

IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH NEW DELHI

Company Petition No. (IB)863(PB)/2020

IA -2829, IA -3286,
IA -3293, IA -3318,
IA -3396, IA -3614,
IA -3862, IA -3869
IA -,4099, IA -3608,
IA -3619, IA -3620,
IA -3621, IA -3015,
IA -2897, IA -2785,
IA -4367 of 2021

IN THE MATTER OF:

ICICI Bank Ltd.

...Financial Creditor

Versus

Essar Power M.P. Ltd.

...Corporate Debtor

AND

IN THE MATTER OF I.A.2829 OF 2021:

Under Section:30(6) read with 31(1) of IBC,2016

Mr. Ashish Chhawchharia
Resolution Professional of Essar Power M.P Ltd.
Grant Thronton, 10C, Hungerford
Street, Kolkata-700017, West Bengal

...Applicant



AND

In the Matter Of I.A.3286 OF 2021

Under Section – 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016

**Balaji Minerals
Through Authorised Signatory
1-B, Vidyut Vihar Colony, Shaktinagar,
Distt. Sonhabadra, UP-231222**

...Applicant/Objector

Versus

**Essar Power M.P. Ltd.
Through RP
Grant Thornton, 11th Floor, Tower II,
One International Centre, SB. Marg
Elphinstone (W), Mumbai-400013**

...Respondent

AND

IN THE MATTER OF I.A.3293 OF 2021

Under Section – 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016

**Pawan Associates
Through its Authorized Signatory
Ward No. 23, Amlori, Singrauli,
Madhya Pradesh-486886**

...Applicant/Objector

Versus

**Essar Power M.P. Ltd.
Through RP
Grant Thornton, 11th Floor, Tower II,
One International Centre, SB. Marg
Elphinstone (W), Mumbai-400013**

...Respondent

AND

IN THE MATTER OF I.A.3318 OF 2021

Under Section – 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016

**V2P Engineering Services Private Limited
BC No. 118/124, Matrix Tower,
Sector- 132, Noida-201301**

...Objector/Applicant

Versus

**Essar Power M.P. Ltd.
Through RP
Grant Thornton, 11th Floor, Tower II,
One International Centre, SB. Marg
Elphinstone (W), Mumbai-400013**

...Respondent

AND

IN THE MATTER OF I.A.3396 OF 2021

Under Section – 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016

**S.M. Automart Private Limited
Through its Authorized Signatory
1st Floor, Plot No. 322, Beside, B.N Shiksha Mandir,
Maa Vishno Nagar. Chandpur,
Lahratara, Varanasi, Uttar Pradesh-221106**

...Objector/Applicant

Versus

**Essar Power M.P. Ltd.
Through RP
Grant Thornton, 11th Floor, Tower II,
One International Centre, SB. Marg
Elphinstone (W), Mumbai-400013**

...Respondent



AND

IN THE MATTER OF I.A.3614 OF 2021

Under Section – 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016

M/s Shree Enterprises

Through its Partner

**House No. 719G, Tel Mill Gali, Gatu Road,
Piska More, Hehal, Ranchi, Jharkand**

...Applicant/Objector

Versus

Essar Power M.P. Ltd.

Through RP

**Grant Thornton, 11th Floor, Tower II,
One International Centre, SB. Marg
Elphinstone (W), Mumbai-400013**

...Respondent

AND

IN THE MATTER OF I.A3862 OF 2021

Under Section – 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016

M/s SK Construction

Through its authorized signatory

Transport Nagar, Shiva Park

Renukoot, Sonebadhra

UP-231217

...Objector/ Applicant

Versus

Essar Power M.P. Ltd.

Through RP

**Grant Thornton, 11th Floor, Tower II,
One International Centre, SB. Marg
Elphinstone (W), Mumbai-400013**

...Respondent



AND
IN THE MATTER OF I.A3869 OF 2021

Under Section – 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016

M/s J B Transport

Through its Authorised Signatory

Transport Nagar, Shiva Park,

Renukoot, Sonebadhra

UP-231217

...Objector/ Applicant

Versus

Essar Power M.P. Ltd.

Through RP

Grant Thorton, 11th Floor, Tower II,

One International Centre, SB. Marg

Elphinstone (W), Mumbai-400013

...Respondent

IN THE MATTER OF I.A 4099 OF 2021

Under Section – 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016

Central Transmission Utility

Of India Limited

Plot No. 2, Sector 29

Gurgaon, Haryana-122001

...Applicant

Versus

Ashish Chhawchharia

Resolution Professional of Essar Power M.P Ltd.

Grant Thronton, 10C, Hungerford

Street, Kolkata-700017, West Bengal

....Respondent No.1

Adani Power Limited

Resolution Applicant

...Respondent No.2



AND

IN THE MATTER OF I.A 3608,3619,3620 AND 3621 OF 2021

Under Section – 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016

**Committee of creditors of Essar M.P. Ltd.
Through ICICI Bank Limited
NBCC Place, Bhishma Pitamah Marg
New Delhi – 110 003**

...Applicant

AND

IN THE MATTER OF I.A 3015 OF 2021

Under Section – 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016

**Central Transmission Utility
Of India Limited
Plot No. 2, Sector 29
Gurgaon, Haryana-122001**

...Applicant

Versus

**1Ashish Chhawchharia
Resolution Professional of Essar Power M.P Ltd.
Grant Thornton, 10C, Hungerford
Street, Kolkata-700017, West Bengal**

....Respondent No.1

**2 CoC of Essar Power M.P Ltd.
NBCC Place, Bhishma Pitamah Marg
New Delhi – 110003**

...Respondent No.2



AND

IN THE MATTER OF I.A 2897 OF 2021

Under Section – 30(2)(a) of IBC

SHAARC Projects Ltd.

....Operational Creditor/Applicant

Versus

Ashish Chhawchharia

Resolution Professional of Essar Power M.P Ltd.

Grant Thronton, 10C, Hungerford

Street, Kolkata-700017, West Bengal

....Respondent

AND

IN THE MATTER OF I.A 2785 OF 2021

Under Section – 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016

U.P. Jal Vidyut Nigam Limited

...Applicant

Versus

Essar Power M.P. Ltd.

Through RP

Grant Thorton, 11th Floor, Tower II,

One International Centre, SB. Marg

Elphinstone (W), Mumbai-400013

....Respondent

AND

IN THE MATTER OF I.A 4367 OF 2021

Under Section – 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016

Trikaya Township Private Limited

....Applicant

Date of Pronouncement – 01.11.2021



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CORAM:

SH.BHASKARA PANTULA MOHAN, HON'BLE ACTING PRESIDENT

SH. HEMANT KUMAR SARANGI, HON'BLE MEMBER (T)

PRESENT:

IA 2829/2021 - For Resolution Professional - Mr Ramji Srinivasan, Sr Adv, Mr Abhijeet Sinha, Mr Diwakar Maheshwari, Mr Rajeev Vidhani, Mr Vishnu Shriram, Aditya V Singh, Mr Ashwij Ramaiah, Adv. Kairav Trivedi, -IA Nos. 3286 / 2021, 3318 / 2021, 3293 / 2021, 3396 / 2021, 3614 / 2021, 3869 / 2021, 3862 / 2021-Adv. Piyush Singh, Adv. Aditi Sinha, Adv. Akshay Srivastava for the Applicants/Operational Creditor, Mr. P.Nagesh, Sr. Adv. with Mr. Shubham Arya, Ms. Poorva Saigal, Ms. Tanya Sareen and Mr. Akshay Sharma, Advocates for CTU (I.A. Nos. 3015 and 4099 of 2021), Mr. Daksh Kadian, Advocates for CoC (Applicants in IA 3609/21; IA 3619/21; IA 3620/21; IA 3621/21)Mr. Kairav Trivedi, PCA for SHAARC In IA 2897 of 2021, Mr. Divyam Agarwal and Ms. Geetanjali Shahi Advocates for the Applicant in IA No. 2785/ 2021 for UP Jal Vidyut Nigam Ltd, Mr. Nakul Mohta, Applicant in IA No. 4367 of 2021

ORDER

PER: BHASKARA PANTULA MOHAN, ACTING PRESIDENT

IA No. 2829/2021 has been filed by Ashish Chhawchharia, the Resolution Professional of the Essar Power M.P. Ltd. (hereinafter referred as 'Applicant/ Resolution Professional') for approval of the Resolution plan submitted by the Adani Power Ltd. (hereinafter referred as 'Successful Resolution Applicant').



