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**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – I, CHENNAI**

**IA/1154/CHE/2021 in IBA/912/2019**

*(Filed under Sec. 30(6) of the Insolvency & Bankruptcy Code, 2016 &  
Sec.39 (4) of IBBI (Insolvency Resolution Process for Corporate Persons)  
Regulations, 2016)*

**Mr. Ramakrishnan Sadasivan**

Resolution Professional  
BVV Paper Industries Limited  
Having Registered Office at 148D,  
Palani Road,  
Venkatesa Mills Post,  
Udumalpet- 642 128.

*... Applicant*

Present:

For Resolution Professional : T. Ravichandran, Advocate

CORAM :

**R. SUCHARITHA, MEMBER (JUDICIAL)  
SAMEER KAKAR, MEMBER (TECHNICAL)**

*Order Pronounced on 30<sup>th</sup> May 2022*

**ORDER**

**Per: SAMEER KAKAR, MEMBER (TECHNICAL)**

This Order has been delivered in this format to facilitate thorough analysis of this said matter. Abbreviations of the terminologies used have been provided initially to facilitate better understanding.



## PARTS OF THE ORDER

1. ABBREVIATIONS
2. FACTUAL BACKGROUND
3. CIRP IN BRIEF
4. VALUATION REPORT OF PLANT AND MACHINERY
5. DELIBERATIONS OF COC ON FEASIBILITY OF THE RESOLUTION PLAN
6. SALIENT FEATURES OF THE PLAN
7. MANDATORY COMPLIANCES UNDER IBC
8. RELEVANT JUDGMENTS OF THE HON'BLE SC
9. CONCLUSION

### **1. ABBREVIATIONS**

The list of acronyms and abbreviations used in this order is enumerated hereunder

ABBREVIATIONS	EXPANSION
RP	Resolution Professional
RA	Resolution Applicant
SRA	Successful Resolution Applicant
Corporate Debtor	B V V Paper Industries Limited
EOI	Expression of Interest
PUFE	Preferential, undervalued, fraudulent and Extortionate Transaction
EMD	Ernest Money Deposit
RFRP	Request For Resolution Plan
COC	Committee of Creditors
NCLT	National Company Law Tribunal

NCLAT	National Company Law Tribunal
AA	Adjudicating Authority
SC	Hon'ble Supreme Court of India
IBC,2016	Insolvency and Bankruptcy Code, 2016
Regulation	Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
SASF	Stressed Assets Stabilization Fund
CIRP	Corporate Insolvency Resolution Process
IPR	Interim Resolution Professional
SIPCOT	State Industries Promotion Corporation of Tamil Nadu Limited
ARCIL	Asset Reconstruction Company (India) Limited

## 2. FACTUAL BACKGROUND:

2.1 IA/1154/CHE/2021 is an Application which is moved by the RP of the Corporate Debtor viz., **B V V Paper Industries Limited** under Section 30(6) of the IBC, 2016 read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 seeking the approval of the Resolution Plan submitted by the successful Resolution Applicant viz., **Mr. Ramesh Khandelwal**.

2.2 In an Application filed under Section 7 of IBC, 2016 by a Financial Creditor viz. Stressed Assets Stabilization Fund, this Adjudicating Authority vide order dated 31.05.2021

passed in IBA/912/2019 initiated CIRP against the Corporate Debtor viz. M/s.BVV Paper Industries Limited, by appointing the Applicant herein as the IRP, who was subsequently confirmed and appointed as the RP of the Corporate Debtor by the COC.

2.3 It can be seen from the averments that the Corporate Debtor is a company which is not in operation for the past 15 years and no maintenance on the plant and machinery had been done by the Corporate Debtor. The Applicant filed a memo dated 08.04.2022 from which it has come to light that the Account of the Corporate Debtor was classified as an NPA on '**31.03.1999**'.

**3. CIRP IN BRIEF:**

3.1 The Learned Counsel for the Applicant submitted that, upon the receipt of the CIRP order, the Applicant caused Public announcement in Form-A dated 02.06.2021 and invited the creditors to submit the claim before the IRP on or before 14.06.2021. Thereafter, it was submitted that on the basis of the claim submitted by the claimants, the IRP had constituted the COC with only SASF with 100% voting share.



The 1<sup>st</sup> (First) COC meeting was convened on 29.06.2021. The COC was reconstituted in the 5<sup>th</sup> COC meeting held on 04.10.2021 with SASF (49.03% Voting Share), SIPCOT (23.07% Voting Share) and Asset Reconstruction Company India Limited (27.09% Voting Share). It is submitted that the reconstitution of COC was necessary due to the receipt of claims after the stipulated date but within 90 days from date of commencement of CIRP. The List of the COC Members after reconstitution along with respective voting share and admitted claims are listed hereunder,

**FINANCIAL CREDITOR CLAIMS- AMT IN RS. LAKHS**

S.NO	NAME OF THE CLAIMANT	PRINCIPAL AMOUNT (RS.)	INTEREST AMOUNT (RS.)	PENAL INTEREST (RS.)	COMPOUND INTEREST (RS.)	DAMAGES (RS.)	EXPENSES/ RECOVERABLE (RS.)	TOTAL CLAIM (RS.)
1.	SASF	771.73	2,069.45	1,016.54	39,561.88	7,628.36	-	51,047.96
2.	SIPCOT	110.35	616.89	2,575.27	20,673.97	-	42.79	24,019.27
3.	ARCIL	608.00	6,132.06	4,099.70	18,194.39	-	13.37	29,047.52
		1,490.08	8,818.40	7,691.51	78,430.24	7628.36	56.16	1,04,114.75

**OPERATIONAL CREDITOR CLAIMS- AMT IN RS. LAKHS**

S. No	CATEGORY OF STAKEHOLDER	AMOUNT CLAIMED	AMOUNT ADMITTED	% OF THE AMOUNT ADMITTED
1.	PF DUES	107.69	107.69	31.42%
2.	EMPLOYEES AND WORKMEN	---	49.95	100%


4. It is averred in the Application that, the Applicant in accordance with Regulation 36 (2) prepared the Information memorandum on 13.07.2021 and circulated the same to the COC via email on 30.07.2021 and further updated and circulated on 23/08/2021 and 07/10/2021.

