

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**INDORE BENCH**  
**COURT NO. 1**

ITEM No.201  
**IA/190(MP)2021**  
in  
**CP(IB) 9 of 2020**

**Proceedings under Sections 30(6) & 30(1) of IBC, 2016**

**IN THE MATTER OF:**

Naveen Kumar Sood RP of Ujaas Energy Ltd

.....Applicant

**Order delivered on 13/10/2023**

**Coram:**

P. Mohan Raj, Hon'ble Member(J)  
Kaushalendra Kumar Singh, Hon'ble Member(T)

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**

**IA/190(MP)2021**

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

A. Bhadauria

Sd/-

**P. MOHAN RAJ**  
**MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
INDORE BENCH**

**IA/190(MP)2021  
In  
CP (IB) 9 of 2020**

**IA/190(MP)2021**

*(An application under Section 30(6) of the Insolvency & Bankruptcy Code, 2016 for approval of resolution plan)*

**Through:**

**Naveen Kumar Sood  
Resolution Professional of  
Ujaas Energy Limited**  
D-501, Shehnai Residency  
A.B. Road, Opp. Amarvilas Hotel  
Indore-452011

**Applicant/  
Resolution Professional**

**IN THE MATTER OF:**

**Naveen Kumar Sood  
Resolution Professional of  
Ujaas Energy Limited**  
D-501, Shehnai Residency  
A.B. Road, Opp. Amarvilas Hotel  
Indore-452011

**Applicant/  
Resolution Professional**

**Versus**

**M/s Ujaas Energy Limited**  
Survey No.211/1  
Opp. Sector-C & Metalman  
Sanwer Road, Industrial Area  
Indore (MP)-452015

**Corporate Debtor**

**In the Matter of CP(IB) 9 of 2020:**

*(An application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016)*

**Mr. Deepak Chandak**

Proprietor of M/s Harshal Enterprises

**Operational Creditor**

**Versus**

**M/s Ujaas Energy Limited**

**Corporate Debtor**

**Order Reserved on: 21.09.2023**

**Order Pronounced on: 13.10.2023**

**Coram: P. Mohan Raj, Member (J)**

**Kaushalendra Kumar Singh, Member (T)**

**Appearance:**

For the Applicant:

Ld. Sr. Counsel Mr. Navin Pahwa a.w. Ld. Counsel Mr. Rohit Dubey & Ld. Counsel Mr. Sandeep Pandey

For the Successful  
Resolution Applicant:

Ld. Counsel Mr. Akshat Agrawal

**ORDER**

1. This application IA/190(MP)2021 is filed on 28.09.2021 under Section 30(6) read with Section 31 of Insolvency & Bankruptcy Code, 2016 (**Code**) by Mr. Naveen Kumar Sood- Resolution Professional of the corporate debtor- Ujaas Energy Limited for approval of the Resolution Plan submitted by consortium of SVA Family Welfare Trust and M&B Switchgears.

2. The application was heard earlier, however, the same was rejected by this Adjudicating Authority vide order dated 06.01.2023 on the ground that CoC by majority votes can not enforce its decision

for extinguishment of the right of the dissenting creditor to proceed against the personal guarantor. For ready reference the relevant part of the said order is reproduced hereunder:

10. .... *Be that as it may we are not going in details of the plan since the said resolution plan contains a relief to extinguish the personal guarantee given to the lenders on the borrowings of the corporate debtor but the same is objected by Bank of Baroda. This Adjudicating Authority vide its order dated 04.08.2022 released the matter for clarification with respect to the said relief in the plan, however the resolution applicant wish to proceed without amending such reliefs and therefore, such conditional plan without the consent of all the secured financial creditors is not in accordance with the provisions of the Code.*
11. *In our considered opinion the CoC can take any commercial decision relating to insolvency of the corporate debtor only, the CoC cannot extinguish right of the particular secured creditor to proceed against the personal guarantor of the corporate debtor under the garb of its commercial wisdom. Such provision in the resolution plan is not only prejudicial to the right of such secured creditor but also against the provisions of law. Hence we cannot approve such resolution plan as it contravenes the provision of section 30(2)(e ) of the Code.*
12. *In view of the above, we are of the considered opinion that such resolution plan can not be approved and deserves to be rejected as the CoC by majority votes can not enforce its decision for extinguishment of the right of the dissenting creditor to proceed against the personal guarantor. It is also noted that the Bank of Baroda has already filed an application against the personal guarantors which is pending before the Adjudicating Authority.*
13. *Accordingly, IA 190 of 2021 is rejected and disposed of.*

