

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA(IBC) No. 369/JPR/2023
& IA(IBC) No. 660/JPR/2023
In CP No. (IB)- 33/10/JPR/2021

IN THE MATTER OF:

AIREN COPPER PRIVATE LIMITED

...Corporate Debtor/ Applicant

MEMO OF PARTIES

IA (IBC) No. 660/JPR/2023:

MR. SATYENDRA PRASAD KHORANIA

Resolution Professional of Airen Copper Pvt. Ltd.

402, OK Plus DP Metro, Opp. Metro
Pillar No. 94, New Sanganer Road,
Jaipur- 302019 (Rajasthan)

...Applicant

VERSUS

AADITYA FINCHEM PRIVATE LIMITED

... Respondent

AND

IA (IBC) No. 369/JPR/2023:

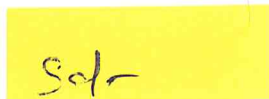
EMPLOYEES PROVIDENT FUND ORGANIZATION

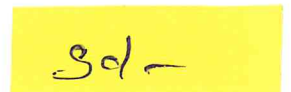
Through Regional Provident Fund Commissioner (Legal)

Ministry of Labour & Employment, Govt. of
India, Nidhi Bhawan, Vidhyut Marg, Jyoti
Nagar, Jaipur- 302005 (Rajasthan)

...Applicant

VERSUS





IA(IBC) No. 369/JPR/2023 &
IA(IBC) No. 660/JPR/2023
In CP No. (IB)- 33/10/JPR/2021

AIREN COPPER PRIVATE LIMITED

F-728, Road No. 9F/2, Vishwakarma
Industrial Area, Jaipur- 302013
(Rajasthan)

... Respondent No. 1

SHRI VISHNU UPADHYAY

Interim Resolution Professional

A-38, First Floor, Bhaskar Enclave- 2,
Near Harbinger Heights, Golyawas, VT
Road, Mansarovar, Jaipur- 302020
(Rajasthan)

... Respondent No. 2

FOR THE APPLICANT:

Anubha Singh, Adv.

Satyendra Prasad Khorania, *RP In person*

Order Pronounced On: 29.02.2024

ORDER

Per: Shri Deep Chandra Joshi, Judicial Members

1. This Application bearing *IA(IBC)No.660/JPR/2023* has been filed by *Mr. Satyendra Prasad Khorania*, Resolution Professional ('RP'/ 'Applicant') of *M/s Airen Copper Pvt. Ltd.* ('Corporate Debtor') under Sections 30(6) read with Section 31 and Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('IBC'/'Code') along with the IBBI (Insolvency Resolution Process For Corporate Persons, 2016 ('CIRP Regulations') seeking approval of Resolution Plan.
2. The main application numbered as *CP No. (IB)- 33/10/JPR/2021* was filed by the Corporate Debtor itself under Section 10 of the Code for initiation of

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*IA(IBC) No. 369/JPR/2023 &
IA(IBC) No. 660/JPR/2023
In CP No. (IB)- 33/10/JPR/2021*

Corporate Insolvency Resolution Process ('CIRP') and the same was admitted by this Adjudicating Authority *vide* Order dated 18.02.2022 wherein *Mr. Vishnu Upadhyay* was appointed as the Interim Resolution Professional ('IRP'). On 23.02.2022, the IRP issued a public announcement as per Regulation 6 of the CIRP Regulations read with Sections 13 and 15 of the Code in Form A in two newspapers i.e., *Economic Times* (English Language) and *Dainik Bhaskar* (Hindi Language) inviting claims from the creditors of the Corporate Debtor wherein the last date of submission of claim was 07.03.2022. A copy of the Public Announcement dated 21.02.2022 is available on the website of IBBI as well and the same has been duly verified. Copy of Form-A dated 21.02.2022 along with Newspaper clippings is annexed at Annexure A-3 of the Application.

