



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

IA(IBC)/366(CHE)/2022 in IBA/73/2020

(Filed under Sec. 30(6) & 31 of the Insolvency & Bankruptcy Code, 2016)

Along with

IA(IBC)/102(CHE)/2022 in IBA/73/2020

(Filed under Sec.12 read with 60(5) of the Insolvency & Bankruptcy Code, 2016)

IN THE MATTER OF:

Mr. Sripatham Venkatasubramanian Ramkumar

Resolution Professional of

Sical Logistics Limited

1605, Block – 1, Myhome Vihanga, Gachibowli,

Hyderabad, Telangana – 500 032

No.71/1, McNichols Road, Hari Krupa,

2nd Floor, Chetpet, Chennai – 600 031

... Applicant

Present:

For RP

*: Rahul Balaji, Advocate
Ananth Merathia, Advocate
Ms. Priyanka Varma, Advocate
Ms. Poornima, Advocate*

CORAM:

**Chief Justice (Retd.) RAMALINGAM SUDHAKAR, PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)**

Order Pronounced on 8th December 2022



ORDER

Per: Chief Justice (Retd.) RAMALINGAM SUDHAKAR, PRESIDENT

The order passed in these Applications are divided into following segments for better analysis: -

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A. ORDER IN IA(IBC)/102(CHE)/2022

IA(IBC)/102(CHE)/2022 is an Application which is moved by the Resolution Professional of the Corporate Debtor viz., **Sical Logistics Limited** under Section 12 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC, 2016') seeking relief as follows;



- (i) *The Hon'ble Bench may please grant a further extension of 60 days of time under Section 12(2) of the Insolvency and Bankruptcy Code, 2016 after excluding 20 days (owing to lockdown and restrictions from 03.01.2022 to 22.01.2022) r/w Regulation 11 of the NCLT Rules, 2016, as deemed appropriate by the Hon'ble Bench, to enable the Committee of Creditors to consider and approve the best possible Resolution Plan for the revival of the Corporate Debtor and its implementation as may be deemed fit and proper;*
- (ii) *To pass such Orders or directions as this Hon'ble Tribunal may deem fit and proper in facts and circumstances of the case.*

2. In support of the above relief, the Learned Counsel for the Applicant relied upon para 17 to 29 of the averments made in the Application. Further, it was also submitted that the Applicant has received 4 Resolution Plans and the Committee of Creditors required more time to negotiate and discuss with the Prospective Resolution Applicants. The reasons stated in para 17 to 29 of the Application seems plausible and as such the CIRP period in respect of the Corporate Debtor is extended as prayed for and the 330-day CIRP period in respect of the Corporate Debtor would come to an end on **28.04.2022**. Accordingly, this Application stands **allowed**.



B. PRAYER IN IA(IBC)/366(CHE)/2022

3. IA(IBC)/366(CHE)/2022 is an Application which is moved by the Resolution Professional of the Corporate Debtor viz., **Sical Logistics Limited** on **26.03.2022** under Section 30(6) & 31 of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC, 2016') read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short, 'CIRP Regulation, 2016') seeking relief as follows;

- A. *Approve the Resolution Plans as submitted by M/s. Pristine Malwa Logistics Park Private Limited on 11.02.2022 along with the Addendum dated 24.02.2022 and clarification letter dated 26.02.2022 (duly approved by the Committee of Creditors after it was put to e-voting in its 9th CoC meeting dated 21.02.2022 and the results of which were declared on 18.03.2022) in accordance with Section 31(1) of IBC, 2016.*
- B. *Direct the appointment/induction of persons nominated by the successful Resolution Applicant i.e. M/s. Pristine Malwa Logistics Park Private Limited as Directors of the Corporate Debtor in accordance with the terms of the Resolution Plan, on approval of the same by the Order of this Hon'ble Tribunal;*
- C. *Direct that the key relief's, waivers, concessions sought for in the instant Resolution Plan be granted on approval of the Resolution Plan;*
- D. *Direct that the Approved Resolution Plan is binding on the Corporate Debtor; its employees, Resolution Applicants, members/shareholders;*



creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the Resolution Plan.

- E. Pass necessary orders to enable the Resolution Applicant to file for the approvals and consents with various Government Authorities, as envisaged in the Plan and as may be required to implement the Plan.
- F. Pass necessary orders in accordance with sub-section (4) of Section 31 of the IBC, 2016 to enable the Resolution Applicant to obtain the necessary approvals required under any law for the time being in force within a period of once year from the date of approval of the resolution plan by the Adjudicating Authority under subsection (1) or within such period as provided for in such law, whichever is earlier;
- G. Pass such order or further relief(s) as this Hon'ble Adjudicating Authority may deem fit and proper in facts and circumstances of the present case.

C. CORPORATE INSOLVENCY RESOLUTION PROCESS – SICAL LOGISTICS LIMITED

- 4.1. The Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor viz. Sical Logistics Limited was initiated by this Tribunal in an Application filed by an Operational Creditor under Section 9 of IBC, 2016 in IBA/73/2020 vide its order dated 10.03.2021 and one Mr. Lakshmisubramanian was appointed as the 'Interim Resolution Professional' (IRP).