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2. That the prayers made in the IA No. 2829/2021, which is taken up for consideration, are reproduced below :

(a) Allow the present application;

(b) Pass an order approving the Resolution Plan dated 11.05.2021 (read with addendum dated 12.05.2021) submitted by Adani Power Limited (as annexed at Annexure Y) under Section 31(1) of the IBC;

(c) Pass an order granting the reliefs and concessions sought in Section 9 of the Successful Resolution Plan dated 11 May 2021 (read with addendum dated 12 May, 2021) submitted by Adani Power Limited (as annexure Y); and

(d) Pass any such other order or orders it may deem fit and necessary in the interest of equity and justice;

3. To put succinctly, the facts of the case are that the Financial Creditor, ICICI Bank Ltd. filed an Application bearing No. IB-863(PB) 2020 under Section 7 of the I&B Code for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, Essar Power M.P. Ltd. The said Application was admitted by this Tribunal vide Order dated 29.09.2020 and the Applicant was appointed as the Interim Resolution Professional (IRP). It is added that the Applicant continued as the Resolution Professional of the Corporate Debtor.

4. In terms of the Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the said Interim Resolution Professional made a public announcement in Form-A on 10.10.2020. The public announcement was made in the newspaper namely Business Standard – Delhi- Hindi Edition,

Raj Express- Jabalpur- Hindi Edition and Financial Express- All India English Edition. The copy of the same is also uploaded on the website of Insolvency and Bankruptcy Board of India (IBBI).

5. The Interim Resolution Professional constituted a Committee of Creditors, which comprised of the following financial creditors with voting share given against each Financial Creditor:

S. No No.	Name of the Creditor	Voting Share%age
1.	ICICI Bank	29.19
2.	REC Limited	24.53
3.	Power Finance Corporation	24.26
4.	Punjab National Bank	15.98
5.	Edelweiss Asset Reconstruction Company Limited	6.04

6. That the 'Form-G' was published on 12.11.2020 in the newspapers namely, All India Edition of Financial Express (in English edition), Delhi Edition of Business Standard (English), Mumbai edition. That the last date for submitting EOI was initially decided for 27.11.2020, However the same was extended to 04.12.2020 and then again to 14.12.2020. That the last date for submission of Resolution Plan was fixed for 16.01.2020.

7. It is stated by the Applicant that the following participants in the EOI made it to the Final list of PRA –



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- a) Adani Power Limited;
- b) Vedanta Limited;
- c) Jindal Power Limited and
- d) NTPC Limited.

The same were reflected in the final list submitted by the Applicant dated 27.12.2020, which was in accordance with Regulation 36A (12) of the IBBI (Insolvency Resolution Process for Corporate Persons Regulations, 2016 (hereinafter referred as "CIRP Regulations").

8. It is stated by the Applicant from the above 4 PRA only 2 PRAs i.e Vedanta Limited and Adani Power Limited submitted their Resolution Plan.

9. That both the PRA made changes to their Resolution Plans and finally submitted their revised Resolution Plan alongwith addendum. The voting for the approval of Resolution plan was conducted in the 11th Meeting of CoC held on 21.05.2021.

10. It is stated by the Applicant that the plan of the Adani Power Ltd was approved by the CoC by 100% votes. The scanned copy of the voting sheet is reproduced below



ESSAR POWER M.P LIMITED - Under CIRP

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Voting Results of the Eleventh Meeting of Committee of Creditors held on 17 May 2021-adjourned and 21 May 2021

E-voting Conclusion Date & Time: 15 June 2021 at 10:00 PM

Sl. No.	Name of Financial Creditor	Voting Share (%)	Agenda Item Number (See Notes Below)							
			B-1(A)	B-1(B)	B-1(C)	B-1(D)	B-1(E)	B-1(F)	B-1(G)	B-1(H)
1	ICICI Bank Limited	29.19%	For	Against	For	For	For	For	For	For
2	Rural Electrification Corporation Limited	24.53%	For	Against	Against	For	For	Against	Against	For
3	Power Financial Corporation Limited	24.26%	For	Against	For	For	For	Against	Against	For
4	Punjab National Bank	15.98%	For	Against	Against	Against	Against	Against	For	For
5	Edelweiss Asset Reconstruction Company Limited	6.04%	For	Against	For	For	For	For	For	For
TOTAL VOTES										
Total Percentage Voting FOR the Resolution(s)			100.00%	0.00%	59.49%	84.02%	84.02%	35.23%	51.22%	100.00%
Total Percentage Voting AGAINST the Resolution(s)			0.00%	100.00%	40.51%	15.98%	15.98%	64.77%	48.78%	0.00%
Total Percentage ABSTAINED from Voting on the Resolution(s)			0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
			Results	Carried	Not carried	Carried	Carried	Carried	Not carried	Carried

NOTES:

Item B-1(A): Approval of the Resolution Plan submitted by Adani Power Limited

Item B-1(B): Approval of the Resolution Plan submitted by Vedanta Limited

Item B-1(C): Approval of Liquidation Cost in accordance with Regulation 39B of CIRP Regulations

Item B-1(D): Assessment of sale as a going concern in accordance with Regulation 39C of CIRP Regulations

Item B-1(E): Fee of the Liquidator in accordance with Regulation 39D of CIRP Regulations

Item B-1(F): To approve appointment of legal advisors to the Committee of Creditors

Item B-1(G): To approve authorization of sub-committee on behalf the Committee of Creditors to finalise the pleadings, affidavits, revisions and any other documents

Item B-1(H): To approve appointment of authorized representative of the members of the Committee of Creditors on the Monitoring Committee/ Steering Committee

11. It is further stated by the Applicant that subsequent to the Approval of the Resolution Plan, the Resolution Applicant has submitted Performance Guarantee dated 22.06.2021 worth Rs 150 Crores.

12. That the details of Payments given to the various stakeholders of the Corporate Debtor is given in Form H of the Resolution Plan. The extracts of the same are reproduced overleaf –

7. The amounts provided for the stakeholders under the Resolution Plan is as under:

(Amount in INR)						
Sl. No.	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	-	-	-	-
		(ii) who voted in favour of the resolution plan	124,391,359,685	120,129,831,567	25,000,000,000	20.098%
		Total[(a) + (b)]	124,391,359,685	120,129,831,567	25,000,000,000	20.098%

2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	4,849,451,504	419,437,816	NIL	NIL
		(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	126,500,000	126,500,000	NIL	NIL
		Total[(a) + (b)]	4,975,951,504	545,937,816	NIL	NIL
3	Operational Creditors	(a) Related Party of Corporate Debtor	547,055,623	546,408,891	NIL	NIL
		(b) Other than (a) above:				
		(i) Government	42,494,439,721	5,446,721,303	NIL	NIL
		(ii) Workmen	-	-	-	-
		(iii) Employees	176,425,856	137,393,857	NIL	NIL
		(iv) Others	29,504,909,458	429,731,129	NIL	NIL
		Total[(a) + (b)]	72,722,830,658	6,560,255,180	NIL	NIL
4	Other debts and dues	-	-	-	-	-
Grand Total			202,090,141,846	127,236,024,563	25,000,000,000	12.37%

Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.

[Handwritten Signature]

13. That the Liquidation value of the Corporate Debtor is disclosed as Rs1733.4 Crores and the Fair Market Value of the Corporate Debtor is disclosed as Rs 2657.2 Crores in the Form H.

14. That the Resolution Applicant has also enclosed the Affidavit stated that they are not barred under Section 29A of IBC, 2016 to submit the Resolution Plan.