3. In pursuance to the said order of this Adjudicating Authority, the successful resolution applicant filed an appeal before the Hon'ble NCLAT bearing Co. Appeal(AT)(Ins) 266 of 2023. The Hon'ble NCLAT vide its order dated 21.08.2023 has allowed the said appeal and has set aside the order dated 06.01.2023 passed by this Adjudicating

Authority stating that the issue pertaining to the release of personal guarantee was placed before the CoC and the CoC has approved the plan even after considering the said relief. Further, the NCLAT stated that the commercial wisdom of the CoC has to be given weightage and directed this Adjudicating Authority to pass a fresh order in the said matter for approval of the resolution plan.

For ready reference, the relevant part of the order of Hon'ble NCLAT is reproduced hereunder:

*25. The present is not a case where issue pertaining to the release of the personal guarantee was not before the CoC and was not deliberated. As noticed above, there was a specific clause in the Resolution Plan pertaining to release of the personal guarantee which clause was deliberated. Even the objection raised by the Union Bank of India that personal guarantee cannot be released was noticed. It is useful to extract the objection as recorded in the minutes of 13th CoC meeting held on 29.05.2021 where following was recorded:-*

*“Mr. Mihir Kumar of Union Bank of India referred to the recent Supreme Court judgment in the matter of Lalit Kumar Jain versus Union of India & Ors. and told the CoC that in his opinion, the judgment lays down that in the case of a resolution plan being approved by the Adjudicating authority, personal guarantees given in relation to loans given by financial creditors can be invoked and no provision can be made in a resolution plan for waiver of these personal guarantees. The CoC requested the RP to obtain a legal opinion from JMVD Legal in the matter.”*

*26. We, thus, are of the view that there is no error in the consideration of the CoC of the Resolution Plan and the commercial wisdom of the CoC by approving the Resolution Plan has to be given due weightage.*

*27. We may also refer to recent judgment of this Tribunal in Company Appeal (AT) (Ins.) No.517 & 518 of 2023- “Edelweiss Asset Reconstruction Company Ltd. vs. Mr. Anuj Jain, Resolution Professional of Ballarpur Industries Ltd. & Ors.” decided on 04.07.2023. In the above case, the Financial Creditor of the Corporate Debtor aggrieved by the approval of*

*the Resolution Plan has filed the Appeal. The grievance of the Appellant was that Appellant has security interest in land of the Corporate Debtor which was proposed to be sold in the Resolution Plan. The submission of the Appellant was negated by this Tribunal and it was held that such security interest by the Corporate Debtor could have been very well dealt in the Resolution Plan. In paragraphs 29 to 32 of the judgment, following was held:-*

*29. From the facts of the present case, it is clearly noticeable that security interest of the Appellant was part of the CIRP process since the Appellant has filed its claim on 05.02.2020 in Form 'C' and its claim although was rejected as Financial Creditor but was accepted as 'Other Creditor' with notional value of Re.1. The Resolution Professional has communicated to the Appellant on 19.10.2020 that since no default has been committed by the Principal Borrower against its claim of Rs.133 Crore and odd, nominal value of Re.1 only is admitted. It is also noticeable that the Appellant at no point of time challenged the admission of its claim by Resolution Professional as 'Other Creditor'. The main distinguishing feature of present case with that of "Jaypee Kensington" is that in "Jaypee Kensington" security interest of the Lender of that case was not part of the CIRP process but in the present case same was part of the CIRP process.*

