

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI, COURT - IV**

**I.A. No. 2207 of 2024**

**IN**

**C.P. (IBPP) No. 03/MB/2023**

*[Under Section 54K(15) of the Insolvency and Bankruptcy Code, 2016]*

**MR. AMIT CHANDRASHEKHAR PODDAR**

Resolution Professional of *Kratos Energy & Infrastructure Ltd.*

...Applicant

V/s.

**KRATOS ENERGY & INFRASTRUCTURE LTD. & ORS.**

...Respondents

**IN THE MATTER OF**

**C.P. (IBPP) No. 03/MB/2023**

**KRATOS ENERGY & INFRASTRUCTURE LTD.**

...Corporate Applicant

**Pronounced: 28.07.2025**

**CORAM:**

**ANIL RAJ CHELLAN  
HON'BLE MEMBER (TECHNICAL)**

**K. R. SAJI KUMAR  
HON'BLE MEMBER (JUDICIAL)**

***Appearances: Hybrid***

For Applicant/RP

:

Adv. Amey Hadwale a/w. Adv.  
Ahmed Chunawala, Adv. Anoushka  
Goyal and Adv. Shashank Sardesai.

---

For Respondent No. 1 (Corporate Debtor)	:	Adv. Kunal Kanungo a/w. Adv. Tanushree Sogani and Adv. Atishay Jain.
For Respondent No. 2 (Strategic Investor)	:	Adv. Nausher Kohli i/b. Adv. Yash Jariwala
For Intervenor (SEBI)	:	Sr. Adv. Shiraz Rustomjee i/b. Adv. Anubha Rastogi.

## **ORDER**

***[PER: K.R. SAJI KUMAR, MEMBER (JUDICIAL)]***

### **1. BACKGROUND**

1.1. This I.A. No. 2207 of 2024 has been filed on 02.05.2024 by Mr. Amit Chandrashekhar Poddar, the Applicant/Resolution Professional (RP) of Kratos Energy & Infrastructure Limited, the Corporate Debtor (CD), under Sections 54K and 54L of the Insolvency and Bankruptcy Code, 2016 (Code/IBC) read with Regulation 49 of the Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021 (PPIRP Regulations), seeking approval of the Final Base Resolution Plan (Resolution Plan), in the Pre-packaged Insolvency Resolution Process (PPIRP) of the CD. The Resolution Plan has been submitted jointly by the CD along with another entity, viz., 'Lord's Mark Industries Pvt. Ltd.' (Strategic Investor), collectively referred to as the Resolution Applicant (RA).

1.2. The CD was initially incorporated on 31.08.1979, by the name 'Deccan Investments Limited', under the Companies Act, 1956, and has undergone two name changes since then. The CD is a public listed company and is registered as a Micro, Small and Medium Enterprises (MSME) w.e.f.

---

21.07.2023, under the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act), as stated in paragraph 10 of the Order of this Tribunal dated 01.02.2024, admitting the CD into PPIRP (Admission Order) under Section 54C(4) of the Code. It is also submitted that the CD is actively involved in providing consultancy services in the domains of power, energy and infrastructure projects.

- 1.3. This Tribunal appointed the Applicant as the RP to conduct PPIRP of the CD. Pursuant to the above, the Committee of Creditors (CoC), with the sole Financial Creditor of the CD, was constituted, at whose instance the financial facility was granted to the CD. The CoC conducted four meetings and in the 4<sup>th</sup> Meeting, the Resolution Plan has been approved with 100% voting share on 27.04.2024. The present I.A. has thus been filed seeking sanction of the Resolution Plan.

## **2. SEBI'S OBJECTIONS AGAINST RESOLUTION PLAN**

- 2.1. One of the CD's Operational Creditors (OCs), viz., the Securities and Exchange Board of India (SEBI), on 27.08.2024, objected to the CD's locus in proposing Resolution Plan under the PPIRP mechanism, *inter alia*, on the grounds that:

- (a) The CD was registered as a Stock Broker in the segment of capital market and wholesale debt market, w.e.f. 27.05.1994. In 2001, the CD had admittedly decided to surrender its trading-cum-clearing membership by preferring application before the National Stock Exchange of India Ltd. (NSE); the National Securities Clearing Corporation Ltd. (NSCCL); and SEBI. In the year 2004, the CD received a statement of fee liability from NSE pertaining to its outstanding statutory dues towards stock broker fees as mandated under Schedule III of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992, for the years 1993-1994 to 1997-1998.