15. With respect to compliances made under the Resolution Plan. The Applicant has stated the following in Form H. The extracts of Form H are reproduced overleaf



9. The compliance of the Resolution Plan is as under:

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?	-	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?	Covering Letter	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	An affidavit dated January 11, 2021 has been submitted	Yes
Section 30(2)	Whether the Resolution Plan-		
	(a) provides for the payment of insolvency resolution process costs?	Section 2.1	Yes
	(b) provides for the payment to the operational creditors?	Section 2.2	Yes
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Section 2.3.3	Yes
	(d) provides for the management of the affairs of the corporate debtor?	Section 7 read with Schedule 2	Yes
	(e) provides for the implementation and supervision of the resolution plan?	Section 3, Section 7 and Section 8	Yes
	(f) contravenes any of the provisions of the law for the time being in force?	Clause 5(e) of the Covering Letter	Yes (the resolution plan is in compliance)

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?	Section 5 read with Schedule 2 The Resolution Plan has been approved by the CoC, by a vote of 100%	Yes Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Section 7	Yes
Regulation 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?	The determination was made on January 31, 2021	Yes
Regulation 38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Section 2.2	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Section 2.14.1 read with Section 2	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?	Section 1.7.2 -	Yes (complied with) -
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?	Section 1.6 and Section 8.8 Section 7 read with Schedule 2 Section 7 read with Section 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?	Schedule 2 Section 5 read with Schedule 2 Section 7 read with Section 8	Yes Yes Yes

	(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?	Section 8 read with Schedule 4 Section 5 read with Schedule 2	Yes Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	The application has been filed on May 21, 2021	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Performance Security in the form of a Bank Guarantee dated June 22, 2021 has been submitted	Yes

16. That the Applicant has also sought various reliefs and concessions as mentioned under Resolution Plan vide its Section 6. The scanned copy of the waivers sought are reproduced below

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SECTION 6 : RELIEFS AND WAIVERS

- 6.1 Any reliefs requested to be granted by the NCLT to the Resolution Applicant shall not be construed as conditionalities to the implementation of this Resolution Plan. The Resolution Applicant submits that, at the time of seeking approval from the NCLT, the reliefs provided below shall be included, with such modifications as may be considered necessary by the NCLT:
- (i) On and from the NCLT Approval Date, by order of the NCLT sanctioning this Resolution Plan, a restraint on, and prohibition of, all Adverse Actions shall be deemed to be declared until the Effective Date;
 - (ii) On and from the NCLT Approval Date, by order of the NCLT sanctioning this Resolution Plan, all counter-party(ies) to the Company Contracts shall be deemed to have given their approval for change in ownership of the Corporate Debtor (as specified in this Resolution Plan) with effect from the date of the Effective Date.
 - (iii) The Resolution Applicant considers the uninterrupted supply of water and use of land in terms of the Articles of Arrangement signed with Uttar Pradesh Jal Vidyut Nigam Limited ("UPJVNL") on December 23, 2009 ("UPJVNL Agreement") for permission for use of land and water draw, to be critical to preserve the value of the Corporate Debtor and to maintain its status as a going concern. Accordingly, the UPJVNL Agreement shall renew for a period of 12 months from the Effective Date in terms of this Resolution Plan and continue in full force and effect and shall remain valid and binding against the Corporate Debtor and UPJVNL.
 - (iv) On and from the NCLT Approval Date, by order of the NCLT sanctioning this Resolution Plan, the Township Lease Agreement dated May 16, 2011 entered with Trikaya Township Limited shall be deemed to be terminated, with such termination being effective from the NCLT Approval Date. Any claims or liabilities arising as a consequence of such termination shall be deemed to be relinquished, cancelled and written-off on the NCLT Approval Date.
 - (v) On and from the NCLT Approval Date, by order of the NCLT sanctioning this Resolution Plan, all Related Party contractual arrangements entered into by the Corporate Debtor shall be deemed to be terminated, with such termination being effective from the NCLT Approval Date. Any claims or liabilities arising as a consequence of such termination shall be deemed to be relinquished, cancelled and written-off on the NCLT Approval Date.
 - (vi) As the Resolution Applicant is required to take over the Corporate Debtor's Business on a 'going concern' basis, all consents, licenses, approvals, clearances, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to, shall continue to remain valid, notwithstanding any provision to the contrary in their terms, and provided that in case of consents, licenses, approvals, rights, entitlements, benefits and privileges that have expired or lapsed, notwithstanding that they may have already lapsed or expired due to any breach, non-compliance or efflux of time, be deemed to continue without disruption for the benefit of the Corporate Debtor, for a period of 12 (twelve) months from the Effective Date or such other period

Yash L Ltd

Tel +91 79 2555 6666

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as required under Applicable Law. Further, no coercive actions shall be taken against Resolution Applicant or Corporate Debtor post NCLT Approval Date towards lapse of any consents, licenses, approvals, clearances etc. under the Applicable Law during the CIRP Period.

- (vii) The Resolution Applicant in the event of being declared successful shall be given an exemption of three (3) years from the Effective Date to correct, amend and remedy for (i) 100% utilization of fly ash; (ii) CSR Expenses, as required under the Environmental Clearance issued by the relevant Government and Statutory Authorities.
- (viii) The time period provided to Corporate Debtor to install flue gas desulfurization system (FGD) for Unit 1 and Unit 2 shall be extended to 31 March 2023 and no coercive action be taken against the Corporate Debtor or Resolution Applicant for non-compliance during such period.
- (ix) The Resolution Applicant and the Corporate shall be deemed to have received a waiver from all actions, Proceedings or penalties under any applicable Law for any Non-Compliance, including in connection with any prior transfer of assets, contracts or business by the Corporate Debtor.
- (x) All Assets whether leased or owned by the erstwhile Promoters, other individuals, Related Parties or affiliates of the erstwhile Promoters, which are integral to the operations of the Project shall vest with the Corporate Debtor.
- (xi) The implementation of the Resolution Plan by the Resolution Applicant and any change in control occurring pursuant thereto shall not impact or breach the validity of any such agreements, contracts (including but not limited to PPAs and FSAs) etc, to which the Corporate Debtor is a party to.
- (xii) The Ministry of Environment and Forest to waive all past non-compliances of the Corporate Debtor and an additional period of 36 months from the Effective Date to be provided for complying with all the emission norms for installation of FGD.
- (xiii) All permits, clearances and necessary approvals for transportation of coal by road which have been obtained by the Corporate Debtor shall be extended for 36 months from the Effective Date.
- (xiv) Any stamp duty liabilities or Tax liability arising pursuant to the transactions contemplated under this Resolution Plan shall be exempted or waived off.

It is hereby clarified that the non-grant of any of the aforementioned reliefs shall not be considered as modification of any of the other terms contained in this Resolution Plan, which shall continue to have the binding effect in terms of this Resolution Plan.

17 That before giving any observations on the Resolution Plan placed before this Adjudicating Authority, it is pertinent to mention that the Resolution Plan and objections were heard at length on 21.09.2021 and 25.09.2021. That all the counsels who appeared for the parties which objected the Resolution Plan, were present and have marked their presence. However inadvertently in the order dated 28.09.2021, it is mentioned that only IA 2829/2021 is reserved but the non mentioning of other IAs as

'reserved' was a clerical mistake. It is also pertinent to mention that no next date of hearing was given in any of the IAs listed on 28.09.2021. Further neither the matter was mentioned on any subsequent date, nor any fresh IA was filed after 28.09.2021 application. Even when matter was reserved on 28.09.2021 there was no objection whatsoever made by any of the parties asking time for further arguments because the matters were completely heard.

18 That in all the IAs filed as an objection, the pleadings are complete and even Written Submissions are filed in most of the IAs. Therefore all the objections are decided on the basis of the material available on record.