*30. When any asset including security interest in the asset is part of the CIRP process, there is no constraint or prohibition in I&B Code or Regulations to deal with the said asset including a security interest. The observation of the Hon'ble Supreme Court in "Jaypee Kensington" was observation in the facts of that case. In the aforesaid background the Hon'ble Supreme Court held that security created in the land could not have been annulled in the manner suggested in the plan. The plan in the aforesaid case in Clause 23 of Schedule 3 provided that the mortgaged land shall continue to be vested in the Corporate Debtor free of any mortgage or charge or encumbrance.*

*31. As noted above, in the present case, the Appellant filed its claim and their claim came to be dealt with in the Resolution Plan. In the Jaypee Kensington's case Lenders were outside the CIRP. In Para 259.1, as*

*noted above following was held by the Hon'ble Supreme Court:*

*“This bank appears right in its contention that when the security in question was not even taken up as a part of the resolution process, it could not have been extinguished on the ipse dixit of the resolution applicant.”*

*32. Thus, basis of the judgment is when security interest is not part of the CIRP it could not have been extinguished. As noted above, in the present case, claim was filed by the Appellant and Appellant was part of the CIRP process, hence, their security interest can very well be dealt with in the resolution plan. The scheme as delineated by Regulation 37 of CIRP Regulations, 2016 fully support our view.”*

*28. The above judgment fully supports the submissions of the Appellant that security interest of dissenting Financial Creditor by virtue of personal guarantee of the ex-director of the Corporate Debtor could have been very well dealt in the Resolution Plan. It is further relevant to notice that each Financial Creditor has personal guarantee in their favour to secure the loan extended by them. All Financial Creditors has assented for relinquishment of such security except Bank of Baroda which had only 5.83% vote share. The decision of the CoC to accept the value for relinquishment of personal guarantee was a commercial decision of the CoC which cannot be allowed to be impugned at the instance of dissenting Financial Creditor.*

*29. In view of the foregoing discussions, we are of the view that the Adjudicating Authority committed error in rejecting the Application for approval of the Resolution Plan on the ground that plan could not have contained a provision for extinguishment of personal guarantee of the personal guarantors. Plan allocates a plan value for extinguishment of personal guarantee which has been accepted by the Financial Creditors by a vote share of 78.04%. We, thus, are of the view that the order of the Adjudicating Authority dated 06.01.2023 is unsustainable. In result, we allow the Appeal and set aside the order dated 06.01.2023 passed by the Adjudicating Authority. We hold that the Resolution Plan submitted by the Appellant did not contravene any of the provisions of Section 30(2)(e) of the Code. The Adjudicating Authority shall proceed*

*to pass a fresh order in IA 190 of 2021 praying for approval of the Resolution Plan along with necessary directions. Adjudicating Authority shall endeavour to pass fresh order on IA 190 of 2021 within a period of three months from the date when copy of this order is produced before it.*

4. Subsequent to the said order of the Hon'ble NCLAT, this Adjudicating Authority in an application filed by the RP bearing No. IA 94 of 2023 has vide order dated 24.08.2023 directed the registry to re-list the present application i.e. IA 190 of 2021 for re-hearing. Thereafter the present application for approval of the resolution plan was re-heard and was reserved for order.

5. The following are the submissions made by the applicant/ resolution professional in the present application:

(i) The Corporate Debtor was admitted in the Corporate Insolvency Resolution Process (**CIRP**) on 17.09.2020. Mr. Navin Khandelwal was appointed as Interim Resolution Professional (**IRP**). On 21.09.2020 the IRP made public announcement of CIRP of the Corporate Debtor and called upon its creditors to submit claims with requisite proof. The IRP formed the CoC consisting of the following financial creditors having voting percentage right as stated below:

Sr.	Name of Financial Creditor	Secured/ Unsecured	% Voting Share
(i)	Union Bank of India	Secured	27.06
(ii)	State Bank of India	Secured	35.74
(iii)	Indian Overseas Bank	Secured	15.53
(iv)	Axis Bank Limited	Secured	15.70
(v)	Bank of Baroda	Secured	5.83
(vi)	RBL Bank Limited	Secured	0.05
(vii)	Swastika Fin-Mart Private Limited	Unsecured	0.33

(ii) The RP published Form-G on 03.12.2020 in widely circulated English as well as local language newspapers. In response thereto, he received four resolution plans, one of them was plan of resolution applicant- consortium of SVA Family Welfare Trust and M&B Switchgears.