**5. VALUATION OF PLANT AND MACHINERY**

It is seen from the averments made in the Application that the Applicant has appointed four IBBI Registered valuers for valuation of the Plant & Machinery and land & Building and the valuers have completed the valuation and submitted their report before the Applicant on 19.08.2021 and the same is placed in the Application typeset as 'Annexure 2'.

**6. PREFERENTIAL, UNDERVALUED, FRAUDULENT AND EXTORTIONATE TRANSACTION**

It was submitted that a Transaction Audit was conducted by the Applicant for the period ranging from 1.04.2019 to 31.05.2021 by M/s PVRM & Associates, Chartered Accountants to determine if there were any transactions falling under Section 43, 45, 50 and 66 of Insolvency and Bankruptcy Code, 2016. The said Chartered Accountant submitted the Final report dated 02.09.2021 which was circulated amongst all the COC members. The Applicant submitted



that the in the 4<sup>th</sup>(Fourth) COC meeting held on 13.09.2021, the Transaction Audit report was discussed in detail and in conclusion the Transaction Audit did not reveal any transactions as "Preferential, Undervalued, Fraudulent and Extortionate Transaction." Further it can be seen that there is no Applications pending under Section 43 to 66 of IBC, 2016 against this Corporate Debtor on the file of this Adjudicating Authority till date.

#### **7. EXPRESSION OF INTEREST**

In continuity it was submitted that in the 2<sup>nd</sup> (Second) COC meeting held on 27.07.2021, it was resolved to publish Form- G for Invitation for Expression of Interest (EOI) on 04.08.2021 with the last date for submission of EOI as 19.08.2021. It is submitted that in pursuance to the Form-G *Supra*, two EOI was received by the Applicant and the same is enumerated hereunder:-

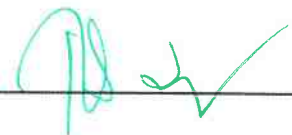
<b>S. No</b>	<b>EOI</b>	<b>DATE</b>
1.	M/s Sree Anandakumar Mills Private Limited (SAMPL)	19.08.2021
2.	Mr. Ramesh Khandelwal	01.10.2021

8. It is submitted by the Ld. Counsel for the Applicant that one Mr.Ramesh Khandelwal submitted EOI on 01.10.2021 Resolution Professional did not consider the same as it was after 19.08.2021 the last date for submission of EOI. Therefore, Mr. Ramesh Khandelwal and Associates had filed IA/1010/2021 in

IBA/912/2019. In lieu of the same this Tribunal in order dated 12.10.2021 had directed the prospective resolution applicant to submit the Resolution Plan on or before 14.10.2021 by 6.00PM. It was submitted by the Applicant that in compliance of the directions of this Tribunal, Mr. Ramesh Khandelwal submitted the resolution plan on 14.10.2021 along with the EMD Amount of Rs. 50,00,000 (Rs.25 Lakhs along with EOI and Rs. 25 Lakhs along with the Resolution Plan).

**9. DELIBERATIONS OF COC ON FEASIBILITY OF THE RESOLUTION PLAN**

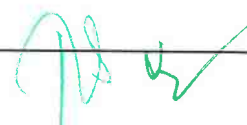
9.1 It was submitted by the Ld. Counsel for the Applicant that, the Resolution Professional received two Resolution Plans, which were in compliance with the provisions of IBC, 2016 and the same were placed before the COC for discussion regarding the viability of the Resolution Plans. Pursuant to the same, the COC after discussions, requested the Resolution Applicants to modify the Resolution Plan and improve the bid amount. Further it is averred in the Application that SAMPL on 29.10.2021 submitted the Final Resolution Plan for the total value of Rs.17.58 Crores (Rupees Seventeen Crores and Fifty Eight Lakhs) and Mr. Ramesh Khandelwal on 01.11.2021 submitted the resolution plan for the total value of Rs.18.85 Crores (Rupees Eighteen Crores and Eighty Five Lakhs).



9.2 It can be seen from the averments that the in the 10<sup>th</sup> CoC meeting held on 03.11.2021, based on the evaluation matrix selected the successful resolution Applicant as Mr. Ramesh Khandelwal with 100% voting share. The e-voting results in accordance to Regulation 39 (3B) of the IBBI regulations held on 10.11.2021-11.11.2021 is placed as 'Annexure-6' along with the Application typeset. The Resolution passed by the CoC in the 10<sup>th</sup> meeting dated 03.11.2021 is extracted hereunder:-

"RESOLVED THAT after considering the feasibility and viability of the final resolution plan and other requirements as specified in the appropriate sections of the IBC,2016 read with the relevant Regulations as specified under the IBBI (Insolvency Process for Corporate Persons) Regulations 2016 including amendments, if any, by the Board, the Consortium of Creditors in pursuance to S.30 of the IBC , 2016 and subject to approval of the Honble NCLT Chennai Bench, hereby approves the Final Resolution Plan, submitted by Mr. Ramesh Khandelwal being the Resolution Applicant."

