

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI
BENCH- I**

IA No. 3478 of 2022

AND

IA No. 787 of 2023

AND

IVN. P. No. 12 of 2023

IN

CP(IB) No. 408 of 2019

Under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (“Code”) r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for seeking approval of the Resolution Plan under the provisions of Section 31(1) of the Code.

IA No. 3478 of 2022

In the Application of

S. Gopalakrishnan

**...Applicant/Resolution
Professional**

IA No. 787 of 2023

In the matter of

S. Gopalakrishnan

**...Applicant/Resolution
Professional**

Versus

Satish Damodar Akole & Anr.

...Respondents

IVN. P. 12 of 2023

In the matter of

Saturn Ventures and Advisors Private Limited

...Intervenor

Versus

S. Gopalakrishnan

**...Original Applicant/
Resolution Professional**

In the matter of

Bank of India Limited

**...Financial Creditor/
Petitioner**

Versus

Saturn Rings and Forgings Private Limited

**...Corporate Debtor/
Respondent**

Order Delivered on : 30.01.2024

Coram:

Hon'ble Member (Judicial) : SH. Justice Virendrasingh G. Bisht (Retd.)

Hon'ble Member (Technical) : SH. Prabhat Kumar

Appearances:

For the Resolution

Professional : Mr. Rohit Gupta, Mr. Amit Tungare,
Advocates

For the Bank of India

: Ms. Prajakta Menezes, Mr. Rakesh Gupta,
Advocates

For the Intervenor in

IVN. P. 12/2023 : Mr. Shyam Kapadia, Mr. Suyesha Kakarla,
Ms. Nancy Singh, Advocates with
Mr. Satish Gopinath

For the Successful

Resolution Applicant : Mr. Zaman Ali, Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. The Resolution Professional of **Saturn Rings and Forgings Private Limited** (“**Corporate Debtor**”), Mr. S. Gopalkrishnan, has filed an Application bearing **IA No. 3478/2022** in **CP(IB) No. 408/2019** seeking approval of Resolution Plan in terms of Sec. 31 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) after the approval of Committee of Creditors (“**CoC**”) of the Corporate Debtor.
2. Before we deal with the Application for approval of the Resolution Plan, it is important to deal with **IA No. 787/2023**, filed by the Resolution Professional (“**RP**”) against the suspended Directors of the Corporate Debtor seeking declaration of certain businesses/transactions conducted by the Respondents and the Senior Management of the Corporate Debtor as fraudulent and wrongful and directions against Respondents to make appropriate contributions to the assets of the Corporate Debtor. It is also important to address one **IVN. P. 12/2023** filed by Saturn Ventures and Advisors Private Limited against the RP seeking declaration that the machinery named Wagner 630 line is owned by the Intervenor and that its inclusion in the Information Memorandum of the Corporate Debtor is wrong and that the machinery named Wagner 630 cannot form part of the Resolution Plan of the Successful Resolution Applicant (“**SRA**”).

3. We are of the opinion that the outcome of these Applications could have bearing on the decision regarding approval of the Resolution Plan and hence, they need to be adjudicated first.

IA No. 787 of 2023 and IVN. P. No. 12/2023

4. IA No. 787/2023 has been filed by the Resolution Professional against the suspended Directors of the Corporate Debtor seeking the following reliefs :
- 4.1. The Tribunal be pleased to hold, and declare that the suspended directors of the Corporate Debtor, have carried on the business of the Corporate Debtor, with intent to defraud the homebuyer of the Corporate Debtor;
- 4.2. The Tribunal be pleased to hold that the impairment reversal entry is merely a book entry to defraud the Financial Creditor
- 4.3. This Hon'ble Tribunal be pleased to hold that the machinery being Wagner 630 is the asset of the Corporate Debtor;
- 4.4. In alternate to prayer (c) above, this Hon'ble Tribunal be pleased to direct the Respondents, jointly and severally, to bring in the monies equivalent to Rs. 6,48,00,000/- as are siphoned off by them through its parent company;
- 4.5. This Hon'ble Tribunal be pleased to direct the Respondents, jointly and severally, to bring back an amount of Rs. 14,00,000/- (Rupees Fourteen Lakhs Only) as received from PSL A.S. Robotnica;
- 4.6. This Hon'ble Tribunal be pleased to award maximum punishment to the suspended directors, for the false representation to the Applicant U/s 73(b) of the IBC, 2016.

5. Satish Ramapuram Gopinath, Respondent No. 2 and Viraj Ghatila Chhotalal, Respondent No. 3 are common Directors of the Corporate Debtor and its holding company, i.e. Saturn Ventures and Advisors Private Limited (now known as Sattvam India Ventures Private Limited).

6. IVN. P. No. 12/2023 has been filed by Saturn Ventures & Advisors Private Limited (now known as Sattvam India Ventures Private Limited), the holding company of the Corporate Debtor, through its Director Satish Gopinath, against the Resolution professional of the Corporate Debtor seeking the following reliefs :
 - a) Pass ad-interim ex-parte order staying the proceedings in respect of approval of Resolution Plan submitted by the Successful Resolution Plan u/s 30(1) of the Code and the transfer of rights of the machinery named Wagner 630 line to the Successful Resolution Applicant or any other person until adjudication of the present Application;

 - b) Declare that the machinery named Wagner 630 line is wholly and solely owned by the Intervenor and is therefore an asset of the Intervenor;

 - c) Hold that the inclusion of the machinery named Wagner 630 line in the Information Memorandum of the Corporate Debtor is wrong and the Information Memorandum must be amended to exclude Wagner 630 line in the list of assets of the Corporate Debtor;

 - d) Hold that the machinery named Wagner 630 line must not form part of the Resolution Plan submitted by the Successful Resolution Applicant.