- 4.2. The IRP has caused a public announcement on 13.03.2021 in 'Financial Express' (English) and 'Malai Malar' (Tamil) regarding initiation of CIRP against the Corporate Debtor and invited proof of claims from the Financial Creditors, Operational Creditors, workers and employees of the Corporate Debtor. It was submitted that the 'Committee of Creditors' (CoC) was constituted on 05.04.2021 with 21 members.
- 4.3. The 1st CoC meeting was held on 07.04.2021, wherein the Applicant herein was appointed as the 'Resolution Professional' (RP) in respect of the Corporate Debtor. Thereafter, the CoC filed IA(IBC)/54(CHE)/2021 before this Tribunal under Section 22(3) of IBC, 2016 and this Tribunal vide its order dated 02.06.2021, appointed the Applicant herein as the RP in respect of the Corporate Debtor.
- 4.4. It is seen that the Applicant has appointed two registered valuers in terms of Regulation 27 and 35(a) of CIRP Regulations, 2016. The Applicant submitted that in terms of the provisions of Section 25(2)(h) of IBC, 2016 read with Regulation 36A(1) of the CIRP Regulations, 2016, 'Form – G' for 'Expression of Interest' (EoI) was issued by the Applicant and the same was published in Economic Times, Business Standard (English – Pan India edition), Business Standard (Hindi – pan India edition) and Dinakaran (Tamil



– Tamilnadu edition) on 03.07.2021 and then subsequently on 29.07.2021, 30.09.2021, 26.08.2021, 28.09.2021 and 22.11.2021. The last date for receipt of EoIs was 07.12.2021.

4.5. The Applicant submitted that in response to the invitation for EoI, up to the last date i.e. 07.12.2021, 40 EoIs (14 from interest parties with reference to Revised Form – G dated 22.11.2021 and 26 EoIs from interest parties with reference to Form – G dated 03.07.2021) were received from interest ‘Prospective Resolution Applicants’ (PRAs). It was submitted that the ‘Information Memorandum’ (IM) and ‘Evaluation Matrix’ (EM) and ‘Request for Resolution Plan’ (RFRP) were issued to these PRAs on 09.12.2021 and the last date for submission of Resolution Plan was fixed as 08.01.2022.

4.6. It was submitted that the Applicant has received Resolution Plan from 4 PRAs viz. (i) Pristine Malwa Logistics Park Private Limited, (ii) Winwind Energy Private Limited, (iii) Agrigo Trading Private Limited and (iv) Ambey Mining Private Limited – Godavari Commodities Limited (consortium). The Applicant opened the Resolution Plans on 10.01.2022 in front of the CoC members and the PRAs and later the Applicant evaluated the Resolution Plans and sought certain clarifications from the PRAs who submitted the Resolution Plan.



4.7. It was submitted that in the 7th CoC meeting held on 20.01.2022 the contours of the Resolution Plan were discussed with the members of the CoC. In the 8th CoC meeting held on 03.02.2022, the CoC members deliberated in detail the 4 Resolution Plans submitted by the PRAs and also analyzed the feasibility and viability of the respective plan and the CoC requested each PRAs to submit their modified Resolution Plans by 11.02.2022. In the 9th CoC meeting held on 21.02.2022, the Applicant after examination of the Resolution Plan under Section 30(2) of IBC, 2016, confirmed that only 3 out of 4 Resolution Plans are deemed to be 'compliant' and thereafter these 3 Resolution Plans were put for vote before the CoC. The voting window for the Resolution Plan was kept open from 28.02.2022 to 18.03.2022 for the members of the CoC to vote. The Resolution Plan submitted by Pristine Malwa Logistics Park Private Limited (hereinafter referred to as '*Successful Resolution Applicant*') was voted by the CoC with 77.5% voting percentage in its favour.

4.8. It was submitted that the Applicant has issued the Letter of intent on 18.03.2022 and the same was accepted by the Successful Resolution Applicant on 19.03.2022. Further, it was submitted that the Successful Resolution Applicant has furnished the performance bank guarantee on 24.03.2022 issued by HDFC Bank Limited totaling to about INR 48.08



Crore in favour of Bank of Baroda, who is the lead member of CoC, as per the terms of RFRP.

4.9. The Applicant has filed a Compliance Certificate in the prescribed form i.e. Form 'H' in compliance with Regulation 39(4) of the CIRP Regulations, 2016. A brief snapshot of the Resolution Plan submitted by the Successful Resolution Applicant, is as follows;

PARTICULARS	PAYOUT PROPOSED UNDER THE PLAN		
	INR – CRS	TIMELINE	SOURCE
CIRP Cost	3.93	Effective Date (ED) + 30 Days	Initial Fund infusion by RA
Operational Creditor – Employees & Workmen	6.75	ED + 30 days	Initial Fund infusion by RA
Operational Creditor – Statutory Dues & Others	-		Not Applicable
Sub- Total (A)	10.68		
Financial Creditor – Upfront	54.32	ED + 30 days	Initial Fund infusion by RA
Financial Creditor – Deferred (Note 1 & 2)	105.00	ED + 2 Years	From Operational cashflow of CD with 8% interest p.a. on deferred pay out (Moratorium for 1 year from Effective Date applicable)
Financial Creditor – Deferred (Note 1 & 2)	226.00	ED + 2.5 Years	
BG reimbursement, if invoked (for live BGs)	84.82	Within 180 days from invocation	Not mentioned
Sub – Total (B)	470.14		
Settlement as per Plan (A+B=C)	480.82		
Cash & Cash equivalents with CD (D)	41.01		Additional consideration to FC per Plan net of funds for Trust formation, Interim management costs and legal costs post CIRP.
Total settlement to various stakeholders (C+D=E)	521.83		