10. The Applicant has also filed Form – H in accordance with the IBBI (Corporate Insolvency Resolution Process for Corporate Persons) Regulations, 2016 along with this Application and the same is placed as Annexure-8 to the Application typeset. Further from the averments it can be seen that the Resolution Applicant has submitted Rs.1,50,00,000/- on 12.11.2021 as stipulated in the



RFRP as performance security within 3 days of approval of the Resolution Plan by the COC. Further, it can be seen from FORM-H that the Resolution plan that has come for approval before this adjudicating authority is much higher than the liquidation value. The fair value and liquidation value as per the Form-H filed is extracted hereunder:-

1.	<b>FAIR VALUE</b>	Rs. 19,58,48,616
2.	<b>LIQUIDATION VALUE</b>	Rs. 17,30,63,865

**11. MANAGEMENT AND CONTROL OF BUSINESS OF THE CORPORATE DEBTOR**

It can be seen from Part-L of the Resolution plan placed at Annexure-7 of the application typeset that, the proposed directors for the Corporate Debtor would be Mr. Ramesh Khandelwal , Mrs. Mamta Khandarwal and Mr. Sharad Khandarwal, pursuant to the approval of the Resolution Plan by this adjudicating authority.

**12. SALIENT FEATURES OF THE RESOLUTION PLAN**

1. The Resolution Applicant proposes to pay a sum of **Rs.1751.20 Lakhs (Rupees Seventeen Thousand and Fifty one Lakhs and Twenty thousand)** to the Secured Financial Creditor, within 30 days of the approval of the Resolution Plan by this Adjudicating Authority.



2. The Resolution Applicant proposes to pay a sum of **Rs.33.84 Lakhs (Rupees Thirty Three Lakhs and Eighty Four Thousand)** to the operational Creditors i.e., Govt and PF dues, within 30 days of the approval of the Resolution Plan by this Adjudicating Authority.
3. Further, The Resolution Applicant proposes to pay a sum of **Rs.49.95 Lakhs (Rupees Forty Nine Lakhs and Ninety Five Thousand)** to the operational Creditors i.e., Employees and Workmen, within 30 days of the approval of the Resolution Plan by this Adjudicating Authority.
4. The Resolution Applicant proposes to pay a sum of **Rs.50 Lakhs (Rupees Fifty Lakhs)** as to Corporate Insolvency Resolution Process (CIRP) Cost, within 30 days of the approval of the Resolution Plan by this Adjudicating Authority.
5. Part-N: Provision for measures for maximization of the value of the assets of the Corporate Debtor.

"The Resolution Applicant shall after overhauling and suitably modifying and upgrading the machinery of the Corporate Debtors shall put the idle resources of the Corporate Debtor to use. The Resolution Applicant shall run the manufacturing set up at optimum capacity by infusing additional working capital required for the business. This will generate optimize the returns for all the stake holders of the Corporate Debtor. By amalgamation of the Corporate Debtor, the Corporate Debtor shall have the benefits of sound goodwill and vast client base and marketing set up of the Resolution Applicant. On idle resources being put to use, sizable employment will be generated. Many other ancillary Industries will get business out of the operations of the Corporate Debtor. Government exchequer will also get revenue from the various types of taxes. Thus the Resolution Application will maximize the value of the assests of the Corporate Debtor.

Exclusion of Personal Guarantees, Corporate Guarantees and other Third Party Collaterals given in respect of the Corporate Debtor's debt: The Resolution Plan specifically excludes all personal guarantees given by promoters, Directors and third parties in association



with the Outstanding Financial Debt ("Personal Guarantees"), Corporate guarantees given by the Promoters / third parties in association with Outstanding Financial Debt ("Corporate Guarantees") and third party collateral securities given with respect to the Outstanding Financial Debt."

A brief detail of Resolution Plan is tabulated herewith:-

S.NO	PARTICULARS OF CLAIM	ADMITTED AMOUNT (INR)	SETTLEMENT AMOUNT (INR)	PERCENTAGE IN RECOVERY	HAIR CUT %	TERM OF PAYMENT (IN DAYS)
1.	CIRP Cost	50,00,000/-	50,00,000/-	100%	-	30 Days
2.	Workmen and Employees	49,95,279/-	49,95,279/-	100%	-	30 Days
3.	Secured Financial Creditors	104,14,74,421/-	17,51,20,114/-	16.81%	83.19	30 Days
4.	Operational Creditors	1,07,69,214/-	33,84,607/-	31.42%	68.58	30 Days
	<b>Total</b>		<b>18,85,00,000</b>			

## 6. Capital Structure as Envisaged under the Plan:

Part-H: Extinguishment of existing share capital of Corporate Debtor and issuance of Fresh equity shares to Resolution Applicant in the Corporate Debtor:

(i) The Corporate Debtor shall undertake capital reduction and cancel the entire existing equity share capital held by the promoter group and the public, i.e. Equity Shares with face value of Re. 100/- each. Accordingly, pursuant to NCLT order approving this Resolution Plan the entire existing share capital of Corporate Debtor shall stand cancelled immediately without payment of any amount to the shareholders and without requirement of writing of the words "and reduced in the corporate name and style of the Corporate Debtor.

