



IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH - II, CHENNAI

IA(IBC)/543(CHE)/2023

IN

IBA/561/2019

(Filed under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016)

IN THE MATTER OF:

RADHAKRISHNAN DHARMARAJAN

[IBBI/IPA-001/IP-P00508/2017-2018/10909]

Resolution Professional of

**Malar Energy & Infrastructure Private Limited**

[CIN: U40101TN2007PTC063365]

... Applicant / Resolution Professional

*Order Pronounced on 10<sup>th</sup> July, 2023*

Present:

Resolution Professional	: T.Ravichandran, Advocate
Successful Resolution Applicant	: Kaushik N Sharma, Advocate
Dissenting Financial Creditor	: Sriram Venkatavaradan, Advocate

CORAM

SANJIV JAIN, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)



## ORDER

*Per:* SAMEER KAKAR, MEMBER (TECHNICAL)

Under consideration is an Application filed by the Resolution Professional of the Corporate Debtor viz., **Malar Energy & Infrastructure Private Limited** under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (*hereinafter referred to as the 'Code'*) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (*hereinafter referred to as the ' CIRP Regulations'*) read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking for approval of the Resolution Plan which is placed as Annexure – 17 and certain ancillary reliefs.

2. Before considering the Resolution Plan, this Tribunal is aware of the fact that the 'UDYAM Registration' was obtained post the initiation of the CIRP with respect to the Corporate Debtor. However, in the greater interest of the revival of the Corporate Debtor which is categorised as a 'Small Enterprise' by the 'Ministry of Micro, Small and Medium Enterprises' and in light of the decision of the Hon'ble NCLAT in the case *Rakesh Kumar Agarwal Vs. Devendra P Jain, Liquidator of Asis Logistics Ltd* [Company Appeal (AT) Ins No. 1034 of 2020] with respect to the Section 240A of the Code, a lenient view



is taken for the consideration of the Resolution Plan submitted by the Promoter.

### 3. ABOUT THE CORPORATE DEBTOR

3.1. The Corporate Debtor is a Private Limited Company registered under the provisions of the Companies Act, 1956. The Corporate Debtor is a MSME unit and registered as a 'SMALL ENTERPRISE' with the Ministry of Small & Medium Enterprises, Government of India.

3.2. The Corporate Debtor was incorporated in the year 2007 by the Promoter viz., Mr. R.R. Gopaljee with a vision to provide low cost housing solution specifically to cater to the Medium Income Group / Low Income Group of the Society. The Corporate Debtor provides innovative building solutions for its customers, emphasizing customer service and quality products.

3.3. The current production capacity is 25,000 sq.ft. of slab and 50,000 sq. Ft. of wall panel per day, Column, beam and staircase can be produced as per requirement. In short, the Corporate Debtor is capable of producing precast elements for 30,000 sq.ft. built up area per day.



#### 4. CIRP OF THE CORPORATE DEBTOR:

4.1. The Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor viz. Malar Energy & Infrastructure Private Limited was initiated by this Tribunal vide order dated 05.07.2019 in an Application (IBA/561/2019) filed under Section 7 of IBC, 2016 filed by Indian Overseas Bank. Consequently, the Applicant was appointed as the Interim Resolution Professional.

4.2. The above order of admission was challenged in appeal before the constitution of the Committee of Creditors in Company Appeal (AT) (Ins) No. 784 of 2019 by the Promoter (R.R. Gopaljee) with an intent to settle the matter with the Financial Creditor, however, vide order dated 24.06.2020, Hon'ble NCLAT dismissed the appeal.

4.3. It is stated that in terms of Section 15 of the Code read with the CIRP Regulations, the Applicant effected Public Announcement on 10.07.2019 in the newspapers viz., 'Business Standard - English' and 'Dina Seithi - Tamil' where the claims against the Corporate Debtor were invited *inter alia* fixing 24.07.2019 as the last date for submission of claims. Accordingly, claims were received. The amounts claimed and admitted are summarized below:





Particulars	Claim filed	Claim admitted
Secured Financial Creditors – Indian Overseas Bank & Shri Ram City Union Finance Ltd.	55,03,08,657	55,03,08,657
Unsecured Financial Creditors Suraj Agro Infrastructure India Pvt. Ltd.	10,04,53,695	10,04,53,695
Staff & Workmen	Nil	Nil
Operational Creditors (statutory dues)	3,58,78,968	3,58,78,968
Related Party (includes Unsecured Financial Creditors & Operational Creditor)	Nil	Nil
<b>Total</b>	<b>68,66,41,320</b>	<b>68,66,41,320</b>