7. Since the subject matter of both these Applications is the dispute regarding ownership of the machinery Wagner 630 line, we consider it appropriate to decide both the Applications by this Common Order.

Submissions made by the Ld. Counsel on behalf of the Resolution Professional

8. The Resolution Professional (“**RP**”) states that the Corporate Debtor is a 99.99% subsidiary of Saturn Venture and Advisors Private Limited (now known as Sattvam India Ventures Private Limited), which company is the corporate guarantor for the loan obtained by the Corporate Debtor from the Financial Creditor, i.e., Bank of India Limited.
9. The RP states that this Tribunal vide its order dated 24.12.2021 in above Company Petition admitted the Application made by the Financial Creditor for initiation of Corporate Insolvency Resolution Process (“**CIRP**”).
10. The RP states that the Corporate Debtor has executed a Hypothecation cum Loan Agreement dated 06.06.2014 (“**Hypothecation Agreement**”) whereby it has hypothecated all tangible movable machineries and plants (both present and future) whether installed or not as specified in Part A of Schedule I of the said Hypothecation Agreement. The amount secured by the hypothecated Plant and machinery was Rs. 40,00,00,000/- (Rupees Forty Crores Only). The list of such plant and machinery as mentioned in the Part A of Schedule I is as below:
- a. Hatebur APMP70
 - b. CNC Machine Shop
 - c. National 10
 - d. CNC Machine Shop (INR)

- e. Annealing Furnace
- f. Wagner 630
- g. Other Equipment

11. The RP states that pursuant to the Order of this Tribunal, the insolvency process was initiated as per law. During the said period, the RP started valuating the hypothecated assets at which time the Respondent No. 3, Mr. Satish Gupta objected to machinery namely Wagner 630 being hypothecated to the Financial Creditor on the ground that the same belongs to the parent company i.e. Saturn Venture & Advisors Private Limited, which is a corporate guarantor in the present case and vide email dated 20.04.2022 annexed an Invoice in which the name 'Wagner 630' is nowhere mentioned.
12. The RP further states that the parent company i.e. Saturn Ventures and Advisors Private Limited through the Respondent No. 3 has also filed an Affidavit reiterating the aforesaid position alongwith copies of Invoices and an unstamped Memorandum of Understanding to show that Wagner 630 is not owned by the Corporate Debtor but belongs to the parent company being Saturn Steel Ventures & Advisors Private Limited.
13. The RP submits that pursuant to the above, the Financial Creditor appointed a Chartered Accountant Firm to prepare a Transaction Audit Report of the Corporate Debtor and it was during this exercise that it came to the knowledge of the RP and the Financial Creditor that during the financial year 2019- 2020, as per Note 2.8 the Net Block of total tangible assets is Rs. 58.92 Crores, however as per Balance Sheet the total is Rs. 52.45 Crores. Therefore, there was an impairment reversal of an amount of Rs. 6.48 Crores. The Books of Accounts of the Corporate Debtor as maintained by the Corporate Debtor in Tally was therefore checked by the Transaction Auditors as appointed by the

Financial Creditor and it was during this time it was revealed that plant and machinery worth Rs. 6.48 Crores was transferred to Saturn Venture & Advisors Private Limited. In the narration it is stated as follows “repossession of assets as per management decision dt. 31.03.2020”.

14. It is the RP’s case that the Financial Creditor had filed the present proceedings under IBC Code on 04.02.2019 and the said decision of repossession of asset is taken after the filing of present proceedings with an intent to defraud the creditors. The RP further submits that the said act of the Corporate Debtor falls under Section 49 read with Section 66 of the Code.
15. The RP further states that it has also been observed by the Auditor that an amount of Rs. 14,00,000/- has been received in the account of the Saturn Venture & Advisors Private Limited directly from one of the party being PSL A.S. Robotnica on behalf of the Corporate Debtor. The RP states that the said act of the Corporate Debtor falls under Section 49 of the Code.

Submissions made by the Ld. Counsel on behalf of Saturn Ventures and Advisors Private Limited/Intervenor

16. The Intervenor states that since the commencement of CIRP of the Corporate Debtor, the Intervenor has submitted a claim of Rs. 55,51,21,361/- against the unsecured loans provided by it to the Corporate Debtor which has been admitted by the RP on 01.02.2022.
17. The Intervenor seeks to oppose the Resolution Plan submitted by the Successful Resolution Applicant (“SRA”) dealing with an asset being a Ring Rolling Plant which comprises of a Wagner 630 press, and various other equipment in the line (“Wagner 630 line”) owned wholly and solely by the Intervenor.