- 
- (b) On 25.09.2017, the CD made application to NSE for surrendering its stock broker registration, which was approved by the latter on 08.12.2017, subject to compliance of certain post-surrender formalities. Subsequently, SEBI and NSE raised outstanding fee liability by the CD, *vide* letters dated 08.08.2019 and 30.08.2019, respectively, which was appealed against before the Ld. Securities Appellate Tribunal (SAT). The SAT dismissed CD's appeal by order dated 04.01.2023. Aggrieved by the order of dismissal, the CD filed appeal before the Hon'ble Supreme Court. In the appeal, the Hon'ble Apex Court, *vide* order dated 15.10.2024, *inter alia*, directed as follows:

*"We find that interest of justice would be sub-served in the matter if the appellant is directed to pay a total sum of Rs. 5.77 crores to respondent no.1 minus a sum of Rs.1.44 crores. A sum of Rs.1.44 crores shall be paid by respondent no.2 to respondent no.1 on behalf of the appellant. The said amounts shall be paid within a period of eight weeks from today."*

- (c) The CD is a '*financial service provider*' as defined under Section 3(17) of the IBC and does not fall under '*corporate person*' and is barred from proposing the Resolution Plan under PPIRP mechanism. SEBI has filed two Affidavits-in-Reply dated 27.09.2024 and 30.10.2024, in compliance with the Orders of this Tribunal dated 27.08.2024 and 09.10.2024, respectively, disputing the locus of the CD to submit the Resolution Plan. The CD registered itself as an MSME to escape its liability arising from the non-payment of outstanding broker fees, and thus, the Admission Order is to be recalled.
- (d) The CD continued to be a registered stock broker and regulated by SEBI at the time of Admission Order.

2.2. However, Respondent No.2 submits that there is no evidence that the CD was a financial service provider at the time of initiation of PPIRP or at the time of submitting the Resolution Plan. Although the CD was originally registered as a financial service provider, it discontinued stock trading since 2001 and surrendered its VSAT terminal on 18.01.2006. There is no evidence to suggest that the CD was in stock trading since then. The CD applied to NSE on 27.09.2017, for disabling trading w.e.f. 08.05.2001. It is also on record that NSE approved the CD's request by letter dated 08.12.2017. The CD, being an MSME, is eligible to be a Resolution Applicant to submit this Resolution Plan.

### **3. PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS**

The Applicant/RP submits that the Public Announcement was made on 04.02.2024, in Form P9, inviting claims from the creditors/stakeholders. The RP submits that the CoC was constituted on 10.12.2022, consisting of the sole Financial Creditor, viz., 'Tricon Prints and Packaging Pvt. Ltd.', and there were four CoC meetings held during PPIRP period, as under:

<b>Particulars</b>	<b>Date of Meeting</b>
First Meeting	15.02.2024
Second Meeting	20.02.2024
Third Meeting	23.02.2024
Fourth Meeting	27.04.2024

### **4. SALIENT FEATURES OF FINAL BASE RESOLUTION PLAN**

4.1. The key features of the Resolution Plan submitted by the RA are as under:

#### **a. Eligibility of CD for PPIRP**

Section 4 of the Resolution Plan is extracted hereunder:

4. **EXECUTIVE SUMMARY**

› The Corporate Debtor being an MSME company is eligible for a Pre-Packaged Insolvency Resolution Process. We are hereby submitting this Resolution Plan.