**a. Financial Creditors**

S.No.	Creditors	Category	Amount Claimed	Amount Admitted
1.	Indian Overseas Bank	Secured Financial Creditor	31,72,36,018	31,72,36,018
2.	Shri Ram City Union Finance Ltd.	Secured Financial Creditor	23,30,72,639	23,30,72,639
3.	Suraj Agro Infrastructure India Pvt. Ltd.	Unsecured Financial Creditor	10,04,53,695	10,04,53,695

**b. Operational Creditors**

Name of the Creditors	Amount Claimed Rs. in Cr.	Amount AdmittedRs. in Cr.
Staff and Workmen	Nil	Nil
Income Tax	29,14,980	NIL
Service Tax	3,58,78,968	3,58,78,968
Supplier/Service Provider	Nil	Nil
Custom Dues	Nil	Nil
<b>Total</b>		<b>3,58,78,968</b>

*[Handwritten signature]*



4.4. It is stated that that a total of 11 CoC meetings were held during the CIRP period. Details are as follows:

No. of CoC Meetings	Date of CoC meeting
1st.	06.07.2020
2nd.	23.09.2020
3rd.	02.11.2020
4th.	18.12.2020
5th.	09.02.2021
6th.	29.06.2021
7th.	13.09.2021
8th.	30.09.2021
9th.	15.11.2021
10th.	10.05.2022
11th.	23.05.2022

4.5. It is stated that the Applicant had *inter alia* filed two application viz., IA/821/IB/2020 and IA/651/CHE/2021 under Section 12(2) read with Regulation 40(C) seeking exclusion and extension of the CIRP Period and this Tribunal vide order dated 04.02.2021 and 06.08.2021 extended the CIRP period till 02.10.2021.

4.6. It is stated that the Applicant had appointed a Chartered Accountant for the purpose of conducting the Transaction Audit of the Corporate Debtor after having a *prima facie* view that there were certain preferential transactions.



Based on the report of the Chartered Accountant, the Applicant had filed an Application (IA(IBC)/998(CHE)/2021) under Section 43 of the Code, however, the Applicant withdrew the said Application. The order of this Tribunal dated 05.06.2023 records the same.

4.7. It is stated that the Applicant had presented the draft 'Form – G' during the 3<sup>rd</sup> COC Meeting held on 02.11.2020. Pursuant to the said meeting, invitation for Expression of Interest (hereinafter referred to as 'EOI') dated 05.11.2020 in 'Form – G' was published by the Applicant. The same is enclosed along with the Application as 'Annexure – A8'. In response to publication, the Applicant had received only one 'EOI' which is from the Promoter of the Corporate Debtor viz., Mr. Gopaljee. The same was placed before the COC during its 4<sup>th</sup> meeting on 18.12.2020. The Applicant had informed the members of the COC that the Promoter is eligible to give Resolution Plan as the benefit of Section 240A of the Code is extended to the Corporate Debtor.

4.8. It is stated that the COC not being satisfied with the Resolution Plan permitted the Promoter to come forward with a revised Resolution Plan several times, and finally when the final revised Resolution Plan was put to vote in the 9<sup>th</sup> COC meeting, the revised Resolution Plan did not pass muster as only 64% votes were secured as against the 66% mandated under the Code.





Consequently, the COC approved the Applicant to proceed with the liquidation of the Corporate Debtor.

4.9. It is stated that the Applicant had filed the liquidation application (IA(IBC)/1251(CHE)/2021) under Section 33(1) of the Code before this Tribunal, however, based on a memo filed by the Applicant as to another opportunity be given to the Promoter for reconsidering his Resolution Plan, this Tribunal vide order dated 02.05.2022 kept the liquidation application in abeyance and permitted the Applicant to call for another meeting of the COC for reconsideration of the Resolution Plan. Subsequently, when the Resolution Plan was placed for voting in the 11<sup>th</sup> COC meeting, the COC approved the Resolution Plan with 85% of the voting share in favour of the Resolution Plan. It is stated that the Promoter has deposited a sum of Rs.1.60 Crores (in lieu of Bank Guarantee) on 24.05.2022 in the designated bank account.