(ii) The cancellation of shares and capital reduction:

- Shall be applicable to the public shareholders and all of the existing shareholders of Corporate Debtor;
- Shall be pursuant to NCLT order approving the Resolution Plan and shall not require any other procedure as required under Companies Act, including under section 66 of the Companies Act, 2013 or other Applicable Law; and
- Shall not require consent of any of the creditors of Corporate Debtor or approval of shareholders of the Corporate Debtor upon Resolution Plan being approved by an order of NCLT, which order shall be binding on Corporate Debtor and its stakeholders (including its creditors and shareholders).

(iii) Any veto rights or any other preferential rights associated with existing shareholders shall also stand extinguished/ cancelled and the approval of the Shareholders shall be deemed to have been given for effecting such revision of agreements, constitutional documents such as Memorandum of Association, Articles of Association, on approval of this Resolution Plan by Adjudicating Authority u/s 31(1) of the Code.

(iv) Simultaneous Issuance of New Shares to the Resolution Applicant: The amount to be brought in by the Resolution Applicant under the resolution plan is Rs.18,85,00,000/- of which a sum of Rs.8,58,28,008/- is already kept in the 'No Lien account with IDBI. Thus the balance fresh fund to be brought in by the resolution applicant is Rs.10,26,71,912/-. The resolution applicant proposes to bring in the above stated fund in the form of equity share capital upto a maximum of Rs.1,00,00,000/- (rupees One Crore) based on the requirement. This will be issued by the Corporate Debtor to the Resolution Applicant. The Equity shares to be issued shall be of face value Rs. 100/- each and remaining fund shall be brought as Unsecured loan/Quasi Capital by the Resolution Applicant.

(v) No other regulatory approvals shall be required for reorganization of share capital by way of its extinguishment, and issuance of fresh shares to the Resolution Applicant. The existing shareholder's approval required for said purpose



shall be deemed to have been sought and given, as contemplated under the IBC.

(vi) The Resolution Plan contemplates that the present shareholders shall get fully diluted in terms of their shareholding in the Corporate Debtor.

(vii) Notwithstanding the change in shareholding, the Corporate Debtor would be entitled to carry forward and setoff of loss under Chapter VI of the Income Tax Act, 1961. Section 79 of the Income Tax Act, 1961 not applicable for carry forward, set off and adjustment of losses of the Corporate Debtor since Section 79 of Income Tax Act, 1961 is not applicable for Public Limited Companies under Corporate Insolvency Resolution Process.

(viii) The Resolution Applicant will cause amendment of the constitutional documents of the Company as may be necessary to give effect to the transactions contemplated in this Resolution Plan.

13. Further the Resolution plan also states the sources of funds of the Successful Resolution Applicant in support of payment of obligations under the Resolution plan. The Resolution Applicant has also submitted a Letter of Comfort for Rs. 10 Crores from Sino Credits and Leasing Limited.

14. The Ld.Counsel for the Applicant submitted that the Corporate Debtor has a land extent of 106.675 acres and 10.92 acres upon which the factory land is situated. Further it was stated by the Ld. Counsel that, the Corporate Debtor is not in operation for the past 15 years and no maintenance on the plant and machinery was done by the Corporate Debtor. The Ld Counsel for

the Applicant submitted that though there was no claim with regard to employees, Rs. 49,95,279/- (Rupees Forty Nine Lakhs Ninety Five thousand Two Hundred and Seventy Thousand) has been allotted as a part of the resolution plan as there was employees liability outstanding in the books of the Corporate Debtor.

**15. MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS**

However, this Authority is duty bound to examine the Resolution Plan within the contours of Section 30(2) of the IBC, 2016. A comparison *vis-à-vis* with the Mandatory compliance under the IBC and the Compliance made under the Resolution Plan is captured hereunder;

<b>MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS</b>	<b>COMPLIANCE UNDER RESOLUTION PLAN</b>
<b>S. 30(1)</b> - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	the Resolution Plan states that the prospective Resolution Applicant has already submitted the Affidavit under Section 29A of IBC, 2016 to the Resolution Professional and that the Resolution Applicant is not disqualified in terms of Section 29A of IBC, 2016. And the same is attached at page no 647-652
<b>S. 30(2)(a)</b> -Payment of Insolvency and Resolution cost in the manner specified by the Board	Part A- Clause 4 of the Resolution Plan provides payment of the CIRP costs in priority.
<b>S. 30(2)(b)</b> -Payment of debts of Operational Creditors in such manner as may be specified by the Board, which shall not be less than the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under Sec. 53	As, Part-E and sub clauses, it is stated that the Liquidation value due to the Operational Creditor is NIL as the Resolution Plan amount is much less than the admitted claims of the secured creditors who have priority over Operational Creditor. Therefore, no amount is payable as per this provisions of law to the said class of creditors. Notwithstanding the same,