4.10. A brief comparison chart of the Resolution Plan payout of the 4 Resolution Applicants is reproduced hereunder;

	PARAMETER	PRISTIN MALWA	AGRI BBC (AGRIGO)	WINWIND POWER	AMPL – GCL (AMPL)
Payments to FCs from RA funds	Upfront payment – FCs (a)	54.32	50.00	40.00	73.50
	Deferred payment – FCs (Cash)(B)	331.00	158.50	170.00	250.00
	Deferred Period	ED + 2-2.5 years	90 – 365 days	Within 60 days	3 – 45 months
	Deferred payment – Return / Replacement of BGs or Cash if BG encashed (C)	84.82	130.00	142.56	BG release shall be adjusted against Deferred payment
	Deferral Period	BGs to be reimbursed within 180 days of the invocation	Within 24 months	Within 60 days	Within deferred payment period
	Deferred payment – FCs (Passthrough receivables (D)	-	21.60	-	-
	Deferred Period	NA	Within 365 days	NA	NA
	Payout to FCs from Ras fund (A+B+C+D)=E	470.14	360.10	352.56	323.50
Payment to Other Stakeholders	Upfront payment – OCs	6.75	4.40	6.12	-
	Upfront payment – CIRP costs (G)	3.93	3.93	4.00	1.50
	Payout to OCs and CIRP costs (F+G)=H	10.68	8.33	10.12	1.50
	Total Payout (E+H=I)	480.82	368.43	362.68	325.00



D. SUBSIDIARIES OF THE CORPORATE DEBTOR

5.1. It is seen from the Information Memorandum that the Corporate Debtor is a subsidiary of Tangling Retail Reality Developments Private Limited. The Company is part of Coffee Day group. Tangling Retail Reality development Pvt. Ltd. is a wholly owned subsidiary of Tanglin Developments limited which develops technology parks for IT / ITES sectors in Bangalore and Mangalore. The subsidiaries of the Corporate Debtor viz. Sical Logistics Limited are as follows;

S. No.	ENTITY	RELATIONSHIP	BUSINESS	SHAREHOLDING
1	Sical Connect Limited	Indian subsidiary	Road Logistics	100%
2	Sical Supply chain Solutions Limited	Indian subsidiary	Supply Chain	100%
3	Sical Mining Limited	Indian subsidiary	Mine developer and Operation of Tara East & West Mines of West Bengal Power Development Corporation Limited	100%
4	Sical Washeries Limited	Indian subsidiary	To operate coal washeries	100%
5	Sical Iron Ore Terminal (Mangalore) Limited	Indian subsidiary	For development and operation of a deep draft berth at New Mangalore Port for handling iron ore	100%
6	Bergen Offshore Logistics Pte Ltd.	Foreign subsidiary	Offshore Logistics	100%
7	Sical Infra Assets Limited	Indian subsidiary	Logistics	53.60%
8	Sical Iron Ore Terminal Limited	Indian subsidiary	Development and Operation and maintenance of coal at Kamaraj Port Limited	63%
9	Sical Saumya Mining Limited	Indian subsidiary	Surface mining and removal of overburden of Coal	65%

✓



10	Sical Logiexpress Private Limited (erstwhile known as PNX Logistics Private Limited)	Indian subsidiary	Express logistics	30%
11	Patchems Logistics Private Limited	Indian subsidiary	Warehousing	97.50%
12	Develecto Mining Limited	Indian subsidiary	Mine Developer and Operation of Damodar Valley Corporation's TUBED mines at Jharkhand	51%
13	Sical Multimodal and Rail Transport Limited	Step down India subsidiary (Through SIAL)	Operation of container Rail and Container Freight Stations	53.60%
14	Sical Bangalore Logistics Park Limited	Step down India subsidiary (Through SIAL)	ICD / CFS in Bangalore	53.60%

E. ABOUT THE RESOLUTION APPLICANT

6.1. The Successful Resolution Applicant viz., Pristine Malwa Logistics Park Private Limited is a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at 3rd Floor, Wing B, Commercial Pass Radisson Hotel. NH-8, Mahipalpur, New Delhi-110037.

6.2. The Successful Resolution Applicant is backed by Pristine Logistics and Infraprojects Limited (hereinafter referred to as "PLIPL group"), the parent company of Pristine, which is India's leading company engaged in the business of providing, end to end multi cargo logistics solutions pivoted around rail terminals. It is further submitted that PLIPL group is the only company in the country to provide differentiated services in non-container, container, rail



transportation, road transportation and other allied services under one umbrella. It is submitted that PLIPL group is funded by marquee investor, Global Infrastructure Partners.