4.10. It is stated that the Applicant had filed an application (IA(IBC)/695(CHE)/2022) before this Tribunal under Section 30(6) of the Code seeking approval of the Resolution Plan, however the Applicant withdrew the said application with liberty to file afresh, hence the present Application was filed on 07.04.2023 before this Tribunal. The Compliance Certificate in 'Form – H' is attached as Annexure – A18.





## 5. OVERVIEW OF THE RESOLUTION PLAN

5.1. The Committee of Creditors after duly assessing the viability and feasibility of the Resolution Plan submitted by the Promoter of the Corporate Debtor had accepted and voted in favour of the said Resolution Plan with 85% voting share. Copy of the Resolution Plan is annexed at page 176 – 200 of the Application.

5.2. The list of Financial Creditors of the Corporate Debtor and their voting share as per 'Form – H' and the Resolution Plan submitted by the Applicant are extracted as under:

S. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1.	Indian Overseas Bank	49%	Voted For
2.	Shriram City Union Finance Ltd.	36%	Voted For
3.	Suraj Agro Infrastructure Private Limited	15%	Dissented

5.3. The settlement of the claims of the Financial Creditors and the Operational Creditors as per the Resolution Plan is extracted as under:



10. SETTLEMENT OF FINANCIAL CREDITORS (Amount in Rupees)

Sl No	Creditors	Category	Amount Claimed	Proposed Settlement
1	Indian Overseas Bank	Secured Financial Creditor	31,72,36,018	10,32,55,000
2	Shri Ram City Union Finance Ltd	Secured Financial Creditor	23,30,72,639	5,51,20,000
3	Suraj Agro Infrastructure India Pvt Ltd	Unsecured Financial Creditor	10,04,53,695	Nil
	Total			15,83,75,000

*[Handwritten signature]*

11. SETTLEMENT OF OPERATIONAL CREDITORS (Amount in Rupees)

Sl No	Creditors	Category	Amount Claimed	Proposed Settlement
1	CIRP Related Cost	Insolvency Related Cost	60,00,000	60,00,000
2	Staff and Workers at Various Sites - Pre CIRP Dues	Worker/Employee Costs	84,53,534	71,85,500
3	Staff and Workers at Various Sites - Post CIRP Dues	Worker/Employee Costs	99,00,000	84,15,000
4	Income Tax Demand	Government related Dues	29,14,980	7,28,000
5	Service Tax Demand	Government related Dues	3,58,78,968	89,65,000
6	Suppliers/Service Providers	Operational Creditors	-	1,78,89,000
7	Customer Dues	Operational Creditors	-	86,90,500
	Total			5,78,73,000

*[Handwritten signature]*

*[Handwritten signature]*



5.4. The Resolution Plan under clause 7 has proposed for the above payment at three stages, i.e., an upfront payment of 10% of the amount payable to the Secured Financial Creditors, followed by another 10% disbursement immediately after approval of this Tribunal. The rest of the payment under the Resolution Plan is proposed to be made with 6 months from the date of approval by this Tribunal.

5.5. It is also seen that the settlement with respect to Operational Creditors proposed by the Resolution Applicant includes the claims of 'Suppliers/Service Providers' and 'Customer Dues' who has not filed the claims before the Resolution Professional. In this regard, the Resolution Plan provides as under:

*The Resolution Applicant is the promoter director of the CD, who intends to continue the business of the CD as a going concern. In making provision in the Resolution Plan in respect of the operational creditors, the Resolution Applicant has been guided by the fact that, in the absence of the continued support from the operational creditors, the workability and feasibility of the Resolution Plan itself would be in question. The Resolution Applicant relies on the supply credit from the operational creditors for purchase of construction materials and also on the support of the existing customers to make sale of the inventory as provided in the Resolution Plan. The ability of the RA to raise bank finance for its working capital requirements from banks and financial institutions has been heavily impacted due to the CIRP proceedings and the absence of adequate collateral security. Therefore, the support of the operational creditors is inevitable to make the Resolution Plan feasible. Similarly, the existing customers of the RA are strategically important for the commercial feasibility of the Resolution Plan. The A relies on the continued support of the customers who are the active source of referral demand for the sale of the real estate inventory. The adverse impact on reputation in the event of a complete denial of dues to the existing customers would similarly lead to the Resolution Plan being not operationally feasible.*





The RA has therefore, compelling commercial reasons for making provision for operational creditors which, in the view of the RA could decide the feasibility of the Resolution Plan. RA further submits that a detailed affidavit in this respect has been filed before this Hon'ble Court.

