

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

IA(IBC)/430(CHE)/2023 in IBA/1180/2019
(Filed under Sec. 30(6) & 31 of the Insolvency & Bankruptcy Code, 2016)

Along with

IA(IBC)/322(CHE)/2023 in IBA/1180/2019
(Filed under Sec. 12(2) of the Insolvency & Bankruptcy Code, 2016)

IN THE MATTER OF:

CA M. Suresh Kumar
Resolution Professional of
Alkas Spinning Mills Private Limited
Reg. No. IBBI/IPA-001/IP-P00110/2017 – 2018/10217

... Applicant

Present:

For RP : E. Om Prakash, Senior Advocate
A.G. Sathyanarayana, Advocate

CORAM:

Justice RAMALINGAM SUDHAKAR, PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)

Order Pronounced on 5th July 2023

COMMON ORDER

(hearing conducted through VC)

Per: Justice RAMALINGAM SUDHAKAR, PRESIDENT

IA(IBC)/322(CHE)/2023 is an Application which is moved by the

Resolution Professional of the Corporate Debtor viz., Alkas Spinning



Mills Private Limited (hereinafter referred to as 'Corporate Debtor') under Section 12(2) of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC, 2016') read with Regulation 40(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and Rule 11 of NCLT Rules, 2016 seeking relief as follows;

- A. *To grant an extension of 15 days from 16.02.2023 till 02.03.2023 to continue the Corporate Insolvency Resolution Process;*
- B. *To pass such other orders as it deems fit in the above circumstances of the case and thus render justice;*

2. In support of the above relief, the Learned Counsel for the Applicant relied upon para 17 to 20 of the averments made in the Application. Further, it was also submitted that the Applicant has received 2 Resolution Plans and the Committee of Creditors required more time for internal process of plan verification, legal clearance and obtaining approval of appropriate authority. The reasons stated in para 17 to 20 of the Application seems plausible and as such the CIRP period in respect of the Corporate Debtor is extended as prayed for and the CIRP period in respect of the Corporate Debtor would come to an end on 02.03.2023. Accordingly, this Application stands **allowed**.



3. IA(IBC)/430(CHE)/2022 is an Application which is moved by the Resolution Professional of the Corporate Debtor viz., **Alkas Spinning Mills Private Limited** on 03.03.2022 under Section 30(6) & 31 of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC, 2016') read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short, 'CIRP Regulation, 2016') seeking relief as follows;

- A. *To grant approval to the Resolution Plan (dated 04.01.2023 which was last amended on 06.02.2023) which was approved by the Committee of Creditors in the 12th CoC meeting conducted on 07.02.2023 (voting closed on 27.02.2023);*
- B. *To grant approval to the Reliefs sought by the Successful Resolution as set out in pages 31 to 42 of the Resolution Plan*
- C. *To pass such other orders as it deems fit in the above circumstances of the case and thus render justice;*

**A. CORPORATE INSOLVENCY RESOLUTION PROCESS –
ALKAS SPINNING MILLS PRIVATE LIMITED**

2.1. In an Application filed under Section '9' of the IBC, 2016, by the Operational Creditor, the CIRP in respect of the Corporate Debtor was ordered by this Tribunal vide order dated 05.05.2020 and one Mr. Kannan Sambasivam was appointed as the IRP. The IRP has caused paper publication



on 09.05.2020 in accordance with under Section 15 of IBC, 2016 r/w Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in Indian Express (English Edition) and Daily Thanthi (Tamil Edition).

- 2.2 In response to the same, it is seen that the IRP has received claim from the Operational Creditor and from one Financial Creditor viz., Union Bank of India. It was submitted that based on the claim submitted by the Union Bank of India for a sum of Rs.9,64,06,229.70/- the CoC was constituted with the Union Bank of India being the sole Financial Creditor. The amounts claimed and admitted are summarized below:

(Rs. in Lakhs)

| PARTICULARS | CLAIM FILED | CLAIM ADMITTED |
|---|----------------|-------------------|
| Secured Financial Creditors | 964.09 | 964.09 |
| Unsecured Financial Creditors (except Related party) | - | - |
| Staff & Workmen | - | - |
| Operational Creditors (Statutory Dues) | 14.61 | 14.61 |
| Related party (includes Unsecured Financial Creditors & Operational Creditor) | - | - |
| Operational Creditors (Trade Creditors) | 44.92 | 44.92 |
| TOTAL | 1023.59 | 1023.59 |

a. FINANCIAL CREDITORS

(Rs. in Lakhs)

| NAME OF THE LENDERS | AMOUNT CLAIMED | AMOUNT ADMITTED |
|---------------------|----------------|-----------------|
| Union Bank of India | 964.09 | 964.09 |
| TOTAL | 964.06 | 964.06 |

b. OPERATIONAL CREDITORS

(Rs. in Lakhs)

| NAME OF THE LENDERS | AMOUNT CLAIMED | AMOUNT ADMITTED |
|---|----------------|-----------------|
| ESIC – Government | 10.13 | 10.13 |
| EPFO – Government | 4.48 | 4.48 |
| Superfine Bleaching Company Limited – Trade Creditor | 44.92 | 44.92 |
| TOTAL | 59.53 | 59.53 |

2.3. The Applicant submitted that a total of 12 CoC meetings have been held during the CIRP period which is as follows;

| PARTICULARS | DATE OF MEETING |
|------------------------------|-----------------|
| 1 st CoC Meeting | 25.09.2020 |
| 2 nd CoC Meeting | 14.12.2020 |
| 3 rd CoC Meeting | 12.01.2021 |
| 4 th CoC Meeting | 11.03.2021 |
| 5 th CoC Meeting | 23.06.2021 |
| 6 th CoC Meeting | 06.07.2021 |
| 7 th CoC Meeting | 13.07.2021 |
| 8 th CoC Meeting | 27.09.2021 |
| 9 th CoC Meeting | 05.11.2022 |
| 10 th CoC Meeting | 04.01.2023 |
| 11 th CoC Meeting | 02.02.2023 |
| 12 th CoC Meeting | 07.02.2023 |