18. The Intervenor submits that the Intervenor had entered into a Memorandum of Understanding with National Engineering Industries Limited ("NEI") dated 05.07.2012 to purchase a used/secondhand Ring Rolling Plant comprising the Wagner 630 line and other equipment mentioned above and more particularly described in Annexure I to the Memorandum of Understanding, for a total consideration of Rs.2.5 crores. Accordingly, the Intervenor made payments to NEI in two installments of Rs.25 lakhs on 10.09.2012 and Rs.2.25 crores on 01.10.2012, against which NEI has raised invoices on 30.09.2012 listing the various items of machinery and as is customary for sale of scrap equipment, names of equipment makers are not mentioned and the invoices mention only "scrap main press", "scrap box furnace" etc.
19. The Intervenor submits that the Corporate Debtor was incorporated on 13.07.2012 and the installation of the Wagner 630 line was completed in February, 2013.
20. The Intervenor submits that since the line was not going to be used by the Intervenor, the lien was given on lease to the Corporate Debtor and shown in the Corporate Debtor's Balance Sheet in the Fixed Asset Schedule till financial year 2019, in order to claim depreciation benefit in the Corporate Debtor's books.
21. It is the Intervenor's case that subsequently, the Wagner 630 line along with other assets and stock of the Intervenor, had been hypothecated to IndusInd Bank, being sole banker to the Intervenor. In the year 2019, since IndusInd Bank insisted that all the assets of the Intervenor hypothecated to them had to appear on the Intervenor's Balance Sheet, the Wagner 630 line and other assets owned by the Intervenor were repossessed by the Intervenor against a payment of Rs. 6.48 crores by way of reduction of outstanding loan amount. The payment is reflected

in the Corporate Debtor's books in financial year 2020 in the ledger of the Intervenor and in the Corporate Debtor's books, this is reflected as a financial lease; the machinery being the Asset side, and the Lease/loan from the Intervenor is shown as the Liability.

22. The Intervenor had informed the RP vide e-mail dated 20.04.2022 that the Wagner 630 line belongs to the Intervenor along with invoices. Accordingly, the Information Memorandums, starting from the first one dated 20.04.2022 do not mention this line in the list of equipment of the Corporate Debtor.
23. The Intervenor submits that on 19.05.2022, the RP had sought for the contract between the Intervenor and the Corporate Debtor for keeping the machinery at the premises of the Corporate Debtor, to which the Intervenor replied on 20.05.2022, replying that there was no contract between the Intervenor and the Corporate Debtor.
24. Subsequently, the RP sent a letter to the IndusInd Bank along with a list of machinery informing them to remove the machinery and stock belonging to the Intervenor lying at the plant of the Corporate Debtor and hypothecated with the IndusInd Bank failing which cost of rental would be charged from 15.06.2022. However, the Intervenor list of machineries annexed to the letter was not placed before the CoC.
25. IndusInd Bank, in its reply to the RP dated 18.11.2022, stated that the machinery owned by the Intervenor and lying at the plant of the Corporate Debtor must not be part of the Resolution Plan of the Corporate Debtor. In this letter IndusInd Bank also attached the list of machinery that was provided to them by the RP. On receiving a copy of IndusInd Bank's letter dated 18.11.2022 to the Resolution Professional, the Intervenor saw that the list of machinery provided by the Resolution Professional comprised of various non-core

machineries, including miscellaneous equipment like fans, coolers, ACs etc. and the the invoices or proof of ownership had not been provided for any of these to the RP by the Intervenor. Consequently, IndusInd Bank sent another letter on 24.11.2022 with the corrected list of machinery which included the Wagner 630 line.

26. The Intervenor further submits that pursuant to decision made at the the 5th CoC meeting, the Corporate Debtor sent an invoice to the Intervenor for Rs. 1,00,000/- (plus taxes) on 06.07.2022 for keeping the machineries at the premises of the Corporate Debtor from the 15.06.2022 to 14.07.2022.
27. The Resolution Plan submitted by the SRA was discussed on 12.07.2022, when the Intervenor informed the SRA that the Wagner 630 line could not be made part of the Resolution Plan since it is an asset of the Intervenor and not the Corporate Debtor.
28. Subsequently, the SRA made the following observation in the revised Resolution Plan :
- “Additional Remarks*
- Basis the meeting with the CoC and the Corporate Debtor, we would like to bring to your notice that Wagner 630 Line with Induction Heater, 3 station Press, Ring Rolling Mill, Sizing Press as included in the list of machinery of Corporate Debtor in the Resolution Plan, is integral part of the Wagner line and in the absence of this critical machine the second line would not yield any output. This machine was a part of teaser dated 16.03.2022 and Detailed Invitation of Expression of Interest, thus taken as a part of CDs asset and this is physically available as well. Non availability of this machine along with other machines will cause great damage to Resolution Applicant and viability of this Resolution Plan.”*

29. On 17.08.2022, a revised Information Memorandum was circulated, where the Wagner 630 line was still not shown in the List of Plant & Machinery. However, a paragraph was inserted below the List of Plant & Machinery stating that the Wagner 630 machine belongs to the Corporate Debtor as per the documents related to the term loan financed by the Bank of India.
30. It is the Intervenor's case that the RP and the Corporate Debtor have been aware and convinced of the fact that the Wagner 630 line is the asset of the Intervenor, but as soon as the SRA stated that the viability of the Resolution Plan would be affected by the non-availability of the Wagner 630 line, the RP and the CoC made every attempt to show that the Wagner 630 line belonged to the Corporate Debtor.
31. The Intervenor submits that the TEV Report that the RP has relied on states that the invoices from the Wagner line were in the name of the Intervenor and that the documents of transfer from Intervenor to the Corporate Debtor were not provided.
32. The Intervenor also states that the Ring Rolling line was not acquired out of Bank's finance or even the Corporate Debtor's own finance. It was acquired by the Intervenor before Bank of India sanctioned a loan, with the MOU being executed before the Corporate Debtor was incorporated. Bank of India hadn't disbursed any money at the stage when the Hypothecation Deed was signed by the Corporate Debtor and not a single item of machinery on the Hypothecation Deed had been purchased by the Corporate Debtor at the time of signing, this was a notional list hand - written by the bank in one page of the 28g page deed and had no bearing on the actual project status or future events.
33. The Intervenor submits that the last Information Memorandum dated 17.08.2022 does not include the Wagner 630 line in the List of Plant &

Machinery, however, in the final Resolution Plan dated 14.09.2022, the SRA has included in the Wagner 630 line in Details of Machinery of the Corporate Debtor.