3. Pursuant to the public announcement, the IRP collated the claims and constituted the Committee of the Creditors ('CoC') on 08.04.2022 in terms of Regulation 17 of the CIRP Regulations. A report was filed in compliance with Regulation 13(2)(d) and Regulation 17 of CIRP Regulations *vide IA(IBC) No. 133/JPR/2022* and taken on record *vide* Order dated 27.04.2022. Hence, the IRP in accordance with Section 21(1) of the Code constituted the CoC consisting of two Financial Creditors i.e., *Union Bank of India*, having voting share of 90.83% and *Bank of Baroda*, having voting

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share of 9.17% ('Financial Creditors'). During the 1st CoC meeting held on 23.03.2022, the resolution for replacement of IRP was deferred.

4. An application numbered as *IA No. 179/JPR/2022* was filed by *Bank of Baroda* seeking necessary directions and re-constitution of the CoC. This Authority vide order dated 27.04.2022 directed that no substantial step shall be taken by the CoC. Subsequently, on 12.04.2023, the Application filed by *Bank of Baroda* numbered as *IA No. 179/JPR/2022* was disposed of with the direction to the IRP to treat the creditors as Secured or Unsecured strictly on the basis of the date when the charges were registered with ROC and further directed re-constitution of the CoC. Therefore, the IRP reconstituted the CoC in accordance with the directions laid down by this Adjudicating Authority wherein *Bank of Baroda* (being the Secured Financial Creditor) held 14.54% voting share and *Union Bank of India* (being the Unsecured Financial Creditor) held 85.46% voting share in the reconstituted CoC. A report was filed via *IA(IBC) No. 256/JPR/2023* and disposed of vide Order dated 12.05.2023.
5. In the 5th meeting of CoC held on 18.05.2023, the CoC passed a resolution for replacement of IRP with a majority of 85.46%. Thereafter, an Application numbered as *IA(IBC)No.288/JPR/2023* was filed under Section 22(3)(b) of the Code for replacing *Mr. Vishnu Upadhyay* with *Mr. Satyendra*

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Prasad Khorania as IRP and the same was ordered on 01.06.2023. The CoC also deliberated and approved the eligibility criteria in terms of Section 25(2)(h) of the Code for the Prospective Resolution Applicant ('PRA') to submit their Resolution Plans with the Applicant.

6. In the 5th meeting itself, the CoC, in terms of the Section 25(2)(h) read with Regulation 36A of the CIRP Regulations, determined the eligibility criteria for Prospective Resolution Applicant ('PRA'). Consequently, the Applicant published Form G in two leading newspapers on 26.05.2023 inviting the PRAs to submit Expression of Interest ('EOI') on or before 15.06.2023. However, no EOI was received. Therefore, in the 6th meeting of, the period of submission of EOI was extended and duly approved by CoC. The Applicant then published a notice for extension of submission of EOI in *Economic Times* and *Dainik Navjyoti* on 15.06.2023 and the last date as mentioned was 30.06.2023.
7. After the aforementioned activity was carried out, the Applicant received 4 EOIs. In the 7th meeting of CoC conducted on 11.07.2023, the agenda for approval of Request for Resolution Plan from the PRAs was approved with 100% votes. Thereafter, the RP issued a provisional list of PRAs on 10.07.2023 and shared the IM, RPRP, EM and other related documents with

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the PRA on 15.07.2023. Later, the final list of PRAs was issued by the Applicant on 22.07.2023.

8. In the 8th meeting of the CoC dated 25.08.2023, the Applicant apprised that 4 resolution plans have been received from the Resolution Applicants ('RA'), i.e., *Aaditya Finchem Pvt. Ltd.*, *Nakshatra Corporate Advisers Limited*, *Agarwal Industrial Corporation* and *Sunrise Industries*. Thereafter, in the 9th meeting of CoC convened on 13.09.2023, the representatives of each RA were invited to present their plan. After the completion of all the presentations and receipt of bids, the sealed bids were opened in the presence of COC members.
9. In the 10th meeting of the CoC dated 04.10.2023, the members discussed all aspects of Resolution Plan with RA and required them to increase the financial bid as well as the upfront payment. The members were informed that after receipt of bids in Swiss challenge process, the Applicant has invited final resolution plan from the RAs. In the 11th meeting of the CoC dated 16.10.2023, the CoC approved the Resolution Plan submitted by *M/s Aaditya Finchem Pvt. Ltd.* for a resolution amount of Rs. 8,35,00,000/- (Rupees Eight Crores Thirty-Five Lakhs Only) with 85.46% votes in favour.
10. As per resolution plan, the monitoring committee shall consist of three members, i.e. Resolution Professional, One representative of RA and One

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representative of CoC. The Final Offer/Plan Value of Rs. 8,35,00,000/- (Rupees Eight Crores Thirty-Five Lakhs Only) includes the payment of Equity Shareholders, Funds for working capital as well as for capital expenses.