› The detailed particulars of the Corporate Debtor are as under:

Sr. No	Particulars	Kratos Energy & Infrastructure Limited
(a)	CIN	L40102MH1979PLC021614
(b)	Registration No.	021614
(c)	Date of Incorporation	31/08/1979
(d)	Nature of Activity	Power Projects Consultancy and undertaking energy and infrastructure projects
(e)	Registered Office	317, Maker Chamber V, 221 Nariman Point, Mumbai, MH – 400021
(f)	Email id	dvfl@rediffmail.com
(g)	Directors	Rajesh Raghunath Pawar (DIN: 00232533) Feroza Jamsheed Panday (DIN: 00232812) Irfan Ahmed Khan (Independent Director) (DIN: 02258102) Niket Jayesh Naik (DIN: 07318527) Muralidharan Pazhaya Pisharam – CFO (PAN: ADJPP3370N)
(h)	Net Worth as on 31.03.2023	Rs.521.58 Lakhs

› The detailed particulars of the Strategic Investor are as under:

Sr. No.	Particulars	Lord's Mark Industries Limited
(a)	CIN	U21000MH1998PTC115601
(b)	Registration No.	115601
(c)	Date of Incorporation	01/07/1998
(d)	Nature of Activity	Paper Manufacturing, Solar and LED Pharma and Health care
(e)	Registered Office	B-101, Ridhi Sidhi Complex M G Road, Borivali (East) Mumbai Mumbai City MH 400066 IN.
(f)	Email id	sachin@lordsmark.com

(g)	Directors	<ul style="list-style-type: none"> <li>Sachidanand Haniram Upadhyay</li> <li>Vinay Benigopal Sarda</li> <li>Manav Kishore Teli</li> <li>Vinod Tiwari (Independent Director)</li> <li>Subodh Chandra Gupta (Independent Director)</li> <li>Veer Singh (Independent Director)</li> <li>Manish Gyanchand Mehta (Independent Director)</li> </ul>
(h)	Net Worth as on 31.03.2023	Rs.4713.35 Lakhs

› The Resolution Plan has been prepared based on the information available as on 31.01.2024. Further, the Resolution plan has been prepared to the best possible intent in accordance with the Insolvency and Bankruptcy Code, 2016, Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Insolvency and Bankruptcy (Pre-Packaged Insolvency Resolution Process) Rules, 2021 and amendments thereto.

› The Strategic Investor considers recapitalizing the balance sheet of the Corporate Debtor with fresh equity/ debt. The fresh funds to be brought in will be primarily utilized for meeting the PPIRP Costs, to settle the dues of existing creditors for keeping the company as a going concern and make it running, in the manner described in subsequent paragraphs.

› The Strategic Investor has to the extent possible taken into account the interest of all the stakeholders of the Company and enables the Company to continue as a "going concern" and is confident of delivering on this Resolution Plan in an expeditious and time bound manner after receiving necessary approvals.

---

**b. Background of the Strategic Investor**

Section 6 of the Resolution Plan states the background of the Strategic Investor. It is submitted that the Strategic Investor has a sizeable presence in domains of healthcare and energy, spanning across two decades of operations, and an admitted net-worth of Rs.4713.35/- Lakh as on 31.03.2023. It is also submitted that it has adequate means to arrange the required finances for making the payments of the creditors of the CD. The RA intends to continue the business activities/objects of the CD in addition to carrying on/pursuing its existing diversified objects/activities, and has thus, submitted the Resolution Plan for consideration.

**c. Implementation and Monitoring Committee**

The RA submits that from the date of approval of the Plan by this Adjudicating Authority and till the Completion Date, a committee (Implementation and Monitoring Committee) shall be constituted and shall comprise of the RP, one nominee of the Strategic Investor and one nominee of the Financial Creditor. The Implementation and Monitoring Committee shall ensure compliance with IBC and strict adherence to the Plan to ensure revival of the CD.