	provisions has been made for Trade Creditors and Statutory Creditors
<p><b>Reg. 38(1)</b> -Resolution Plan identifies specific source of funds that will be used to pay the</p> <p>(a) Insolvency Resolution Process cost?</p> <p>(b)Liquidation value due to Operational Creditors?</p> <p>(c) Liquidation value due to dissenting financial creditors</p>	Part -K of the Resolution Plan deals with the Source of Funds for implementation of the Resolution plan
<p><b>Reg. 38(1A)</b> -Resolution Plan shall include a statement as to how it has dealt with the interest of all the stakeholders, including financial creditors and operational creditors of the Corporate Debtor</p>	Part -K of the Resolution Plan and sub clauses thereunder enumerates how the interest of all the stakeholders including operational and financial creditors has been dealt with under the Resolution Plan.
<p><b>S. 30(2)(c)</b> -Management of the affairs of the Corporate Debtor after approval of the Resolution Plan</p>	Part-L and sub clauses thereunder the Resolution Plan deals with the Management and Control and Implementation of Terms in relation to the Resolution Plan.
<p><b>S. 30(2)(d)</b> -Implementation and Supervision of the Resolution Plan</p> <p style="text-align: center;"><b>and</b></p> <p><b>Reg. 38(2)</b> - Resolution Plan shall provide:</p> <p>a) term of plan and its implementation schedule</p> <p>b) management and control of the business of the Corporate Debtor during its term;</p> <p>c) it has provisions for effective implementation</p> <p>d) it has provisions for approval required and the timeline for the same; and</p> <p>e) the Resolution applicant has the capability to implement the Resolution Plan.</p>	<p>Part-M and P Implementation and Supervision of the Resolution Plan subject to the approval of COC and the monitoring agent shall be responsible for the same.</p> <p>The Resolution Plan further proposes the following with regard to the supervision of implementation plan :-</p> <ol style="list-style-type: none"> <li>i. Subject to the approval of COC and adjudicating Authorities, the resolution applicant proposes to appoint a monitoring agent.</li> <li>ii. The monitoring agent will be responsible to oversee the execution of the implementation of the resolution plan at the terms and timeline specified under the resolution plan.</li> <li>iii. The monitoring agent shall be appointed for the fee as agreed mutually at the time of his appointment from the effective date of NCLT order approving the resolution plan.</li> </ol>

	iv. The tenure of such monitoring agent shall end on the expiry of the 10 <sup>th</sup> day from the date of entire payment to all the secured financial creditors as per this resolution plan.																				
<b>Reg. 38(3)</b> -Resolution Plan shall demonstrate: a) it address the cause of default b) it is feasible and viable c) it has provisions for effective implementation d) it has provisions for approval required and the timeline for the same e) the resolution applicant has the capability to implement the resolution plan	Part-K deals with the feasibility and viability and effective implementation of the Resolution Plan by the Resolution Applicant along with the time schedule for payment to the creditors.																				
<b>S. 30(2)(e)</b> -Does not contravene any of the provisions of the law for the time being in force	The Resolution Professional in Form-H has confirmed that the Resolution Plan is not in contravention with the provisions of any Applicable Law. And the same is placed as Annexure- 8 to the Application typeset.																				
<b>S. 30(4)</b> -Committee of Creditors approve the Resolution Plan by not less than 66% of voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by the Board	The CoC, in its 10 <sup>th</sup> meeting has approved the Resolution Plan in the following voting pattern;																				
	<table border="1"> <thead> <tr> <th>S.No</th> <th>Name of Creditor</th> <th>Assent (%)</th> <th>Dissent (%)</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>SASF</td> <td>49.03%</td> <td>-</td> </tr> <tr> <td>2.</td> <td>(SIPCOT)</td> <td>23.07%</td> <td></td> </tr> <tr> <td>3.</td> <td>ASSET RECONSTRUCT ION COMPANY INDIA LIMITED</td> <td>27.90%</td> <td></td> </tr> <tr> <td></td> <td><b>TOTAL</b></td> <td><b>100%</b></td> <td><b>-</b></td> </tr> </tbody> </table>	S.No	Name of Creditor	Assent (%)	Dissent (%)	1.	SASF	49.03%	-	2.	(SIPCOT)	23.07%		3.	ASSET RECONSTRUCT ION COMPANY INDIA LIMITED	27.90%			<b>TOTAL</b>	<b>100%</b>	<b>-</b>
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## **16. RELEVANT JUDGMENTS OF THE HON'BLE SC**

16.1 In so far as the approval of the Resolution Plan is concerned, this Authority is not sitting on an appeal against the decision of the

Committee of Creditors and this Authority is duty bound to follow the much celebrated Judgment of the Supreme Court in the matter of **K. Sashidhar –Vs– Indian Overseas Bank(2019) 12 SCC 150**, wherein in para 19 and 62 it is held as follows;

“19.....In the present case, however, our focus must be on the dispensation governing the process of approval or rejection of resolution plan by the CoC. The CoC is called upon to consider the resolution plan under Section 30(4) of the I&B Code after it is verified and vetted by the resolution professional as being compliant with all the statutory requirements specified in Section 30(2).

62. ....In the present case, however, we are concerned with the provisions of I&B Code dealing with the resolution process. The dispensation provided in the I&B Code is entirely different. In terms of Section 30 of the I&B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC and they express their opinion on the proposed resolution plan in the form of votes, as per their voting share. In the meeting of the CoC, the proposed resolution plan is placed for discussion and after full interaction in the presence of all concerned and the Resolution Professional, the constituents of the CoC finally proceed to exercise their option (business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, non-recording of reasons would not per-se vitiate the collective decision of the financial creditors. The legislature has not envisaged challenge to the “commercial/business decision” of the financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count.”

16.2 Further, the Hon’ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steels –Vs– Satish Kumar Gupta &Ors. in Civil Appeal No. 8766 – 67 of 2019** at para 42 has held as follows;

42. ....Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a



business decision of the majority of the Committee of Creditors, has to be within the four corners of Section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and Section 32 read with Section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra).

16.3 Further the Supreme Court in the matter of **K. Sashidhar v. Indian Overseas Bank and Ors.** (2019) 12 SCC 150 has lucidly delineated the scope and interference of the Adjudicating Authority in the process of approval of the Resolution Plan and held as follows;

"55. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite per cent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides: (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected

plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.

58. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with Section 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters "other than" enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers."