34. The Intervenor also states that the prayer in IA No. 787/2023 for reversal of repossession amounts to an acknowledgement by the RP declaring that the Wagner 630 line is not an asset of the Corporate Debtor in its books and therefore, the Wagner 630 line cannot be a part of the Resolution Plan. The Intervenor also states that the alternate plea of payment of Rs. 6.48 crores has been fulfilled by the Intervenor since the Corporate Debtor has received the said payment immediately on repossession of assets.

35. The Parties have brought additional facts and documents on record vide various Additional Affidavits. The content of these Additional Affidavits are summarised below :

35.1 The RP vide Additional Affidavit dated 27.11.2023 has stated that the Corporate Debtor has filed Form CHG-1 with the Registrar of Companies (“**ROC**”), Pune and the same has been registered on 12.06.2014 and placed the same on record.

35.2 The RP has placed on record a ROC Search Report dated 20.11.2023 submitted by M/s. Mustafa Bohra & Associates in respect of charges on assets of the Corporate Debtor. The RP has also placed on record a Joint Deed of Guarantee dated 06.06.2014, where Saturn Ventures and Advisors Private Limited, Mr. Satish Gopinath, Mrs. Roopa Satish Gopinath and Mr. Satish Akole along with other Guarantors have provided guarantee as security of Credit Facilities in favour of the Financial Creditor.

- 35.3 The RP states that upon the account of the Corporate Debtor becoming a Non-Performing Asset (“NPA”), the Financial Creditor had initiated action against under the SARFAESI Act and the RDDBFI Act, however, the Intervenor did not claim the ownership of the Wagner 630 line or file for its recovery before the competent courts or tribunals.
- 35.4 The RP states that the Intervenor, being the guarantor and promoter/director has brought its equity/margin by way of transferring the Wagner 630 line for implementation and operation of the project, which constitutes an absolute transfer in favour of the Corporate Debtor under the Sale of Goods Act, 1930.
- 35.5 The RP states that the Wagner 630 line has been recognised as fixed asset of the Corporate Debtor in its Balance Sheet from the financial year 2017 and depreciation has also been claimed on it.
- 35.6 The RP also states that Mrs. Roopa Satish, one of the personal guarantors for the security of the Credit Facilities provided by the Financial Creditor is also one of the Senior Officials of IndusInd Bank.
- 35.7 The Intervenor vide Additional Affidavit dated 30.11.2023 states that the Financial Creditor was duly informed by the Intervenor on 28.11.2023, well before the execution of the Hypothecation Agreement dated 06.06.2014 that the purchase cost of the Wagner 630 line was capitalised in the books of the Intervenor along with other machineries to the tune of Rs. 5.33 Crores.
- 35.8 The Intervenor further states that as per the arrangement and terms of the Sanction Letter dated 22.01.2015 issued by Bank of

India to the Corporate Debtor, only those assets funded by it were to be hypothecated to it and Bank of India has admitted in its e-mail dated 08.10.2014 that it has not funded the purchase of Wagner 630 line. The Intervenor has also stated that the Bank of India would directly release amounts to the vendors from whom the Corporate Debtor had purchased various machineries and not into the account of the Corporate Debtor.

35.9 The RP has filed Additional Affidavit dated 04.12.2023, pursuant to the Order of this Tribunal dated 10.11.2023, placing on record the Hypothecation Deed issued by IndusInd Bank to Sattvam India Ventures Private Limited (previously known as Saturn Ventures and Advisors Private Limited), latest Sanction Letters and latest CHG form.

35.10 The Intervenor has filed Additional Affidavit dated 18.12.2023, pursuant to this Tribunal's Order dated 12.12.2023, placing on record the book entry passed in the books of the Intervenor and the Corporate Debtor when Wagner 630 was leased to the Corporate Debtor by the Intervenor.

35.11 The Intervenor states that the treatment has been made as per Accounting Standard 19 in the books of the Corporate Debtor. Accordingly, the entry is reflected on the "Asset" side and explained at Note 2.7 as "CWIP Plant and Machinery", and the corresponding entry in the "Liability" side is explained at Note 2.3 under "Long Term Borrowings" as "Loans and Advances from SVAPL". Further, in the books of Intervenor, the entry is included under "Non-Current Investments" and is explained at Note 3.0 as "Investment in Subsidiary Company, Saturn Rings and Forgings Private Limited".

35.12 The Bank of India has filed Additional Affidavit dated 18.12.2023, pursuant to this Tribunal's Order dated 05.12.2023 directing them to place on record certificate from Chartered Accountant having been obtained at the time of disbursement of the loan facilities in terms of the sanction referred in their e-mail dated 11.10.2018.

35.13 The Bank of India also submitted that with reference to the Credit Facilities granted, the Corporate Debtor, from time to time forwarded invoices towards the charges for installation and fabrication of various machines including for the machine Wagner 630 to the Bank of India for payment.