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- 2.4. The Applicant submitted that the Application for change of RP was filed by the Financial Creditor before this Adjudicating Authority vide IA(IBC)/48(CHE)/2021 and the same was allowed by this Tribunal and the Applicant herein was appointed as the Resolution Professional in respect of the Corporate Debtor.
- 2.5. The Form-G inviting Expression of Interest (EoI) was published by the IRP on 16.03.2021 and as per Form G, the last date of receipt of EoI was fixed as 01.04.2021. On 19.04.2021, i.e. after the expiry of a period of 18 days from the last date of receipt of EoI, the RP has received an e-mail from the prospective Resolution Applicant viz., KSV Cotton Mills Private Limited intimating their intention to submit an EoI in respect of the Corporate Debtor, to which the RP has replied on 07.05.2021 about the details and the formalities in respect of documents to be submitted for the EoI.
- 2.6. Subsequently, it was submitted that the detailed "Expression of Interest" along with necessary "Non-Disclosure Agreement" was given to the Prospective Resolution Applicant on 18.05.2021. In the meanwhile, it was submitted that due to Covid-19 lockdown from the period of April 2021 to June 2021, the Applicant called for a CoC meeting and the same was held on 23.06.2021 wherein



the Applicant had informed the CoC that he had received one "Expression of Interest" after the last date from the prospective Resolution Applicant on 18.05.2021 and in the said meeting the CoC had resolved the final request for the Resolution Plan and the valuation matrix shall be circulated to the prospective Resolution Applicant as per the Regulation 36(b) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- 2.7. It is seen that the 6th CoC was held on 06.07.2021 wherein the RP informed the CoC in respect of the request for the Resolution Plan and the related documents were shared with the prospective Resolution Applicant. Pursuant thereto, the prospective Resolution Applicant submitted the Resolution Plan dated 05.07.2021 along with the prescribed EMD amount.
- 2.8. It was submitted by the RP before the CoC that he had received a new EoI from one Mr. K. Palaniappan (Promoter of TPN Transports and Thenpandian Textiles Private Limited) on 09.07.2021 and the same was also informed to the CoC through an e-mail dated 10.07.2021.
- 2.9. However, it was submitted that the CoC in the said 7th meeting after detailed discussion on the CIRP timelines



unanimously resolved to reject the belatedly submitted "Expression of Interest" by Mr. K. Palaniappan since the Resolution Plan submitted by the KSV Cotton Mills Private Limited was already under consideration before the CoC and it was in the final stage for approval.

2.10. In relation to the Resolution Plan submitted by the KSV Cotton Mills Private Limited, the CoC had stated that they require two weeks' time for internal review for approval with respect to the revised Resolution Plan and it was unanimously decided to adjourn the said meeting for the period of two weeks. Hence, the 7th meeting was adjourned and rescheduled on 27.07.2021. In the adjourned 7th meeting of the CoC held on 27.07.2021, it was decided to take up the Resolution Plan for voting in the next CoC meeting since the members of the CoC required additional time to evaluate and decide upon the Resolution Plan.

2.11. In the meantime, the RP had informed the CoC that the CIRP timeline is about to come to an end and necessary Application was required to be made before the Adjudicating Authority seeking exclusion of lockdown period to validate the decision of the CoC with respect to the Resolution Plan. Hence, the Resolution was passed in the said CoC meeting to seek 90 days extension of the CIRP with the exclusion of lockdown period.



- 2.12. In the interregnum, both the CoC members and the RP had several rounds of negotiations with the Resolution Applicant for improvement in the Plan value.
- 2.13. Finally, the Resolution Plan was received by the RP on 07.09.2021 from the Resolution Applicant and in the 8th CoC meeting which was held on 27.09.2021, the said Resolution Plan was placed for consideration before the CoC. In the said meeting it was submitted that the CoC evaluated the Resolution Plan submitted by the Resolution Applicant and had unanimously passed a Resolution approving the Resolution Plan submitted by the Resolution Applicant, as per Section 30 (4) of the IBC, 2016.
- 2.14. In the meantime, the RP has moved IA/820/2021 for extension of CIRP period and the same was allowed by this Tribunal vide order dated 05.10.2021 whereby the CIRP period in respect of the Corporate Debtor was extended up to 21.01.2022.
- 2.15. The Application for approval of Resolution Plan filed by the RP i.e. IA(IBC)/1046(CHE)/2021 was dismissed by this Tribunal vide its order dated 02.11.2022 on the ground that the expression of interest from the Resolution Applicant herein was received only on 19.04.2021 which is much



beyond the last date mentioned in the Form G which was 01.04.2021. It was held that the RP has clearly not maintained the sanctity of the CIRP Regulations more particularly Regulation 36 A (6), which very clearly lays down that "The expression of interest received after the time specified in the invitation under clause (b) of sub regulation (3) shall be rejected." Further, in the said order dated 02.11.2022 certain directions were issued to the RP, which is as follows;

"4.10. Hence, in view of the same, we dispose of all the above Applications, with directions as follows;

- (a) The RP to call for a CoC meeting within a period of 5 days from the date of this order and to proceed with the CIRP from the publication stage of 'Form - G' for inviting Expression of Interest afresh as per CIRP Regulations.
- (b) The RP is directed to complete the Resolution Process within a period of 45 days from the date of this order.
- (c) By taking into consideration the Judgment of the Hon'ble Supreme Court in the matter of *Committee of Creditors of Essar Steel India Limited -Vs- Satish Kumar Gupta and Others;* (2020) 8 SCC 531, the CIRP period in respect of the Corporate Debtor is extended for a period of 45 days from the date of this order.
- (d) The Registry of this Tribunal is directed to forward a copy of this order to IBBI for its information and records."