IA 3286, IA 3293, IA 3318, IA 3396, IA 3614, IA 3862 , IA 3869, IA 4099 of 2021

19. That the Resolution Plan is objected by the Operational Creditors and other entities. Therefore before adjudicating the resolution plan it is necessary to go through the objections made against the Resolution Plan. That **IA 3286, IA 3293, IA 3318, IA 3396, IA 3614, IA 3862 , IA 3869, IA 4099 of 2021** are filed by the Operational Creditors. Their main grievance is that the Operational Creditors are being paid 'NIL' value in the Resolution Plan.

20. It is further stated by the Applicants of these IAs that the Resolution Plan contravenes the provision of Section 30(2)(b) of IBC, 2016 and Regulation 38 of the CIRP Regulations. They further placed reliance on the **Judgement of Hon'ble Supreme Court passed in the matter of Essar**

Steel India Ltd. Committee of Creditors Vs Satish Kumar Gupta to submit that although the decision vests with the CoC to approve a resolution plan, however if the plan does not confirm to the mandatory contents which must be provided for in a resolution plan. The extracts of the Judgement are reproduced below –

44. *The minimum value that is required to be paid to operational creditors under a resolution plan is set out under Section 30(2)(b) of the Code as being the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under Section 53. The Insolvency Committee constituted by the Government in 2018 was tasked with studying the major issues that arise in the working of the Code and to recommend changes, if any, required to be made to the Code. The Insolvency Committee Report, 2018 (hereinafter referred to as "The Committee Report, 2018"), inter alia, deliberated upon the objections to Section 30(2)(b) of the Code, inasmuch as it provided for a minimum payment of a "liquidation value" to the operational creditors and nothing more, and concluded as follows:*

21. That in response to these objections it is stated by the RP and CoC that the Approved Resolution Plan complies with the provisions of the Code read with CIRP Regulations. It is stated that the approved resolution plan provides for the total payment of Rs 2500 Crores. It is added that that the total admitted claim received in regard to the Financial Creditors comes to the tune of Rs 12067,57,69,383 and the Total claim of the Operational Creditors comes to the tune of Rs 97,04,70,865. That the Liquidation value of the Corporate Debtor is around 1733 Crores. It is emphasized by the Applicant and the CoC that the Liquidation value of the Operational



Creditors in the Resolution Plan in "NIL". Therefore there is no illegality in the approved Resolution Plan.

22 That the Applicant has placed reliance on the Para 55 of the Judgement of **Hon'ble Supreme Court passed in the matter of Essar Steel India Ltd. Committee of Creditors Vs Satish Kumar Gupta that-**

"56. By reading paragraph 77 de hors the earlier paragraphs, the Appellate Tribunal has fallen into grave error. Paragraph 76 clearly refers to the UNCITRAL Legislative Guide which makes it clear beyond any doubt that equitable treatment is only of similarly situated creditors. This being so, the observation in paragraph 77 cannot be read to mean that financial and operational creditors must be paid the same amounts in any resolution plan before it can pass muster. On the contrary, paragraph 77 itself makes it clear that there is a difference in payment of the debts of financial and operational creditors, operational creditors having to receive a minimum payment, being not less than liquidation value, which does not apply to financial creditors. The amended Regulation 38 set out in paragraph 77 again does not lead to the conclusion that financial and operational creditors, or secured and unsecured creditors, must be paid the same amounts, percentage wise, under the resolution plan before it can pass muster. Fair and equitable dealing of operational creditors rights under the said Regulation involves the resolution plan stating as to how it has dealt with the interests of operational creditors, which is not the same thing as saying that they must be paid the same amount of their debt proportionately.

Also, the fact that the operational creditors are given priority in payment over all financial creditors does not lead to the conclusion that such payment must necessarily be the same recovery percentage as financial creditors. So long as the provisions of the Code and the Regulations have been met, it is the commercial wisdom of the requisite majority of the Committee of Creditors which is to negotiate and accept a resolution plan, which may involve differential payment to different classes of creditors, together with negotiating with a prospective resolution applicant for better or different terms which may also involve differences in distribution of amounts between different classes of creditors."

23 That the RP has further placed reliance on the Judgement of Hon'ble NCLAT in the matter of The Asst. Commissioner of **CGST & Central Excise Vs Kuresh Hatim Khambati, Company Appeal (AT) (Insolvency) No. 174/2021**

4....The Resolution Professional is pointing out that according to the Valuation Report it was clear that the amounts payable to the Appellant would be Nil in case of Liquidation and as has been set out in the approved Resolution Plan and when the Amounts payable to the Appellant as Operational Creditor were determined to be Nil, Regulation 38 of CIRP Regulations, 2016 to pay on priority would not be relevant. It is argued that the Resolution Plan was in compliance with Section 30(2) of the IBC read with Regulation 38 of CIRP, Regulations and thus it was placed before the CoC. Workmen and Employees as Operational

Creditors were the continuing stakeholders and on humanitarian grounds it was required that their dues should be paid to the fullest extent and hence Resolution Plan contains corresponding allocation to them. Other Operational Creditors (Other than Workman and Employees and Statutory Dues) who provide continuous support to the Corporate Debtor to ensure that in the future also their support is received to run the Corporate Debtor, the Resolution Plan provided for allocation ex gratia to such Operational Creditors. It is argued that although if the Company was to go in Liquidation the Operational Creditors would have got Nil, still the Resolution Plan made provisions for Workman and Employees and other Operational Creditors (Other than Workman and Employees and Statutory Dues) and thus the Resolution Plan was not bad in law. It is argued that the CoC has considered the Resolution Plan and approved the same in commercial wisdom and may not be interfered with. The Resolution Professional has also argued that Annexure 5 filed with the Resolution Plan gives a list of various litigations with regard to the claim made by the Appellant and in such factual background the claim made by the Appellant was admitted only on contingent basis and now with the Approval of Resolution Plan, the claim would not be enforceable. The claim made by the Appellant was less than 10 % of the aggregate debt of Corporate Debtor and thus the Appellant was not entitled to even notice under Section 24(3) of IBC.

8. Adjudicating Authority has considered the Revised Position of claims received as on 28th October, 2020 (Paragraph 4 of the Impugned Order) which showed that the amounts claimed by the Financial Creditors



admitted were Rs. 20,904,644,307/- and that the dues of Operational Creditors (Workman and Employees) admitted were of Rs. 82,253,253/-. It is recorded that amounts claimed by Operational Creditors (Statutory Dues, Liabilities including outstanding government authority dues, taxes, etc.) were Rs. 4,827,297,551/- (which includes amounts admitted on provisional as well as contingent basis). Then there are dues which were admitted by Operational Creditors (Other than Workmen and Employees and statutory dues) which were of R. 213,192,038/- (including amount admitted on/contingent basis). **Considering these amounts and the Liquidation Value, it is difficult to find fault with the Resolution Plan as has been approved. There is substance in the submissions made by the Resolution Professional that if the Corporate Debtor was to go in Liquidation, the Appellant would get Nil amount.**

(Emphasis Supplied)

REASONING

24 That after going through the objections made by the Operational Creditors, and examining the reply given by the RP and CoC, this bench observes that as per Section 30(2)(b) of IBC, 2016, the higher of the following amount is required to be paid to the Operational Creditors i.e the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or 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.



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25 Since the Liquidation value of the Operational Creditors is 'Nil' and the amount which shall be distributed to the Corporate Debtor in accordance with Section 53(1) would have been the Nil as well. Therefore we are of the considered view that the Resolution Plan is not in violation of Section 30(2)(b) of IBC, 2016.

26 Since the plan is approved by the 100% votes by the CoC. Therefore this bench cannot interfere in the Commercial Wisdom of the CoC, in absence of any contravention of any provision of law. Therefore we dismiss IA 3286, IA 3293, IA 3318, IA 3396, IA 3614, IA 3862 ,IA 3869 Of 2021, IA 4099 filed by the Operational Creditors.

27 That IA 3608, IA 3619, IA 3620, IA 3621 were the Applications filed by the CoC to intervene in the Applications filed by the Operational Creditors. Since the objections of the operational Creditors are already decided, therefore these IAs are dismissed as infructuous.