6.3. It is submitted that PLIPL group is currently one of the fastest growing rail logistics operator in the private sector and is expected to be the largest operator by 2023. The operations of PLIPL group are spread across northern and eastern India catering to ports in western and eastern India. It is submitted that PLIPL group and Pristine are managed by a team of professionals who have held senior management positions in Indian Railways and other competing companies. The founding members of PLIPL group have cumulative work experience of more than 80 years in the rail logistics sector. It is submitted that PLIPL Group is also responsible for setting up the highest number of rail terminals and rail sidings in the country. PLIPL group prides itself on having a long- standing industry relationship with various key stakeholders.

6.4. It is submitted that since inception, the PLIPL Group has developed and currently operates five private freight terminals ("PFT") and inland container depots (ICDs) at Kanpur (Uttar Pradesh), Ludhiana (Punjab), Siliguri (West Bengal), Patna (Bihar) and Birgunj (Nepal). It is submitted



that the group has also established presence in certain western states such as Rajasthan, Gujarat, Chattisgarh in relation to transportation of domestic cargo. It is further submitted that the group holds Category I container train operator ("CTO") license for its EXIM-focussed operations across the NCR / Ludhiana to Mundra/ Pipavav route, and the Kanpur to Jawaharlal Nehru Port Trust ("INPT") route. It is submitted that the group also operates out of five gateway port locations at Kolkata (West Bengal), JNPT (Maharashtra), Mundra (Gujarat), Pipavav (Gujarat) and Visakhapatnam (Andhra Pradesh). It is further submitted that PLIPL group currently owns a warehousing area of approximately 500,000 square feet and approximately 2,000 containers and operates approximately 350 container trucks and 30 rakes. Some of the key customers of the group include Maersk, JK Cement Limited, MSC Agency (India) Pvt. Ltd. and CMA CGM S.A.

F. CREDIT WORTHINESS OF THE RESOLUTION APPLICANT:

- 7.1. It is submitted that Pristine has no debt on its books as on October 30, 2021. In the PLIPL group, the leverage is at Pristine Mega Logistics Park Pvt Limited, which is a 100% subsidiary of Pristine Logistics and Infrastructure Limited (parent company of the group). Pristine Mega Logistics



Park Pvt. Limited is rated A- from India Ratings as on 09.03.2021.

- 7.2. It is submitted that the PLIPL group at consolidated level has a healthy financial profile with a total operating income of Rs. 5,6324 million (Rs. 4,743.5 million in FY2020) with an increase of 18.74% as compared to FY2020. The EBITDA margin of the group in FY2021 was 19.27% at Rs. 1,085.6 million. The group has a healthy leverage ratio with Total Debt/EBITDA ratio in FY2021 being 1.95x. The group had a cash and cash equivalents of Rs. 165.0 million on its books as on March 31, 2021. Thus, the net debt of the group as on March 31, 2021, was Rs. 1,949.8 million. It is submitted that the group has been backed by marquee private equity player Global Infrastructure Partners and has been associated with private equity players like CDC Group and UTI Capital in the past.

G. SETTLEMENT PROPOSED TO THE STAKEHOLDERS IN THE RESOLUTION PLAN

- 8.1. The Successful Resolution Applicant has submitted a Resolution Plan with a guaranteed consideration of Rs.521.82 crores to all the stakeholders. A brief snapshot of the details of the payments to various stakeholders per the waterfall mechanism u/s 53 of the IBC, 2016 is presented below;



S. No.	CATEGORY OF STAKEHOLDERS	AMOUNT CLAIMED	AMOUNT ADMITTED	AMOUNT PROVIDED UNDER THE RESOLUTION PLAN	AMOUNT PROVIDED TO AMOUNT ADMITTED
1	CIRP Costs (as on December 31, 2021)	3,92,78,190	3,92,78,190	To be paid in actuals subject to and in accordance with the terms of the Resolution Plan	100%
Sub – Total (A)		3,92,78,190	3,92,78,190	3,92,78,190	
2	FINANCIAL CREDITORS				
	Secured Financial Creditors – excluding Bank Guarantee exposure (as on December 31, 2021)	9,56,62,91,978	9,36,14,74,086	426,31,88,694	45.54%
	Secured Financial Creditors – Bank Guarantee exposure (as on December 31, 2021)	1,42,55,89,426	1,42,55,89,426	84,82,37,057 (guaranteed)	59.50%
	Unsecured Financial Creditors (as on December 31, 2021)	4,82,62,80,022	4,82,62,80,022	Nil	0.00%
Sub – Total (B)		15,81,81,61,426	15,61,33,43,534	5,11,14,25,751	
3	OPERATIONAL CREDITORS (as on December 31, 2021)				
	Employees and Workmen (directly or through authorized representative)	9,27,75,401	6,75,33,117	6,75,33,117	100%
	Other Operational Creditors – Related parties	3,70,34,22,692	3,68,97,99,324	Nil	0.00%
	Other Operational Creditors – Statutory Dues	32,16,82,312	31,23,30,312	Nil	0.00%
	Other Operational Creditors – Other Creditors	1,78,22,31,817	1,41,32,08,033	Nil	0.00%
Sub – Total (C)		5,90,01,12,222	5,48,28,70,786	6,75,33,117	
4	Other Creditors (as on December 31, 2021)	38,98,00,000	Nil	Nil	0.00%
Sub – Total (D)		38,98,00,000	Nil	Nil	
GRAND TOTAL (E=A+B+C+D)		22,14,73,51,838	21,13,54,92,510	5,21,82,37,058	22.75%