11. Further, the Respondent being the Successful Resolution Applicant has submitted its affidavit vide diary No. 81/2024 dated 08.01.2024 under Regulation 39(1) of the CIRP regulations confirming its eligibility in terms of Section 29A of the Code. Furthermore, the Applicant has also filed Compliance Certificate under Regulation 39(4) in Form H of the schedule of CIRP regulation. Hence, the present Application has been filed by the Applicant seeking approval of the Resolution Plan.
12. An application numbered as *IA No. 369/JPR/2023* has been filed by Employees Provident Fund Organization ('EPFO') seeking payment of EPFO dues in full. In the said application, the EPFO has submitted that it had filed its claims in requisite format with the erstwhile IRP vide email dated 07.09.2022 for a total amount of Rs. 3,326/- (Rupees Three Thousand Three Hundred and Twenty-Six Only). The proof of final dues was also forwarded vide email dated 11.10.2022. The claim was rejected vide email dated 09.05.2023 wherein the Applicant was informed to submit the claim in Form B as prescribed for Operational Creditors. Thereafter, the Applicant

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in its reply email dated 02.06.2023 informed the IRP that under Section 36 (4) of IBC, all dues towards Provident Fund, Pension Fund and Gratuity are third party assets and excluded from Liquidation Estate of Corporate Debtor, hence, the EPFO does not fall under the category of Operational Creditor. Again, the claim of EPFO was rejected vide email dated 02.06.2023 requiring submission in prescribed form. The EPFO has submitted that the claims are statutory dues and further reliance was placed on the judgment of the Hon'ble NCLAT in *Sikander Singh Jamwal Vs. Vinay Talwar*, CA(AT)483/2019 dated 11.03.2022 and judgment of Hon'ble Supreme Court in *Sunil Kumar Jain Vs. Surendra Bhat* (CA 5910 of 2019 decided on 19.04.2022). The said Application is also being considered along with the Application seeking approval of the Resolution Plan. The directions in the present Application have been passed in this Order subsequently.

13. We have carefully considered the submissions of the learned Counsel for the Applicant and perused the averments made in the Application along with the documents annexed therewith.
14. It is seen that the Corporate Debtor was incorporated on 15.02.2002 and CIRP was initiated under Section 10 of the Code vide Order dated 18.02.2022. The present Application is filed under the provisions of Section

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31(1) of the Code seeking approval of the resolution plan submitted by *Aaditya Finchem Private Limited* ('Successful Resolution Applicant').

15. After receipt, verification and collation of claims as discussed above, the IRP constituted the CoC as per the provisions of Section 21 of the Code. The details of the financial creditor, the distribution of voting share among them and the position of voting for the Resolution Plan is as under (Para-No. 5 of Form H) –

| S. No. | Name of Creditor | Category | Voting Share | Voting on Resolution Plan |
|---------------|-------------------------|------------------------------|---------------------|----------------------------------|
| 1. | Union Bank of India | Unsecured Financial Creditor | 85.46% | Yes |
| 2. | Bank of Baroda | Secured Financial Creditor | 14.54% | Not voted |
| | | | 100% | |

16. The Resolution Plan was approved by 85.46% of voting share of Financial Creditors after considering the feasibility and viability in accordance with the requirements specified by the CIRP Regulations. Further the interests of existing shareholders have been altered by the Resolution Plan, which is provided for as under:

| S. No. | Category of Share Holder | No. of shares held before CIRP | No. of shares held after the CIRP | Voting share (%) held before CIRP | Voting share (%) held after CIRP |
|---------------|---------------------------------|---------------------------------------|--|--|---|
| 1. | Equity | 8,20,160 | 8,20,160 | 100% | 100% |
| 2. | Preference | - | - | - | - |