**d. Financial Plan**

Section 8 of the Resolution Plan provides for the Financial Plan. The RA submits that all payments/settlements proposed in the Resolution Plan shall be made within 60 days of the date of approval by this Tribunal. The Summary of Payments is as under:

Particulars	Balance as per Balance Sheet	Final Resolution Amount (Rs. in Lakh)	Within 60 days
PPIRP Cost	-	15.00	15.00

Particulars	Admitted Claims	Final Resolution Amount	Within 60 days
Unsecured Financial Creditors	159.84	72.00	72.00
Operational Creditors- Expenses	<b>17.38</b>	<b>17.38</b>	<b>17.38</b>
Operational Creditors- Statutory Dues	<b>2.78</b>	<b>2.78</b>	<b>2.78</b>
Operational Creditors- Government Dues (Disputed Claims)	608.50	<b>215.43</b>	<b>215.43</b>
Other Creditors, if any, (other than financial creditors and operational creditors)	36.26	8.86	8.86
<b>Total</b>	<b>824.76</b>	<b>331.45</b>	<b>331.45</b>

Further, the RA has proposed the following:

- i. **PPIRP Costs**: The RA has provided Rs.15 Lakh towards PPIRP Costs under the Resolution Plan. The RA has further proposed that in case the PPIRP Costs increase beyond Rs.15 Lakh, the same shall be appropriated from the upfront amount being payable to the Financial Creditor.



- ii. **Workmen and Employees' Dues:** The RA submits that there are no pending dues towards workmen and employees of the CD, and therefore, no payment is required in this connection.
- iii. **Secured Financial Creditors:** The RA submits that there are no secured financial creditors of the CD, and therefore, no payment is required to be made.
- iv. **Unsecured Financial Creditors:** The RA submits that there is only one unsecured financial creditor of the CD, being the original lender, viz., 'Tricom Prints and Packaging Pvt. Ltd'. The RA has proposed a payment of Rs.72 Lakh within a period of 60 days from the date of approval of the Resolution Plan.
- v. **Operational Expenses (excluding Statutory Liabilities):** The RA submits that the CD has the following liabilities towards operational expenses:

Sr. No.	Operational Creditor	Amount as per books of accounts (Amount in INR [Lakhs])	Amount proposed to be paid in cash (Rs in Lakhs)	Amount of Hair cut (Rs in Lakhs)
1	BSE Ltd.	0.01	0.01	-
2	Inta Corporation	7.65	7.65	-
3	Shri Sai Industries	9.72	9.72	-
<b>Total</b>		<b>17.38</b>	<b>17.38</b>	-

The RA further submits that any amount payable under Regulation 45(5)(a) of the PPIRP Regulations, as determined by RP/CoC, shall be paid in priority to the Financial Creditor.

- vi. **Statutory Liabilities:** The proposed treatment by RA towards Statutory (Government) Dues, is extracted below:

Sr. No.	Operational Creditor – Government Dues	Amount as per books of accounts (Amount in INR [Lakhs])	Amount proposed to be paid in cash (in INR[Lakhs])	Amount of Hair cut (in INR [Lakhs])
1.	GST Karnataka	0.82	0.82	-
2.	Employees Profession Tax Payable	0.19	0.19	-
3.	TDS out of Professional Fees	1.76	1.76	-
<b>Total</b>		<b>2.77</b>	<b>2.77</b>	-

Further, the claims of SEBI amounting to Rs.608.50 Lakh have been earmarked by the RA under the title '*Operational Creditor – Government Dues (Disputed Claims)*'.

- vii. **Other Creditors (other than financial creditors and operational creditors)**: The RA submits that, as against the liability of Rs.36.26 Lakh to one *Canos Trading Private Limited*, categorised as 'Other Creditors', the RA shall settle by the proposed payment of Rs.8.86 Lakh, within a period of 60 days from the date of approval of the Resolution Plan.

**e. Implementation Timeline**

The RA submits that the Resolution Plan shall be implemented as per the following Timeline:

Sr. No.	Particulars	Timeline
1	Presentation of Resolution to CoC	As per schedule, prior to Resolution Plan submitted for Approval to the Hon'ble Tribunal
2	Formation and appointment of Implementation and Monitoring committee	Date of Approval by Hon'ble Tribunal ("T")

3	Payment of unpaid CIRP Cost and amount to stakeholders as per Resolution Plan (“Effective Date”)	T + 60 days
---	--	-------------

**f. Source of Funds**

The RA submits that it plans to fund the resolution amount as follows:

