Creditors who were forming part of the CoC, two representatives of the Resolution Applicant and the Monitoring Professional. The remuneration of the Monitoring Professional and functions of the Monitoring Committee are described in Clause 5.6.2 in detail and are satisfiable to this Tribunal.

17. It is noted that the Resolution Plan has been unanimously approved by all the CoC members and the same has been recorded

in the minutes of the 11th CoC meeting held on 27.01.2023. The Resolution Professional has certified the Form-H in accordance with the Regulation 39(4) of IBBI(CIRP) Regulations 2016 and the same is placed at page 551 of the typed set filed in the application. Further, in Form-H, there are NIL-PUFE Applications pending in respect of Corporate Debtor. The Fair Value and Liquidation Value as per Form-H is extracted hereunder.

Fair Value	Rs.1.49 crore
Liquidation Value	Rs.0.55 crore

18. TABULATION OF VARIOUS MANDATORY COMPLIANCES REQUIRED UNDER THE PROVISIONS OF IBC, 2016:

From the averments as well as in the Form-H filed by the Resolution Professional the details of various compliances as envisaged within the provisions of IBC, 2016 and CIRP Regulations, which requires a Resolution Plan to adhere to, have been given which are reproduced hereunder:

MANDATORY COMPLIANCE UNDER IBC, 2016	COMPLIANCE UNDER RESOLUTION PLAN
<u>S. 30(1)</u> - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	Resolution Applicant filed an Undertaking at page 257 of the application
<u>S.30(2)(a)</u> - Payment of Insolvency and Resolution cost in the manner specified by the Board	Clause 5.2.1 of the Resolution Plan provides for the payment of CIRP costs.

<u>S.30(2)(b)</u> -Payment of debts of Operational Creditors in such manner as may be specified by the Board, which shall not be less than the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under Sec. 53.	Clause 5.2.2 of the Resolution Plan provides for the discharge of Operational Creditor claims.																				
<u>S. 30(2)(c)</u> - Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause 5.6 of the Resolution Plan provides for Management and control of the operations of the Corporate Debtor.																				
<u>S.30(2)(d)</u> Implementation and Supervision of the Resolution Plan.	Clause 5.7 of the Plan at page 240 of the Application.																				
<u>S.30(2)(e)</u> - The plan does not contravene any of the provisions of the law for the time being in force.	Yes, mentioned at clause 13 of Form-H																				
<u>S.30(4)</u> - Committee of Creditors approve the Resolution Plan by not less than 66% of the voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by the Board	<p>The CoC, in its 11th meeting, has unanimously approved the Resolution Plan voting is given below;</p> <table><tr><th>S.No</th><th>Name of Creditor</th><th>Assent (%)</th><th>Dissent (%)</th></tr><tr><td>1.</td><td>Integrated Data Management Services Pvt. Ltd.</td><td>88.24%</td><td>-</td></tr><tr><td>2</td><td>Sridharan</td><td>8.21%</td><td>-</td></tr><tr><td>3</td><td>Sundaram Finance Limited</td><td>3.55%</td><td>-</td></tr><tr><td></td><td>TOTAL</td><td>100%</td><td>-</td></tr></table>	S.No	Name of Creditor	Assent (%)	Dissent (%)	1.	Integrated Data Management Services Pvt. Ltd.	88.24%	-	2	Sridharan	8.21%	-	3	Sundaram Finance Limited	3.55%	-		TOTAL	100%	-
S.No	Name of Creditor	Assent (%)	Dissent (%)																		
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2	Sridharan	8.21%	-																		
3	Sundaram Finance Limited	3.55%	-																		
	TOTAL	100%	-																		

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

MANDATORY COMPLIANCE UNDER CIRP REGULATION	COMPLIANCE UNDER RESOLUTION PLAN
<i>A Resolution Plan shall provide for the measures, as may be necessary, for insolvency resolution of the Corporate Debtor for maximisation of the value of its assets, including by not limited to the following: -</i>	
(a) transfer of all or part of the assets of the Corporate Debtor to one or more persons;	Clause 5.1 and clause 3.5 at part III of the Scheme at page No.314.
(b) sale of all or part of the assets whether subject to any security interest or not;	Not Applicable
(ba) restructuring of the Corporate Debtor, by way of merger, amalgamation and demerger;	Clause 5.1.1 of the Plan
(c) the substantial acquisition of shares of the Corporate Debtor, or the merger or consolidation of the Corporate Debtor with one or more persons;	Clause 5.1.1 of the Plan
(ca) cancellation or delisting of any shares of the Corporate Debtor, if applicable;	Clause 5.1.2 of the Plan
(d) satisfaction or modification of any security interest;	Clause 5 of the Plan
(e) curing or waving of any breach of the terms of any debt due from the Corporate Debtor;	Clause 5 of the Plan
(f) reduction in the amount payable to the creditors;	Clause 5 of the Plan