35.1 The Bank of India also submits that after the sanction of the credit facilities from Bank, a Supplementary Techno Economic Viability ("**TEV**") Report was also obtained from an independent Technical Consultant namely, R.N Thobbi TEV Consultant dated 15.06.2015 for monitoring the project finance for the given list of plant and machinery. That the said Supplementary TEV Report includes Wagner 630 (I No.) Indigenous old machine from NEI bearings Jaipur as part of total project funding wherein the Promoter Margin against the said machinery was 100%.

Findings

36. Heard learned Counsel and perused the material available on record.

37. The dispute in the present Application pertains to ownership of Wagner 630 machine. It is the case of the Intervenor that the machine was never sold to the Corporate Debtor. However, it was given on lease for the usage of Corporate Debtor. Per Contra, it is the case of the Resolution Professional that this machine is accounted for in the books of Corporate

Debtor and it is stated to have been taken out of the Fixed Assets Block of the Corporate Debtor by way of journal entry passed on 31.03.2020.

38. During the course of hearing, this Bench sought certain clarification from both Parties who have placed on record those clarifications along with relevant documents for the perusal of the Bench.

39. It is noticed that the Intervenor had bought this machine on 05.07.2012 vide Invoice No. 0012040867 and 0012040868 from National Engineering Industries Limited and the same is declared as part of Capital Work In Progress in the audited financial statement of the Intervenor. A certificate to this effect has been placed on record from their Chartered Accountant. We further find from these documents that Intervenor had obtained loan from IndusInd Bank on the security of this machine. It is pertinent to note here that one of the officers of IndusInd is the wife of Mr. Satish Gopinath, a common Director of the Corporate Debtor as well as the Intervenor. Nonetheless, this Bench is of considered view that the hypothecation of this machine in favour of IndusInd Bank is not so relevant as to require adjudication at this stage because the relevant fact for consideration in the matter is the determination of the ownership of the said machine.

40. We further note that Corporate Debtor while obtaining Term Loan from Bank of India had declared Wagner machine as already acquired and thus represented to Bank of India that the value of this machine shall form part of Promoter's contribution to the loan sanctioned by Bank of India. It is further noticed that this Wagner machine is included in the list of machines in the Hypothecation Agreement with Bank of India.

41. It is undisputed fact that this machine was accounted for in the books of accounts of the Corporate Debtor and the Intervenor's account was credited by the equivalent sum which is reflected as Loans & Advances

due to the Intervenor in the books of Corporate Debtor. There is no sum towards lease rental having been booked in the books of the Corporate Debtor which could substantiate the contention of the Intervenor.

42. It is also an undisputed fact that this machine was not included initially in the Information Memorandum by the Resolution Professional. However, finally it came to be included in the Information Memorandum before the submission of the Resolution Plan. The Resolution Professional has pleaded that this machine was not included initially on account of Journal Entry of 31.03.2020 which had taken out this machine from the books of the Corporate Debtor. It is only after realization that the Journal entry dated 31.03.2020 is a transaction in the nature of fraudulent transaction because it had the effect of paying the Intervenor in priority of other creditors and keeping the essential machine out of the reach of other creditors, the Resolution Professional looked into other facts and discovered further that this machine forms integral part of the machine line. The Resolution Professional is stated to have filed an Application under Section 49 and 66 of the Code seeking annulment of this transaction.

43. The Counsel for the Intervenor persisted with the argument that the machine was transferred to the Corporate Debtor under lease agreement and same was repossessed on account of failure of the Corporate Debtor to pay the lease money. When this Bench asked the learned Counsel to demonstrate from the financial statements of the Intervenor as to whether necessary disclosures as required to be made in relation to lease transactions are appearing in its Audited financial statements so as to substantiate its contention in relation to this transaction being a lease transaction, the learned Counsel took us through the Accounting Standard as well as the financial statement. However, he failed to show the disclosure of information/accounting treatment as required under the said Accounting Standard. Finally, this Bench asked the Counsel for the

Intervenor who claimed the depreciation under Income Tax law on the investment made in the machine after the transfer of said machine after purported lease transaction. Undisputedly, both the parties conceded that the depreciation was claimed by the Corporate Debtor in its Income Tax return all along. It is noteworthy that depreciation under Income Tax law is allowed to the owner of the assets and in no case depreciation is allowed to the lessee, which would be the case if the contention of Applicant is accepted that the said transaction was a finance lease transaction. Accordingly, we have no hesitation to hold that the said Wagner Machine was sold to the Corporate Debtor and same was mischievously stated to have been repossessed on account of failure of the Corporate Debtor to pay the lease money in order to keep the most critical asset of the Corporate Debtor away from its creditors by the intervenor, which is the holding company of the Corporate Debtor.

44. In light of above, we are of considered view that there are irrefutable evidences on record to substantiate that Wagner machine was transferred to the Corporate Debtor as a sale transaction and Journal Entry dated 31.03.2020 was created to keep the said machine away from the Corporate Debtor. Accordingly, we have no hesitation to hold that the journal entry dated 31.3.2020 ought to be reversed. Accordingly, we find no infirmity in the action of the Resolution Professional to consider the said Wagner Machine as part of the assets of the Corporate Debtor.