2.16. It was submitted that in compliance with the directions of this Tribunal, the RP called for the 9th CoC Meeting on



05.11.2022. In the said meeting it was resolved by the CoC to issue Form – G. Further, in the said meeting the Applicant informed the CoC that the said process would take more time as per the model timelines given in the CIRP Regulations and requested the CoC for passing appropriate Resolution seeking extension of CIRP timelines for completion of CIRP process. The CoC has also resolved to extend the CIRP period for 60 days.

2.17. It was submitted that after the approval of the CoC, Form – G was published by the Applicant on 06.11.2022 in Dinamani (Tamil) and The New Indian Express (English) and in response to the same, 7 Expression of Interest (EoI's) were received by the Applicant within the timeline prescribed under Form – G viz.

- (a) S. Raju, Director of M/s. Suganthika Spinning Mills
- (b) A. Anand (Promoter of the Corporate Debtor)
- (c) HM Textiles Private Limited
- (d) Kapil Mantri
- (e) M/s. MG Threads
- (f) M/s. KSV Cotton Mills Private Limited
- (g) TPN Transports

Upon examining the EoI's and eligibility criteria to submit the Resolution Plan, the Provisional List of the PRA's was issued by the Applicant on 22.11.2022 consisting



of all the above PRAs and the Request for Resolution Plan and Evaluation Matrix were given to all the 7 PRAs.

2.18. It was submitted that the Applicant filed IA(IBC)/1420(CHE)/2022 before this Tribunal seeking extension of additional 60 days' time for completion of CIRP period and the same was allowed by this Tribunal vide its order dated 12.12.2022.

2.19. The Last date for submission of Resolution Plan was 04.01.2023. However, on 03.01.2023 a request was received from one of the PRA to extend the date for submission of Resolution plan by 2 weeks. The Applicant conducted the 10th CoC meeting on 04.01.2023 where it was decided to extend the last dated for submission of resolution plan till 11.01.2023 in accordance with Regulation 36B (6) of the IBBI (Insolvency Resolution Process for Corporate Person) Regulation, 2016.

2.20. It was submitted that only 2 resolution plans were received from (1) M/s. MG Threads and (2) A. Anand (Promoter of the Corporate Debtor) out of the total 7 PRAs and the respective Resolution Plans submitted by the said 2 PRAs was opened by the Applicant on 12.01.2023 and was subject to scrutiny for compliance with the Code and Regulation



by the Applicant and presented to the sole CoC member for their evaluation and deliberation.

2.21 The 11th CoC meeting was called by the Applicant on 02.02.2023 to discuss the Resolution Plan submitted by the PRA. The Applicant presented the key facts of the plans submitted by the 2 PRAs as a comparative study. After the presentation and detailed discussion, the CoC directed both the PRAs to submit a revised plan with revision pertaining to certain terms of the Resolution Plan in their commercial wisdom.

2.22. The 12th CoC meeting was held on 07.02.2023 wherein Resolution plan submitted by the PRAs were put for voting and the sole CoC member submitted their voting in favour of the Resolution Plan submitted by Mr. A. Anand one of the Prospective Resolution Applicants and suspended Director of the Corporate Debtor on 27.02.2023.

3. ABOUT THE RESOLUTION PLAN

3.1. The Successful Resolution Applicant has submitted the Performance Bank Guarantee to the tune of Rs.43,74,400/- issued by Union Bank of India dated 01.03.2023 to the Applicant and the same is appended as Annexure – 15 to the typed set filed along with the Application.



3.2. It was submitted that the Successful Resolution Applicant being the Promoter of the Corporate Debtor was found eligible to submit his Resolution Plan in accordance with the provisions of the Code and Regulations based on the MSME Certification dated 01.07.2013 in the name of the Corporate Debtor as a Manufacturing Enterprise in the category 'Small' vide., Entrepreneurs Memorandum Number 3301412 03681E Part II. The copy of the said MSME Certification is appended as Annexure – 16 to the typed set filed along with the Application.

3.3. The CoC discussed in detail regarding the feasibility and viability of the plan and the eligibility of the Resolution Applicant to implement the same as follows:

(i) The Resolution applicant is the promoter and Suspended director of the Corporate Debtor. The Resolution Applicant did his Master of Business Administration from the University of Royal Melbourne, Australia and then joined MARG Karaikal port & Real estate as part of their Business Development Team.

(ii) The Resolution Applicant in the year 2011, Completed a Textile (SITRA), Coimbatore and



started construction of the spinning mill of the Corporate Debtor. The said spinning mill was operational in April, 2013. The Resolution Applicant single handedly managed the day-to-day activity of the Spinning mill and was responsible for all the day to day activity of the Mill from buying cotton to production and selling of yarn.

- (iii) The highlight of the Resolution Applicant was that he cleared the Export Promotion Capital Goods (EPCO) Scheme within a period of 3 years, and excelled in exporting finished products to various parts of the world. The Resolution Applicant had been operating the mill for close to 6 years and has great communication with the labour force and can revive the business of the corporate debtor in a very short span of time. Having a thorough knowledge about the suppliers who can supply cotton on credit basis and also the having a vast database of customers brings a lot of advantage on the table.

3.4. The Details of the Resolution Plan / Payment Schedule are set out herein below



| SL. No | CATEGORY OF STAKEHOLDER | AMOUNT CLAIMED (RS. IN LAKHS) | AMOUNT ADMITTED (RS. IN LAKHS) | AMOUNT PROVIDED UNDER THE PLAN (RS. IN LAKHS) | AMOUNT PROVIDED TO THE AMOUNT CLAIMED (%) |
|--------|---|-------------------------------|--------------------------------|---|---|
| 1 | Insolvency Resolution Process Costs | Actual | Actual | 49.09 | |
| 2 | Operational Creditor (including Statutory Authorities admitted by RP) | 14.61 | 14.61 | 5.00 | 34.22% |
| 3 | Operational Creditor | 44.92 | 44.92 | 1.35 | 3% |
| 4 | Workmen / Employees | - | - | - | - |
| 5 | Financial Creditors | 964.06 | 964.06 | 382 | 39.62% |
| Total | | 1023.59 | 1023.59 | 437.44 | 42.74% |