5.6. Further, the Resolution Applicant places reliance on the judgement of the Hon'ble NCLAT in the case **Jagmeet Singh Sabharwal & Ors -Vs- Rubber Products Ltd & Ors [Company Appeal (AT) (Ins) No. 405 of 2019]** and submits that the Resolution Plan contemplates payment to the above Suppliers and Service Providers since they have rendered services even during the CIRP to keep the Corporate Debtor which is an MSME a going concern.

5.7. As per the Resolution Plan, the Cash Flow Summary of the Resolution Plan is extracted as below:

12. CASH FLOW SUMMARY OF THE RESOLUTION PLAN				
RECEIPT	(Amount Rs.)	PAYMENTS	(Amount Rs.)	(Amount Rs.)
		Financial Creditors		
Introduction of Funds by Promoter Director	21,62,48,000	Indian Overseas Bank	10,32,55,000	
		Shri Ram City Union Finance Ltd	5,51,20,000	15,83,75,000
		Operational Creditors		
		CIRP and Related Cost	60,00,000	
		Staff and Workers at Various Sites		
		• Dues prior to CIRP	71,85,500	
		Staff and Workers at Various Sites		
		• Post CIRP	84,15,000	
		Income Tax, Service Tax Demands	96,93,000	
		Suppliers/Service Providers	1,78,89,000	
		Dues to Customers	86,90,500	5,78,73,000
Total	21,62,48,000	Total		21,62,48,000

*[Handwritten signatures and marks]*





## 6. SETTLEMENT FOR THE DISSENTING FINANCIAL CREDITOR

6.1. It is seen that the M/s. Suraj Agro Infrastructure (India) Private Limited which is one of the Unsecured Financial Creditor having 15% of the voting share in the Committee of Creditors of the Corporate Debtor had voted against the Resolution Plan for the reason that the security furnished against its Financial Facility to the Corporate Debtor does not belong to the Corporate Debtor.

6.2. In this regard, clause 23 of the Resolution Plan states as under:

*The loan amount of this financial creditor, is not secured by any assets of the CD, and hence ranks as an unsecured creditor. However, one of the promoter directors has offered her personal property as security for this loan. The said creditors has not relinquished the mortgage of the private property and therefore any additional provision against their claim in the Resolution Plan will result in duplication and multiplicity of the provision. Hence no provision has been made in the Resolution Plan in respect of their claim and in addition they are not likely to get any payments under Section 53(1), if the Resolution plan amount is distributed in accordance with Section 53(1) of the code and also comply with the Sec 30(2) of the code.*

6.3. Thereafter, the said Dissenting Financial Creditor filed an Affidavit vide SR 2077 dated 15.05.2023 wherein it is stated as below:

*4. I hereby submit that when the Resolution plan was placed before the committee of creditors on 23.05.2022, since the above said property is not a liquidation estate as per section 36(4) of IBC, 2016 and cannot be liquidated under IBC for this reason, we had opted to remain as dissenting Financial Creditor.*

*5. I hereby submit that subsequent to filing the application for approval of the resolution plan, the promoter had contacted the dissenting financial creditor and gave an undertaking that the charge created on the Said property will be conveyed to the dissenting financial creditor.*



6. I hereby submit that upon receipt of the Said property being transferred to us, our entire claim will be satisfied, and we may not have any further claim over the corporate debtor or its promoters.

7. I hereby submit that it would be just and fair to approve the above application and I note that M/s. Suraj Argo Infrastructure (India) Private Limited does not intend to pursue its claim against the corporate debtor as the Said property has been specifically earmarked to us and our entire claim will be fully satisfied upon receipt of the Said property.

Perusal of the above would show that the Dissenting Financial Creditor has dropped its claim against the Corporate Debtor. Thus, the Resolution Plan which contemplates no payment for M/s. Suraj Agro Infrastructure (India) Private Limited is accepted to by the Dissenting Financial Creditor.