*(emphasis supplied)*

16.4 Also the Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Ors.** (2020) 8 SCC 531 after referring to the decision in **K. Sashidhar (supra)** has held as follows;

"73. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or sub-class of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going

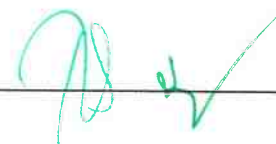
concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal."

*(emphasis supplied)*

16.5 The Supreme Court in its recent decision in **Jaypee Kensington Boulevard Apartments Welfare Association &ors. v. NBCC (India) Ltd. &Ors** in *Civil Appeal no. 3395 of 2020* dated 24.03.2021 has held as follows;

76. The expositions aforesaid make it clear that the decision as to whether corporate debtor should continue as a going concern or should be liquidated is essentially a business decision; and in the scheme of IBC, this decision has been left to the Committee of Creditors, comprising of the financial creditors. Differently put, in regard to the insolvency resolution, the decision as to whether a particular resolution plan is to be accepted or not is ultimately in the hands of the Committee of Creditors; and even in such a decision making process, a resolution plan cannot be taken as approved if the same is not approved by votes of at least 66% of the voting share of financial creditors. Thus, broadly put, a resolution plan is approved only when the collective commercial wisdom of the financial creditors, having at least 2/3rd majority of voting share in the Committee of Creditors, stands in its favour.

77. In the scheme of IBC, where approval of resolution plan is exclusively in the domain of the commercial wisdom of CoC, the scope of judicial review is correspondingly circumscribed by the provisions contained in Section 31 as regards approval of the Adjudicating Authority and in Section 32 read with Section 61 as regards the scope of appeal against the order of approval.

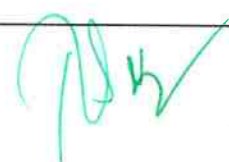


77.1. Such limitations on judicial review have been duly underscored by this Court in the decisions above-referred, where it has been laid down in explicit terms that the powers of the Adjudicating Authority dealing with the resolution plan do not extend to examine the correctness or otherwise of the commercial wisdom exercised by the CoC. The limited judicial review available to Adjudicating Authority lies within the four corners of Section 30(2) of the Code, which would essentially be to examine that the resolution plan does not contravene any of the provisions of law for the time being in force, it conforms to such other requirements as may be specified by the Board, and it provides for: (a) payment of insolvency resolution process costs in priority; (b) payment of debts of operational creditors; (c) payment of debts of dissenting financial creditors; (d) for management of affairs of corporate debtor after approval of the resolution plan; and (e) implementation and supervision of the resolution plan.

77.2. The limitations on the scope of judicial review are reinforced by the limited ground provided for an appeal against an order approving a resolution plan, namely, if the plan is in contravention of the provisions of any law for the time being in force; or there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period; or the debts owed to the operational creditors have not been provided for; or the insolvency resolution process costs have not been provided for repayment in priority; or the resolution plan does not comply with any other criteria specified by the Board

77.6.1. The assessment about maximisation of the value of assets, in the scheme of the Code, would always be subjective in nature and the question, as to whether a particular resolution plan and its propositions are leading to maximisation of value of assets or not, would be the matter of enquiry and assessment of the Committee of Creditors alone. When the Committee of Creditors takes the decision in its commercial wisdom and by the requisite majority; and there is no valid reason in law to question the decision so taken by the Committee of Creditors, the adjudicatory process, whether by the Adjudicating Authority or the Appellate Authority, cannot enter into any quantitative analysis to adjudge as to whether the prescription of the resolution plan results in maximisation of the value of assets or not. The generalised submissions and objections made in relation to this aspect of value maximisation do not, by themselves, make out a case of interference in the decision taken by the Committee of Creditors in its commercial wisdom

78. To put in a nutshell, the Adjudicating Authority has limited jurisdiction in the matter of approval of a resolution plan,



which is well defined and circumscribed by Sections 30(2) and 31 of the Code read with the parameters delineated by this Court in the decisions above referred. The jurisdiction of the Appellate Authority is also circumscribed by the limited grounds of appeal provided in Section 61 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by the CoC. Within its limited jurisdiction, if the Adjudicating Authority or the Appellate Authority, as the case may be, would find any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by Code and exposted by this Court.

17. Thus, from the catena of judgments rendered by the Hon'ble Supreme Court on the scope of approval of the Resolution Plan, it is amply made clear that only limited judicial review is available for the Adjudicating Authority under Section 30(2) and Section 31 of IBC, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the Committee of Creditors.

#### **18. RELIEF / CONCESSIONS**

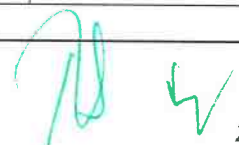
The Resolution Applicant in Part – VII of the Resolution Plan has sought for a total of 25 Relief and concessions from this Adjudicating Authority so as to implement the Resolution Plan. These are ordered as follows;