IA 3015/2021

28. That IA 3015/ 2021 has been filed by Central Transmission Utility of India Limited, claiming to be an Operational Creditor against the RP. That through this IA Central Transmission Utility of india Limited has sought admission of Rs 26,325,400,000 as an Operational Debt.

29. That the necessary of adjudicating the claim of the Operational Creditor in **IA 3015/2021** is not required since the all the Operational



Creditors, irrespective of their claim amount, are awarded with 'Nil' amount in the Resolution Plan,. Therefore IA 3015/2021 is dismissed as infructuous.

IA 2897/2021

30. That IA 2897/2021 is also an objection the Resolution to the Resolution Plan filed by SHAARC Projects Ltd (hereinafter referred as SHHARC). That the SHAARC has made the following prayer in its application

- a. The Resolution Professional be directed to Include the balance portion of expenses of Rs 1,85,01,466.12*
- b. Alternatively, the Resolution Professional be directed to make this payment of Rs. Rs 1,85,01,466.12*
- c. Order cost of Rs 1 Lacs to the MSME unit for filing and defending this matter.*
- d. Since this matter is for objection to a proposed Resolution Plan, the same may be taken on Priority along with the hearings for Approval / Rejections of the proposed Resolution Plan.*
- e. Pass such other order / directions as this Hon'ble Bench may deem fit and proper in the facts and circumstances of the case*

31 That the main grievance of the SHAARC is that the Resolution Plan is in violation of Section 30(2)(a) of IBC, 2016 since the Resolution does not takes account the full expenses which were made during the CIRP as a part of the CIRP cost.

32 It is stated by the SHAARC that it had continued to supply goods/services after the date of CIRP i.e from 1.10.2020 till 30.04.2021. It is

added that the value of goods/services provided during the CIRP was of Rs 6,77,11,154.37.

33 It is further stated by the Applicant that The following amounts have been adjusted from this outstanding during CIRP of Rs. 6,77,11,154.37 to arrive at the Net Principal Outstanding balance of Rs 1,80,58,879.12 as follows:

- a. An amount of Rs. 8,84,748 has been deducted as TDS on the supplies made,
- b. Diesel Recovery of Rs. 57,70,462 has been recovered
- c. Rent Recovery Rs 96,000
- d. Part Payments received Rs 3,00,54,205
- e. The opening Credit balance of Rs1,28,46,060.25 payable to Essar Power MP Limited has also been adjusted
- f. An excel summary of all these workings have been enclosed for easy reference as separate Annexure

34 It is stated by the SHAARC that, the Bills under contentions in this application are leading to a net Principal Outstanding Amount of Rs 1,80,58,879 and these have been raised from 1st October 2020 till 30th April 2021, after the date of the Initiation of CIRP as per the above CIRP Order dated 29 September 2020.

35 It is further stated by the SHAARC that since it is a MSME, therefore MSME Interest of Rs 4,42,587 has been considered on the balance



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outstanding, calculated 45 days from the bill dated. 28/02/2021 as per MSMDE Act.

36 That the RP has filed its reply and has stated that that consequent to the Public Announcement, the SHAARC vide its Form-B dated 20.10.2020 and submitted its claim for an amount of INR 2,71,53,207 (Indian Rupees Two Crores Seventy-One Lakhs Fifty-Three Thousand Two Hundred and Seven), claiming to be due and payable by the Corporate Debtor in consideration for the Job undertaken by the SHAARC ("Erstwhile Claim"). It is stated that that out of the total Erstwhile Claim, an amount of INR 2,66,08,356 (Indian Rupces Two Crores Sixty-Six Lakhs Eight Thousand Three Hundred and Fifty-Six) was admitted ("Admitted Claim) and hence, the SHAARC was duly admitted as the operational creditor of the Corporate Debtor.

37 It is stated by the RP that Since, the Applicant continued providing its services during the CIRP as per the Work Orders, it was incumbent upon it to complete the work as per the agreed schedule.

38 It is submitted by the RP that based on these discussions. RP Understood that despite sending several requests to the SHAARC for expediting the work process at the Plant by mobilizing and deploying additional resources, SHAARC maintained a lackadaisical attitude which put the ash dyke cells at the Plant in jeopardy. In view of the above position, the Corporate Debtor. vide its emails dated 08.10.2020 and 12.10.2020 once again requested the SHAARC to adhere to the completion schedule as per the

Work Order(s), for carrying out and completing the Job. However, SHAARC not only failed to do the needful, but also failed to even respond to the said emails. The copy of the emails dated 8 October 2020 and 12 October 2020 have been placed on record.

39 It is stated by the RP that various rounds of discussions were conducted with officials of the Applicant, wherein the company personnels informed about unsatisfactory work progress and also regarding its payment obligations towards the Corporate Debtor to the tune of INR 3,97,83,375.55 (Indian Rupees Three Crores Ninety-Seven Lakhs Eighty-Three Thousand Three Hundred Seventy-Five and Fifty-Five Paise only) under the Scrap Sale Agreement as on 29.09.2020.

40 It is added by the RP that In relation to the above mentioned dues, SHAARC vide its letter dated 11 January 2021 requested the Corporate Debtor to recover @35,00,000/ (approx.) per month against the amount payable by it.

41 It is stated by the RP Subsequently, based on mutual verbal discussions amongst the parties, a consensus was arrived that the SHAARC would discharge its dues towards the Corporate Debtor in a periodic manner by agreeing for an adjustment of INR 35.00.000 (approx.) per month against the invoices for work carried out under the Work Orders.

42 It is submitted by the RP While the dues of the Applicant under the Scrap Sale Agreement were agreed to be adjusted at the rate of INR



35,00,000 (approx) per months and thus, were likely to be resolved in a periodic manner, however, another issue arose qua Applicant's failure in making timely payment to the sub contractors and workmen/labourers engaged by it at the Plant. It is submitted that in view of the same. The Corporate Debtor also faced with the said unpaid claims of the sub contractors and workmen/labourers, who demanded immediate payment of their dues from the Corporate Debtor and further threatened to stall the ongoing work at the Plant by initiating a strike.

43 It is added by the RP that certain local vendors/ workmen engaged by the Applicant at the site ("Obstructors") continuously caused disruptions at the plant of the Corporate Debtor by way of inter-alia, forceful blockage of the Ash Dyke gate on account of non-payment of their dues by the Applicant. It is submitted that the smooth functioning and operation of the Plant is quintessential to continue the Corporate Debtor as a 'going concern'. Accordingly, considering that it was extremely necessary that all obstructions for the smooth functioning of the plant were removed, which were severely impacting the operations of the Corporate Debtor, RP made direct payments to the workmen (through the local vendors) engaged by the Applicant at the plant so that they may be persuaded to terminate their strike at the earliest and resume work. It is further submit that the Applicant vide its emails dated 06.05.2021 and 14.05.2021 expressed its inability to pay the dues of workmen and labourer engaged by it for the completion of the Job and requested the Corporate Debtor to make direct payments to the workmen and labourer..

44 It is submitted by the RP that during the course of the CIRP of the Corporate Debtor, the Applicant has raised invoices aggregating to a sum of INR 6.77.87,380 towards the Work Orders issued by the Corporate Debtor, which was further reduced to INR 6.69.25.676 after adjusting TDS towards this amount, the Corporate Debtor has made payment aggregating to a sum of INR 6,69,18,062 in the following manner:

(i.) an amount of INR 3,52,89,228 paid (to the Applicant as well as to its sub-contractors directly on Applicant's request);

(ii.) an amount of INR 2,44,76.462 withheld as part of the Adjustment of Applicant's dues against purchase of metal scrap from Corporate Debtor in terms of the mutual consensus: and

(iii.) an amount of INR 71,52,372, adjustment to the payables on account of High Speed Diesel supplied to the Applicant as per work order.

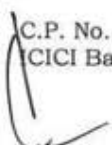
45 It Is further stated by the RP that so far only an amount of INR 2,44,76,462 has been adjusted as per mutual consensus, out of total dues of INR 3.97.83.375.55 (Indian Rupees Three Crores Ninety -Seven Lakhs Eight Three Thousand Three Hundred Seventy-Five and Fifty-Five Paise) under the Scrap Sale Agreement, the Applicant is still liable to make payment of an amount of 1,53,06,913 (Indian Rupees One Crore Fifty-Three Lakhs Six Thousand Nine Hundred and Thirteen Only).