**7. PAYMENT TO EMPLOYEES AND WORKMEN**

7.1. The Resolution Applicant in the Resolution Plan had provided a sum of Rs. 84,15,000/- (Rupees Eighty-Four Lakh Fifteen Thousand) as against the sum of Rs. 99,00,000/- (Rupees Ninety-Nine Lakh) payable to the Employees and Workmen of the Corporate Debtor. However, pursuant to the order of this Tribunal, the Resolution Applicant has filed an Affidavit in SR 2280 dated 07.06.2023 wherein following undertaking has been made:

*"I submit that as per the resolution plan, I had provided for a sum of Rs 84,15,000/- (Rupees Eighty-Four Lakhs Fifteen Thousand Only) as against the sum of Rs 99,00,000/- (Rupees Ninety-Nine Lakhs Only) payable to the employees and workmen as per the books of accounts in respect of the period post CIRP. Since the entire amount needs to be paid for the period post CIRP, I hereby undertake to pay the balance amount of Rs 14,85,000/- (Rupees Fourteen Lakhs Eighty-Five Thousand Only) payable to the workmen employees."*



7.2 The above undertaking is taken on record by this Tribunal. A sum of Rs. 14,85,000/- as undertaken is to be paid as CIRP costs.

**8. IMPLEMENTATION & SUPERVISION OF THE RESOLUTION PLAN**

Clause 16 of the Resolution Plan contemplates that the upon the approval of the Resolution Plan by this Tribunal, a Supervision and Monitoring Committee will be formed wherein the Applicant Resolution Professional will be the Chairperson while the Promoters and Representative of the Creditors would be the Members of the Committee and would function till it is handed over back to the Promoters.

**9. TABULATION OF VARIOUS COMPLIANCES REQUIRED UNDER THE PROVISIONS OF THE CODE IS AS BELOW:**

<i>Clause of s. 30(2)</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
(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.	<i>Note 1 under Clause 11 of the Resolution Plan at page 184 of the Applicant's typed set &amp; clause 3 of Addendum to Resolution Plan at page 195 of the Applicant's typeset.</i>
(b)	(i) 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	<i>Clause 11 of the Resolution Plan at page 184 of the Applicant's typeset &amp; clause 4 of Addendum to Resolution</i>





	<p>them in the event of liquidation u/s 53; or</p> <p>(ii) 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</p> <p>(iii) provides for 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.</p>	<p><i>Plan (Page 195 of the Applicant's Typeset).</i></p> <p><i>Clause 4 of Addendum to Resolution Plan (Page 195 of the Applicant's Typeset).</i></p> <p><i>Dealt with as per para 6 of this order.</i></p>
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	<i>Clause 16 of resolution plan at page 187 of the Applicant's typeset and clause 6 &amp; 7 of Addendum to Resolution Plan (Page 196 of the Applicant's Typeset).</i>
(d)	Implementation and Supervision.	<i>Clause 16 of the resolution plan at page 187 of the Applicant's typeset and clause 6, 7 &amp; 9 of Addendum to Resolution Plan. (Page 196 of the Applicant's Typeset).</i>
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	<i>Clause 11 of Addendum to Resolution Plan at page 197 of the Applicant's typeset.</i>
(f)	Conforms to such other requirements as may be specified by the Board.	<i>Clause 12 of Addendum to Resolution Plan. (Page 197 of the Applicant's Typeset).</i>





**10. MEASURES REQUIRED FOR IMPLEMENTATION OF THE RESOLUTION PLAN IN TERMS OF REGULATION 37 OF CIRP REGULATIONS ARE AS BELOW:**

<i>Particulars</i>	<i>Relevant Page of the Resolution Plan dealing aforesaid compliance with Regulation</i>
<i>A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization 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;	<i>Not applicable.</i>
(b) sale of all or part of the assets whether subject to any security interest or not;	<i>Not applicable.</i>
(c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	<i>Not applicable.</i>
(d) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	<i>Not applicable.</i>
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	<i>Not applicable.</i>
(f) satisfaction or modification of any security interest;	<i>Promoter providing resolution plan and the security is already with the Creditors, so no modification of any security interest is required and discharge will be made when the creditors recover the resolution amount as approved by the AA.</i>
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	<i>Not applicable</i>
(h) reduction in the amount payable to the creditors;	<i>Provided in Form-H, where breakdown of claims admitted vs payment is provided</i>