45. Accordingly, IA No. 787/2023 is allowed and IVN. P. No. 12/2023 is disposed as dismissed.

IA No. 3478 of 2022

46. The present Application is moved by Resolution Professional **Mr. S. Gopalkrishnan** (“Applicant”) under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (“Code”) r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate

Persons) Regulations, 2016 for seeking approval of the Resolution Plan of **Agrasen Engineering India Private Limited** (“**Successful Resolution Applicant/SRA**”) under the provisions of Section 31(1) of the Code, for **Saturn Rings and Forgings Private Limited** (“**Corporate Debtor**”) and for passing order/appropriate direction that this Tribunal may deem fit in the present matter.

Brief Facts

47. The CIRP was initiated against the Corporate Debtor vide Order dated 24.12.2021 and Mr. S Gopalkrishnan was appointed as the Interim Resolution Professional (“**IRP**”).
48. The IRP published a Public Announcement in Form-A on 12.01.2022 inviting claims from the creditors of the Corporate Debtor. After the receipt of claims, the CoC was constituted by the IRP on 02.02.2022.
49. The Applicant submits that till the date of filing of the present Application, a total of 13 (Thirteen) CoC meetings of the Corporate Debtor have been held from time to time.
50. The Committee of Creditors (“**CoC**”) in its 2nd meeting held on 14.03.2022 confirmed the appointment of the IRP as the Resolution Professional (“**RP**”). The CoC also approved appointment of Mr. Rajubhai Patel and Mr. Devendra Arun Patenkar as the valuers for valuation of Land and Building, Mr. Rajubhai Patel and Mr. Kedar Chikodi as valuers for valuation of Plant and Machinery and Mr. Jigar Shah and Mr. Sai Manohar Prabhu as valuers for valuation of Securities and Financial Assets (“**Registered Valuers**”) and M/S Shambhu Gupta and Co as a Transaction Auditor. The average liquidation value of the Corporate Debtor was determined as Rs. 18.04 Crores (Rupees Eighteen Crores, and Four Lakhs Only). The average

fair value of the Corporate Debtor was determined as Rs. 23.94 Crores (Rupees Twenty Three Crores, and Ninety Four Lakhs Only).

51. Thereafter, the RP invited Expression of Interest (“**EOI**”) in Form G under Regulation 36A (1) of the CIRP Regulations from the general public. The paper publication was made on 28.04.2022. The last date for receipt of the EOI was set as 13.05.2022 and the last date for submission of Resolution Plan was set as 09.07.2022.
52. At the 6th CoC meeting held on 28.06.2022, the RP apprised the CoC that he had received the Password Protected Resolution Plan from 1 (One) Prospective Resolution Applicant (“**PRA**”) namely - Agrasen Engineering Industries Private Limited. Accordingly, the Resolution Plan was opened, and the Resolution Professional informed the CoC that Bid Bond Guarantee of Rs. 50 Lakhs had been received along with the Resolution Plan.
53. At the 7th CoC meeting held on 12.07.2022, the RP presented the Resolution Plan to the CoC Member, further ratified the CoC Member regarding the payment scale proposed by the Prospective Resolution Applicant and further discussed the draft Transaction Audit Report.
54. At the 8th CoC meeting held on 08.08.2022, the Resolution Plan submitted by the Resolution Applicant was discussed at length by the team of the Resolution Applicant and the CoC Member suggested few changes and requested the Resolution Applicant to incorporate the same and provide a revised Resolution Plan.
55. At the 9th CoC meeting held on 22.08.2022, the Resolution Applicant put forth the altered payment scheme which was considered by the CoC Member who further urged the Resolution Applicant to consider the liquidation value of the Corporate Debtor and provide a better plan in order to envisage a smoother Resolution Process.

56. At the 10th CoC meeting held on 13.09.2022, the Resolution Applicant addressed the queries of the CoC Member in terms of the finance and sought time to send a revised draft as proposed during the past CoC meetings.
57. At the 11th CoC meeting held on 29.09.2022, the RP presented the revised Resolution Plan circulated by the Prospective Resolution Applicant.
58. At the 12th CoC meeting held on 04.10.2022, the CoC member passed a resolution for filing an exclusion application by a further 60 days to consider the resolution plan of the Resolution Applicant.
59. At the 13th CoC meeting held on 17.10.2022, the Resolution Plan as submitted by the Resolution Applicant after thorough deliberation was approved by the sole CoC member and accordingly a resolution was passed to get the Resolution Plan approved by the Hon'ble Tribunal.
60. Subsequently, the RP issued Letter of Intent dated 27.10.2022, on behalf of the CoC to the Successful Resolution Applicant, accepting the revised Resolution Plan submitted on 12.10.2022.
61. Pursuant to the approval of the Resolution Plan by the CoC, the Successful Resolution Applicant has issued the Bank Guarantee of Rs. 1,90,00,000/- (Rupees One Crore and Ninety Lakhs Only) on 29.10.2022.

Salient Features of the Resolution Plan

62. The key features and summary of the final Resolution Plan submitted by the Resolution Applicant and as approved by the CoC are as under:

Sr. No.	Payment Proposed	Amount in Rs. (Lakhs)	Remarks	Page No. of the Resolution Plan.
1.	CIRP Cost	59.69	Paid upfront within 60 days	43 – 49
2.	Financial Creditors	1813.27	Paid upfront within 60 days	
3.	Unsecured Financial Creditor	000		
4.	Operation Creditors: Suppliers	23.44	Paid upfront within 60 days	
	Statutory Dues/Government dues	12.17	Paid upfront within 60 days	
5.	Employees and Workmen (Claim not submitted)	1.43	Paid upfront within 60 days	
6.	Shareholders (Public)	Nil		
	Total Plan Outlay	1910.00		

63. Sources of Funds of the Resolution Applicant is as follows:

Sr. No.	Particulars	Amount (Rs. in lakhs)	Source of Funds	Page No. of the Resolution Plan.