<b>SL. NO.</b>	<b>RELIEF / CONCESSIONS SOUGHT FOR</b>	<b>ORDERS THEREON</b>
1.	100 % exemption on stamp duty and any	

	other levy.	<b>Not Granted</b>
2.	Stamp duty and taxes on the transactions undertake pursuant to NCLT order to be exempt and the State Government shall make a publication in this regard in the official gazette as per Provisions of State Stamp Act.	<b>Not Granted</b>
3.	The Resolution Applicant will not be liable for any liabilities which are neither appearing in the provisional balance Sheet nor mentioned in claim statement in response to the public notice under IBC, 2016 except those liabilities which are mentioned in this Information Memorandum and/ or as communicated by the Resolution Professional.	<b>Granted, subject to the provisions of IBC, 2016 and other Applicable laws</b>
4.	Benefits under incentive for labor intensive industries scheme of state government.	<b>Not granted</b>
5.	All licenses & consents to operate to be available within 30 days of completion date.	<b>Granted, subject to the provisions of IBC, 2016 and other Applicable laws</b>
6.	The Ministry of Environment, PWD, Inspector of Factories, Electricity Board Central Pollution Control Board and Pollution Control Board of State and all other Government authorities concerned to grant all environmental and other business permits as required by the corporate debtor.	<b>This is for the concerned Governmental authorities to consider, keeping in view the objects of IBC, 2016 and a fresh start of the Corporate Debtor</b>
7.	Full waiver of other contingent dues/ charges/ interest/ penalties and unconfirmed dues.	<b>This is for the concerned Governmental authorities to consider, keeping in view the objects of IBC, 2016 and a fresh start of the Corporate Debtor</b>
8.	The Concerned individuals and/or their legal heirs to be directed to sign and execute necessary papers and deeds including conveyance and also to be preset before the concerned SRO/Competent Land Revenue Authorities for execution of required agreements for transfer of land for which advance payment has been given to them by the Corporate Debtor. The Concerned SRO's to be directed to	<b>This is for the concerned Governmental authorities to consider, keeping in view the objects of IBC, 2016 and a fresh start of the Corporate Debtor</b>

	register the conveyance by collecting the stamp duty applicable during the time when such advances were given by the Corporate Debtor to the concerned individuals.	
9.	The competent authority of Land revenue Department of Government of Tamil Nadu to be directed or allowing the change of use suitable for the revival of Corporate Debtor to be implemented by the Resolution Applicant without additional payment for the land parcels.	<b>This is for the concerned Governmental authorities to consider, keeping in view the objects of IBC, 2016 and a fresh start of the Corporate Debtor</b>
10.	No claim other than the claims mentioned in the Resolution Plan shall be allowed and/or paid towards any statutory dues, including but not limited to, (1) Entry Tax, (2) GST, (3) VAT, (4) TDS, (5) Contractor TDS, (6) Salary TDS, (7) Professional TDS, (8) Income tax, (9) Works Contract Tax, (10) Professional Tax, (11) Provident Fund, (12) Excise, (13) Employees Professional tax, (14) penalties/ dues towards any government scheme, (15) Scheme of incentives, (16) Cess, (17) Service Tax, (18) Statutory Licenses, etc.	<b>This is for the CBITC and other appropriate authorities to consider keeping in view the object of IBC, 2016</b>
11.	Principal Dues: The Principal outstanding of the statutory dues as stated hereinabove shall be waived in totality and necessary directions may be passed to the concerned authorities directing them to waive off the said dues.	<b>appropriate authorities to consider keeping in view the object of IBC, 2016</b>
12.	Interest, Penalty and Demurrages Dues: To waive penal interest, simple interest, compound interest, damage charged if any (whether provided or not provided in the Books of Corporate Debtor) as the liability of Company as on the date of approval of this Resolution Plan.	<b>appropriate authorities to consider keeping in view the object of IBC, 2016</b>
13.	To benefited with the applicable provisions of Income Tax Act, 1961 with respect to set off and carry forward of loss incurred by BVV Paper Industries Ltd to carry forward and set off the accumulated losses and unabsorbed depreciation as per provisions of section 72A of the Income Tax Act, 1961.	<b>appropriate authorities to consider keeping in view the object of IBC, 2016</b>
14.	To allow MAT Credit, if any available with respect to BVV Paper Industries Limited.	<b>appropriate authorities to consider keeping in view the object of IBC, 2016</b>

15.	To allow VAT credit, if any available with respect to BVV Paper Industries Limited.	<b>appropriate authorities to consider keeping in view the object of IBC, 2016</b>
16.	100% CGST and SGST reimbursement paid during the CIRP.	<b>This is for the CBITC and other appropriate authorities to consider keeping in view the object of IBC, 2016</b>
17.	To exempt BVV Paper Industries Limited from the applicability of and payment of tax under Section 115 (JB) of the Income Tax Act, 1961 regarding the waiver/ write off accepted by the creditors as envisaged under this Resolution plan and this the amount of write off should not be added / considered while calculating the book profit for the purpose of section 115 (JB) and thus the MAT Liability on such write off should not be levied.	<b>appropriate authorities to consider keeping in view the object of IBC, 2016</b>
18.	All business permits and/ or licenses and/or approvals required by the Corporate Debtor to conduct its business and which have not been granted/ cancelled/ terminated/ revoked/ suspended or not renewed may please be directed to be granted/restored/ renewed/ reinstated as the case may be (by the concerned competent authority) at no additional cost to the Resolution Applicant.	<b>appropriate authorities to consider keeping in view the object of IBC, 2016</b>
19.	The period from the date of the closure of the plant of the corporate debtor till the resumption of the plant by the Resolution Applicant to be ignored while checking the eligibility criteria as to continuity of the plant under various circumstances Viz., tendering process for supply, export performance, export obligation (for the purpose of DGFT, Customs, Banking, RBI etc) and the Resolution Applicant may be given the same treatment as if the plant has never closed its operation.	<b>appropriate authorities to consider keeping in view the object of IBC, 2016</b>
20.	Upon approval of this Resolution Plan by the Adjudicating Authority, no further proceedings and/ or formalities shall be required to be under taken the companies Act and/or SEBI Regulations and the respective authority shall take cognizance of it on receipt of the copy of Hon'ble NCLT. In the furtherance to the	<b>Granted, subject to the provisions of IBC, 2016 and other Applicable laws</b>




