

SL.No.11

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

PHYSICAL HEARING

**CORAM: JUSTICE TELAPROLU RAJANI – HON’BLE MEMBER (J)
CORAM: SHRI CHARAN SINGH - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 01.05.2023 AT 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/503/2023 in Company Petition IB/28/2022
NAME OF THE COMPANY	IVRCL Chegapalli Tollways Ltd
NAME OF THE PETITIONER(S)	Assets Care Reconstruction Enterprises Ltd
NAME OF THE RESPONDENT(S)	IVRCL Chegapalli Tollways Ltd
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/503/2023

Orders pronounced, vide separate orders.

**Sd/-
MEMBER (T)**

**Sd/-
MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II**

**I.A. No.503 OF 2023
in
CP(IB) NO. 28/7/HDB/2022**

*[U/s. 31(1) of the I&B Code, 2016 r/w Regulation 39(4) of the IBBI (IRPCP)
Regulations, 2016]*

**In the matter of:
M/s.IVRCL Chengapalli Tollways Limited**

Mr. Sutanu Sinha
Resolution Professional for
IVRCL Chengapalli Tollways Limited
4th Floor, Duckback, House 41
Shakespeare Sarani
KOLKATA – 700 017, West Bengal, India.

.... Applicant /
Resolution Professional

Date of Order: 01.05.2023

Coram:

**Hon'ble Justice Smt. Telaprolu Rajani, Member, Judicial
Hon'ble Sri Charan Singh, Member, Technical**

Parties / Counsels Present:

For the Applicant : Mr. P. Mohith Reddy, Mr. Saketh Movva
Ms. Hamsini D, Advocates

Heard on: 01.05.2023

[PER : BENCH]

ORDER

1. This Application is filed by the Resolution Professional of M/s.IVRCL Chengapalli Tollways Limited /‘Corporate Debtor’ (CD) under Section 31(1) of the Insolvency & Bankruptcy Code, 2016, r/w regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, seeking approval of the Resolution Plan submitted by SPCP Luxemburg Strategies S.A.R.L., the ‘Resolution Applicant’ as duly approved by the Committee of Creditors with 100% voting share.
2. The Company Petition CP(IB) No. 28/7/HDB/2022 filed by M/s. Assets Care & Reconstruction Enterprise Limited u/s. 7 of IBC, 2016 was admitted by the Adjudicating Authority, vide Order dated 20.04.2022, copy of which was made available on 25.04.2022 and commencement of CIRP was ordered against the Corporate Debtor by appointing Mr. Sutanu Sinha as the Interim Resolution Professional (IRP). Later, in the 1st COC Meeting held on 25.05.2022, the IRP was confirmed as Resolution Professional, for short ‘RP’.
3. On receipt of claims from the Creditors pursuant to public announcement dated 26.04.2022, the RP constituted the Committee of Creditors, for short ‘COC’ comprising of sole Financial Creditor of the Corporate Debtor as follows:

S.No.	Name of the Creditor	Claim Admitted	Voting %
1.	M/s. Assets Care & Reconstruction Enterprise Limited	Secured	100%

4. It is averred that the RP conducted a total of Thirteen (13) Meetings of the COC during the CIRP. The Applicant issued Form-G on 09.07.2022 and the last date for submission of EOI was 08.08.2022. In response, the Applicant received Expression of Interests (EOIs) from the following Prospective Resolution Applicants:

- i. Adani Road Transport Ltd.
- ii. Highways Infrastructure Trust
- iii. Kotak Investment Advisors Ltd.
- iv. SPCP Luxembourg Strategires S.A.R.L. (SPCP)
- v. Global Infrastructure Partners India Pvt. Ltd.
- vi. Cube Highways and Infrastructure V. Pte. Ltd.

5. The RP requested for Resolution Plan, Evaluation Matrix and Information Memorandum from all the Prospective Resolution Applicants, by fixing the last date for submission of the Resolution Plan as 06.01.2023.