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17. The amounts provided for the stakeholders under the Resolution Plan are given in Para 7 of Form H and the same is tabulated below for reference:

(Amount in Rs.)

| <i>S. No</i> | <i>Category of Stakeholder*</i> | <i>Sub-Category of Stakeholder</i> | <i>Amount Claimed</i> | <i>Amount Admitted</i> | <i>Amount Provided under the Plan</i> | <i>Amount provided to the Amount Claimed</i> |
|--------------|---------------------------------|--|-----------------------|------------------------|---------------------------------------|--|
| (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 | NA | NA | NA | NA |
| | | (b) Other than (a) above: | | | | |
| | | (i) who did not vote in favour of the Resolution Plan | Nil | Nil | Nil | Nil |
| | | (ii) who voted in favour of the Resolution Plan | Nil | Nil | Nil | Nil |
| | | (iii) who did not vote for Resolution Plan | 253362153.96 | 253362154 | 63000000 | 24.86 |
| | | Total [(a) + (b)] | | | 63000000 | 24.86 |
| 2 | Unsecured Financial Creditors | (a) Creditors not having a right to vote under sub-section (2) of section 21 | NA | NA | NA | NA |
| | | (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 | 2575851992.02 | 1489603054 | 18500000 | 1.24 |

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18. The compliance aspect of the Resolution Plan has been given in Para No. 9 of Form H, which is as follows:

| 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? | EOI, Affidavit | 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? | Chapter- VII Declaration at page No. 45 read with affidavit dated 29.06.2023 | Yes |
| Section 30(1) | Whether the Resolution Applicant has submitted an affidavit stating that it is eligible? | Affidavit dated 29.06.2023 | Yes |
| Section 30(2) | Whether the Resolution Plan- | | |
| | (a) Provides for the payment of insolvency resolution process costs? | Clause B at Page No. 21 | Yes |
| | (b) provides for the payment to the operational creditors? | Clause E at Page No. 24 | NA |
| | (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan? | Clause C at Page No. 21 | Yes |
| | (d) provides for the management of the affairs of the corporate debtor? | Clause O at Page No. 41 | Yes |
| | (e) provides for the implementation and supervision of the resolution plan? | Clause N and Q at page No. 37 & 42 | Yes |
| | (f) contravenes any of the provisions of the law for the time being in force? | NA | No such contravention |

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| Section of the Code/ Regulation No. | Requirement with respect to Resolution Plan | Clause of Resolution Plan | Compliance (Yes/No) |
|-------------------------------------|---|--|---------------------|
| 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? | As per the item No. 8 of the minutes of 11 th COC meeting | Yes |
| Section 31(1) | Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC | Part N, O, P, Q read with item No. 8 of the minutes of 11 th COC meeting | Yes |
| Regulation 38 (1) | Whether the amount due to the operational creditor under the Resolution Plan has been given priority in payment over financial creditors? | Part E at page No. 24 | NA |
| Regulation 38(1A) | Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders? | Clause No. L para 3 at Page No. 35 | 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? | At page No. 43 declaration | Yes |
| Regulation 38(2) | Whether the Resolution Plan provides: (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? | Part N, O, P, Q of the Resolution Plan | Yes |
| Regulation 38(3) | Whether the resolution plan demonstrates that – | a) Point No. 4 page No. 22, Chapter VI page No. 42 b) Chapter VI page No. 42 c) Chapter VI page No. 42 | Yes |

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| Section of the Code/ Regulation No. | Requirement with respect to Resolution Plan | Clause of Resolution Plan | Compliance (Yes/No) |
|-------------------------------------|---|--|---------------------|
| | (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? | d) No such approval required as per resolution Plan e) Chapter VI page No. 42 | |
| Regulation 39(2) | Whether the RP has filed applications in respect of transactions observed, found or determined by him? | No transactions has been found | Yes |
| Regulation 39(4) | Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B. | Performance security Rs. 50 lacs received on 07.12.2023 | Yes |

19. The summary in brief as mentioned in the Resolution Plan is noted down below for reference:

19.1. The CIRP cost of Rs. 20,00,000/- (Rupees Twenty Lakhs Only) will be paid upfront.

19.2. The Secured Financial Creditors will be paid Rs. 1.65 Crores upfront, Rs. 1 crore each will be paid in three monthly instalments after expiry of 60 days from the effective date and lastly, Rs. 1.65 Crores will be paid in between 151 to 180 days.