46 Therefore, the Corporate Debtor does not have any outstanding amounts due and payable to the Applicant for the period during the CIRP, and in fact there is a receivable position. It is added that in view of the above, a total amount of INR 1,53,06,913.55 is due and pending to be received from the Applicant, after netting the during CIRP payables to with the receivables of the Corporate Debtor. I submit that as per the books of accounts of the Corporate Debtor, after due adjustments and set off, the Applicant is still liable to pay to the Corporate Debtor an amount of INR 1.53,06,913.55. Hence, it is evident that the present Application through which the Applicant seeks direction from this Hon'ble Tribunal for the admission of its claim is baseless and devoid of merit Further, any prayer that has been sought against the Resolution Professional has no basis in law, as the Resolution Plan voted for by the COC is already Sub judice before this Hon'ble Tribunal, which would ultimately decide the manner of payments.

47 After hearing submissions of both the parties this bench observes that the RP has given justification that the claim of the Corporate Debtor is higher in comparison to what SAARC has to recover form the RP during the CIRP period. It has been emphasized by the RP that the SHAARC has not paid its dues towards the purchase of scrap. That SHAARC has admitted its liability in its letter dated 11.01.2021 where they submitted that they shall pay Rs 25,00,000 per month. The scanned copy of the same is reproduced below



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**SHAARC PROJECTS LIMITED**

Regd. & Head Office : 309-C, 3rd Floor, Megh Malhar Complex, Sector-11, Gandhinagar - 382 011, Gujarat, INDIA.
204, 2nd Floor, Megh Malhar Complex, Sector-11, Gandhinagar - 382 011, Gujarat, INDIA.
Email : info@shaarc.co.in, splnagar@gmail.com
Phone : 079 - 232 48393,
Website : www.shaarc.co.in
CIN : U45201GJ2011PLC005822

SPL/GNR/ACS/2020-21/076
Date : 11.01.2021

To,
The Project Manager
Essar Power MP Limited,
Vill, Bhandora, PO- Karsualal,
Tal- Waidhan,
Dist Singrol,
Madhya Pradesh.

Subject : Payment of our dues for Ash Dyke work at EPMP, Mahan, M.P.

Dear Sir,

With reference to above subject, we wish to bring to your knowledge that we are working at Mahan site for Ash Dyke work.

We wish to bring to your kind attention that PRE IRP our receivable from EPMP was 2.76 Crores and at the same time we have to pay Rs. 3.97 crores to EPMP.

We request you to recover @ Rs. 25,00,000/- per month against the amount payable by us.

We request you to kindly confirm the same so that we can get our payment regularly & timely and continue to work simultaneously.

Hoping for your co-operation in this regard.

Thanking you.

For Shaarc Projects Limited



Authorized Signatory

48 Further, it is apprised by the RP that the dues under the Scrap Sale Agreement were agreed to be adjusted at the rate of INR 35,00,000 (approx) per month and thus were likely to be resold in a periodic manner, however since the SHAARC failed to make payment to sub contractor/workmen labor. The Corporate Debtor was burdened with unpaid claims. The copy of the mail dates 06.05.2021 and 14.05.2021 has been placed by the RP which depicts inability of the Shaarc to Pay the dues of Sub Contractor, Labor. The mails further depicts that the SHAARC had requested the Corporate Debtor to clear their dues. The scanned copy of the mail dated 14.05.2021 is reproduced below

From: M.K.Mishra [mailto:mkmishra@shaarc.co.in]

Sent: 14 May 2021 12:01

To: Singh, Lallan - EP MPL - Maintenance (HAZ)

Cc: Sinha, Ajay K. - EP MPL - Waidhan; Sanyal, Sukanta- EP MPL-Mechanical- Mahan; Singh, Rajesh -

EP MPL - Head - HR, IR, Admin, R&R & CSR - Mahan; Thite, Anand - EP MPL - Mahan; R MISHRA

Subject: Re: FW: Payment of local vender

Dear sir,

Further to the trailing mails and our discussion in this connection.

Please find enclosed revised list of PRW Contractors and Local workers of Mahan site who are chasing for their payments to us as well as to you too and are creating nuisance at Mahan site.

You are requested to kindly look into the same and arrange to make direct payment to them on our behalf out of the net amount payable to us.

Thanks & Regards,

M. K. Mishra

Shaarc Projects Ltd.

309-C, Third floor, Megh Malhar Commercial Complex,

49 That the RP has adjusted the amount of Rs 6,77,87,380 towards the work orders issued by the Corporate Debtor, which was further reduced to Rs 6,69,25,676 after adjusting TDS. That the RP in its reply has stated that it has adjusted RS. 6,69,18,062 in following manner

(i.) an amount of INR 3,52,89,228 paid (to the Applicant as well as to its sub-contractors directly on Applicant's request);

(ii.) an amount of INR 2,44,76,462 withheld as part of the Adjustment of Applicant's dues against purchase of metal scrap from Corporate Debtor in terms of the mutual consensus: and

(iii.) an amount of INR 71,52,372, adjustment to the payables on account of High Speed Diesel supplied to the Applicant as per work order.

50 It is further pleaded by RP that an amount of INR 2,44,76,462 has been adjusted as per mutual consensus, out of total dues of INR 3,97,83,375.55 (Indian Rupees Three Crores Ninety -Seven Lakhs Eight Three Thousand Three Hundred Seventy-Five and Fifty-Five Paise) under the Scrap Sale Agreement, SHAARC is still liable to make payment of an amount of Rs. 1,53,06,913.

51 Therefore, in light of the events which happened during the CIR Process between SAARC and the Corporate Debtor and while note of the dues paid by the Corporate Debtor on behalf of SHAARC and liability of SAARC under Scrap Sale Agreement, we find no illegality in the actions of the RP. **Accordingly we are of the considered view that the SHAARC has no valid claim arising out of the CIR Process which is required to be paid as a part of the CIRP Cost. Hence IA 3015 is devoid of any merit. Hence the same is dismissed.**

IA 2785 of 2021

52. Now it is necessary to examine other IAs which have challenged the Resolution Plan. That **IA 2785 of 2021** is filed by one more Operational Creditor i.e U.P Jal Vidyut Nagar Limited.

53. That the U.P Jal Vidyut Nagar Limited has sought the following reliefs-

(i) *Direct the Resolution Professional of the Corporate Debtor to admit the entire amount claimed by the Applicant i.e. an amount of INR 12,08,64,637 (Rupees Twelve Crore Eight Lac Sixty Four Thousand Six Hundred Thirty Seven Only), being the total outstanding amount payable till September 29, 2020 i.e, the date of commencement of CIRP;*

(ii) *Direct the Resolution Professional to revise and update the list of creditors uploaded on the website of the Corporate Debtor as per Form B submitted to the Respondent; and*

(iii) *Direct the Resolution Professional to admit the outstanding claim amount of Rs. 5,17,21,063 (Rupees Five Crore Seventeen Lakhs Twenty One Thousand Sixty Three Only) for the period of October 2020 to May 2021 and immediately release payments for the same.*

(iv) *Direct the Resolution Professional of the Corporate Debtor to pay month to month charges to the Applicant towards the drawl of water; and*

(v) *Pass any other or further order(s) as this Hon'ble Tribunal may deem fit and necessary in the facts and circumstances of the given case.*

54. That the necessary of going into the Prayer (i) and (ii) made by U.P Jal Vidyut Nagar Limited is not required since undisputedly the U.P Jal Vidyut Nagar Limited, is falling under the category of the Operational Creditor. That irrespective of the claim amount the Operational Creditor are awarded 'nil' value in the resolution plan.



55 That with respect to Prayer (iii) and (iv) the U.P Jal Vidyut Nagar Limited has raised its claim which as per it is arising during the CIRP Period.