6. During the 6th and 7th Meetings of COC held on 13.12.2022 and 26.12.2022 respectively, the COC discussed the multiple requests of the PRAs, seeking extension of last date for

submission of resolution plan for the CD. After due deliberations, the COC granted 30 days extension for submitting the resolution plans i.e. till 05.02.2023.

7. After issuance and acceptance of the RFRP, Evaluation Matrix and the IM, as on the last date of submission of resolution plans i.e. on 22.02.2023, Resolution Plans were received from the following Prospective Resolution Applicants.
 - i. SPCP Luxembourg Strategires S.A.R.L. (SPCP)
 - ii. Highways Infrastructure Trust
 - iii. Cube Highways and Infrastructure V. Pte. Ltd.
8. On 04.03.2023, pursuant to the requests received from PRAs, the Applicant, granted an extension of 1 more day to the PRA by his email dated 4 March 2023 and the PRAs were allowed to submit their respective final revised resolution plans by 06.03.2023.
9. Thereafter, on 06.03.2023, the Applicant received final revised resolution plans from all 3 PRAs, which, the Applicant by his email of 07.03.2023, circulated to the CoC for their consideration.

10. During the 12th CoC Meeting held on 02.03.2023, the RP/CoC conducted negotiations / deliberations with the representative of Resolution Applicants and requested to enhance the Resolution Plan amount, to which the Resolution Applicants responded favourably. On 06.03.2023, the Applicant received final revised Resolution Plans.
11. The Applicant had filed an application IA 38/2023 seeking extension of 60 days w.e.f. 20.01.2023, which was admitted by this Adjudicating Authority, vide order dated 17.01.2023.
12. During the 13th CoC Meeting, M/s Samarth Valuation Advisory LLP presented its Report on evaluation of resolution plans based on evaluation matrix (as per RFRP as approved by CoC) and working in relation to scoring of each resolution plan. Further, the CoC in the 13th COC Meeting suggested that all the three revised resolution plans be put for e-voting and that the CoC would vote on the plans on 08.03.2023 as per its commercial wisdom and taking into account final report of M/s Samarth Valuation Advisors LLP.
13. In its 13th COC Meeting, the CoC noted that till the Hon'ble Adjudicating Authority decides and approves the Resolution Plan (as approved by CoC), the business of the Corporate Debtor shall be run on a going concern basis by the Applicant.

14. The RP appointed two registered valuers, namely GAA Advisory LLP and Adroit Appraisers & Research Private Limited, to determine the Fair Value and Liquidation Value of the CD. However, in the 5th Meeting of the CoC held on 02.12.2022, the Applicant informed the CoC that upon a review of the two valuation reports received, it was seen that there existed a significant difference in arriving at the Fair Value and the Liquidation Value. In view of the same, the Applicant informed the CoC that a third valuer registered with the IBBI, namely Resolute Valuers Consultants Private Limited was appointed and the CoC ratified such appointment.

15. The CoC evaluated the Resolution Plan submitted by the Prospective Resolution Applicant as per the Evaluation Matrix and Section 29A of the Code. After evaluating in terms of both qualitative and quantitative criteria and aggregate, the revised resolution plans submitted by the Resolution Applicants, were put to e-voting on 08.03.2023. The Resolution Plan submitted by SPCP Luxemburg Strategies S.A.R.L. (Resolution Applicant) was considered and approved by the CoC with 100% voting in favour of it under Section 30(4) of IBC. The Applicant further submits that all the requirements envisaged under the Code and Rules/Regulations made thereunder have been met.

A copy of the Resolution Plan, along with its annexures, is filed as **Annexure – R** at page nos.384 to 644 of the application.