(i) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	<i>Not applicable</i>
(i) amendment of the constitutional documents of the corporate debtor;	<i>Not applicable</i>
(k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	<i>Not applicable</i>
(l) change in portfolio of goods or services produced or rendered by the corporate debtor;	<i>Not applicable</i>
(m) change in technology used by the corporate debtor; and	<i>Not applicable</i>
(n) obtaining necessary approvals from the Central and State Governments and other authorities.	<i>Not applicable as the CD is a running/going concern.</i>

**11. MANDATORY CONTENTS OF THE RESOLUTION PLAN IN TERMS OF REGULATION 38 OF CIRP REGULATIONS ARE AS UNDER:**

<i>Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
38(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	<i>Clause 11 of the Resolution Plan at page 184 of the Applicant's typeset &amp; clause 4 of Addendum to Resolution Plan (Page 195 of the Applicant Typeset).</i>  <i>Clause 4 of Addendum to Resolution Plan. (Page 195 of the Applicant Typeset).</i>
38(1)(A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor.	<i>Clause 10 &amp; 11 of the Resolution Plan at Page 183 to 184 of the Applicant's typeset and Clause 8 of Addendum to Resolution Plan. (Page 196 of the Applicant's Typeset).</i>



38(1)(B)	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.	<i>Clause 14 of Addendum in Resolution Plan at Page 198 of the Applicant's typeset.</i>
38(2)	A resolution plan shall provide: (a) the term of the plan and its implementation schedule;	<i>Clause 7 of the Resolution Plan at Page 182 of the Applicant's typeset and Clause 15 of Addendum to Resolution Plan (Page 198 of the Applicant's Typeset).</i>
	(b) the management and control of the business of the corporate debtor during its term; and	<i>Clause 16 of the Resolution Plan at page 187 of the Applicant's typeset and Clause 6, 7 &amp; 9 of Addendum to Resolution Plan. (Page 196 of the Applicant's Typeset).</i>
	(c) adequate means for supervising its implementation.	<i>Clauses 7, 9, 16 of Addendum to Resolution Plan (Page 196 &amp; 198 of the Applicant's Typeset).</i>
38(3)	A resolution plan shall demonstrate that – (a) it addresses the cause of default;	<i>Clause 5 of the Resolution Plan at Page 182 of the Applicant's and Clause 17 of Addendum to Resolution Plan (Page 198 of the Applicant's Typeset).</i>
	(b) it is feasible and viable;	<i>Clause 12 &amp; 13 of the Resolution Plan at page 185 &amp; 186 of the Applicant's typeset and Clause 18 of Addendum to Resolution Plan. (Page 198 of the Applicant's Typeset).</i>





	<i>(c) it has provisions for its effective implementation;</i>	<i>Clause 16 of Resolution Plan at page 187 of the Applicant's typeset and Clauses 6,7,9 of Addendum to Resolution Plan. (Page 196 of the Applicant's Typeset).</i>
	<i>(d) it has provisions for approvals required and the timeline for the same; and</i>	<i>Not Applicable</i>
	<i>(e) the Resolution Applicant has the capability to implement the Resolution Plan.</i>	<i>Clause 3 to 6 of the Resolution Plan at page 177 to 182 of the Applicant's typeset and Clause 21 of Addendum of Resolution Plan (Page 190 of the Applicant's Typeset).</i>

11.2. The 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 – 16 to the typed set filed along with the Application.

**12. RELIEFS AS SOUGHT AND GRANTED UNDER THE APPLICATION ARE AS FOLLOWS:**

<b>S No.</b>	<b>Relief (s) Sought for under Application</b>	<b>Order</b>
<b>a.</b>	<i>Pass an order approving the resolution plan submitted by the Promoter Director Mr. Gopaljee in respect of the Corporate Debtor under Section 31 (1) of the Code and declare that the same be binding on the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan</i>	<b>Granted</b>