56 That the RP in response to the same has stated that the Corporate Debtor was allocated 0.058 MAF per annum of water by Madhya Pradesh Water Resource Department ("MPWRD") from Rihand Reservoir on 27 July 2006, against Government of Madhya Pradesh's share of water in Rihand reservoir which is under the control of the Applicant. Therefore, in order to permit the Corporate Debtor to draw water from the reservoir by building an intake pump house in Uttar Pradesh, an Agreement dated 23 October 2009 was entered into by and between the Corporate Debtor and the U.P Jal Vidyut Nagar Limited.

57 It is added that UPJVNL started raising invoices for the water drawn by the Corporate Debtor, purportedly exercising its rights under the 23 October Agreement. Additionally, MPWRD also started levying charges on the water drawn from Rihand Reservoir, under the terms of the Agreement For Supply of Water, To Industrial /Power Plant dated 16 February 2010 on the ground that the water drawn is from the share of the state of Madhya Pradesh

58 It is further stated by the RP that On 20 June 2013, the Corporate Debtor addressed a letter to the Applicant intimating that both the Applicant and the MPWRD have been raising invoices on the Corporate Debtor for the



same quantum of water drawn from the Rihand reservoir. Accordingly, the Corporate Debtor requested the UPJVNL to cancel the invoices raised on the Corporate Debtor in relation to the water drawn from the Rihand reservoir. Additionally, on 21 September 2013, the Corporate Debtor addressed a letter to the Applicant intimating that the Corporate Debtor has raised the same issue with MPWRD.

59 The Corporate Debtor filed Writ Petition No. 1724 of 2015 ("First Writ Petition") before the Hon'ble Madhya Pradesh High Court on 2 February 2015 challenging the UPJVNL right to levy water charges since the water is allocated from the share of the State of Madhya Pradesh and the charge for the same is also levied by the Government of Madhya Pradesh. The Hon'ble Madhya Pradesh High Court vide an order dated 30 March 2015 restrained the Applicant from taking any coercive steps pending the final hearing of the said Writ Petition. Subsequently, on 27 February 2020, the First Writ Petition was dismissed for lack of jurisdiction. Thereafter, the Corporate Debtor filed Writ Petition being WP No. 12331/2020 on 22 July 2020 before the Hon'ble High Court of Allahabad ("Second Writ Petition") challenging the Applicant's right to levy charges for supplying water. The Second Writ Petition is currently pending before the Hon'ble Allahabad High Court and has not been taken up for hearing.

60 With regard to the payment of month to month charge sought by UPJVNL for drawing of water it is stated by the Applicant that The Corporate Debtor has been drawing water from the state of Madhya Pradesh's share of the upstream of Rihand lake and has accordingly been making payments to



MPWRD since 2013 towards water usage charges, including during the CIRP period.

61 It is further stated by the RP that . It is an expressly admitted position of the Applicant that even after the expiry of the term of the 23 October Agreement, the arrangement by which the Corporate Debtor has been drawing water from the state of Madhya Pradesh's share of water from the Rihand reservoir and by utilising the pump house located under the control of the Applicant in Uttar Pradesh is continuing. In this regard, the Corporate Debtor has been duly making payments towards the lease rentals of the pump house to the Applicant. In fact, the claim of the Applicant in the present IA is in itself limited only to drawl of water.

62 In respect of the claim of the UPJVNL arising during the CIRP period it is stated by the RP that the In the Second Writ Petition, the Corporate Debtor has inter-alia challenged the right of the Applicant to levy and recover, charges for drawl of water and, costs for loss of power generation from the Corporate Debtor under the 23 October Agreement. Therefore, the question as to whether the charges for drawl of water are to be paid to the Applicant or to MPWRD is also pending consideration of the Hon'ble Allahabad High Court.

63 Per Contra the UPJVNL in response to the contention raised by the RP that it had paid the charges to the Madhya Pradesh Government, therefore it is not required to pay charges to UPJVNL has stated charges payable to it



are over and other than what was required to be paid to UPJVNL. That reliance has been placed on Clause 6 and Clause 8 of the Agreement which are reproduced overleaf -

"6. MAXIMUM DEMAND AND UTILIZATION OF WATER

- a. Pursuant to the permission granted by state of Madhya Pradesh vide its letter no.4887/13/2006 dated 27.07.2006, maximum quantity of water to be drawn from the upstream of the Lake by the Consumer is limited to 0.058 MAF/annum (i.e. 15714.59904 million imperial Gallon per annum) ("Entitlement").
In case of non-observance of this clause by the Consumer, the Consumer as and when called upon by the notice from the Supplier, forthwith take all steps to reduce the intake to the above-mentioned quantity. The quantity of water drawn in excess of the above quantity shall be paid for by the Consumer with a surcharge of 50% calculated on the rate provided in clause 8 of this agreement. The right of the Supplier to disconnect the supply of water will not, however, in any case extinguish.
- b. The Consumer shall utilize the water obtained under this agreement solely for the purpose of running its works and its appurtenant works and for distribution in their colony to their people employed or engaged on its works and shall neither utilize the same for any



other purpose nor sell the same to any party, whatsoever, without the prior permission of the supplier. Any breach of these stipulations shall automatically entitle the Supplier to determine the agreement and to disconnect the supply and forfeit the security deposited by the Consumer.

“8. RATES

- a. The Consumer shall pay to the Supplier for the permission granted to it for pumping water from upstream of the Lake for the purposes mentioned in Clause 6 (b) at the rate specified in the O.M. No.186/JNL/CMD/03-(WC)/2001 dated February 3, 2001 issued by Deputy General Manager (HQ) based on the minutes of the meeting chaired by Hon'ble Minister of Energy, U.P. and participated by Secretary (Energy), Govt. of U.P., Chairman UPSEB and CMD, NTPC at Lucknow on April 03, 1999 to formulate "Principles for consumptive power charges for future" (The rate being 189.256198 Gallons per rupee for the period January 01, 2009 to December 31, 2013 to be revised upwards by 10% after every five years.)
- b. *No discharge will be made by the consumer in the Rihand reservoir. Consumer will have to follow pollution norms strictly."*

64 That in our view the dispute with regard to the charges levied by UPJVNL existed between the Corporate Debtor, UPJVNL and State of Madhya Pradesh, much prior to the initiation of CIRP. Further the litigation went to the Hon'ble High Court of Madhya Pradesh, by filing Writ Petition, which got dismissed on the jurisdictional ground. Further the Writ Petition was filed before the Hon'ble Allahabad High before the commencement of the CIRP.



65 Here it is not the case where no payment, whatsoever made by the Corporate Debtor during the CIR Process for using the water, as the payment has been made to the Madhya Pradesh Government. Since the right of UPJVNL to levy charges for supplying water to the Corporate Debtor is already under challenge, prior to the initiation of the CIRP before the Hon'ble Allahabad High Court, therefore we are of the considered view that this Adjudicating Authority has no jurisdiction to adjudicate the dispute or any claim arising out of such transaction which is subject matter of Writ Petition before the Hon'ble Allahabad High Court.

66 That Accordingly we are of the view that Prayer (iii) and (iv) made in IA 2785 of 2021 requires no consideration. Hence IA 2785 of 2021 is dismissed.

67 That the UPJVNL has further objected towards the following concession sought in the Resolution Plan

"(iii) The Resolution Applicant considers the uninterrupted supply of water and use of land in terms of the Articles of Arrangement signed with Uttar Pradesh Jal Vidyut Nigam Limited ("UPJVNL") on December 23, 2009 ("UPJVNL Agreement") for permission for use of land and water drawl, to be critical to preserve the value of the Corporate Debtor and to maintain its status as a going concern. Accordingly, the UPJVNL Agreement shall renew for a period of 12 months from the Effective Date in terms of the Resolution Plan against the Corporate Debtor and UPJVNL."