16. On 08.03.2023, the RP issued 'Letter of Intent' (LoI) to the SRA and advised to furnish an unconditional and irrevocable Performance Bank Guarantee/security amounting to Rs.30,00,00,000/- and in turn, the Successful Resolution Applicant furnished a Performance Bank Guarantee bearing No. 0006NDCG00368523, dated 15.03.2023 with acceptance of LOI, which is filed **as Annexure A-19 at page nos.657 to 666 of the application.**

17. **Contour of the Resolution Plan:**

- i. The Resolution Plan is submitted by SPCP Luxembourg Strategies S.A.R.L., a company duly incorporated on 28.12.2018 and registered under the laws of Luxembourg and having its registered office at 11-13 Boulevard de la Foire, Luxembourg, L-1528, pursuant to the Code. The Successful Resolution Applicant's investment adviser is Silver Point Capital which focuses on global investments where there are turn around opportunities. Silver Point Capital was founded in 2002. As on 01.02.2023, Silver Point Capital manages USD 18,000,000,000 in committed and invested capital. Silver Point Capital, is familiar with the Indian market and has prior experience in investing in India

such as investment in Patna Highway Projects Limited, Bhushan Power and Steel Limited, Asian Color Coated Ispat Limited and Patna Bakhtiyarpur Tollway Limited. The Successful Resolution Applicant is a principal vehicle used by its investment manager, Silver Point Capital, to make number of debt investments in India (such as investment in SEW Krishnagar Baharampore Highways Limited).

- ii. As on 30.11.2021, the Successful Resolution Applicant has assets under management (AUM) of €1,413,176,186, equivalent to Rs.12,488,85,97,532. The Successful Resolution Applicant, along with support from Silver Point Capital, has sufficient funds readily available to be deployed in order to meet its financial requirement under the Plan. The Silver Point Group has a track record of investing in infrastructure and road assets with investments amounting to approximately USD 147,000,000 over the last 10 years. Further, investments in India have totalled approximately USD 312,000,000 since first investing in the region in 2018. The Successful Resolution Applicant has an expertise in distressed and special situation opportunities and has managed / turned around various companies. Schedule 8 of the Resolution Plan of the SRA details out some of the case studies of turning around various companies.

- iii. The Successful Resolution Applicant and its affiliates have a presence in the road and infrastructure sector of India, with successful investments in projects like Patna Highway Projects Limited, Sew Krishnagar Baharampore Highways Limited and Patna Bakhtiyarpur Tollway Limited. The acquisition of the Corporate Debtor is to a sophisticated owner with significant resources and experience in conducting turnarounds in India and globally and who proposes to build on the positive turnaround initiated by the Resolution Professional and manage the asset in a manner that avoids vitiation of any contractual obligations.
- iv. The Successful Resolution Applicant and its Affiliates have the financial capability and extensive experience in turning around distressed companies and has successfully invested and managed companies across the globe as detailed in Clauses 5 and 6 of Part I of the Resolution Plan. Given the action plan of the Successful Resolution Applicant along with the financial capabilities of the Resolution Applicant, it is seen that the Resolution Plan is feasible and viable.
- v. The CoC is the sole Financial Creditor i.e. M/s. Assets Care & Reconstruction Enterprise Limited, which is having 100% voting share, voted in favour of the Resolution Applicant.

- v. The Successful Resolution Applicant proposes to distribute the Resolution Plan amount to different stakeholders in the following manner:

(Amount in Rs. lakhs)

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	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	NIL	NIL	NIL	NIL
		(ii) who voted in favour of the resolution plan	1,060,36,03,407	1058,49,99,727	1058,49,99,727 (in terms of Clause 3 of Paragraph B of Part III of the Resolution Plan)	100%

		Total[(a) + (b)]	1,060,36,03,407	1058,49,99,727	1058,49,99,727	100%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NIL	NIL	NIL
		(b) Other than (a) above:	NIL	NIL	NIL	NIL
		(i) who did not vote in favour of the resolution Plan	NIL	NIL	NIL	NIL
		(ii) who voted in favour of the resolution plan	NIL	NIL	NIL	NIL
		Total[(a) + (b)]	NIL	NIL	NIL	NIL
3	Operational Creditors	(a) Related Party of Corporate Debtor	7,88,62,556	5,84,31,534	5,84,31,534	100%
		(b) Other than (a) above:				
		(i) Government- Income Tax Department, Hyderabad	6,03,040	1,85,100	1,85,100	100%
		(ii) Workmen	NIL	NIL	NIL	NIL
		(iii) Employees	NIL	NIL	NIL	NIL