3.5. The Summary of the Financial proposal / payment under the Resolution Plan dated 06.02.2023 and the addendum / supplementary letter dated 23.02.2023 of Mr. A. Anand is tabulated hereunder:

| PARTICULARS | AMOUNT |
|---|--|
| Admissible Debt to be paid upfront to the CIRP | 49.09 Lakhs + Actuals till final order (security + legal + RP fees as per letter dated 23.02.2023) |
| Admissible Debt to be paid upfront to the Operational Creditors | 6.35 Lakhs |
| Admissible Debt to be paid to Financial Creditor | 382.00 Lakhs |
| Admissible Debt to be paid to the Workmen / Employees | NIL |
| Capex / Working Capital | NIL |
| Total | 437.44 lakhs + actual CIRP expenses (as ref. above) |

4. SOURCE OF FUND

4.1. Upon approval of the Resolution Plan by the AA, the Financial Sponsor Mr. V.S. Ramakrishnan would fund the entire settlement amount and the Financial Sponsor vide its letter dated 01.03.2023 has provided its unconditional undertaking to deposit the entire amount towards the Resolution plan. The letter dated 01.03.2023 by the Financial Sponsor is appended at Page No. 253 to 254 of the typed set filed along with the Application. The Financial Sponsor has also filed his IT Returns in support of the same. Further, the 29A Affidavit filed by the said Financial Sponsor is also appended at Page No. 255 to 258 of the typed set.

5. IMPLEMENTATION, MANAGEMENT AND SUPERVISION OF THE RESOLUTION PLAN

5.1. The Resolution Plan amount will be paid as per the Schedule given below:

(Rs. in Lakhs)

| TRANCHE OF PAYMENT | DATE OF PAYMENT | AMOUNT (RS. IN LAKHS) | APPROPRIATION |
|--|--|-----------------------|--|
| 10% Resolution Plan amount by way of EMD | Along with the Resolution Plan | 43.74 | The amount will be appropriated first towards the CIRP costs and other priority costs including amounts payable to the Operational |
| 10% of the Resolution Plan amount | At the time of approval of Resolution Plan | 43.74 | |



| | | | |
|-----------------------------------|--|--------|--|
| 80% of the Resolution Plan Amount | The balance entire will be deposited within 45 days from the date of approval of Resolution Plan by the Adjudicating Authority | 349.52 | Creditors under the Resolution Plan upon approval by the Adjudicating Authority. After making payments, disbursements to the Financial Creditor shall be made. |
| TOTAL | | 437.44 | |

5.2. The implementation of the plan will begin once the plan is approved by the Adjudicating Authority in accordance with the provisions of IBC, 2016. Once the plan has been approved, the Resolution Applicant will make arrangements to restart the Mill and for that further investment has been planned along with the Financial Sponsor.

5.3. Upon the approval of the plan, the Resolution applicant along with the Financial Sponsor will further invest Rs.1.5 Crores as working capital for the purpose of reviving and running the Spinning Mill within a period of 60 days from the date of Approval of the Plan. A further sum of Rs.1 Crore will be invested in the Corporate Debtor for the purpose of buying new machineries for the Business.

5.4. The Shareholding pattern pre and post Resolution Plan is as follows:



PRE – RESOLUTION PLAN

| S. No. | NAME OF THE SHAREHOLDER | NO. OF SHARES | PERCENTAGE |
|--------|--------------------------|---------------|------------|
| 1 | Samiappan Krishnamoorthi | 6,00,000 | 30% |
| 2 | Ramasamy Kannan | 4,50,000 | 22.5% |
| 3 | Rajagopal Dinesh Balaji | 4,00,000 | 20% |
| 4 | Arumugam Anand | 1,00,000 | 5% |
| 5 | Keerthi | 50,000 | 2.5% |
| 6 | Jeevanandam | 4,00,000 | 20% |
| TOTAL | | 20,00,000 | 100% |

POST – RESOLUTION PLAN

| S. No. | NAME OF THE SHAREHOLDER | NO. OF SHARES | PERCENTAGE |
|--------|-------------------------|---------------|------------|
| 1 | Arumugam Anand | 12,00,000 | 60% |
| 2 | V.S. Ramakrishnan | 8,00,000 | 40% |
| TOTAL | | 20,00,000 | 100% |

- 5.5. The Resolution Applicant shall hold 60% of the Equity Share Capital and the Financial Sponsor shall hold 40% Equity Share Capital.
- 5.6. The Land belonging to the Corporate Debtor where the Spinning Mill is situated along with any buildings will be mortgaged to raise funds.
- 5.7. The Resolution Plan will be monitored by constituting a Project monitoring committee, which will consist of the persons nominated by the Financial Creditor, and the



Resolution Applicant who will monitor the progress of the revival of the Corporate Debtor.

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

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

| CLAUSE OF S.30(2) | REQUIREMENT | HOW DEALT WITH IN THE PLAN |
|-------------------|--|--|
| (a) | Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board. | Clause 8 D at Page 24 of the Resolution Plan. |
| (b) | Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53; or Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall be not less than amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher and (iii) provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such | (i) Clause 8C (d) at Page No. 23 (ii) Clause 8(D) at Pg. No. 24 (iii) Clause 8(D)(d) at Pg. No. 25 of the Resolution Plan |



| | | |
|-----|--|--|
| | manner as may be specified by the Board. | |
| (c) | Management of the affairs of the Corporate Debtor after approval of the Resolution Plan. | Clause 8E(3)(a) at Pg. No. 27 of the Resolution Plan |
| (d) | Implementation and Supervision. | Clause 8E(2) & (3) at Pg. No. 26 & 27 of the Resolution Plan |
| (e) | Plan does not contravene any of the provisions of the law for the time being in force. | Clause 2(C)(d) at Pages 12 of the Resolution Plan. |
| (f) | Conforms to such other requirements as may be specified by the Board. | Clause 8C at Pages 21 of the Resolution Plan. |