Particulars	Rs. in Lakh	Remarks
Upfront Payment of PPIRP cost within 60 days	15.00	To be infused by SI as in cash
Upfront within 60 days for Payment to Unsecured Financial creditors	72.00	To be infused by SI in cash and/ or paid directly to operational creditors
Upfront within 60 days for Payment to Operational creditors- Expenses	17.38	To be infused by SI in cash and/ or paid directly to operational creditors
Upfront within 60 days for Payment to Operational creditors – Government Dues/ Statutory dues	2.78	To be infused by SI paid directly to operational creditors – Government Statutory Dues
To SEBI (Disputed Claim)	195.43	Security deposit lying with Stock exchange
Upfront within 60 days for Payment to SEBI (Disputed Claim)	20.00	To be infused by Strategic Investor paid directly to operational creditors – Government dues (Disputed Claims) SEBI.
Upfront within 60 days for Payment to Other creditors, if any, (other than	8.86	To be infused by Strategic Investor paid directly to other creditors,

financial creditors and operational creditors)		if any, (other than financial creditors and operational creditors)
<b>Total upfront payments within 60 Days of approval by NCLT</b>	<b>331.45</b>	

**g. Restructuring of CD**

- i. The RA submits that Section 9 of the Resolution Plan envisages corporate restructuring of CD through a Scheme of Reverse Merger by Absorption (Scheme) of the RA, i.e., the Strategic Investor (Transferor Company) with the CD (Transferee Company) in consonance with Regulation 44 of the PPIRP Regulations, resulting in consolidation of the business in one entity and strengthening the position of the merged entity i.e., the CD, by enabling it to harness and optimise the synergies of the two entities on a 'going concern' basis.
- ii. The RA submits that the Scheme envisages allotment of shares to the shareholders of Transferor Company (RA) pursuant to the Scheme. The Resolution Plan proposes the following:

	Each shareholder of LMIL (Strategic Investor/transferor company) holding shares of Rs.5 each will get 1.25 shares of Rs.10 Each in KEIL (Corporate Debtor/ Transferee Company).
	The above-mentioned Swap ratio is as per the valuation report dated 15/04/2024 of the approved valuer Mr. Suman Kumar Verma bearing IBBI Registration No.: IBBI/RV/05/2019/12376.
xliii.	It is clarified that the approval of the members of the Corporate Debtor to the Plan shall be deemed to be their consent / approval also to the alteration of the Memorandum and Articles of Association of the Corporate Debtor as may be required under the Act.
xliv.	Clause V of the Memorandum of Association of the Corporate Debtor relating to the Authorized Share Capital shall, without any further act, instrument or deed, be and stand altered, modified and amended pursuant to Sections 13, 14, 61 and 233 of the Companies Act, 2013 and other applicable provisions of the Act, as the case may be and be amended accordingly.
xlv.	Upon coming into effect of this Plan, the Corporate Debtor shall file necessary application of the revised Authorized Share Capital along with the prescribed fees due on the revised Authorized Share Capital with the Registrar of Companies, Mumbai in accordance with law.

The RA submits that the rights of the shareholders and creditors of the Transferor Company are duly safeguarded as the CD (Transferee

---

Company) is a listed entity and by the merger of the Transferor Company, being a going concern, with the Transferee Company, the benefit of listing shall also be available, whereby the rights shall be further strengthened. In furtherance of the same, the RA has sought for the following dispensations from this Adjudicating Authority:

- (i) *The Hon'ble Tribunal may please to dispense with calling of a meeting of creditors or class of creditors or of the Members or class of Members of the SI as creditors, having more than 90% value have agreed to confirm by way of affidavit, to the scheme of compromise or arrangement and no objection for seeking dispensation of their right to attend their respective meetings. (The acknowledgements/Affidavits received from Creditors are attached herewith as Annexure 3) The remaining Affidavits shall be submitted to the Hon'ble Tribunal as and when received. (Consent affidavits of the more than 90% of equity shareholders of the Transferor Company for approving the scheme of Reverse Merger of the SI with the corporate debtor and no objection for seeking dispensation of their right to attend their respective meetings is attached herewith as Annexure 4)*
- (ii) *The Hon'ble Tribunal may please to dispense with publishing the advertisement for convening the meeting of the creditors and would be pleased to dispense with the requirement of publication of notice in the newspapers.*
- iii. The Scheme further envisages the following as per the terms and conditions set out in the Resolution Plan:

  - Transfer of assets and liabilities, licences, contracts, employees and benefits of tax paid between the Transferor and Transferee companies

- 
- Alteration of Name and Object clause in the Memorandum of Association and Articles of Association of the CD
  - Combination of capital
  - Dissolution of RA without being wound up on the implementation of the Resolution Plan.
- iv. The CD has placed reliance on the third proviso to Regulation 3(2) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SEBI SAST Regulations), which allows for exemption from obligations specified thereunder in cases of an acquisition, pursuant to a resolution plan under the IBC. The RA submits that the main reasons and circumstances leading to and justifying the proposed Scheme, which make it beneficial for all stakeholders, including members, creditors and other stakeholders of both the Strategic Investor and the CD are as follows:
- *The Strategic Investor and the Corporate Debtor can be merged for mutual benefit as this would reduce the costs and compliances requirements for the Corporate Debtor as a group. Cost savings will be resulted from focused operational efforts, rationalization, standardization and simplification of the business processes, integration and optimization of various support functions, resources and the assets;*
  - *The amalgamation of the two entities shall not prejudicially affect the interest of its shareholders;*
  - *The amalgamation of the Strategic Investor and the Corporate Debtor will bring about increased operational efficiency for Group;*
  - *The Scheme will result in administrative and operational rationalization, organizational efficiencies, and in economies of scale, reduction in overheads and other expenses,*

---

*optimum utilization of resources and enhanced liquidity on account of infusion of funds by the Strategic Investor.*

- h. The RP has annexed a copy of valuation reports on the assets of all categories of the CD. The valuation summary shows that the Fair Value of the CD is Rs. 35.35 Lakh and the Liquidation Value is Rs.7.17 Lakh.

## **5. AVOIDANCE TRANSACTIONS**

It is submitted by the Applicant/RP that although certain transactions did not seem genuine, upon providing requisite documents by the CD in support of the transactions, the Applicant/RP concluded that he did not find any avoidable transactions. Hence, he did not form an opinion as to any preferential or other transactions under Sections 43, 45, 50 or 66 of the Code.

## **6. PERFORMANCE SECURITY**

The Applicant has produced the Letter of Intent dated 29.04.2024 issued to the RA regarding approval of the Resolution Plan along with four Demand Drafts for a total amount of Rs.33,14,500/- as Performance Security, also attaching the Bank Statement containing credit of the same amount into the account of the CD on 14.05.2024.

## **7. LEGAL COMPLIANCE OF FINAL BASE RESOLUTION PLAN**

- 7.1. The RA submits that the Resolution Plan, as approved by the CoC, is in conformity with the legal requirements mandated under the IBC and all other laws for the time being in force.
- 7.2. The Applicant/RP submits that the Resolution Plan, as approved by the CoC, is, in particular, in compliance with the legal requirements as mandated under Section 30(1), 30(2)(a), 30(2)(b), 30(2)(c), 30(2)(d), 30(2)(e), 30(2)(f) and 54K of IBC read with Regulations 45(1)(a), 45(1)(b), 45(1)(c), 45(2)(a), 45(2)(b),

---

45(2)(c), 45(3)(a), 45(3)(b), 45(3)(c), 45(3)(d), 45(3)(e), 45(4), and 45(5) of the PPIRP Regulations.

7.3. The RP has annexed a Compliance Certificate, in Form P12, to the present Application in accordance with Regulation 49(1) of the PPIRP Regulations, certifying the following:

- a. *The said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021 and does not contravene any of the provisions of the law for the time being in force.*
- b. *The corporate debtor/third party resolution applicant (Kratos Energy & Infrastructure Limited along with strategic investor Lord's Mark Industries 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.*
- c. *The said Resolution Plan has been approved by the committee in accordance with provisions of the Code and the 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 PPIRP Regulations.*
- d. *The voting was held in the meeting of the committee on 27.04.2024 where all the other members of the committee were present.*

## **8. ANALYSIS AND FINDINGS**

8.1 We have heard the submissions of the Ld. Counsel for the Applicant/RP, Ld. Counsel for Respondents 1 & 2 as also Ld. Sr. Counsel for the Intervenor-SEBI; and have perused the materials on record.