(iii) The Adjudicating Authority vide order dated 28.01.2021 approved the replacement of the IRP and appointed Mr.Naveen Kumar Sood as Resolution Professional (**RP**) in place of Mr.Navin Khandelwal.

(iv) The plans were discussed in several meetings and thereafter, two final plans- consortium of SVA Family Welfare Trust and M&B Switchgears and Manikaran Power Limited were put to vote in the 18<sup>th</sup> CoC meeting dated 09.08.2021.

The resolution plan submitted by consortium of SVA Family Welfare Trust and M&B Switchgears was approved by the COC with 78.04% votes on 30.08.2021. The same plan has been submitted before the Adjudicating Authority for approval under Section 30(6) of the IBC, 2016. The liquidation value and fair value of the Corporate Debtor is reported at Rs.43,08,09,000/- and Rs.56,64,44,300/- respectively.

(v) The resolution applicant- consortium of SVA Family Welfare Trust and M&B Switchgears has proposed to pay a sum of Rs.74,81,75,744/- (including Rs.5,77,35,694/- towards working capital requirements).

The details of the proposed payment are as follows:

Sl	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	31,75,87,769	31,75,87,769	9,49,33,128	29.89
		(ii) Who voted in favour of the resolution plan	71,77,10,432	71,77,10,432	18,50,66,871	25.78
		Non-fund-based creditors (Un-invoked bank guarantees)	40,59,23,329	40,59,23,329	40,59,23,329	100
	Total [(a)+(b)]	1,44,12,21,530	1,44,12,21,530	68,81,75,744	47.75	
2.	Unsecured Financial Creditors (Unrelated)	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution plan	-	-	-	-
		(ii) who voted in favour of the resolution plan	50,00,000	50,00,000	50,00,000 equity shares of face value Re.1/-	100
		Total [(a)+(b)]	50,00,000	50,00,000	50,00,000	100
3.	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than				

		(a) above: (i) Government	89,58,79,886	89,58,79,886	9,72,799	0.106
		(ii) Workmen	8,58,289	8,58,289	8,58,289	100
		(iii) Employees	1,96,017	1,96,017	1,96,017	100
		(iv) Claims Received from Operational Creditors (other than employees)	5,04,07,501	2,50,50,321	27,201	0.054
		Total [(a)+(b)]	94,73,41,693	92,19,84,513	20,54,306	0.21
4	Other debts and dues	Other than Financial Creditors and Operational Creditors	86,10,777	86,10,777	2,10,000	2.44
5	Unsecured Financial Creditors (Related)		10,61,046	10,45,979	0	0
Grand Total			2,40,32,35,046	2,37,78,62,799	69,54,40,050	28.94

(vi) The RP has examined the resolution plan and the compliances required. For ready reference, the compliances examined by the RP are reproduced hereunder:

Section of the Code/ Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes/No)
25 (2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Chapter 2	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?		Yes
Section 30 (1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Annexure 9	Yes
Section 30 (2)	Whether the Resolution Plan-  (a) provides for the payment of insolvency resolution process costs?  (b) provides for the payment to the operational creditors?  (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?  (d) provides for the management of the affairs of the corporate debtor?  (e) provides for the implementation and supervision of the resolution plan?  (f) contravenes any of the provisions of the law for	Chapter 4 Clause 5.1  Chapter 4 Clause 7.4  Chapter 5 Clause 12  Chapter 7  Chapter 8  Chapter 10	Yes