8.2. It is submitted that the manner of distribution of the Total Resolution Amount in the matter set out under the Resolution Plan shall be as follows:

- a. Payment of CIRP costs in full and in priority to all other Stakeholders as set out in sub – section 1.2.9 (5) of Part B (*Financial Proposal*) of the Resolution Plan and sub – section 3.1.2 of Part B (*Financial Proposal*) of the Resolution Plan;
- b. Payment of 100% amount of Admitted Workmen and Employees claims to the Workmen and Employees;
- c. Payment of NIL amount to the Operational Creditors other than Workmen and Employees, whose claims have been admitted as of the date of submission of this Resolution Plan;
- d. Payment of Mandatory Dissenting Financial Creditor payment in priority to Approving Financial Creditors in terms of upfront payment and deferred payment proposed under sub-section 1.2.9(1)(a) of Part – B (*Financial Proposal*) of the Resolution Plan read with addendum dated 24.02.2022.
- e. Payment of NIL amount to the Other Creditors;
- f. Payment of Balance Financial Creditor Debt Assignment Consideration to the Financial Creditors in accordance with subsections 1.2.9(1)(a) of Part B (*Financial Proposal*) of the Resolution Plan.
- g. Payment of Financial Creditor Debt Consideration constituting of Upfront Financial Creditor Debt Payment to be paid out of the Initial Infusion Fund and Deferred Financial Creditor Debt Payment (after payment of the Mandatory Dissenting Financial Creditor Payments) to



be paid out of the cash flow of the Corporate Debtor subject to Outstanding Receivable Adjustment, in a manner and timeline as set out and in accordance with sub-sections 1.1, 1.2.9(1) and 3.2 of Part B (*Financial Proposal*) of the Resolution Plan (read with addendum to resolution plan dated 24.02.2022 and clarification letter dated 26.02.2022) and distributed amongst the Financial Creditors in a manner as decided by the Financial Creditors. A separate agreement would be entered into by the Successful Resolution Applicant with the financial creditors for payment of Deferred Financial Creditor Debt Payment by the resolution applicant as clarified vide letter dated 26.02.2022.

H. TIMELINES ENVISAGED FOR THE PAYMENT OF MONIES TO THE STAKEHOLDERS POST APPROVAL BY NCLT

9.1. It is submitted that upon approval of the Resolution Plan by the Adjudicating Authority in accordance with the Code, the aforesaid manner of distribution will be binding on all the Stakeholders of the Corporate Debtor. It is submitted that the Resolution Plan outlines the payment to be made to the Financial Creditors of the Company on effective date as follows:

PERIOD	PAYMENT (IN INR)
Upfront FC Debt Payment	54,31,88,693
Deferred FC Debt Payment (as provided below)	
Effective Date + 2 years (quarterly instalments)	1,05,00,00,000
Effective Date + 2 years and 6 months	2,26,00,00,000
Balance FC Debt Assignment Consideration	1
Total (A)	385,31,88,694



- 9.2. It is further submitted that the Resolution Plan provides for protection of necessary Bank guarantees by undertaking to reimburse in case of invocation of live bank guarantees after effective date per sub-section 3.2.24 of Part B (*Financial Proposal*) of the Resolution Plan and passing of cash and cash equivalents available with the Corporate Debtor as at NCLT approval date as per sub-section 2.6 of Part B (*Financial Proposal*) of the Resolution Plan subject to adjustments as proposed in the Resolution Plan in subsection 2.1.5 and 2.1.6 of Part A (*Business Plan*) of the Resolution Plan and sub-section 3.12(g) of Part B (*Financial Proposal*) of the Resolution Plan, tabulated below:

PARTICULARS	PAYMENT (IN INR)
Amounts payable to Financial Creditor with bank Guarantee Exposure for live BGs in case of invocation after Effective date per sub-section 3.2.24 of Part – B (Financial Proposal) of Resolution Plan	84,82,37,057
Cash and Cash equivalents as at Hon'ble NCLT approval date passed on to the Financial Creditor as per sub section 2.6 of Part B (Financial Proposal) of the Resolution Plan	41,00,00,000
Total	125,82,37,057

- 9.3. It is required to be noted that the sum of Rs.84,82,37,057/- as per Clause 3.2.24 of Part – B of the Resolution Plan will become payable, only if the guarantees are invoked. Thus, the said sum of Rs.84,82,37,057/- is a contingent liability and



will not become payable by the Successful Resolution Applicant, if the guarantees are not invoked.

I. TABULATION OF VARIOUS COMPLIANCES REQUIRED UNDER THE PROVISIONS OF IBC, 2016

10. The Applicant has submitted the details of various compliances as envisaged within the provisions of IBC, 2016 and CIRP Regulations, which requires a Resolution Plan to adhere to, which is reproduced hereunder:

<i>Clause of Section 30(2) of IBC, 2016</i>	<i>Requirement</i>	<i>How dealt with in the Resolution Plan</i>
(a)	Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board	Clauses 1.2.3 of Part – B of the Resolution Plan and Clauses 3.1.1 and 3.1.2 of the Resolution Plan.
(b)	(i) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53; or (ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall be not less than amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub- section (1) of section 53, whichever is higher and (iii) provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such manner as may be specified by the Board.	Clause 3.3.4 of Part – B of the Resolution Plan.