		(iv) Operational creditors <i>(Note- The Plan at Clause 5.1 at page no. 32, provides that in case any new and additional claims and entitlements arise until the date of the Order of the Hon'ble Adjudicating Authority approving the Plan, then such claims and entitlements shall be settled in full from the Contingency Fund of INR 10 crores.)</i>	60,48,466	59,66,902	59,66,902 (in terms of Clause 5 of Paragraph B of Part III of the Resolution Plan)	100%
		Total[(a) + (b)]	8,55,14,062	6,45,83,536	6,45,83,536	100%
4	Other debts and dues	(i) NHAI unpaid due premium and NHAI deferred premium (claim filed under Form F) (ii)NHAI Operational Dues (claim filed under Form F)	4,45,01,80,212	4,00,02,29,332.51	NHAI's Unpaid Due Premium & Deferred Premium to be paid in full in the manner prescribed in Schedule 3 (Provision for	100% 100%

					NHAI Premiu m in Future Years)	
					NHAI Other Dues: INR 12,46,17 ,003	
Grand Total			1513,92,9 7,681	14,64,98, 12,595.51	14,64,98 ,12,595. 51	100%

*If there are sub-categories in a category, please add rows for each sub-category.

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

18. The Applicant confirmed that the Successful Resolution Plan is in compliance with the provisions of Section 30 (2). **A copy of the Resolution Plan along with its annexures is filed as Annexure – R at page nos. 384 to 644 of the application.**

19. **Compliance of mandatory contents of Resolution Plan under the Code and CIRP Regulations:-**

The Applicant has conducted a thorough compliance check of the Resolution Plan in terms of the Code as well as Regulations 38 & 39 of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016, for short 'Regulation and has submitted Form-H under Regulation 39 (4). A copy of Form-H is filed at page nos. 669 to 688 of the application. It is submitted that Resolution

Applicant has filed Certificate of compliance under Section 29A and 30 of the Code confirming that they are eligible to submit the plan under Section 29A of the Code and that the contents of the said Certificate are in order. The fair value and Liquidation value as submitted in Form-H are Rs.611.75 crores and Rs.471.23 crores respectively.

20. We heard Mr.Mohit Reddy, Learned Counsel for RP. He submits that the Resolution Plan meets the requirement of Section 30 (2) and Regulations 38 and 39 of the Code, as under:-

The Resolution Plan proposes to repay all stakeholders (as provided for under the Plan) in full, including secured financial creditors. The plan value proposed by the Successful Resolution Applicant is above the average fair value of the Corporate Debtor. Thus, the creditors stand to gain sufficiently more than the said values by approval of SPCP's Plan.

i. CIRP Costs

The CIRP Costs are proposed be paid in priority to any other creditors of the Corporate Debtor in accordance with the Code.

ii. Secured Financial Creditors

The Resolution Plan of the Successful Resolution Applicant proposes to pay the secured financial creditors, in compliance of the Code and the CIRP Regulations thereunder, after payment of CIRP Costs, payment to Operational Creditors (including Workmen, Employees, gratuity, Employee State Insurance Corporation, Employee Provident Fund and statutory authorities and Related Party Operational Creditor) and payment to Dissenting Financial Creditors (if any).