---

8.2 The Ld. Sr. Counsel for SEBI has challenged the registration of the CD as MSME, by arguing that it has been secured by the CD in order to escape its liability arising from the non-payment of outstanding broker fees. We observe that pre-packaged insolvency resolution process is permissible only in respect of a corporate debtor classified as an MSME under the MSMED Act, in terms of Section 54A(1) of the Code. We also observe that the CD obtained registration as MSME on 21.07.2023, i.e., before the initiation of the PPIRP. The CD was admitted into PPIRP by the Admission Order of this Tribunal dated 01.02.2024. In any event, since the Admission Order has not been set aside by the Appellate Courts, such an argument does not have any relevance at this time when Resolution Plan is under consideration.

8.3. As regards the above contention of the Ld. Sr. Counsel for SEBI, it is in evidence that the CD was not having trading rights in any recognised stock exchange or was a trading member, at the relevant time, within the meaning of Regulation 2(gb) of the Securities and Exchange Board of India (Stock Broker) Regulations, 1992. The letter by NSE dated 08.12.2017, also suggests that the CD's application for surrender of membership was approved by the Stock Exchange. Moreover, the CD has already complied with the order of the Hon'ble Supreme Court dated 15.10.2024, as is duly recorded by the Hon'ble Apex Court in its Order dated 13.12.2024. Further, SEBI also has issued No-Dues Certificate to the CD on 12.12.2024, after its compliance of the order dated 15.10.2014. In any event, SEBI does not have a case that the CD is prohibited by SEBI from trading in securities or accessing the security market under clause (f) of Section 29A of the IBC. The CD has already settled the pending dues in terms of the order of the Hon'ble Supreme Court dated 15.10.2024. Pursuant to the said compliance, and the issuance of No-Dues Certificate dated 12.12.2024 by SEBI, nothing else remains. In view of the above, we are of the considered view that the objection raised by SEBI does not warrant any more consideration, and that the Resolution Plan submitted by the CD is fit for consideration.

- 
- 8.4 The Applicant/RP seeks our approval of the Resolution Plan submitted by the RA (CD along with the Strategic Investor), stating that the Plan is in accordance with Section 30(2) of the Code, and the Regulations made thereunder. We have already dealt with the objections to this IA raised by SEBI. Further, the third proviso to Regulation 3(2) of the SEBI SAST Regulations, provides exemption from the obligations of acquisition of shares pursuant to a resolution plan approved under Section 31 of the IBC. Since giving effect to a final base resolution plan under Section 54L of the IBC is akin to the approval of a resolution plan under Section 31, it is presumed that the RA is eligible to the benefits provided under the third proviso to Regulation 3(2) of the SEBI SAST Regulations.
- 8.5 In the 4<sup>th</sup> Meeting of the CoC held on 27.04.2024, the RA improved the Base Resolution Plan by making enhancement and changes incorporated in the same. It was apprised to the CoC that even though there was impairment of claims, the Resolution Plan confirms that the entire shareholding of the promoters would be extinguished and that the control of the CD would be shifted from promoters to the new board of directors. The Resolution Plan was thus approved by 100% of voting share of the CoC. Moreover, the Resolution Plan provides for 100% payment of the debts of operational creditors, excluding statutory liabilities. Out of the claims of Rs.6.08 Crore owed to SEBI on account of non-payment of fees, an amount of Rs.4.33 Crore has since been paid in terms of the order of the Hon'ble Supreme Court in Civil Appeal No. 2533 of 2023. The Security Deposit of Rs.1,95,43,251/- lying with NSE has been adjusted against the said claim, which was intimated by NSE to SEBI *vide* email dated 26.11.2024, and confirmed by the latter, *vide* letter to the CD dated 12.12.2024. This has resulted in a total payment of Rs.5.77 Crore as full and final settlement to the claim made by SEBI. Hence, the operational creditors are fully and finally paid under the Resolution Plan. Therefore, there is no impairment of any claims owed by the CD to the operational creditors, in terms of Section 54K(4) of the Code.