(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan	Clause 6 of Part – B of the Resolution Plan
(d)	Implementation and Supervision	Clause 4 and Clause 7 of Part – A of the Resolution Plan.
(e)	Plan does not contravene any of the provisions of the law for the time being in force	Clause 1.5 of Part – B of the Resolution Plan
(f)	Conforms to such other requirement as may be specified by the Board.	Clause 6 of the covering letter of the Resolution Plan.

Measures required for implementation of the Resolution Plan in terms of Regulation 37 of CIRP Regulations

<i>Particulars</i>	<i>Relevant Pages of the Resolution Plan dealing with aforesaid compliance</i>
<i>A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the Corporate Debtor for maximization of value of its assets, including but not limited to the following:-</i>	
(a) transfer of all or part of the assets of the Corporate Debtor to one or more persons;	Section – 4 – acquisition of going concern – at Resolution Plan
(b) sale of all or part of the assets whether subject to any security interest or not;	Section 4 – acquisition of going concern – at Resolution Plan
(c) restructuring of the Corporate Debtor, by way of merger, amalgamation and demerger;	NA
(d) the substantial acquisition of the shares of the Corporate Debtor or the merger or consolidation of the Corporate Debtor with one or more persons;	Section 4 of Part – B of the Resolution Plan.



<i>Particulars</i>	<i>Relevant Pages of the Resolution Plan dealing with aforesaid compliance</i>
(e) cancellation or delisting of any shares of the Corporate Debtor, if applicable;	Section 4 of Part – B of the Resolution Plan
(f) satisfaction or modification of any security interest;	Clause 1.2.9 (j) of Part – B of the Resolution Plan
(g) curing or waiving of any breach of the terms of any debt due from the Corporate Debtor;	Clauses 3.2.16, 3.2.22 of Part – B of the Resolution Plan
(h) reduction in the amount payable to the creditors;	Section – 3: Treatment of stakeholders – of the Resolution Plan
(i) extension of a maturity date or a change in interest rate or other terms of a debt due from the Corporate Debtor;	NA
(j) amendment of the constitutional documents of the Corporate Debtor;	NA
(k) issuance of securities of the Corporate Debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	NA
(l) change in portfolio of goods or services produced or rendered by the Corporate Debtor;	NA
(m) change in technology used by the Corporate Debtor; and	NA
(n) obtaining necessary approvals from the Central and State Governments and other authorities	Clauses 8.2.4 of Part – B of the Resolution Plan.

Mandatory contents of the Resolution Plan in terms of Regulation 38 of the CIRP Regulations:-

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Resolution Plan</i>
38(1)	The amount due to the Operational Creditors under a Resolution Plan shall be given priority in payment over Financial Creditor.	Clause 3.3.4 and 3.3.6 of Part – B of the Resolution Plan.



<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Resolution Plan</i>
38(1A)	A Resolution Plan shall include a statements as to how it has dealt with the interest of all stakeholders, including Financial Creditors and Operational Creditors of the Corporate Debtor	Clause 4 of Part – B of the Resolution Plan.
38(1B)	A Resolution Plan shall include a statement giving details if the resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.	Clause 1.8 of Part – B of the Resolution Plan
38(2)	A Resolution Plan shall provide (a) the term of the plan and its implementation schedule	Clause 5 and 5.2 of Part – A of the Resolution Plan
	(b) the management and control of the business of the Corporate Debtor during its terms; and	Clause 6 of Part – B of the Resolution Plan
	(c) adequate means for supervising its implementation	Clause 4 of Part – A read with Clause 7 of Part – B of the Resolution Plan
38(3)	A Resolution Plan shall demonstrate that (a) It addressed the cause of default;	Clause 3.1.2 of Part – A of the Resolution Plan
	(b) It is feasible and viable;	Clause 3.2 of Part – A and sub section 2.2 of Part – B of the Resolution Plan
	(c) it has provisions for its effective implementation;	Clause 1.3 of Part – B and Clause 4 of Part – A of the Resolution Plan
	(d) it has provisions for approvals required and the timeline for the same; and	Clause 8.2.4 of Part – B of the Resolution Plan



<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Resolution Plan</i>
	(e) the Resolution Applicant has the capability to implement the Resolution Plan	Clause 1 and 3 of Part – A of the Resolution Plan

10.3. The Successful Resolution Applicant has submitted a certificate of eligibility under Section 29A of IBC, 2016 which has been appended as Annexure – 12 at Page 963 to 966 of the typed set filed along with the Application.