The Plan proposes to pay the secured financial creditors by combination of ways that include issuance of compulsory convertible debentures (an amount of up to INR 5,00,00,000) (**CCDs**), equity in the Corporate Debtor, the proceeds of New Equity Shares (as defined in the Plan) and/or the CCDs issued to the Successful Resolution Applicant and Excess Cash (less deductibles as mentioned in Clause 3.1.2 of Paragraph B of Part III) and reclassification into Reconstituted Debt [*Refer Clause 4 of Paragraph (A) of Schedule 2 (Implementation Provisions)*]. The secured financial creditors are proposed to be repaid by way of issuance of (an amount of up to Rs.5,00,00,000) CCDs of the Corporate Debtor. The aggregate number of CCDs issued shall be such that upon their conversion, the Secured Financial Creditors would hold up to 25% of the New Equity Share capital of the Corporate Debtor on a Fully Diluted Basis, in accordance with

Paragraph (A) of Schedule 2 (Implementation Provisions) of the Plan.

iii. Unsecured Financial Creditors – No unsecured financial creditors in the present CIRP

The Plan provides that the Unsecured Financial Creditors shall not be paid any amount, whether admitted or whose claim arises or is crystallized or judicially determined in each such case on the date of the Plan or later, since making payment to any such person may not serve the best interests of the other stakeholders. In any event, there are no unsecured financial creditors in the present CIRP.

iv. Dissenting Financial Creditors – No dissenting financial creditors in the present CIRP

The Plan provides that if there are any Dissenting Financial Creditors, then, in accordance with Section 30(2)(b) of the Code and Regulation 38(1) of the CIRP Regulations, the Liquidation Value attributable to the Dissenting Financial Creditors will be paid in priority to the assenting Financial Creditors by the Resolution Applicant through the Excess Cash (as defined in the Plan).

v. Operational creditors – 100 % payment

Operational creditors are proposed to be repaid in full on the Payment Date [i.e., 60 days from Effective Date (i.e., 2 business days after completion of actions prior to

implementation of plan as specified in Clause 2.1 of Paragraph B of Schedule 2)] from the proceeds of Excess Cash (as defined in the Plan). Payment Date and Effective Date may be varied as decided by the Monitoring Committee and Successful Resolution Applicant. The Plan further provides that if any new and additional claims and entitlements arise until the order of this Hon'ble Adjudicating Authority approving the Plan, from Operational Creditors then such claims and entitlements shall stand extinguished be settled in full, from the Contingency Fund (as described hereunder). Provided, if the Contingency Fund is insufficient to settle such claims in full, then payment shall be made to the Operational Creditors on *pro rata* basis, in accordance with their respective verified amounts (as verified by the Applicant) out of the Contingency Fund, subject to and in accordance with the Payment Principles provided for under the Plan.

Claims of related party operational creditors are also proposed to be paid in full on the Payment Date from the proceeds of the New Equity Shares held by the Successful Resolution Applicant/ New CCDs issued to the Resolution Applicant, and if insufficient then from Excess Cash as provided in the Plan.

vi. NHAI Dues

NHAI Other Dues and Unpaid Due Premium (as defined in the Plan) shall be paid by the Successful Resolution Applicant out of the Excess Cash to the NHAI on the Payment Date as upfront consideration towards the NHAI. The deferred premium as on 1 April 2017, payable to NHAI, shall be paid in terms of the Concession Agreement between the Corporate Debtor and NHAI and as confirmed by NHAI under the correspondence exchanged with the Corporate Debtor. The regular future premia shall be serviced in full as per the escrow waterfall provided under the Escrow Agreement dated 24 November 2010 between the Corporate Debtor and IDBI Bank Ltd.

vii. Income Tax Department, Hyderabad

The claim of the Income Tax Department, Hyderabad is proposed to be paid in full on the Payment Date from the proceeds of Excess Cash as provided for under the Plan.

viii. Other Statutory Authorities

The Plan provides that since the Successful Resolution Applicant understands that there are no other outstanding statutory dues as on date, no payment towards statutory authority dues is required or provided under the Plan. The Plan further provides that if any claims and entitlements arise until the order of this Hon'ble Adjudicating Authority approving the Resolution