- 
- 8.6 The RA has submitted Affidavits, annexed as Exhibit G, stating that they are eligible under Section 29A of the IBC to submit Resolution Plan. Upon perusal of the Resolution Plan with the documents, the same is found to be formally in order.
- 8.7 The RA has sought certain Reliefs and Concessions in terms of Section 13(j) of the Resolution Plan. In this regard, we make it expressly clear that the Reliefs and Concessions are allowed only to the limited effect and extent of being concomitant to the *Doctrine of Clean State* and those in furtherance of the Scheme of Merger, as laid down by the Hon'ble Supreme Court in *Arun Kumar Jagatramka Vs. Jindal Steel and Power Ltd. & Anr. [(2021) ibclaw.in 46 SC]*. We further make it expressly clear that no reliefs, concessions and dispensations that fall within the domain of other Government department/authorities are granted hereto, and the same shall be dealt with by the respective competent authorities/fora/offices, Government (State or Central) with regard to the respective reliefs, if any. Be that as it may, the Ld. Counsel for the Applicant/RP has categorically affirmed, during the course of hearing, that the implementation of the Resolution Plan is not conditional and/or contingent upon grant of any or all of such reliefs, concessions and dispensations by this Tribunal.
- 8.8 As regards the restructuring of the CD by way of the Scheme, as contained in Section 9 of the Resolution Plan, and in terms of Regulation 44(c) of the PPIRP Regulations, we make it clear that all procedural formalities under the extant laws shall be undertaken by the RA and that no such reliefs are allowed.
- 8.9 In view of the above, it is observed that approval of the Resolution Plan does not prejudice any creditor, as the sole Financial Creditor has consented and operational creditors have been paid in full. The Resolution Plan meets the requirements of Section 54K read with Section 30(2) of the Code and Regulations 44, 45 and 49 of the PPIRP Regulations. The directors of the CD and authorised person for the Strategic Investor have submitted separate

---

Affidavits stating that they are not ineligible to submit the Resolution Plan. Hence, it is presumed that the Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law, and the same deserves to be approved.

### **ORDER**

9. The **I.A. No. 2207 of 2024** in **C.P. (IBPP) No. 03/MB/2023** is **allowed** and the Resolution Plan annexed to the IA is **approved**, which shall be part of this Order. It shall become effective from this date and shall form part of this Order.

- 9.1 The approved Resolution Plan shall be binding on the CD, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom any 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 Plan.
- 9.2 The approval of this Resolution Plan shall not be construed as waiver of any statutory obligations of the CD, and the same shall be dealt by the appropriate authorities in accordance with the law.
- 9.3 The Memorandum of Association and Articles of Association of the CD shall, accordingly, be amended and filed with the Registrar of Companies (RoC), Mumbai, 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.
- 9.4 A copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies, Mumbai.

- 
- 9.5 The moratorium imposed under Section 54E of the IBC, shall cease to have effect from the date of pronouncement of this Order.
- 9.6 The RP shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Final Base Resolution Plan.
- 9.7 The Implementation and Monitoring Committee shall supervise the implementation of the Resolution Plan effectively and the Applicant/RP shall file status of its implementation before this Tribunal from time to time without fail, preferably every quarter.
- 9.8 The Applicant shall forward all records relating to the conduct of the PPIRP and the Resolution Plan to the Insolvency and Bankruptcy Board of India, along with the copy of this Order for information and record.
- 9.9 The Applicant shall forthwith send a Certified Copy of this Order to the CoC and the RA, for necessary compliances.

Ordered accordingly.

Sd/-  
**ANIL RAJ CHELLAN**  
**MEMBER (TECHNICAL)**

AK

Sd/-  
**K. R. SAJI KUMAR**  
**MEMBER (JUDICIAL)**