19.3. The Unsecured Financial Creditor will be paid Rs. 65,00,000/- (Rupees Sixty-Five Lakhs Only) upfront, Rs. 10 lakh each will be paid

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in two monthly instalment after expiry of 60 days from the effective date and lastly, Rs. 1 crore will be paid in between 151 to 180 days.

19.4. Hence, as mentioned in the summary of the Resolution Plan an amount of Rs. 2.50 Crores will be paid upfront and the remaining amount of Rs. 5.85 Crores will be paid in instalments as mentioned therein.

20. During the pendency of the application seeking approval of the Resolution Plan, this Applicant by way of Additional Affidavit filed vide Diary No. 209/2024 dated 23.01.2024, the Applicant placed the notice and minutes of the 13th meeting of CoC wherein it was decided that the ratio of shares of Trade Receivables between the Financial Creditor and the Successful Resolution Applicant will be 30:70 i.e. Financial Creditors will receive 30% of the amount and the Successful Resolution Applicant will receive 70% of the amount. Further, out of the 30% realised amount from Trade Receivables, the Secured Financial Creditor will be entitled to 22.50% and the Unsecured Financial Creditor will be entitled to 7.50%. The said amount will be paid over and above the amount already offered in the Modified Resolution Plan.

21. The approval of the Resolution Plan has been sought under Section 31(1) of the Code, which reads as follows:

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“If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.”

22. The conditions provided in Section 31(1) of the Code for approval of the Resolution Plan are as follows:

21.1. The Resolution Plan is approved by the CoC under Section 30(4) of the Code;

21.2. The Resolution Plan so approved meets the requirements as referred to in Section 30(2) of the Code;

21.3. The Resolution Plan has provisions for its effective implementation.

23. The satisfaction of the conditions is discussed below. It is submitted by the RP that the Resolution Plan has been approved by 85.46% votes of the Financial Creditors in favour and therefore, the conditions provided for by Section 30(4) of the Code are satisfied.

24. The provisions of Section 30(2) of the Code are as follows:

“30. Submission of Resolution Plan:

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(1)

(2) *The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan –*

(a) *provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;*

(b) *provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-*

(i) *the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or*

(ii) *the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,*

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor—

(i) *where a resolution plan has not been approved or rejected by the Adjudicating Authority;*

(ii) *where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or*

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- (iii) *where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;*
- (c) *provides for the management of the affairs of the corporate debtor after approval of the resolution plan;*
- (d) *The implementation and supervision of the resolution plan;*
- (e) *does not contravene any of the provisions of the law for the time being in force*
- (f) *confirms to such other requirements as may be specified by the Board.*

Explanation: For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.

(3) ”

25. The compliance of Section 30(2) of the Code is given in Para No. 9 of Form H (*supra*). The same is being further examined as under:

25.1. *Section 30(2)(a):* The Resolution Plan (Part B at Page No. 21 of the Resolution Plan) states that the Insolvency Resolution Process Cost of Rs. 20,00,000/- (Rupees Twenty Lakhs Only) will be paid out in priority over payments to any other creditors within 60 days of Effective Date.

25.2. *Section 30(2)(b):* The Resolution Plan (Part E at Page No. 24 of the Resolution Plan) states there are no Operational Creditors as per the Information Memorandum, no provision has been made for payment to operational creditors.

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25.3. *Section 30(2)(c)*: The Resolution Plan (Part C at Page no. 21 of the Resolution Plan) states that—

25.3.1. The Secured Financial Creditor shall be settled at a total consideration of Rs. 6.30 Crores, out of which an amount of Rs. 1.65 Crore shall be paid upfront within a period of 60 days from effective date and Rs. 3 crores shall be paid in monthly instalment of Rs. 1 crore each for the period of 3 months after expire of 60 days from effective date and the balance amount of Rs. 1.65 crore will be paid after expire of 150 days from effective date but within 180 days.