Plan, from Statutory Authorities then such claims and entitlements shall be settled in full, from the Contingency Fund, provided that, if the Contingency Fund is insufficient to settle such Claims in full, then payment shall be made to the Statutory Authorities on a *pro rata* basis, subject to and in accordance with the Payment Principles under the Plan.

ix. The Plan further provides that if the Resolution Professional, the Hon'ble Adjudicating Authority, any statute or any other Applicable Law determine that the statutory authority dues should be accorded different treatment than what is provided under the Resolution Plan, then such differential amount shall be paid upfront from the Contingency Fund.

ix. Existing Shareholders

The Existing Securityholders shall not be paid any amount under the Plan.

x. Workmen dues and Employees dues

As on date there are no outstanding workmen and employees' dues and therefore no payment towards workmen/employees' dues is required or provided under the Resolution Plan. However, the Plan provides that in case any claims and entitlements arise until the date of

Order of the Hon'ble Adjudicating Authority approving the Resolution Plan, from workmen dues/employees, then such claims and entitlements shall be settled in full, from the Contingency Fund, provided that, if the Contingency Fund is insufficient to settle such claims in full, then payment shall be made to the workmen on *pro rata* basis subject to and in accordance with the Payment Principles as provided for in the Plan.

xi. Employee Provident Fund (EPF), Employees State Insurance Corporation (ESIC) and Gratuity

There are no outstanding Claims arising towards EPF, ESIC and gratuity. Therefore, no payment towards these dues is required or provided under the Resolution Plan. However, if any claims and entitlements arise until the date of Order of the Hon'ble Adjudicating Authority approving the Resolution Plan in relation to EPF, ESIC and gratuity, then such claims shall each be paid an amount not exceeding 100% of their respective verified amounts, as verified and admitted by the Applicant, if any, and such claims shall be paid from the Contingency Fund and to the extent the Contingency Fund is insufficient, such Claims shall be paid from the Excess Cash.

- xii. The Successful Resolution Applicant will subscribe to 100% of the paid-up share capital of the Corporate Debtor under the Foreign Direct Investment (**FDI**) route by way of a combination of subscription of New Equity Share (as defined under the Resolution Plan) and/or New Compulsorily Convertible Debentures of the Corporate Debtor (**New CCDs**) aggregating to INR 15,00,00,000/-.
- xiii. Immediately upon issuance of the New Equity Shares which are part of the allocation and following the existing security holders cancellation, the Successful Resolution Applicant will hold 100% of the issued New Equity Share capital of the Corporate Debtor, which will subsequently be reduced to 75% of the New Equity Share capital on Fully Diluted Basis in the manner specified in Clause 3.1.1 of Paragraph (B) of Part III and Paragraph (A) of Schedule 2 (Implementation Provisions) of the Resolution Plan, provided that the price and conversion formulae of the New Equity Share and New CCDs respectively shall be in compliance with The Foreign Exchange Management Act, 1999.
- xiv. Contingency Fund
The Resolution Plan also provides for a contingency fund of Rs.10,00,00,000/- which is proposed to be set aside to cover any contingent costs and claims that are not known to the Successful Resolution Applicant at the time of

submission of the Resolution Plan. Under the Plan, this amount shall be payable as and when contingent liabilities or new claims are verified by the Applicant and are admitted prior to the Hon'ble Adjudicating Authority's Order approving the Resolution Plan and deemed payable by the Hon'ble Adjudicating Authority.

21. **Monitoring Committee**

According to Regulation 38(2) of IBBI (IRPCP) Regulations, 2016, which is as under:

(2) A Resolution Plan shall provide:

- a) the term of the Plan and its implementation schedule;
 - b) the management and control of the business of the Corporate Debtor during its term; and
- adequate means for supervising its implementation.

The Resolution Professional is also a part of the Monitoring Committee. It is also provided in the Resolution Plan that a Monitoring Committee would be constituted with the representatives mentioned in clause 8.1 of the Resolution Plan. Hence, the **Management and Control until the Closing Date:**

Until the Closing Date, the Monitoring Committee will have the powers to implement the Plan in accordance with its terms. The powers of the existing board of directors of the Corporate Debtor shall remain suspended until the Closing Date; and on the Closing

Date, other than the Appointed Director, the existing board of directors and Key Managerial Personnel of the Corporate Debtor shall stand removed / resigned, without any further deed or action.