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

| PARTICULARS | RELEVANT PAGE OF THE RESOLUTION PLAN DEALING AFORESAID COMPLIANCE WITH REGULATION |
|--|--|
| <i>A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximisation of value of its assets, including but not limited to the following: -</i> | |
| (a) transfer of all or part of the assets of the corporate debtor to one or more persons; | Yes – Transfer of all assets of the Corporate Debtor to the Resolution Applicant |
| (b) sale of all or part of the assets whether subject to any security interest or not; | Yes – All assets are mortgaged / hypothecated to Union Bank (CoC member) being transferred |
| (c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger; | No Restructuring |

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|---|---|
| (d) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons; | Yes – RA will hold 60% of the equity shares and 40% of equity share capital by Financial Sponsor |
| (e) cancellation or delisting of any shares of the corporate debtor, if applicable; | Not Applicable |
| (f) satisfaction or modification of any security interest; | Yes – The securities created on Corporate Debtors assets for the debt due to Secured Financial Creditors shall stand unconditionally released. |
| (g) curing or waiving of any breach of the terms of any debt due from the corporate debtor; | Yes – All violation or breach of any agreement of the Corporate Debtor shall stand condoned or waived and such agreements shall be treated as if no violation or breach has ever been committed |
| (h) reduction in the amount payable to the creditors; | Yes |
| (i) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor; | No extension sought |
| (j) amendment of the constitutional documents of the corporate debtor; | No amendments in the Constitution documents of the Corporate Debtor |
| (k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose; | Not Proposed |
| (l) change in portfolio of goods or services produced or rendered by the corporate debtor; | Not Proposed |



| | |
|---|--------------|
| (m) change in technology used by the corporate debtor; and | Not proposed |
| (n) obtaining necessary approvals from the Central and State Governments and other authorities. | Yes |

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

| <i>Reference to relevant Regulation</i> | <i>Requirement</i> | <i>How dealt with in the Resolution Plan</i> |
|---|---|---|
| 38(1) | The amount due to the Operational Creditors under a Resolution Plan shall be given priority in payment over Financial Creditor. | Clause 8(D)(d) at Page 25 of the Resolution Plan. |
| 38(1A) | A Resolution Plan shall include a statements as to how it has dealt with the interest of all stakeholders, including Financial Creditors and Operational Creditors of the Corporate Debtor | Clause 8(E)(5) at Page 29 of the Resolution Plan. |
| 38(1B) | A Resolution Plan shall include a statement giving details if the resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past. | Clause 2(C) at Page 11 of the Resolution Plan. |
| 38(2) | A Resolution Plan shall provide (a) the term of the plan and its implementation schedule | Chapter 9 at Pages 30 of the Resolution Plan. |
| | (b) the management and control of the business of the Corporate Debtor during its terms; and | Clause 8E (3) at Pages 27 of the Resolution Plan. |
| | (c) adequate means for supervising its implementation | Chapter 10 at Pages 31 of the Resolution Plan. |

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| Reference to relevant Regulation | Requirement | How dealt with in the Resolution Plan |
|----------------------------------|--|--|
| 38(3) | A Resolution Plan shall demonstrate that (a) It addressed the cause of default; | Clause 2(C)(a) at Pages 1 of the Resolution Plan. |
| | (b) It is feasible and viable; | Clause 2(C)(b) at Pages 12 of the Resolution Plan. |
| | (c) it has provisions for its effective implementation; | Clause 2(C)(c) at Pages 12 of the Resolution Plan. |
| | (d) it has provisions for approvals required and the timeline for the same; and | Clause 2(C)(d) at Pages 12 of the Resolution Plan. |
| | (e) the Resolution Applicant has the capability to implement the Resolution Plan | Clause 2(C)(e) at Pages 12 of the Resolution Plan. |

9. The successful Resolution Applicant has submitted a Certificate of Eligibility under Section 29A of IBC, 2016 to submit a Resolution Plan under the provisions of IBC, 2016 and the same is appended as Annexure – 18 to the typed set filed along with the Application.

10. RELIEFS AND CONCESSIONS

| SL. NO | RELIEF AND/OR CONCESSIONS AND APPROVAL SOUGHT BY RESOLUTION APPLICANT (CHAPTER 12 OF RESOLUTION PLAN) | ORDERS THEREON |
|--------|--|----------------|
| 1 | All existing issued and paid-up Equity Shares of CD being 20,00,000 equity shares of Rs 10 each amounting to Rs. 2,00,00,000 (Rupees Two Crore only) shall stand cancelled without any further act or deed to be done. | Granted |



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| 2 | The Resolution Applicant and or his nominees shall be issued 200.000 Equity Shares of Rs.10 each fully paid, aggregating to Rs. 2,00,00,000 in consideration of having remitted the monies as Resolution Plan Amount and capital for the CD upon and after approval of the Resolution Plan as per schedule of payment thereof. | Granted |
| 3 | The aforesaid cancellation under Clause A of the existing Issued and paid-up Equity shares of the CD, being as of date Rs. 2,00,00,000 made up 20,00,000 Equity Shares of Rs.10 each fully paid, shall stand fully cancelled/written down as on the date of Issue of fully paid-up Equity shares in favour of the Resolution Applicant as above | Granted |
| 4 | The issue of the fresh equity shares shall stand duly authorized and shall be deemed to be in compliance with the applicable Laws. | Granted |
| 5 | All Power of Attorneys, Guarantees, Indemnities, letter of authority, comfort letters and such other documents issued by the CD or by an officer on its behalf stand revoked | Granted, subject to the provisions of the IBC, 2016 |
| 6 | All liabilities and guarantees extended whether monetary or non-monetary, admitted, disputed or undisputed, confirmed or contingent or due or overdue or statutory, crystallized or not future due, decrees obtained for satisfaction of debt and all such obligations of the crystallized, claimed or not claimed, admitted or not CD shall stand extinguished and discharged in full without any recourse to it or to the Resolution Applicant upon payment of the Resolution Plan Amount into the account earmarked by the Resolution Professional. | Granted, subject to Section 32A of IBC, 2016 |
| 7 | All or any inquiries, investigations, notices, causes of action, suits, claims, disputes, arbitration and such other proceedings including those pending before any judicial, quasi-judicial, administrative, tax, arbitral or any regulatory body or local authority. including and not limited to those, pertaining to GST, VAT, Sales Tax, Central Excise & Customs and Income Tax, initiated by | Granted, subject to Section 32A of IBC, 2016 |