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1.	Issuance of Equity/Quasi Equity – Paid up share capital from Resolution Applicant	500.00	Out of internal accruals of Resolution Applicant has cash generation of Rs. 4604 lakhs for FY 2021-22.	52
2.	Equity/Quasi Equity – OCD/CCD from Resolution Applicant	1410.00		
3.	Equity/Quasi Equity – OCD/CCD from Resolution Applicant	845.20		
4.	New Senior Debt – Term Loan Facility	1540.00	Resolution Applicant shall arrange Term Laon Facility of Rs. 1540 lakhs and Working Capital Facility for Rs. 1380.59 after Closing Date.	
5.	New Senior Debt – Working Capital Facility	1380.58		
	Total	5675.78		

64. The total financial proposal of the Resolution Applicant is Rs. 5675.78 lakhs consisting of (i) amount payable to creditors, amount for CIRP Cost from Effective Date till Closing Date, and amount for contingency shall not exceed Rs. 1910.00 lakhs and (ii) amount provided for operation improvement and investment plan is Rs. 3765.78 lakhs. Out of the above, Resolution Applicant will bring in 48.54% of the total proposal amount. The remaining amount to be brought in the form of Term Loan Facility and Working Capital Facility.

Statutory Compliance

65. In compliance of Section 30(2) of IBC, 2016, the Resolution Professional has examined the Resolution Plan of the Successful Resolution Applicant and confirms that this Resolution Plan:
- a) Provides for payment of Insolvency Resolution Process cost in a manner specified by the Board in the priority to the payment of other debts of the corporate debtor;
 - b) Provides for payment of debts of operational creditor in such manner as may be specified by the board which shall not be less than
 - (i) the amount to be paid to such creditors in the event of liquidation of the corporate debtor under Section 53; or
 - (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distribute in accordance with sub-section (1) of Section 53 in the event of liquidation of the corporate debtor.
 - c) Provides for management of the affairs of the Corporate Debtor after approval of Resolution Plan;
 - d) The implementation and supervision of Resolution Plan;
 - e) Does not prima facie contravene any of the provisions of the law for time being in force,

- f) Confirms to such other requirements as may be specified by the Board.
 - g) As per the Affidavit, the Resolution Applicant is not covered under 29A.
66. In compliance of Regulation 38 of CIRP Regulations, the Resolution Professional confirms that the Resolution plan provides that:
- a) The amount due to the Operational Creditors under resolution plan shall be given priority in payment over Financial Creditors.
 - b) It has dealt with the interest of all Stakeholders including Financial Creditors and Operational Creditors of the CD.
 - c) A statement that neither the Resolution Applicants nor any related parties have failed to implement nor have contributed to the failure of implementation of any other Resolution Plan approved by the AA in the past.
 - d) The terms of the plan and its implementation schedule.
 - e) The management and control of the business of the CD during its term.
 - f) Adequate means of Supervising its implementation.
 - g) The Resolution Plan Demonstrate that it addresses
 - i. The cause of the Default
 - ii. It is feasible and viable
 - iii. Provision for effective implementation
 - iv. Provisions for approvals required and the time lines for the same.
 - v. Capability to Implement the Resolution Plan
67. The Resolution Professional has annexed Form H under Regulation 39(4) of the CIRP Regulations to certify that the Resolution Plan as approved by the CoC meets all the requirements of the Code and its

Regulations. The relevant extracts, as otherwise stated elsewhere in the order, are as follows -

FORM H
COMPLIANCE CERTIFICATE

*(Under Regulation 39(4) of the Insolvency and Bankruptcy Board of India
(Insolvency Resolution Process for Corporate Persons) Regulations, 2016*

I, S. Gopalakrishnan, an Insolvency Professional enrolled with ICSI Institute of Insolvency Professionals (ICSI IIP) and registered with the Board with registration number (IBBI/IPA-002/IP-N00151/2017-18/10398), am the resolution professional of Saturn Rings and Forgings Private Limited.

2. The details of the CIRP are as under:

Sl. No.	Particulars	Description
1	<i>Name of the CD</i>	<i>SATURN RINGS AND FORGINGS PRIVATE LIMITED</i>
2	<i>Date of Initiation of CIRP</i>	<i>24.12.2021 (The date in Hon'ble NCLT order is 24th December, 2021 but the order was communicated to the IRP on 10.01.2022)</i>
3	<i>Date of Appointment of IRP</i>	<i>24.12.2021</i>
4	<i>Date of Publication of Public Announcement</i>	<i>12.01.2022 (The date in Hon'ble NCLT order is 24th December, 2021 but the order was communicated to the IRP on 10.01.2022)</i>
5	<i>Date of Constitution of CoC</i>	<i>02.02.2022</i>