	the time being in force?	Clause 3	
Section 30 (4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?		Yes Yes
Section 31 (1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?		Yes
Section 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43,45,50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?		No (No such transactions were found or determined)
Regulation 38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Chapter 4 Clause 7.5	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Chapter 4 Clause 10	Yes
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code.  (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation	Chapter 2 Clause 6	Yes  NA
Regulation 38(2)	Whether the Resolution Plan provides that: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	Chapter 8  Chapter 7  Chapter 8	Yes  Yes  Yes
38(3)	Whether the resolution plan demonstrates that-  (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same?  (e) the resolution applicant has the capability to implement the resolution plan?	Chapter 8 Chapter 7 Chapter 8  Page 51 & 54-57  Chapter 7 & 8	Yes Yes Yes  Yes  Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		No (No such transactions were found or determined)
Regulation 39 (4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.		Fixed Deposits of INR 10 Cr. Kept under lien with the lead member of CoC (SBI)

(vii) The plan proposes to restructure the share capital of the corporate debtor in the form of a demerger of the corporate

debtor. According to the said resolution plan the business of the corporate debtor is to be divided into three segments i.e. (a) Sale of Solar power plant, solar power generation, operation & maintenance, manufacturing of electrical vehicles; (b) transformer business; (c) Power trading and advisory.

The resolution applicant envisages the demerger of the transformer business (Demerged Undertaking 1) and Power trading and advisory business (Demerged Undertaking 2) of the corporate debtor into Resulting Company 1 & Resulting Company 2 respectively in such a manner that all assets & liabilities, rights and obligations relating to the Demerged Undertaking 1 & 2 will be vested with the Resulting Company 1 & 2 respectively. The Resulting Company 1 & 2 will be new companies freshly incorporated to meet the requirements of this resolution plan.

(viii) The total admitted operational debt (government dues) amounts to Rs.89,58,79,886/- out of which only Rs.9,72,799/- was proposed to such creditors under the resolution plan. Therefore, the successful resolution applicant filed an affidavit dated 23.11.2022 proposing additional Rs.74,01,086/- to MP VAT, Gujarat VAT and PF departments to be paid in proportion to their respective admitted debts in view of the judgment of Hon'ble Supreme Court in State Tax Officer v/s Rainbow papers Limited. It has also been submitted that if in case of review, amendment in the said judgement (within 36 months from the date of approval of the resolution plan), the payment to MP VAT, Gujarat VAT and PF departments are not required to be made at par with other secured financial creditors, then in such a case the resolution applicant should be refunded with the said amount of Rs. 74,01,086/-.

Subsequently, the resolution applicant has sought withdrawal of its affidavit dated 23.11.2022 on ground of the position of law as laid down in State Tax Officer V/s Rainbow Papers Ltd [Civil Appeal No. 1661 OF 2020] been changed by Hon'ble Supreme Court in Paschimanchal Vidyut Vitaran Nigam Limited v. Raman Ispat Private Limited [Civil Appeal No. 7976 of 2019]. Even after withdrawal of the said additional proposal been made in affidavit dated 23.08.2023 it can be seen that an amount of Rs. 9,72,7991- is being paid towards statutory/government dues, which is more than their apportionable share in the liquidation value of the Corporate Debtor.

6. We have heard the learned counsels for the RP and the learned counsel for the successful resolution applicant. On perusal of records it is noted that the CoC approved the resolution plan of consortium of SVA Family Welfare Trust and M&B Switchgears by 78.04% voting and it is not necessary for us to go into details of the commercial wisdom of CoC. We proceed to examine the plan in light of provisions contained in sections 30(2) and 31 of the IBC r.w. Regulation 38 of the IBBI (CIRP of the Corporate Debtor Regulation, 2016). The RP has placed on record the compliance certificate in Form-H (revised Form-H dated 20.10.2021 filed through separate application bearing IA 202 of 2021). It shows that the fair value of the assets of the corporate debtor is Rs.56,64,44,300/- whereas, the liquidation value is Rs. 43,08,09,000/-. The successful resolution applicant has proposed a payment of Rs.69,54,40,050/- in the resolution plan.

7. The resolution plan should adhere to the following requirements as per Section 30(2) of the Code r.w. CIRP Regulation 38:

(i) It should provide for the payment of insolvency resolution process costs in priority to the repayment of other debts of the corporate debtor.