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| | or against the CD shall stand terminated or abated without any liability whatsoever to CD or to the Resolution Applicant. | |
| 8 | All or any disputes, assessments, determinations or proceedings against the CD by or before any judicial, quasi-judicial, administrative, tax, arbitral tribunal or any regulatory body or local authority, pending or that may be commenced under any law including direct or indirect tax laws such as Income Tax Act 1962 or under GST. Excise, Sales Tax or value Added Tax laws, pertaining to the period prior to the Resolution Plan approval/Effective date, upon its continuation or conclusion. irrespective of the amount so decreed or awarded or determined or assessed as payable by the CD, by whatever name called including award, decree, claim. damages, compensation, tax, penalty interest, surcharge, cess etc. shall stand terminated or abated without any liability. All other claims, liabilities or debt whether crystallized or not, contingent or final, filed or not filed, admitted or not admitted by the Resolution Professional, disputed or undisputed or otherwise, including those pertaining to statutory due and penalties shall be deemed as having been fully discharged in accordance with the provisions of the Code and in the light of the Hon'ble Supreme Court's Judgement in Re Essar Steel India Ltd (CoC of Essar Steel India Ltd Vs Satish Kumar Gupta & Ors- CA 8766-67 of 2019 dated Nov 15,2019-paragraphs 66-67 on pages 111-113 of the said Orders and the CD and or the Resolution Applicant shall not be liable for the same pursuant to the approval of the Resolution Plan. | Granted, subject to Section 32A of IBC, 2016 |
| 9 | The CD must be allowed to carry forward and set-off of depreciation and losses and claims such other deductions and benefits under applicable provisions of the Income Tax Act 1961 notwithstanding the change in the shareholding pattern of the CD company, | This is for the CBDT and other appropriate authorities to consider |



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| | consequent to the approval of the Resolution Plan | keeping in view the object of IBC, 2016 |
| 10 | All recovery or coercive proceedings initiated by any creditor against the CD including those initiated under SARFAESI or RDBBFI Acts or under Section 138 of the Negotiable Instruments Act 1888, pertaining to debts/claims as against the CD shall stand abated and the creditors shall duly file for withdrawal of the same. | Granted, only in respect of the dues of the Corporate Debtor |
| 11 | Approvals, Permissions, Licenses, Consents, Permits. Authorization, Connection, Enrolments, Entitlements, Agreements. Orders and such other statutory instruments or grants, by whatever name called, issued to commence, establish, operate, continue factory / commercial establishment and/or exercise rights to access resources air, water, environment or for electricity or for discharge of effluents issued or guaranteed by any statutory authority or board or local authority or such other organs to and in favour of CD shall continue to stand vested in favour of CD. Should there be any need for any special approval or grant or renewal thereof, the Resolution Applicant may be permitted to move the concerned authority or approach this Hon'ble Adjudicating Authority under Section 31(4) of the Code as may be appropriate for the effective implementation of the approved Resolution Plan. | This is for the appropriate authorities to consider keeping in view the object of IBC, 2016 |
| 12 | To pass an order confirming that this Resolution Plan for the Corporate Debtor has with the interests of all the stakeholders in the Corporate Debtor, including the Financial Creditors, Operational Creditors, Other Creditors and all other dealt stakeholders in accordance with the Code; | Granted |
| 13 | To pass an order directing that in accordance with Section 32A and 238 of the Code, any action undertaken pursuant to the Resolution Plan by the Resolution Applicant or the Corporate Debtor will not require | Granted |

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| | compliance with requirements under any other laws. For the implementation of this Resolution Plan, and except as set out in the Resolution Plan, upon the Resolution Applicant ensuring compliance with the provisions of the Code and the CIRP Regulations, no further compliance actions or consents will be required under other laws and regulations for undertaking the individual actions contemplated under the Resolution Plan. The Code is a complete code by itself and the NCLT acting under the Code functions as a single window clearance for all action proposed to be undertaken pursuant to a resolution plan approved by the NCLT. Accordingly, the process stipulated under the code for implementation of a Resolution Plan is a final and binding process on all stakeholders (Including any Government Authorities); | |
| 14 | The Adjudicating Authority shall approve and pass an order for extinguishment and waiver of other claims and liabilities other than those in the knowledge of the Resolution Applicant. Also, (i) all obligations, claims and liabilities (whether final or contingent, whether disputed or undisputed and whether or notified to or claimed against the Company) of the Company and (ii) all outstanding disputes or legal proceedings against the Company, and (iii) all rights or claims of any person against the company : in each case relating to the period prior to the effective date. and no person shall have any further date or claim against the company in this regard. | Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i> 2021 SCC Online SC 313 |
| 15 | To pass an order directing that upon the NCLT Approval Date, the reconstitute board of directors of the Company shall be entitled to run the business of the Corporate Debtor as a going concern in accordance with this Resolution Plan and the Code | Granted |
| 16 | To pass an order directing that, the Corporate Debtor shall continue to be given unfettered access to all its assets, including any movable assets located on | Granted only in respect of the |