(g) extension of maturity date or a change in interest rate or other terms of a debt due from the Corporate Debtor.	Clause 5 of the Plan
(h) amendment of the constitutional documents of the Corporate Debtor;	Clause 5.2.16 of the Plan
(i) Issuance of Securities of The Corporate Debtor, for cash property, securities, or in exchange for claims or interests, or other appropriate purpose;	Not Applicable
(j) change in portfolio of goods or services produced or rendered by the Corporate Debtor;	Not Applicable
(k) change in technology used by the Corporate Debtor; and	Annexure 5 to the Resolution Plan at page 299 of the application.
(n) obtaining necessary approvals from Central and State Governments and other Authorities.	No Approval is required as of now, and undertook to obtain if any, necessary for the implementation.

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

	MANDATORY COMPLIANCE UNDER CIRP REGULATION	COMPLIANCE UNDER RESOLUTION PLAN
38(1)	The amount due to the Operational Creditor under Resolution Plan shall be given priority in payment over Financial Creditor.	Clause 3.7 & 5.2.2 of the 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.	Clause 3.7 of the 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 Adjudicating Authority at any time in the past.	Clause 3.7 of the Plan
38(2)	a) term of the plan and its implementation schedule	Clause 5.3, 5.4 & Annexure 2 of the Plan
	b) management and control of the business of the Corporate Debtor during its term;	Clause 5.6 of the Plan
	c) adequate means for supervising its implementation	Clause 5.7 of the Plan
38(3)	a) it address the cause of default;	Clause 3.7 of the Plan
	b) it is feasible and viable	Clause 3.7 of the Plan
	c) it has provisions for effective implementation	Clause 3.7 of the Plan
	d) it has provisions for approval required and the timeline for the same; and	Clause 3.7 of the Plan
	e) the resolution applicant has the capability to implement the Resolution Plan.	Clause 3.7 of the Plan

19. Relief and concessions:

In respect of additional relief and concessions prayed in Clause 11 of the Resolution Plan, this Tribunal directs as follows,

SL. No.	RELIEF / CONCESSIONS SOUGHT FOR	ORDERS THEREON
a	Issue directions for the transfer of the whole of the undertaking, property of the UCAL Products Private Limited, transferor company by the merger of absorption to the Sija Shoei Industries Private Limited, transferee company from the appointed date being 01/04/2022.	Granted subject to the provisions of IBC, 2016 and other applicable laws
b	Issue directions that all liabilities of the transferor company as an insolvency commencement date being dealt in accordance with this approved resolution plan.	Granted subject to the provisions of IBC, 2016 and other applicable laws
c	Issue directions for the allotment of fully paid-up equity shares and debentures by the transferee company to the assenting creditors under this Resolution Plan.	Granted subject to the provisions of the Companies Act, 2013 and other applicable laws
d	Issue directions that the dissenting creditors be settled as in this approved resolution plan.	There are no dissenting Financial Creditor, relief no longer required
e	Issue directions that dissolution of Transferor company without winding-up.	Granted subject to the provisions of the Companies Act, 2013 and other applicable laws
f	Issue directions that where the transferor company is dissolved,	Granted subject to the provisions of the

	the fee, if any, paid by the transferor company on its authorized capital shall be set-off against any fees payable by the transferee company on its authorized capital subsequent to the merger.	Companies Act, 2013 and other applicable laws
g	Issue directions that such incidental, consequential and supplemental matters as are deemed necessary to secure that the merger is fully and effectively carried out.	Granted subject to the provisions of the Companies Act, 2013 and other applicable laws
h	Issue directions that all income tax benefits accrue by way of a merger under the Companies Act, 2013 is deemed to accrue by approval of this Resolution Plan.	Left for the consideration of Appropriate Authority.
i	Declare that this Resolution Plan and the terms and conditions therein is binding on all the stakeholders of the Corporate Debtor including the Relevant Authorities to whom a debt in respect of the payment of dues arising under any Applicable Law for the time being in force, or Relevant Authorities to whom statutory dues are owed.	Granted in terms of the judgement of Hon'ble Supreme Court in Ghanshyam Mishra and Sons vs. Edelweiss Asset Reconstruction Company Limited 2021 SCC Online SC 313