[Section 30(2)(a)]

(ii) The repayment of the debts of operational creditors should not be less than the amount to be paid to such creditors in the event of liquidation of the corporate debtor under section 53 of the Code, or the amount that would have been paid to the said creditors if the amount to be distributed under the resolution plan had been distributed in accordance of section 53(1) of the Code.

Moreover, the payment to the operational creditor is to be made in priority over the financial creditor;

Further the repayment of the debts of dissenting financial creditors should not be less than the amount that would have been paid to such creditors in the event of liquidation of the corporate debtor under section 53 of the Code and the payment to the said dissenting financial creditor is to be made in priority to the consenting financial creditors.

[Section 30(2)(b) read with CIRP Regulation 38(1)(a) &  
38(1)(b)];

(iii) Provides for the management of the affairs of the corporate debtor after approval of the resolution plan.

[Section 30(2)(c) read with CIRP Regulation 38(2)(b)];

(iv) The implementation and supervision of the resolution plan.

[Section 30(2)(d) read with CIRP Regulation 38(2)(c)];

(v) It does not contravene any of the provisions of the law for the time being in force.

[Section 30(2)(e)];

(vi) It conforms to such other requirements as may be specified by the Board.

[Section 30(2)(f)]

Such other requirements of the resolution plan as detailed in IBBI (Resolution Process for Corporate Persons) Regulations, 2016 which are not covered above, are as under:

(a) The resolution plan should include statement as to how it has dealt with the interests of all stakeholders including financial creditors and operational creditors of the corporate debtor.

[CIRP Regulation 38 (1A)]

(b) The resolution plan should include a statement giving details as to whether the resolution applicant or any of its related parties has at any time failed to implement or caused to the failure of implementation of any other resolution plan which was approved by the Adjudicating Authority.

[CIRP Regulation 38 (1B)]

(c) The resolution plan should contain the term of the plan and its implementation schedule.

[CIRP Regulation 38(2)(a)]

(d) The resolution plan should also demonstrate that it addresses the cause of default; is feasible and viable;

has provisions for its effective implementation; has provisions for approvals required and timeline for the same. Further that the resolution applicant has the capability to implement the resolution plan.

[CIRP Regulation 38(3)]

8. Taking into account the above provisions of the Code, the resolution plan submitted before us has been examined as follows:

(i) In the plan, no specific amount with regards to CIRP cost has been proposed however there is an undertaking by the resolution applicant to pay the entire unpaid CIRP cost in priority to repayment of other debts of the corporate debtor. Thereby, section 30(2)(a) has been complied with.

(ii) It is noted that as per the provisions of the code,

a) the operational creditors should not be paid less than the amount payable to such creditors in the event of liquidation of the corporate debtor under section 53 of the Code, or the amount that would have been paid to the said creditors if the resolution plan value had been distributed in accordance of section 53(1) of the Code.

In the present case, the liquidation value is Rs.43,08,09,000/- whereas the total admitted claim of secured financial creditors is Rs.103,52,98,201/- excluding Non-fund based creditors. As such if the said liquidation value was to be considered in the event of liquidation as a total amount to be distributed as per sec 53 then the operational creditors would have got nothing. Similarly, we find that the proposed plan value is Rs.69,54,40,050/- and if that was to be distributed in accordance with sec 53 then also nothing would have remained for the operational

creditors. However, the resolution applicant has proposed to pay Rs.20,54,306/- to the operational creditors.

b) It is seen from the material available on record that Indian Overseas Bank and Bank of Baroda objected to the approval of the said resolution plan and therefore, they are dissenting Financial Creditors. However, as per the provisions of the Code, the payment to the dissenting financial creditor should be in priority to other consenting financial creditors and should not be less than the amount that would have been payable as per Section 53 of the Code, 2016, in the event of Liquidation of the Company. In the present case, the liquidation value is Rs.43,08,09,000/- and the admitted claim amount of the secured financial creditors excluding Non-fund based creditors is Rs.103,52,98,201/-. The amount proposed to be paid to the dissenting financial creditors (29.89%) is more than that proposed to be paid to the assenting secured financial creditors (25.78%).