b.	<i>Pass an order directing that, pending disposal of the present application by this Tribunal, the Resolution Professional shall continue to conduct his role as Resolution Professional of the Corporate Debtor and during such period shall have all powers, duties and protections as available to him as a Resolution Professional under the Code and Regulations thereunder</i>	<b>Granted</b>
c.	<i>Pass an order directing the Resolution Applicant to implement the Resolution Plan in the manner set out in the resolution plan</i>	<b>Granted</b>
d.	<i>Pass an order approving the appointment of Monitoring Agent (MA) and Monitoring Committee ("MC") from the date of approval of resolution plan by this Tribunal until the date on which the Resolution Applicant acquire control of the Corporate Debtor i.e. closing date under the Resolution Plan, and during such period extend protection to the MC (including extension of the protection of the moratorium against any suit, legal proceedings and investigations or have any liability with respect to anything which is done or intended to be done or omitted in good faith and in compliance with the Code, Regulations or any other applicable law) to enable it to monitor the Corporate Debtor as a going concern.</i>	<b>Granted</b>
e.	<i>Pass an appropriate order in relation to the grant of concessions, reliefs and dispensations sought in the resolution plan.</i>	<b>Granted</b>
f.	<i>Pass an order directing all stakeholders to cooperate with the Resolution Applicant, Monitoring Agent (MA) and the Monitoring Committee (MC) to keep the Corporate Debtor as a going concern and to implement the Resolution Plan in the manner approved by this Tribunal</i>	<b>Granted</b>



g.	Pass an order permitting the Applicant to withdraw IA/1251/2021 seeking liquidation of the corporate debtor	Already dismissed vide order dated 19.06.2023
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### 13. CONCESSIONS UNDER THE RESOLUTION PLAN

S No.	Concession(s) Sought for under Resolution Plan	Order
a.	<p><b><u>Clause 14(i) (a) of the Resolution Plan:</u></b></p> <p><i>'A moratorium of 12 months from compliance with the provisions of the Companies Act, 2013 (including Section 128 and Section 129 of the Companies Act, 2013) in order for the Resolution Applicant to rectify any errors or inconsistencies in any returns, filings, and / or the audited statements of the Company for any of the financial years including till the financial year containing the Resolution Plan Effective Date'</i></p>	Granted, subject terms of the judgement of the Hon'ble Supreme Court in Ghanshyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited [2021 SCC Online SC 313]
b.	<p><b><u>Clause 14(i) (b) of the Resolution Plan:</u></b></p> <p><i>'If any revisions are required to be made in the audited statements of the Company for any of the financial years; a waiver from then obtaining the approval of the National Company Law Tribunal, Chennai Bench under Section 131 of the Companies Act, 2013.'</i></p>	Not Granted
c.	<p><b><u>Clause 15 of the Resolution Plan:</u></b></p> <p><i>'The Applicant and/or their nominee(s) or the Company shall not be liable to pay any tax dues arising out of the periods prior to the Scheme Plan</i></p>	RA to approach the concerned Authorities



	<i>Effective Date and/or any income, transaction, or actions in such period, irrespective of the stage of assessment of these periods.'</i>	
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#### 14. ANALYSIS AND FINDINGS OF THIS TRIBUNAL

14.1. While considering the Resolution Plan of the Corporate Debtor, the Counsel for the Applicant has submitted that all due compliances under Section 30(2) of the Code and the mandatory provisions contemplated under the Regulations have been made. The Applicant has also submitted that the interest of all stakeholders is protected and taken care of in the Resolution Plan.

14.2. It is seen that the Resolution Plan proposed by the Promoter has been voted in favour by the Committee of Creditors having voting share of 85%. The views of the Dissenting Financial Creditor are explained in para 6 of this order. It is the view of this Tribunal that necessary provisions have been made for the implementation of the Resolution Plan.

14.3. It is also seen that in lieu of the Performance Guarantee, the Promoter has deposited a sum of Rs. 1.60 Crores on 24.05.2022 in the designated Bank Account. Further, the Resolution Plan at clause 16 provides that the supervision and implementation of the Resolution Plan.





14.4. As regards the value of the Resolution Plan, it is seen that a total sum of Rs. 21,62,48,000/- has been introduced by the Resolution Applicant, in contrast, the Liquidation Value of the Corporate Debtor has been arrived at Rs. 40,55,00,000/- as per the Form – H'. Hon'ble Supreme Court in the case **Maharashtra Seamless Steel Limited –Vs- Padmanabhan Venkatesh & Ors** [2020 SCC. Online SC 67] has observed as under:

*'25. Now the question arises as to whether, while approving a resolution plan, the Adjudicating Authority could reassess a resolution plan approved by the Committee of Creditors, even if the same otherwise complies with the requirement of Section 31 of the Code. Learned counsel appearing for the Indian Bank and the said erstwhile promoter of the corporate debtor have emphasised that there could be no reason to release property valued at Rs.597.54 crores to MSL for Rs.477 crores. Learned counsel appearing for these two respondents 33 have sought to strengthen their submission on this point referring to the other Resolution Applicant whose bid was for Rs.490 crores which is more than that of the appellant MSL.*