The Resolution Plan further provides that from the date of approval from the Hon'ble Adjudicating Authority, until Closing Date, the Resolution Professional shall continue as the 'Monitoring Agent'; and in order to supervise and manage all the business and operations of the Corporate Debtor and provide requisite assistance to the Monitoring Committee and Monitoring Agent, a 'Managing Agency' shall be appointed. The Managing Agency will act on the instructions of the Monitoring Committee. The terms of engagement of the Monitoring Agent shall be mutually decided by the Monitoring Committee and the Monitoring Agent. In the event the Monitoring Agent and Monitoring Committee are unable to agree on the terms of engagement of the Monitoring Agent, the Successful Resolution Applicant shall have the right to, at its sole discretion, appoint any other professional agency as the Monitoring Agent. The Managing Agency Costs shall be paid out of the Excess Cash (as provided for under the Plan).

The Monitoring Committee with assistance from the Monitoring Agent and the Managing Agency (both acting on the instructions of the Monitoring Committee), shall manage and control the Corporate Debtor as a going concern business in good faith.

22.Management and Control from the Closing Date

The Plan *inter alia* provides that from the Closing Date, there are at least seven New Equity Shareholders of the Company, the Corporate Debtor shall be owned and managed by the Successful Resolution Applicant, the Monitoring Committee shall cease to exist and the position and powers of the Monitoring Agent and Managing Agency shall be terminated, all existing directors of the Corporate Debtor shall be deemed to have resigned and vacated their office and shall stand replaced with the persons appointed by the Successful Resolution Applicant as directors or as the Appointed Director (as defined in the Plan), all existing Key Managerial Personnel of the Corporate Debtor shall be deemed to have resigned.

22. Supervision and Implementation of the Resolution Plan

The Monitoring Committee, Monitoring Agent and Managing Agency (both acting on the instructions of the Monitoring Committee) will jointly supervise the implementation of the Plan until the Closing Date. The supervisory and implementation related powers of the Monitoring Committee, Monitoring Agent

and Managing Agency do not include the supervisory powers available to the Successful Resolution Applicant which is that the mechanism for payments to stakeholders of the Corporate Debtor and subscription to the New Equity Shares and/or New CCDs, as the case maybe, by the Successful Resolution Applicant, under the Resolution Plan, will be supervised solely by the Successful Resolution Applicant or by representatives of the Successful Resolution Applicant.

23.Source of Funds:

Based on the market value, as on 30 November 2021, the Resolution Applicant has assets under management of €1,413,176,186 (Euros One Billion Four Hundred Thirteen Million One Hundred Seventy Six Thousand One Hundred Eighty Six) (equivalent to Rs. 12,488,85,97,532 (Indian Rupees Twelve Thousand Four Hundred Eighty Eight Crore Eighty Five Lakh Ninety Seven Thousand Five Hundred Thirty Two), based on the conversion rate as on 20 February 2023).

Based on the above, the Resolution Applicant, along with support from Silver Point Capital, has sufficient funds readily available to be deployed in order to meet its financial requirement under the Plan.

24.Fraudulent Transactions mentioned in the Form-H,
which are as follows:

In the 12th Meeting of CoC held on 2 March 2023, the Transaction Auditor Team presented its final draft report and the CoC deliberated on the observation made under the final draft Audit Report in respect of one observation in the said report, regarding a fraudulent transaction under Section 66 of the IBC. The CoC informed the RP that the audit can be concluded and the final report can be issued. CoC further noted that further action can be taken by the RP as per the provisions of the Code in respect of the said fraudulent transaction. Accordingly, the final Transaction Audit Report was issued on 3 March 2023.