As such the provisions of section 30(2)(b) read with CIRP Regulation 38(1)(a) & 38(1)(b) are complied with.

(iii) The mechanism for management and control of the affairs of the corporate debtor after approval of the resolution plan till its implementation has been provided in the resolution plan itself whereby a Monitoring Committee consisting of one representative nominated by the resolution applicant, one representative nominated by the CoC and Mr.Navin Kumar Sood (subject to prior consent in writing and in case if the consent is not given by him then another Insolvency Professional

nominated by the Resolution applicant and CoC) will look after the business of the corporate debtor after approval of the resolution plan and pending its implementation. We hold that thereby provisions of Section 30(2)(c) read with CIRP Regulation 38(2)(b) are complied with.

(iv) The resolution plan contains a provision wherein, the implementation of the said plan will be supervised by the Monitoring Committee. Thereby, Section 30(2)(d) read with CIRP Regulation 38(2)(c) have been complied with.

(v) The RP has submitted that the plan does not contravene any provisions of law. We also noted that the plan does not contravene any provisions of the law for the time being in force. Thereby, Section 30(2)(e) has been complied with.

(vi) The resolution plan also conforms to other IBBI Regulations as given hereunder:

- a) The resolution plan adequately deals with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor. Thereby, the plan is in compliance with CIRP Regulation 38 (1A).
- b) It is submitted that neither the resolution applicant nor any of its related parties have at any time failed to implement or contributed to the failure of implementation of any other resolution plan which was approved by the Adjudicating Authority. Thereby, the plan is in compliance with CIRP Regulation 38 (1B).

- c) The term of the Plan is 6 months and its implementation schedule is as detailed on Page No.354 of the resolution plan.

<b>IMPLEMENTATION SCHEDULE</b>		
<b>S.No.</b>	<b>Activity</b>	<b>Timeline (days)</b>
<b>Phase I Approval Process</b>		
	Approval of Resolution Plan by Adjudicating Authority and receipt of certified Adjudicating Authority Order and all other approvals as per the extant laws as prescribed under the Resolution Plan (i.e. NCLT Approval Date)	T
	Intimation to Stock Exchange	T+1
	Appointment of Monitoring Agency	T+1
<b>Phase II – Implementation of Resolution Plan</b>		
	Take-over of the management and control of UEL by the Resolution Application from the Resolution Professional on the Effective Date	T+7
	Reconstitution of Board of UEL and appointment of such key Managerial Personnel as deemed fit by the Resolution Applicant	T+7
	Incorporation of the Resulting Company (for the purpose of demerger)	After T
	Capital Restructuring including Capital Resolution, Part RA Equity Infusion	Within T+30
	Scheme of Arrangement	T+30 but within 6 months from NCLT Approval Date
<b>Phase III – Upfront Payments to Creditors</b>		
	Payment of unpaid CIRP Cost	T+7
	Upfront Payments to Creditors (as per Chapter V)	Within T+7 (Effective Date)
<b>Phase IV – Balance Payment to Financial Creditors</b>		
	Balance Payment to Financial Creditors	As per Chapter IV

Thereby CIRP Regulation 38(2)(a) has been complied with.

- d) The resolution plan addresses the cause of default; is feasible and viable; has provisions for its effective

implementation; contains provisions for approvals required and the timeline for the same. Further that the resolution applicant has the capability to implement the resolution plan. Thus CIRP Regulation 38(3) has been complied with.

9. The resolution applicant SVA is a private discretionary family trust formed under the provisions of Indian Trust Act, 1882. M&B is a partnership, firm formed vide Deed of Partnership dated December 15, 2020 and is engaged in the business of manufacture, import, export suppliers of selling agents, distributing agents, intermediaries, representatives for and dealers of electrical/mechanical/chemical/civil goods, renewal, vehicles and equipment and trading of such goods/commodities as and when decided by the partners and to carry on the business of investment in all forms of share/debentures etc or any other instrument permitted by law and to buy, sell, hold, etc by way of direct subscription, market purchase, or through SARFAESI Act 2002, IBC 2016, or any other process under any law or otherwise trade in and deal in odd lot shares, debenture, debenture stock, bonds, unit either individually or through consortium, joint venture or any other structure as per law.