25.3.2. The Unsecured Financial Creditor shall be settled at a total consideration of 1.85 Crores, out of which an amount of Rs. 65 Lakhs shall be paid upfront within a period of 60 days from effective date and Rs. 20 Lakhs shall be paid in monthly instalment of Rs. 10 Lakhs each for the period of 2 months after expire of 60 days from effective date and the balance amount of Rs. 1 Crore will be paid after expire of 150 days from effective date but within 180 days.

25.4. *Section 30(2)(d)*: The Resolution Plan (Part O at Page No. 40 of the Resolution Plan) states that the management and control of the

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Corporate Debtor shall be handed over to the Board of Directors appointed by the Resolution Applicant for proper management and control of business of the Corporate Debtor.

25.5. *Section 30(2)(e)*: The Resolution Plan (Clause N, P and Q at Page 36-41 of the Resolution Plan) provides for the implementation and supervision of the Resolution Plan.

25.6. *Section 30(2)(f)*: The Resolution Plan does not contravene any of the provisions of the law for the time being in force.

26. While considering the Application filed by the Applicant, it is seen that the dues of EPFO as mentioned in the *IA(IBC) No. 369/JPR/2023* have not been considered whereas the EPFO had filed its claim before the Resolution Professional multiple times but the Resolution Professional rejected it on the ground that it has not been filed in the prescribed format. The law protects the Workmen's dues under Provident Fund, Gratuity Fund and Pension Fund from being treated as assets in the Liquidation Estate under Section 36(4) of the Code. Further, the Hon'ble NCLAT in the matter of *Jet Aircraft Maintenance Engineers Welfare Assn. v. Jet Airways (India) Ltd., 2022 SCC OnLine NCLAT 418* has held as below:

"76. Hence, the said funds, i.e., provident fund, pension fund and gratuity fund maintained by the Corporate Debtor, have to be utilized fully for payment of provident fund, pension fund and gratuity fund of the workmen and employees and thus, these assets cannot be

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included in the Information Memorandum as the assets of the Corporate Debtor, while inviting the Resolution Plan.”

27. It is observed that this is neither a case where the EPFO had not filed its claim nor this is a case where the claim was filed at a belated stage. We are not able to reject the contention of EPFO solely on the ground that the claim of Rs. 3,326/- (Rupees Three Thousand Three Hundred and Twenty-Six Only) was not filed in the prescribed format. Therefore, we are hereby directing the Resolution Professional to accept the claim of the EPFO as mentioned earlier to the tune of Rs. 3,326/- (Rupees Three Thousand Three Hundred and Twenty-Six Only). Consequently, a provision shall be made in the Resolution Plan to make payment towards the said claim of the EPFO in full and a compliance report for the same shall be preferred before this Adjudicating Authority within 15 days from the date of this Order.
28. The Resolution Plan also certifies that *M/s Aaditya Finchem Private Limited* the Resolution Applicant has submitted an affidavit pursuant to Section 30(1) of the Code confirming its eligibility under Section 29A of the Code to submit the Resolution Plan and the contents of the said Affidavit are in order.
29. As per the requirement of Regulation 39(4) of the Regulations for performance security, it is stated in Form H that Resolution Applicant has

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deposited Rs. 50,00,000/- (Rupees Fifty Lakhs Only) as Performance Security as approved by the Committee of the Creditor.

30. With regard to compliance under Regulation 35A, it is stated that there are no transactions that have been identified in respect of the Corporate Debtor which is required to be avoided under Sections 43, 45, 50 or 66 of the Code.
31. A perusal of Regulation 38 would clearly show that by virtue of the mandatory contents of the resolution plan as discussed in the preceding paragraphs in relation to Section 30 and Section 31 of the Code, the requirement of Regulation 38 also stands fulfilled. Thus, the resolution plan fulfils all the requirements of Regulation 38 of the CIRP Regulations.
32. The Resolution Plan *inter-alia* entails the following:
- 32.1. All claims of previous Management, Directors, Shareholders, its Associates and Family Members shall stand waived and cease to exist for Equity Share Capital, Operational Creditor, Unsecured Financial Loan and/or Deposit, outstanding dues and claims as employees or consultants.
- 32.2. The payment to all persons contemplated in this Resolution Plan shall be the Resolution Applicant's full and final performance and satisfaction of all its obligations towards any dues or outstanding against the Corporate Debtor and all remaining claims, dues,