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| | properties that do not belong to the Corporate Debtor, on the same terms and in the same manner as were in existence prior to the Insolvency Commencement Date | Corporate Debtor |
| 17 | To pass an order directing that any and all security interest created or suffered to exist where there is a right to create such a security over the assets of the Company. to secure any obligations towards the Financial Creditors and/or Operational Creditors (whether by way of hypothecation, pledge, mortgage, guarantee or otherwise) shall stand automatically, irrevocably and unconditionally extinguished. released, discharged and terminated, and the Financial Creditors shall make all the necessary filings and notifications to the same. | Granted, subject to payments as envisaged in the plan |
| 18 | To pass an order that the Resolution Applicant or the Corporate Debtor shall not be liable to pay any Taxes whatsoever arising (directly or indirectly on such entity) as a result of the actions for implementation of the Resolution Plan taken by the Corporate Debtor or the Resolution Applicant as set out in the Resolution Plan approved by the NCLT; | Granted to the existing directors of the Corporate Debtor |
| 19 | To pass an order that any person appointed to the reconstituted board of directors of the Corporate Debtor pursuant to this Resolution Plan, shall neither be disqualified to hold directorships in terms of Section 164(2) of the Companies Act, 2013 nor have to vacate their office as directors in terms of Section 167 of the Companies Act. 2013 on account of any noncompliance by the Corporate Debtor of the requirements set out in Section 164(2) of the Companies Act, 2013: | Not Granted |
| 20 | To pass an order that all contracts of employment or consultancy with, and any benefits or fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages or any policy of providing such benefits, fees, commissions, perquisites or any profit extended by any corporate debtor to the promoters of the debtor or the related parties of the promoters of the corporate | Granted, in view of the clean slate principle envisaged under IBC, 2016 |



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| | debtors shall be deemed to be terminated and extinguished on and from the NCLT approval corporate date and the corporate debtors will not have any further obligation to provide the same. | |
| 21 | To pass an order directing that any and all pledge created on the Equity Shares shall stand automatically, irrevocably and unconditionally released and discharged, on and from the Effective Date. | Granted, in respect of the Corporate Debtor |
| 22 | To pass an order on payment as envisaged in the Resolution Plan, any charge, encumbrances, security interest, lien and/or attachments over the assets and or securities of the Corporate Debtor shall be released. | Granted |
| 23 | To pass an order directing that the Existing Promoters or other stakeholders of the Company shall cease to have any right, title and interest in the intellectual properties of the Company including but not limited to all patents, trademarks, service marks, get-up, trade names, rights in designs, logos, copyrights (including, without limitation, rights in computer software), trade secrets, internal domain names, website registration, rights in technology, licenses, moral rights, database rights, utility models, rights in know-how, proprietary and confidential information and rights in databases (whether or not any of these are registered and including any applications for registration of any such thing) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of those which subsist anywhere in the world, and all such intellectual properties shall vest in the Company in entirety and the Resolution Applicant shall have right to use it either by using the same name or by changing name. | Granted |
| 24 | Upon approval of the plan by the NCLT under Section 31 of the Code, all pending proceedings relating to the winding up of the Corporate Debtor, if any shall stand irrevocably and unconditionally abated in perpetuity and all violation or breach of any agreement of the Corporate Debtor shall stand condoned or waived and such agreements shall be treated as if no violation or breach has ever been committed | Granted |



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| 25 | Upon the Finance Act, 1994 (Service Tax), the Customs Act, 1952, the Central Sales Tax Act, 1956, the Goods and Services Tax Act, 2017 and any other indirect tax laws, including taxes, duty, penalties, interest, fines, cess, charges, unpaid TDS/TCS (to the extent applicable), whether admitted or not, due or Contingent, whether part of the above mentioned contingent liability schedule dues or not, whether claimed by the tax authorities or not, asserted or unasserted, crystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the Completion Date, shall stand extinguished and the Corporate Debtor will not be liable to pay any amount against such demand. Upon approval of this Resolution Plan by the NCLT, all outstanding litigations/demands, assessments/appellate or other proceeding, including but not limited to any audits, investigations, search and seizure, pending in case of the Corporate Debtor in relation to the period prior to the date of NCLT order and pending on that date, shall be considered deleted and shall not be proceedings under the provisions of any of the indirect tax laws should be initiated on the Corporate Debtor in relation the period prior to acquisition of control by the Resolution Applicant and any consequential demand shall be considered non existing and as not payable by the Corporate Debtor, any proceedings which were kept in abeyance in view of Insolvency process or otherwise shall not be revived post the order of NCLT. | Granted, only in so far as the dues prior to approval of this Resolution Plan |
| 26 | To pass an order granting a time period 30 days or such other extended time as may be required by the COC, the Government Authority to the Corporate Debtor and the resolution Applicant to obtain all the necessary approvals from Government Authorities required for implementation of Resolution Plan | Ordered, however a time period of 1 year is envisaged under IBC, 2016 for compliance |



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| 27 | To pass an order granting a restraint on, and prohibition of, all adverse actions against the Corporate Debtor until the implementation of this Resolution Plan in full | Ordered, subject to provisions of IBC, 2016 |
| 28 | To pass orders in respect of such incidental, consequential and supplemental matters as are necessary to ensure that the Resolution Plan is fully and effectively carried out. | Not granted since it is vague |
| 29 | To pass an order sanctioning the Resolution Plan submitted by the Resolution Applicant and approved by the COC, including sanction of the Acquisition of the Corporate the Debtor by the Resolution Applicant in accordance with the provisions of Code and other Applicable Law by infusion of funds through subscription to securities of the Corporate Debtor and/or reduction of capital pursuant to cancellation of all the securities of the Corporate Debtor that are currently in existence or otherwise and making the resolution Plan binding on the Corporate Debtor, all shareholders, creditors, guarantors and all other stakeholders and persons, and ordering implementation of the Resolution Plan, without the requirement of any further act, deed, document or costs. | Ordered subject to the provisions of IBC, 2016 and Companies Act, 2013 |
| 30 | To pass an order that as time is of the essence of the Code, and to preserve the value of the assets of the Corporate Debtor, the speedy implementation of the Resolution Plan is of utmost importance and therefore, all Government Authorities are required to take all necessary actions (as required for the implementation of the Resolution Plan approved by the NCLT, without delay; and | Ordered |
| 31 | To pass an order directing that in accordance with Section 31(1) of the Code, this Resolution Plan shall be binding on the Corporate Debtor together with its employees, members, creditors, guarantors and all other stakeholders affected by the Resolution Plan and | Ordered |