*26. No provision in the Code or Regulations has been brought to our notice under which the bid of any Resolution Applicant has to match liquidation value arrived at in the manner provided in Clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. This point has been dealt with in the case of Essar Steel (supra). We have quoted above the relevant passages from this judgment.*

*27. It appears to us that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Once, a resolution plan is approved by the CoC, the statutory mandate on the Adjudicating Authority under Section 31(1) of the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof. We, per se, do not find any breach of the said provisions in the order of the Adjudicating Authority in approving the resolution plan.*

*28. The Appellate Authority has, in our opinion, proceeded on equitable perception rather than commercial wisdom. On the face of it, release of assets at a value 20% below its liquidation value arrived at by the valuers seems inequitable. Here, we feel the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis.'*





14.5. In so far as the approval of the Resolution Plan is concerned, this Tribunal 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.”*

14.6. 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 held as under;

*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)*.

14.7. 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 under;

*“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)*

14.8. 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)* held as

under;

*"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)

14.9. 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 under;

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 exposted by this Court.

14.10. 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.

14.11. With respect to the settlement with respect to Operational Creditors who have not claimed before the Resolution Professional, it is the view of this Tribunal that the judgement of the Hon'ble NCLAT in the case *Jagmeet Singh Sabharwal (Supra)* is squarely applicable. The said judgement has observed as under:

10. From the Re-distribution Chart, we find the workmen dues, employee dues paid 100% and others like 'Secured Financial Creditor' and 'Unsecured Financial Creditor (Promoter)' paid 100%. The other 'Operational Creditors' like 'supplier of goods' or 'rendered services' have been paid 70.81 %. The 'Operational Creditor' and 'other creditors' – 'Promoter Group' like 'Fouress Engineering (India) Pvt. Ltd.' allocated 70.47% of dues. On the other hand, the debt payable to the Central Government or State Government etc. they have been paid 36.31%. We are of the view that the aforesaid classification between the 'employees', 'Operational Creditors' who have supplied goods or rendered services and the 'Operational Creditors' like Government dues i.e. debt payable to the Central Government or State Government etc. is rational and correct. We have noticed that those employees who have rendered services to keep the company a going concern even during the 'Corporate Insolvency Resolution Process', the supplier of the goods and those who rendered services have also invested money for keeping the company operational. On the other hand, the Central Government or State Government, only derive the advantage of the existing law, claiming without supplying any goods or rendering any services. So far as the inventory of 'Fouress Engineering (India) Pvt. Ltd.' is concerned, it is equated with all the similar placed 'Operational Creditors' therefore it cannot allege discrimination. So far as the 'Shareholders' or 'Promoters' are concerned because of their failure the 'Corporate Insolvency Resolution Process' got initiated against the 'Corporate Debtor' and 'Successful Resolution Applicant' pays the dues to all the creditors on behalf of the 'Corporate Debtor'/'Promoters'/'Shareholders'. In lieu of such payment, it is always open to the 'Successful Resolution Applicant' to claim transfer of shares of 'Shareholders'/'Promoters' in its favour.



Therefore, the payments proposed to such persons under the Resolution Plan are justified.

14.12. 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 85% of total voting share. As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By an 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 complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

14.13. 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.

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





14.15. The Resolution Plan is hereby **Approved** by this Adjudicating Authority, subject to the observations made in this order. The Resolution Plan is binding on the Corporate Debtor and other stakeholders.

14.16. As contemplated under clause 7 of the Resolution Plan, the Resolution Applicant hereby is directed to disburse another 10% with immediate effect.

14.17. The Resolution Applicant is hereby directed to strictly abide by the terms of the Resolution Plan including its implementation schedule. Liberty is hereby granted for moving any Application if required in connection with the implementation of this Resolution Plan.

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

15. **IA(IBC)/543/CHE/2023** stands disposed of accordingly.

—sd—

**SAMEER KAKAR**  
MEMBER (TECHNICAL)

—sd—

**SANJIV JAIN**  
MEMBER (JUDICIAL)

*V.Shreekumar*