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6	<i>Date of First Meeting of CoC</i>	10.02.2022
7	<i>Date of Appointment of RP</i>	14.03.2022
8	<i>Date of Appointment of Registered Valuers</i>	23.03.2022
9	<i>Date of Issue of Invitation for EoI</i>	28.04.2022
10	<i>Date of Final List of Eligible Prospective Resolution Applicants</i>	07.06.2022
11	<i>Date of Invitation of Resolution Plan</i>	28.05.2022
12	<i>Last Date of Submission of Resolution Plan</i>	27.06.2022
13	<i>Date of Approval of Resolution Plan by CoC</i>	17 th October, 2022
14	<i>Date of Filing of Resolution Plan with Adjudicating Authority</i>	07/11/2022
15	<i>Date of Expiry of 180 days of CIRP</i>	21.06.2022
16	<i>Date of Order extending the period of CIRP</i>	a. 10.06.2022 (Extending the CIRP by 90 days) b. 06.10.2022 (Exclusion of 17 days) c) 04.11.2022 (Extension by 60 days)
17	<i>Date of Expiry of Extended Period of CIRP</i>	5 th December, 2022
18	<i>Fair Value</i>	Rs. 23.94 Crs

19	Liquidation value	Rs. 18.04Cr
20	Number of Meetings of CoC held	13 CoC meetings

3. I have examined the Resolution Plan dated 27th June, 2022, along with amended Resolution Plan dated 12th October, 2022 (herein after referred to as "Resolution Plan") received from Resolution Applicant, M/s. Agrasen Engineering Industries Private Limited approved by Committee of Creditors (CoC) of Saturn Rings and Forgings Private Limited on 17th October, 2022.

4. I hereby certify that-

(i) the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.

(ii) the Resolution Applicant, M/s. Agrasen Engineering Industries Private Limited has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.

(iii) the said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 100% of voting share of Financial Creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

(iv) I sought vote of members of the CoC by Voting Sheets which was kept open atleast for _____ hours as per the Regulation 26.

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

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(Amount in Rs.)

<i>Sl. No.</i>	<i>Category of Stakeholder*</i>	<i>Sub-Category of Stakeholder</i>	<i>Amount Claimed</i>	<i>Amount Admitted</i>	<i>Amount Provided under the Plan#</i>	<i>Amount Provided to the Amount Claimed (%)</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>	<i>(6)</i>	<i>(7)</i>
<i>1</i>	<i>Secured Financial Creditors</i>	<i>(a) Creditors not having a right to vote under sub-section (2) of section 21</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>
		<i>(b) Other than (a) above:</i>				
		<i>(i) who did not vote in favour of the resolution Plan</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>
		<i>(ii) who voted in favour of the resolution plan</i>	<i>98,20,35,098.98</i>	<i>92,87,15,764.15</i>	<i>18,13,27,000</i>	<i>18.52</i>
		<i>Total[(a) + (b)]</i>	<i>98,20,35,098.98</i>	<i>92,87,15,764.15</i>	<i>18,13,27,000</i>	<i>19.52</i>

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2	<i>Unsecured Financial Creditors</i>	<i>(a) Creditors not having a right to vote under sub- section (2) of section 21</i>	55,22,11, 764.00	55,22,11,7 64.00	<i>NIL</i>	<i>0.00</i>
		<i>(b) Other than (a) above:</i>				
		<i>(i) who did not vote in favour of the resolution Plan</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>
		<i>(ii) who voted in favour of the resolution plan</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>
		<i>(iii) who abstained from voting</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>
		<i>Total[(a) + (b)]</i>	55,22,11, 764.00	55,22,11,7 64.00	<i>Nil</i>	<i>NIL</i>
3	<i>Operational Creditors</i>	<i>(a) Related Party of Corporate Debtor</i>	-	-	-	-

		<i>(b) Other than (a) above:</i>				
		<i>(i) Operational Creditors (Suppliers)</i>	8,00,50,6 15.64	7,81,32,90 4.64	23,44,000	3.00 3.55
		<i>(ii) Operational Creditors (Govt Dues)</i>	3,42,49,5 75.00	3,42,49,57 5.00	12,17,000	
		<i>(iii) Workmen</i>	NIL	NIL	1,43,000	
		<i>(iv) Employee Claims</i>	NIL	NIL		
		<i>Total[(a) + (b)]</i>	11,43,00, 190.64	11,23,82,4 79.64	35,61,000	3.17
4	<i>CIRP Cost</i>				59,69,000	100.00
5	<i>Operational Improvement and Investment Plan</i>				37,65,78,00,00 0	
<i>Grand Total</i>			1,64,85,4 7,053.62	1,59,33,1 0,007.79	56,75,78,00,0 00	

68. On perusal of the Resolution Plan, we find that the Resolution Plan provides for the following:

- a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
 - b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
 - c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of the Code.
 - d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.
69. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations.
70. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal the same is found to be in order. The Resolution Plan has been approved by the CoC by majority of 100%.
71. The Resolution Plan, in Clause 8.6 states that the financial viability of the Resolution Applicant is based on the allowability of Carry Forward of losses and unabsorbed depreciation. It is hereby clarified that the Carry Forward of losses and unabsorbed depreciation shall be subject to necessary compliances with the provisions under Section 79 of the Income Tax Act, 1961.
72. In *K Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No.10673/2018 decided on 05.02.2019) the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2).

The Hon'ble Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent 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.

73. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved. Hence ordered.
74. The Resolution Plan along with the Addendum thereto annexed to the Application is hereby **approved**. It shall become effective from this date and shall form part of this order with the following directions:
- i. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
 - ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned in light of the Judgment of Supreme Court in *Ghanshyam*

Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited, the relevant paras of which are extracted herein below:

“95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;

(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”

- iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Pune, Maharashtra for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- iv. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- v. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.
- vi. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- vii. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

75. Accordingly, IA No. 3478 is allowed.

Sd/-

Prabhat Kumar
Member (Technical)

/SP/

Sd/-

Justice V.G. Bisht
Member (Judicial)