20. Observations of this Tribunal:

20.1. The fair value of the Corporate Debtor is Rs.1.49 crore and the liquidation value of the Corporate Debtor is Rs. 0.55 Crore. The Total infusion through the Resolution Plan is Rs.58,45,125/-. The Resolution Plan value is slightly higher than the Liquidation Value.

The Hon'ble Supreme Court of India in the case of **Maharashtra Seamless Limited -Vs- Padmanabhan Venkatesh & Ors.** in *Civil Appeal No. 4242 of 2019* at para 26 and 27 has held as under;

"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. This point has been dealt with in the case of Essar Steel (supra). We have quoted above the relevant passages from this judgment.

27. It appears to us that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Once, a resolution plan is approved by the CoC, the statutory mandate on the Adjudicating Authority under Section 31(1) of the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof. We, per se, do not find any breach of the said provisions in the order of the Adjudicating Authority in approving the resolution plan."

20.2. It is thus, as held by the Hon'ble Supreme Court, that there is no provision in IBC, 2016 or in the Regulations which stipulates that the bid of the Resolution Applicant has to match the Liquidation value of the Corporate Debtor.

20.3 In so far as the approval of the Resolution Plan is concerned, this Authority, considering the decision of the Committee of Creditors, is duty-bound to follow the precedents 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 the 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."*

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 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)."

Further 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)

Also, the Hon'ble 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 under;

"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)

20.4. 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 under;

"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

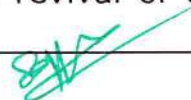
resolution plan results in maximisation of the value of assets or not. The generalised submissions and objections made in relation to this aspect of value maximisation do not, by themselves, make out a case of interference in the decision taken by the Committee of Creditors in its commercial wisdom

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 expounded by this Court."

(emphasis supplied)

21. 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.

22. The Resolution Plan is therefore **approved**. It shall be binding on the Corporate Debtor and other stakeholders, shareholders and all creditors involved. The revival of the Debtor



Company shall come into force with immediate effect and the "Moratorium" under section 14 of IBC, 2016 shall cease to have any effect henceforth.

23. The Resolution Professional shall submit all the records, documents, belongings and assets of the Corporate Debtor processed during the commencement of the Proceedings and also return to the Resolution Applicant.

24. A certified copy of this Order be issued on demand to the concerned parties, upon due compliance. Liberty is hereby granted for moving any Interlocutory Application, if required, in connection with the implementation of this Resolution Plan.

25. In respect of stepping in by the Resolution Applicant/Promoters into the shoes of the Corporate Debtor and taking over the business, the provisions of the Companies Act, 2013 shall be applicable.

26. A copy of this Order be submitted to the Office of the Registrar of Companies, Chennai, for updating the master data of the Corporate Debtor and to the IBBI for records.

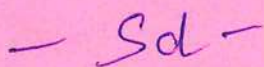
27. The Resolution Professional is directed to hand over all records, premises/documents to Resolution Applicant to finalise the further line of action required for starting the operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access to all the records premises/documents through

Resolution Professional to finalise the further line of action required for starting the operation.

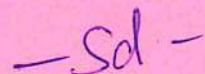
28. The Resolution Professional shall stand discharged from his duties with effect from the date of this order.

29. Accordingly, IA(IBC)/1113(CHE)/2023 shall stand **disposed of**.

30. 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 are consigned to the record.



SAMEER KAKAR
MEMBER (TECHNICAL)



SANJIV JAIN
MEMBER (JUDICIAL)

Gopishankar. D

*Order pronounced under Rule 151 of NCLT Rules 2016, by **Hon'ble Judicial Member Sanjiv Jain** on behalf of the Bench comprising of **Sanjiv Jain, Member (Judicial) and Sameer Kakar, Member (Technical)**.*