Thereafter, in the 13th Meeting of CoC held on 7 March 2023, the RP made a disclosure to the CoC that based on the final Transaction Audit Report dated 3 March 2023, and the CoC recommendation during the 12th Meeting of the COC, the RP will take appropriate action by filing the relevant application before the Hon'ble Adjudicating Authority. Accordingly, the RP is in the process of filing the appropriate application as on the date of filing of the present Application.

25. In K. Sashidhar v. Indian Overseas Bank & Others (in Civil Appeal No. 10673/2018) the Hon'ble Apex Court held that, “if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per Section 30 (6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority. On receipt of such proposal, the Adjudicating Authority (NCLT) is required to satisfy itself that the resolution plan as approved by CoC meets the requirements specified in Section 30(2). No more and no less”.

26. The Hon'ble Supreme Court has further held at para 35 of the above judgement that ***the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite percent 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.***

27. The Hon'ble Supreme Court in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors**, held that “*the limited judicial review available to AA has to be within the four corners of section 30(2) of the Code. Such review can in no circumstance trespass upon a business decision of the majority of the CoC. As such the Adjudicating Authority would not have power*

to modify the Resolution Plan which the CoC in their commercial wisdom have approved”.

28. The Hon’ble Supreme Court of India, in the recent ruling in re **Vallal RCK vs M/s Siva Industries and Holdings Limited & Ors**, has held as under:-

21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in the cases of **K. Sashidhar v. Indian Overseas Bank and Others, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another, and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.**

27. This Court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the case of **Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another:**

“95.However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the

IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.....”

29. Therefore, the resolution plan, when tested on the touch stone of the aforesaid facts and the rulings, satisfies the requirements of Section 30 (2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. We also find that the Resolution Applicant is eligible to submit the Resolution Plan under Section 29A of the Code.

30. We therefore, hereby approve the revised Resolution Plan submitted by **SPCP Luxembourg Strategies S.À.R.L.**, along with annexure, schedules forming part of the Resolution Applicant annexed to the Application and order as under:

31. The Resolution Plan along with annexures and schedules forming part of the plan shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

- i. All crystallized liabilities and unclaimed liabilities of the Corporate Debtor as on the date of this order shall stand extinguished on the approval of this Resolution Plan.
- ii. The Learned Counsel for the Petitioner with regard to the application filed questioning the fraudulent transactions submits that the proceeds, if any, coming consequent to the allowing of the said application would go to the creditors. We are satisfied and agree to the submission. Anyhow, there is no embargo incorporated in the Insolvency and Bankruptcy Code, 2016 to continue the application even after approval of the Resolution Plan as per Section 26 of IBC, 2016 r/w Regulation 38(2)(d) of the IBBI (IRPCP) Regulations. We direct that the fraudulent transactions as mentioned in the Form-H will be pursued by the Monitoring Committee till it is in existence and by the Successful Resolution Applicant after Monitoring Committee comes to an end.
- iii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/ liabilities of the Corporate Debtor and shall be dealt with by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned as held by Hon'ble Supreme Court in the matter of ***Ghanashyam Mishra And Sons Private Limited Versus Edelweiss Asset Reconstruction Company Limited*** in CIVIL APPEAL NO.8129 OF 2019 dated 13.04.2021.

- iv. It is hereby ordered that the Performance Bank Guarantee furnished by the Resolution Applicant shall remain as performance Bank Guarantee till the amount proposed to be paid to the creditors under this plan is fully paid off and the plan is fully implemented.
- v. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC) Hyderabad for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- vi. Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to supra.
- vii. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- viii. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this order for information.
- ix. The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.

- x. The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.
- xi. The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and also forward a copy to IBBI.
20. Accordingly, **IA 503/2023 in CP(IB) No.28/7/HDB/2022** stands disposed of.

Sd/-

CHARAN SINGH
MEMBER (TECHNICAL)

Sd/-

JUSTICE TELAPROLU RAJANI
MEMBER (JUDICIAL)

Syamala