10.4. The Successful Resolution Applicant in its letter dated 30.07.2022 had provided that as per Clause 1.3.1 (Source of Funds') of Part B (Financial Proposal) of the Resolution Plan, the successful resolution Applicant /Pristine Malwa had confirmed that it has sufficient funds to make payments of 'Initial Fund Infusion' (ie., INR. 650 million) and the said amounts of INR 650 million will be infused from the internal sources and accruals of the Successful Resolution Applicant. As per the direction of this Tribunal in order dated 12.07.2022, a tabulated column has been produced indicating the source of funds with timelines:

<i>PARTICULARS</i>	<i>AMOUNT (IN Rs. CR)</i>	<i>TIMELINE</i>	<i>SOURCE</i>
Payment of CIRP Costs	3.93	Effective date + 30 days	Internal accruals of RA's group (FD copies provided)
Payment of Employee Dues	6.75	Effective date + 30 days	Internal accruals of RA's group (FD copies provided)



<i>PARTICULARS</i>	<i>AMOUNT (IN RS. CR)</i>	<i>TIMELINE</i>	<i>SOURCE</i>
Payment of Secured FCs – Upfront	54.32	Effective date + 30 days	Internal accruals of RA's group (FD copies provided)
Payment of Secured FCs – Cash balance of CD	41.00	Effective date + 30 days	Cashflow of CD (available as cash balance with CD)
Sub – Total (A)	106.00		
Payment of Secured FCs – Deferred (Lot 1)	105.00	Effective date + 2 years	Cashflow of CD / Fund infusion by RA's group
Payment of Secured FCs – Deferred (Lot 2)	226.00	Effective date + 2 years 6 months	Cashflow of CD / Fund infusion by RA's group
Sub – Total (B)	331.00		
Payment to Secured FC – if Live Bank Guarantees are invoked	84.82	180 days from date of invocation of live BGs	Cashflow of CD / Fund infusion by RA's group
Sub – Total (C)	84.82		
Grand Total (D=A+B+C)	521.82		

10.5. It was submitted that as per the email dated 30.07.2022, the Successful Resolution Applicant had informed that it does not intend to raise any debt or equity for the funding of the Resolution Plan. It was also submitted that the Successful Resolution Applicant will be utilizing the cash flows of the Corporate Debtor for making payments with respect to the deferred consideration as provided for under the Resolution Plan. It was also stated that in case there exists a situation of the shortfall to make deferred payments as provided under the Resolution Plan, the Successful Resolution Applicant will take the necessary steps to make such payments.



10.6. The Successful Resolution Applicant has also provided the Audited Financials for Financial years 2019,2020 and 2021 including Provisional Financials for the Financial year 2022 evidencing the strong internal accruals with operating profit for the Financial Year 2022, the same being INR 145 crores. The payment obligations of the Successful Resolution Applicant are only INR 19.79 crores. A cogent reading of the internal accruals of the successful resolution Applicant along with the expected projections of the Corporate Debtor, the Successful Resolution Applicant herein is self-sufficient and well capable of providing funds as envisaged under the Resolution Plan.

J. DETAILS ON MANAGEMENT/ IMPLEMENTATION AND RELIEFS AS PER THE RESOLUTION PLAN-SALIENT FEATURES

The Resolution Plan also provides for –

- (a) Management of Company after resolution in *Clauses 6 of part B at Pages 1113 of the Resolution Plan;*
- (b) Term of the resolution plan in *Clause 1.1 of part B at Pages 1055 of the Resolution Plan;* and
- (c) Implementation and Supervision of the resolution plan in *Clauses 4 of part A read with Clause 7 of Part B at Pages 1049 & 1114 of the Resolution Plan.*



K. RELINQUISHMENT/WAIVER OF LIABILITIES AND APPROVALS

The Resolution Applicant has *inter alia* sought for the following reliefs based on provisions of the Code and Regulation 37 of the CIRP Regulations;

S. No.	RELIEFS AND / OR CONCESSIONS AND APPROVALS SOUGHT	ORDERS THEREON
1	Clause 9.21.1. (a) Any stamp duty liabilities or tax liability arising pursuant to the transactions contemplated under this Resolution Plan shall be exempted or waived off; (Pg.No.1121 of resolution plan)	This is for the appropriate authorities to consider, keeping in view of the clean slate principle envisaged under IBC, 2016.
2	Clause 9.21.1. (b) The Monitoring Committee shall be deemed to have the same rights, powers, privileges and protections which the COC and the Resolution Professional have during the CIRP, to the extent applicable; (Pg.No.1121 of resolution plan)	Ordered
3	Clause 9.21.1. (c) On and from the NCLT Approval Date, by order of the NCLT sanctioning this Resolution Plan, a restraint on, and prohibition of, all Adverse Actions including any claims, notice, dispute, litigation, arbitration, judicial, regulatory or administrative proceeding etc. against the Corporate Debtor shall be deemed to be declared until the Effective Date and in any case till the implementation of this Resolution Plan in full. All Persons including Stakeholders shall be bound by the provisions of this Resolution Plan and such restraint and prohibition; Pg.No.1121 of resolution plan)	Granted, subject to the provisions of IBC, 2016.
4	Clause 9.21.1. (d) Under Section 115JB of the Income-tax Act, any company for which a rehabilitation scheme was approved or reference was made under the provisions of the erstwhile Sick Industrial Companies (Special	This is for the CBDT, CBIC and other appropriate authorities to consider keeping in