outstanding amount shall be waived by whatever name called like interest, penal interest, compound interest, damages other commitment charges and any other amount of whatsoever nature in terms of Regulation 37 of IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016. The proceeds out of the Trade Receivables shall be distributed between the Financial Creditor and the Successful Resolution Applicant in the ratio decided which is 30:70 i.e. Financial Creditors will receive 30% of the amount and the Successful Resolution Applicant will receive 70% of the amount

32.3. The management and control of Corporate Debtor shall be handed over to the Board of Directors appointed by the Resolution Applicant for proper running and operations of the plant of the Corporate Debtor subject to approval of Committee of Creditors and Adjudicating Authorities.

32.4. The Resolution Professional or Monitoring Committee, as the case may be, shall do necessary compliance with MCA and all other concerned and applicable authorities as per applicable laws till transfer date. Further, Resolution Professional shall provide the audited books of accounts till the date of this Order while handling over the Corporate Debtor to the Resolution Applicant.



- 32.5. The Resolution Applicant shall constitute monitoring committee for the supervision of implementation of the Resolution Plan. The said committee shall comprise of members from the Resolution Applicant, the CoC and the Applicant itself i.e. the Resolution Professional. The said committee shall submit a timely progress report in the format suggested by the CoC to apprise them about the supervision of the implementation of the Resolution Plan.
- 32.6. The Resolution Applicant shall make payment of Rs. 2.50 Crores as upfront payment and remaining amount of Rs. 5.85 Crores shall be paid via monthly instalment for a period of 4 months from expiry of 60 days of effective date as mentioned in Part A of the Summary part in Chapter IV. That monthly instalment amount shall be paid from internal accruals by operation of Plant and in case of shortfall of internal accruals, it shall be infused by RA as per requirement and as mentioned in Point No. 4 here-in-above in "*Sources of Funds*" column.
33. It is observed that the approval of the Resolution Plan does not mean automatic waiver or abatement of legal proceedings, if any, which are pending by or against the Company/ Corporate Debtor as those are the subject matters of the concerned Competent Authorities having their proper/



own jurisdictions to pass any appropriate order as the case may be. The Resolution Applicant on approval of the Plan may approach those Competent Authorities/ Courts /Legal Forums/ Offices of Government or Semi Government/State or Central Govt. for appropriate reliefs sought for in the plan. This shall not cause any hindrance for proper implementation of the Resolution Plan as those are the subject matter of the concerned/appropriate Competent Authorities. The Resolution Applicant has liberty to approach Competent Authorities for any concession, relief or dispensation as the case may be. Further, the monitoring committee is advised to submit a progress report every quarter before this Adjudicating Authority till the completion of the Resolution Plan.

34. In view of the above discussion, the Resolution Plan submitted by *M/s Aaditya Finchem Private Limited* as approved by the CoC under Section 30(4) of the Code is hereby approved subject to directions laid down above. The Resolution Plan so approved shall be binding on the Corporate Debtor and its employees, members, and creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the Resolution Plan.




35. Under the provisions of Section 31(3) of the Code, we also direct as under:
- 34.1. The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 18.02.2022 shall cease to have effect; and
- 34.2. The RP shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the Board to be recorded on its database.
36. In view of the foregoing, *IA No. 660/JPR/2023* stands allowed and is disposed of; and *IA(IBC) No. 369/JPR/2023* stands allowed and disposed of. A compliance report in pursuance of the direction laid down in this Order shall be preferred before this Adjudicating Authority within prescribed time.
37. The Registry is directed to provide a copy of this Order to the parties therein.


DEEP CHANDRA JOSHI,
JUDICIAL MEMBER


RAJEEV MEHROTRA,
TECHNICAL MEMBER