	same, the order passed by of the Hon'ble NCLT shall be considered final & binding and no proceedings shall be initiated against the Resolution Applicant, in any manner whatsoever.	
21.	Upon approval of this Resolution Plan by Adjudicating Authority, the following licenses should stand automatically renewed for the entity to render smooth operations of the Factory.	<b>appropriate authorities to consider keeping in view the object of IBC, 2016</b>
22.	Factory License, State Pollution Control Board Consent, Environmental Clearances, Industrial and Domestic Water Permission, IME(Industrial Entrepreneur's Memorandum), GST Registration, VAT Registration, Sales Tax Registration, Central Excise Registration, Sales Tax Registration, Central Excise Registration, Service Tax Registration, Electrical Contractor Licenses, Provident Fund Registration, PAN Card, Certificate of Incorporation, Boiler Inspector Certificate, M-I, M-II, DS-I, RS-II Licenses, NOC from all Local Authorities with regard to starting of the Factory.	<b>appropriate authorities to consider keeping in view the object of IBC, 2016</b>
23.	The Resolution Applicant shall not be responsible and/or liable in the event of any action and/or proceeding and /or order passed on account of inappropriate and/or illegal and/or unauthorized use and/or exploitation of any license, permits, sanctions, etc. by the erstwhile management of the corporate debtor.	<b>Granted, subject to the provisions of IBC, 2016 and other Applicable laws</b>
24.	Permission to use/sale the agriculture land from the Tamil Nadu Land Reforms for exemption U/s 37A with respect to Corporate Debtor. Further, we hereby like to mention that after starting the operations of the corporate debtor the resolution applicant will request the commissioner of Land reforms or any equivalent authority of the state government to grant the U/s 37A of the Tamil Nadu Land Reforms Act for use/sale the Surplus Agriculture Land held by the Corporate Debtor. The Final approval of the resolution plan by the NCLT shall be treated as deemed direction to the commissioner of land reforms.	<b>appropriate authorities to consider keeping in view the object of IBC, 2016</b>
25.	All permits, quotas, rights, entitlements, industrial and other licenses, bids, tenders, letters of intent, memorandum of undertaking, expression of interest, permissions, approvals, consents from	<b>Granted, subject to the provisions of IBC, 2016 and other Applicable laws</b>

	<p>various authorities including municipal (whether granted or pending), subsidies, receivables, trade mark, patents, copyrights, all other intellectual property, benefit of any deposits, assets, properties or other interest, financial assets including investments of all of all kinds, funds belonging to or utilized by the Transferor company, bank accounts, privileges and all other rights and benefits including tax, direct or indirect including advance tax paid or any tax deducted in respect of any income received of any income received, sales tax deferrals and exemptions and other benefits, lease, rights membership, lease rights, power and facilities of every kind, nature and description whatsoever, rights to use and avail of telephones, telexes, facsimile connections and installations, utilities, electricity and other services, provisions, funds, benefits of any agreements, contracts and arrangements and all other interest in connection with or relating to the Transferor Company.</p>	
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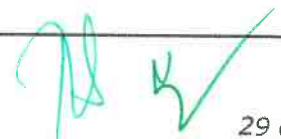
## **19. CONCLUSION**

This Resolution Plan envisages payment to Financial Creditor amounting to Rs.17,51,20,114/- i.e. 16.81 % of the admitted claims of all Financial Creditor's. This Tribunal on thorough analysis of this Resolution Plan, it is seen that the Financial Creditor's are recovering 117.52% of the principal amount which stands at Rs.14.90 crores. Therefore it is seen that the Financial Creditor 's is not taking any Hair cut on principal amount of the loans and the COC have approved this said Resolution Plan with 100% majority.



19 .1 Thus, the Resolution Plan is hereby **approved** and is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect and the "Moratorium" imposed under section 14 of IBC, 2016 shall not have any effect henceforth. The Resolution Professional shall submit the records collected during the commencement of the Proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance. Liberty is hereby granted for moving any Miscellaneous Application, if required, in connection with implementation of this Resolution Plan. That in respect of stepping by the New Promoters/Resolution Applicant into the shoes of the erstwhile Company and taking over the business, the provisions of Companies Act, 2013 shall be applicable and because of this reason a copy of this Order is to be submitted in the Office of the Registrar of Companies, Chennai.

20. Further, it can be seen from the Resolution plan placed as 'Annexure-7' of the Application typeset, envisages the appointment of the 'Monitoring agent' for the supervision of proper implementation of the Resolution plan, the plan does not define who shall be the 'monitoring agent'. As the same is a mandatory compliance under Regulation 38 (2) (c) of the IBBI, (Resolution



Process for Corporate Persons) Regulations, 2016 namely "adequate means for supervising its implementation", this adjudicating authority pursuant to its inherent powers vested under Rule 11 of the NCLT Rules, 2016 is constrained to appoint the '**Applicant Resolution Professional**' as the 'monitoring agent' envisaged under Part-M of the Resolution plan placed as Annexure-7 of the Application typeset for effective implementation of this approved Resolution plan.

21. Further, the Resolution Professional is directed to handover all records, premises / documents to Resolution Applicant to finalise the further line of action required for starting of the operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access to all the records premises / documents through Resolution Professional to finalise the further line of action required for starting of the operation. Accordingly, the Application stands **allowed**.

-Sd-

**SAMEER KAKAR**  
MEMBER (TECHNICAL)

-Sd-

**R. SUCHARITHA**  
MEMBER (JUDICIAL)

*Vinita Varshini*