Sources of funds is through internal accruals and in principle approval of loan from Blue River Finvest Private Limited. The net worth certificate of M/s SVA Family Welfare Trust amounting to Rs.23,03,38,435/- is also placed on record.

10. It is also noted that the resolution applicant has sought certain reliefs & concessions such as waiver of:

- (i) Levy of stamp duty and fees by the stamp authorities and Ministry of Corporate Affairs, as applicable;

- (ii) Exemption from all taxes, levies, fees, transfer charges, transfer premiums and surcharges that arise from or relate to implementation of the resolution plan;
- (iii) Waiver of any tax (including but not limited to income tax, GST or any such tax); any requirement to obtain waiver from any tax authorities as deemed to have granted upon approval of this plan w.e.f the effective date;
- (iv) Relief/ exemption from CBDT, Customs, VAT etc;
- (v) Waiver of income tax and minimum alternate tax liability or any consequences thereof;
- (vi) The CBDT to not to take any action with respect to the transactions contemplated under this plan under section 79, 170 & 281 of the Income Tax Act;
- (vii) All non-compliances, liabilities, defaults, tax, litigations, inquiries, investigations and proceedings, etc if any, for the period prior to the effective date shall be waived of;
- (viii) To approve and sanction the Scheme of Arrangement as part of this resolution plan;

Further, the approval of the resolution plan is not conditional to the grant of reliefs & concessions sought by the resolution applicant.

11. As far as reliefs and concessions claimed by the resolution applicant with respect to the unpaid liabilities after approval of the plan and the claims not filed at all with the RP during the CIRP, the law has been well settled by the Hon'ble Supreme Court in the case of ***Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors. reported in MANU/SC/0273/2021*** in the following words:

86. “.....The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate

*and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.*

87. *We have no hesitation to say, that the word "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of I&B Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief....."*

12. In view of the above, all unpaid liabilities and claims that are not filed with the RP before the approval of the resolution plan and those which are not included in the said resolution plan would stand extinguished. As regards the approval for scheme of demerger of the two undertaking of the corporate debtor into two separate resulting companies (to be incorporated subsequent to the approval of the resolution plan) is deemed to be granted; however, any documents, approvals if required to be made thereafter, has to be complied by the respective resulting companies. Moreover, with respect to the other reliefs and concessions sought by the resolution applicant, we direct the said successful resolution applicant to approach the concerned statutory authority for those concessions and those authorities will consider the same as per the provisions of law under the relevant Acts keeping in view the intent and spirit of the Code.

13. The proviso to section 31 of the Code, 2016, states that before passing any order for approval of the resolution plan, the Adjudicating Authority should also satisfy that the resolution plan

has provisions for its effective implementation. We being satisfied, approve the resolution plan submitted by consortium of SVA Family Welfare Trust and M&B Switchgears for Corporate Debtor i.e., Ujaas Energy Limited and in addition to the above directions, proceed to pass the following order:

- (i) Application is allowed.
- (ii) The resolution plan of consortium of SVA Family Welfare Trust and M&B Switchgears for Corporate Debtor i.e., Ujaas Energy Limited allowed as per Section 30(6) of the IBC, 2016.
- (iii) The approved 'Resolution Plan' shall become effective from the date of passing of this order.
- (iv) The order of moratorium dated 17.09.2020 passed by this Adjudicating Authority under Section 14 of I&B Code, 2016 shall cease to have effect from the date of passing of this order.
- (v) The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant(s).
- (vi) The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.
- (vii) Accordingly, IA 190 of 2021 in CP(IB) 9 of 2020 is allowed and stands disposed of in terms of the above directions.

(viii) Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

**-sd-**

**Kaushalendra Kumar Singh**  
**Member (Technical)**

**-sd-**

**P. Mohan Raj**  
**Member (Judicial)**

Swati Khandelwal