68 It is stated by UPJVNL that a new contract or terms and conditions of the contract cannot be created by this Adjudicating Authority between the Corporate Debtor and the Applicant. That the UPJVNL placed reliance on the Judgement of Hon'ble Supreme Court in Jaypee Kensington Boulevard Apartments Welfare Association & Ors V NBCC (India) Ltd. Civil Appeal no. 3395 of 2020 to support its contentions.



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69 On the other hand the Resolution Professional has stated in order to revive the Corporate Debtor and to keep the status of Corporate Debtor as going concern it is necessary to incorporate such clause.

70 After hearing submissions of the RP and UPJVNL on the concession sought in Section 6 of the Resolution Plan this bench observes that, it has been admitted by the UPJVNL in its written submissions that prior to initiation of CIRP, even after the date of expiry of the agreement on 22.10.2019. The UPJVNL has allowed the Corporate Debtor to continue to draw water, even when there was no agreement existed between the parties. Further the UPJVNL had allowed the Corporate Debtor during the moratorium.

71 That the revival of the Company depends upon this permission, if such relief is not granted then revival of the Corporate Debtor could be under threat which could also lead to Liquidation of the Corporate Debtor. That the Hon'ble Supreme Court in **Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. in Writ Petition (Civil) No. 99 of 2018** by its judgment dated 25th January, 2019, has observed that

"11.What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern."

72 Since the permission of UPJVNL to draw water and use its land pays a vital role in the revival of the Corporate Debtor, therefore, we

are of the view that in order to revive the Corporate Debtor and to keep it as going concern, it is necessary that UPJVNL shall allow the Corporate Debtor to draw the water and use its land, in terms of the arrangement followed during the moratorium period for a period of 12 Months or till the time any decision is taken by Hon'ble Allahabad High Court, whichever is earlier.

IA 4367 of 2021

73 That one more IA 4367 has been filed by Trikaya Township Pvt. Ltd as an objection to the concessions sought in Section 6 of the Resolution Plan.

74 That the by Trikaya Township Pvt. Ltd has presented its objection towards the proposal to unilaterally terminate and extinguish the 20 years lease deed entered between Trikaya Township Pvt. Ltd and the Corporate Debtor.

75 It is stated by Trikaya Township Pvt. Ltd (hereinafter referred as TTPL) that the lease deed is valid and subsisting till 31.12.2031

76 it is further submitted by TTPL there is no provision of unilateral termination of Contract under IBC 2016. Therefore the Resolution plan contravenes Section 30(2)(e) of IBC, 2016.

77 It is further stated by the TTPL that .the statement made in the Resolution Plan to the extent that the lease deed entered between the Applicant Trikaya and Corporate Debtor already stood terminated is misleading, false, and bereft of truth. It is submitted that as per letter dt. 29.12.2020, TTPL merely sought payment of the lease rent from the RP of the Corporate Debtor. In the said letter, TTPL had merely stated that in

absence of the payment of rent by the Corporate Debtor, it will have the right to terminate the said lease deed however the termination was never effected. It is submitted that even till date the Corporate Debtor has been making payment of the outstanding monthly rent in terms of the lease deed and the Corporate Debtor and its employees continues to occupy the leased property.

78 That the Resolution Professional filed to reply to the objections raised by TTPL. It is stated by the RP that the TTPL is related party to the Corporate Debtor.

79 It is further stated by the RP that The TTPL is seeking to rely upon purported Lease Deed dated. 16.5.2011, Supplementary Lease. Deed dated 10.2.2012 and Supplementary Lease Deed dated 1.6.2016 (together referred to as the "Lease Deeds") to contend that the said Lease Deeds cannot be terminated under the Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP"). I state that all the aforesaid Lease Deeds are stated to have been executed in the State of Maharashtra in respect of the properties situated in the State of Madhya Pradesh. It is stated that no adequate stamp duty is paid on the purported Lease Deeds. Thus, under Section 35 of the Indian Stamp Act, 1899, as applicable in the State of Madhya Pradesh, the aforesaid Lease Deeds are inadmissible in evidence and are liable to be impounded by this Tribunal.

80 It is further stated by the RP that, any lease of immovable property for any term exceeding one year has to be compulsorily registered under the

provisions of Section 107 of the Transfer of Property Act, 1882 read with Section 17 of the Registration Act, 1908. As the purported Lease Deeds are not registered, it is submitted that the said Lease Deeds cannot be received in evidence under Section 49 of the Registration Act, 1908. Hence, it is submitted that, no valid lease has been created in favour of the Corporate Debtor and that the Corporate Debtor is not a lessee by virtue of the purported Lease Deeds. It is further submit that this Tribunal is disabled from using the purported Lease Deeds as evidence. It is further submitted that since the purported Lease Deeds does not and cannot be termed or seen as a valid and subsisting lease in the eye of law, therefore, any attempt to enforce the same cannot hold any ground.

81 It is further stated by the RP that Even otherwise, the purported arrangement between the Applicant and the Corporate Debtor is one sided, exorbitant, not in ordinary course of business and has been made to enable the Applicant to have a windfall gain at the expense of the other stakeholders of the Corporate Debtor. It is stated that as per the Annual Reports of the Applicant available on the portal of the Ministry of Corporate Affairs, the gross block of the township asset is about Rs. 110 Crores. Under the purported arrangement between the Applicant and the Corporate Debtor, the Applicant, till Financial Year 2019-20, has already received more than Rs. 119 Crores from the Corporate Debtor. From the aforesaid, it is evident that the Applicant, who is a related party, has made windfall gain from the purported arrangement.

82 That the contents of the concession to which TTPL is objecting is reproduced below-

"On and from the NCLT Approval Date, by order of the NCLT sanctioning this Resolution Plan, the Township Lease Agreement dated May 16, 2011 entered with Trikaya Township Limited shall be deemed to be terminated, with such termination being effective from NCLT Approval Date. Any claims or liabilities arising as a consequence of such termination shall be deemed to be relinquished, cancelled and written-off on the NCLT Approval Date".

83 After hearing objections of TTPL and by perusing the reply of the RP this bench observes in regard to the concession sought by the Applicant in Section 6.1 (iv) of the Resolution Plan seeking termination of lease deed dated 16.5.2011. executed between the TTPL and the Corporate Debtor was for 20 years. It is observed that the Lease Deed annexed with the Application is an unregistered Deed. That leases of immovable property from year to year, or for any term exceeding one year requires compulsory registration to be held as valid. In our considered view the lease Deed having tenure of 20 years is in contravention of Section 107 of Transfer of Property Act 1882 and Section 17 of the Registration Act, 1908.

84 The Deemed termination which has been sought as a concession in Resolution Plan has to be considered positively. Infact, its within the domain of civil law, the aspects of the termination can be decided, if at all TTPL has any right.

85 Hence we dismiss the objections made vide IA 4367 of 2021.

ORDER

86 In the absence of any tenable objection made against the Resolution and keeping note that the Resolution Plan is passed by 100% votes of CoC. Therefore, this bench finds no impediment in allowing the Resolution Plan.

87 The order of the moratorium passed by this Adjudicating Authority under Section 14 of the IBC,2016 shall cease to have effect from the date of passing of this Order.

88 The Resolution Professional shall forward all the records relating to the conduct of the CIRP and the Resolution Plan to the IBBI for its record and database.

89. The approved Resolution Plans shall become effective from the date of passing of this Order.

90. The monitoring Committee shall be setup and shall take necessary steps for the implementation of the plan.

91. That in regard to the concessions sought in Section 6 of the Resolution Plan it is directed that there shall be uninterrupted supply of water and use of land in terms of Arrangement which was followed during the period of moratorium, for a period of 12 months or till the time any decision is taken by Hon'ble Allahabad High Court, whichever is earlier.



92 That all concessions asked in Section 6 of the Resolution Plan as mentioned in Para 16 of this order shall also be granted to the Corporate Debtor.

93. The Resolution Professional shall forthwith send a copy of this Order to the CoC and the Resolution Applicant.

94. IA-2829 of 2021 is **allowed** accordingly.



BHASKARA PANTULA MOHAN

ACTG. PRESIDENT



HEMANT KUMAR SARANGI

MEMBER (TECHNICAL)