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| | accordingly, the approval of such employees, member, creditor, guarantors and other stakeholders shall not be separately required to be undertaken, whether before or after the effective date for implementation of various actions proposed to be taken pursuant to this Resolution Plan. | |
| 32 | The Adjudicating authority shall exempt compliance with the provisions of Chapter XV of the Companies Act 2013 and the corresponding rules issued there under in respect of scheme of arrangement and transaction contemplated under the Plan. | Not Granted since no Scheme is contemplated |
| 33 | The Adjudicating Authority shall exempt compliance with the applicable provisions of the Companies Act 2013 and the corresponding rules issued there under, in respect of cancellation of shares of the Existing Equity Shareholders. | Granted |
| 34 | The Adjudicating Authority shall exempt compliance with the applicable provisions of the Companies Act 2013 and the corresponding rules issued there under, in respect of filing of annual return, balance sheet and other filings/compliances under Companies Act. | Not Granted |
| 35 | The concerned Government Authority for revenue/ Stamp duty / registry, in every relevant state, should waive (i) the stamp duty and other fees to be paid for any registration of the documents, which are required to be registered under the Applicable Law, but have not been registered by the Company as on the Effective Date, (1) Late fee or penalty for delay in registration by the Company as on the Effective Date, (iii) right and power to claim penalties for no registration and inadequate/ Non-stamping of the documents required to be registered and stamped under Applicable Law, but have not been registered/properly stamped by the Company as on the Effective Date. | This is for the appropriate authorities to consider keeping in view the object of IBC, 2016 |



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| 36 | The NCLT should direct the Ministry of Corporate Affairs to waive of its rights and power to levy penalty and initiate proceedings of any nature against the Company or any person responsible (1) for the Noncompliance of any provision of the Companies Act, 2013 and rules made there under, (il) Statutory registers not being properly maintained. etc. Non-compliances by the Company as per the information received. | This is for the appropriate authorities to consider keeping in view the object of IBC, 2016 |
| 37 | The NCLT should direct the relevant Government Authority that the Company not be held liable for any non - compliance, default, beach, etc. by the Company during the period prior to the Effective Date, in relation to. (1) any contractual arrangements of the Company with counter parties, including Government Authorities and (i) failure to take or obtain any approvals, consents or permits or make any fillings required to made by the Company to the relevant Government Authorities under the Applicable Law, | This is for the appropriate authorities to consider keeping in view the object of IBC, 2016 |
| 38 | The Adjudicating Authority shall direct that: (a) pending the occurrence of the Effective Date, no Financial Creditor shall be entitled to take initiate or continue any steps or proceedings against the Company or its assets (whether by way of demand, legal proceedings, alternative determination process such as arbitration or other expert determination process, the levying of distress, execution of judgement or otherwise) in any jurisdiction whatsoever for the purpose of obtaining payment of any liability, or for the purpose of placing the Company into Liquidation or any analogous proceedings; and (b) pending the occurrence of the Effective date, no Operational Creditors shall be entitled to take, initiate or continue any steps or proceedings against the Company or its assets (whether by way of demand, legal proceedings, alternative determination process such as arbitration or other expert determination process, the levying of distress, execution of judgement | Granted |



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| | or otherwise) in any jurisdiction whatsoever for the purpose of obtaining payment of any liability or for the purpose of placing the Company into liquidation or any analogous proceedings | |
| 39 | The Adjudicating Authority shall direct the Ministry of Corporate Affairs of waive the requirements under Section 140 of the Companies Act, 2013 in respect of removal of existing auditors of the Company. | Not Granted |
| 40 | To pass an order directing to withdraw any suits / applications filed against the Corporate Debtor of the Corporate Debtor | Granted, till the approval of Resolution Plan |
| 41 | The Resolution Applicant will have the option to prepay the dues of the Financial Creditors, without any additional levies as proposed in the plan | Granted |
| 42 | If the waiver proposed under the Resolution Plan not granted by the CoC, the Resolution Applicant will abide the Plan. | Ordered |

11. ANALYSIS AND FINDINGS OF THIS TRIBUNAL

11.1. It is seen from Form – H that the Liquidation value of the Corporate Debtor is arrived at Rs.3,74,76,700/- and the corresponding Fair value is arrived at Rs.4,45,44,500/-.

11.2. Further, it is seen from Form – H, no Applications under Section 43, 45, 49 and 66 of IBC, 2016 has been filed by the RP in the present matter.

11.3. In so far as the approval of the Resolution Plan is concerned, this Authority is convinced on the decision of the Committee of Creditors, following the much-celebrated



Judgment of the 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 follows;

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

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

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



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

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

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



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

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

(emphasis supplied)

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

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



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

(emphasis supplied)

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

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



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

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

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

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

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



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

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

11.8. Thus, from the catena of judgments rendered by the Supreme Court on the scope of approval of the Resolution Plan, it is amply made clear that only limited judicial review is available for the Adjudicating Authority under Section 30(2) and Section 31



of IBC, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the Committee of Creditors.

11.9. On hearing the submissions made by the Ld. Counsel for the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with 100% voting share. As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Bench. On perusal of the documents on record, we are also satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016,

11.10. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.

11.11. In case of non-compliance with this order or withdrawal of the Resolution Plan by the Successful Resolution Applicant, the CoC shall forfeit the Performance Security



furnished by the Resolution Applicant in the form of Performance Bank Guarantees.


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

11.13. The Resolution Applicant is directed to make payment of the entire Resolution Plan amount within a period of 45 days from the date of this order, failing which the entire amount paid by the Resolution Applicant (*including the Performance Guarantee*) as on the said date would stand automatically forfeited, without any recourse to this Tribunal.

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

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

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



12. IA(IBC)/430/CHE/2023 shall stand disposed of accordingly.

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

— sd —

SAMEER KAKAR
MEMBER (TECHNICAL)

— sd —

Justice RAMALINGAM SUDHAKAR
PRESIDENT

Raymond