S. No.	RELIEFS AND / OR CONCESSIONS AND APPROVALS SOUGHT	ORDERS THEREON
	Provisions), Act, 1985 was not subject to MAT until the net worth becomes positive. Accordingly, a similar benefit ought to be extended to a resolution plan approved in accordance with the IBC since the IBC supersedes all other Applicable Laws and deals with the same subject matter as the erstwhile Sick Industrial Companies (Special Provisions), Act, 1985. In order to give a partial relief from the levy of MAT to companies which are undergoing bankruptcy proceedings under IBC, Section 115JB of the Income-tax Act, 1961 was amended, vide Finance Act 2018, to allow off-set of aggregate brought forward business losses and unabsorbed depreciation against the book profits of the Corporate Debtor. The relief, however, is limited and does not exempt such companies from the levy of MAT, as in the case of sick companies, as noted above. In light of this, the CBDT shall exempt income/gain/profits, if any, arising as a result of giving effect to the Resolution Plan from being subjected to levy of MAT in the hands of Corporate Debtor under the provisions of the Income-tax Act; (Pg.No.1121 & 1122 of resolution plan)	view the object of IBC, 2016
5	Clause 9.21.1. (e)The CBDT shall (i) exempt income/gain/profits, if any, arising as a result of giving effect to the Resolution Plan from being subjected to income tax in the hands of the Corporate Debtor under the provisions of the Income-tax Act including but not limited to any income tax liability arising under Section 41 and Section 28 of the Income- tax Act on account of write off/write back of current amounts due to employees, vendors and other Operational Creditors and Financial Creditors, value of assets, value of inventories, etc. (ii) waive all liabilities in respect of taxes (including interest and penalty) arising in respect of periods up to the Effective Date, including such liabilities for the period up to the Effective Date that may	This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016



S. No.	RELIEFS AND / OR CONCESSIONS AND APPROVALS SOUGHT	ORDERS THEREON
	crystallize subsequent to the Effective Date, (Pg.No.1122 of resolution plan)	
6	Clause 9.21.1. (f) Section 50CA and Section 56(2)(x) of the Income-tax Act in respect of transfer or receipt of shares, together create a deeming fiction to tax the difference between the fair market value of such shares and the purchase or sale price thereof in the hands of the seller and purchaser respectively. The CBDT shall grant exemption from the applicability of Section 50CA and Section 56 of the Income-tax Act in respect of transactions arising as a result of giving effect to the Resolution Plan, in the hands of the Corporate Debtor and the Resolution Applicant; (Pg.No.1122 of resolution plan)	This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016
7	Clause 9.21.1. (g) The Corporate Debtor and the Resolution Applicant shall be exempted from all dues under the provisions of the Income-tax Act, including taxes, duties, penalties, interest, surcharge, fines, cesses, charges, unpaid tax deducted at source or tax collected at source (including without limitation, the income tax dues), whether admitted or not, due or contingent, whether or not set out in the Information Memorandum, Virtual Data Room, the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor or the list of creditors, asserted or unasserted, assessed or not, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the Effective Date or arising on account of the acquisition of control by Resolution Applicant. Upon the approval of this Resolution Plan, all notices, assessments (whether commenced or not), appellate or other proceedings pending or threatened in relation to the Corporate Debtor, in relation to actions/ omissions pertaining to any period prior to the	Granted in terms of the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited. 2021 SCC Online SC 313



S. No.	RELIEFS AND / OR CONCESSIONS AND APPROVALS SOUGHT	ORDERS THEREON
	Effective Date or arising on account of the acquisition of control by Resolution Applicant shall stand terminated and withdrawn, and all consequential liabilities, if any, arising out of the aforesaid shall stand extinguished and settled. The re- assessment, revision or other proceedings under the provisions of the Income-tax Act and all consequential liabilities, if any, arising out of the aforesaid shall stand exempted, settled and withdrawn. It is hereby clarified that the Corporate Debtor and the Resolution Applicant have an option to continue the income-tax appellate proceedings pending at various forums. However, if the appellate matters are adjudicated against the Corporate Debtor or the Resolution Applicant, then all dues (including but not limited to tax, interest, penalty, fee etc.) as envisaged above shall stand terminated and withdrawn; (Pg.No.1122 of resolution plan)	
8	Clause 9.21.1. (h)The CBDT shall grant the following exemptions/waivers: (a) from applicability of Section 281 of the Income Tax Act, 1961 including obtaining no-objection certificate from income tax authorities in respect of all the pending proceedings and dues (including interest and penalty) of the Corporate Debtor arising for periods up to the Effective Date (including such proceedings and dues for periods prior to the Effective Date that may crystallize subsequent to the Effective Date); (b) from all tax liabilities (including interest and penalty) and tax proceedings arising in respect of periods up to the Effective Date, including such liabilities/ proceedings for periods up to the Effective Date that may crystallize subsequent to the Effective Date in respect of on-going or potential income tax litigations at all levels (c) from applicability of Section 170 of the Income-tax Act in the hands of Resolution Applicant, which deals with successor liability of the Resolution Applicant	This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016



S. No.	RELIEFS AND / OR CONCESSIONS AND APPROVALS SOUGHT	ORDERS THEREON
	in respect of outstanding tax liabilities of the Corporate Debtor, in respect of transactions arising as a result of giving effect to the Resolution Plan. Further, CBDT shall restrict/restrain from treating any transactions contemplated in this Resolution Plan as being void or non-compliant with any provisions of the Income-tax Act; Note: In respect of the exemptions/waivers as mentioned in sub-clauses (d) to (h) above, please note that if required the Resolution Applicant may also approach the CBDT for such exemptions/waivers, however, non-grant of these exemptions by the NCLT as part of this Resolution Plan approval will not affect the binding nature of this Resolution Plan. (Pg.No.1122 & 1123 of resolution plan)	
9	Clause 9.21.1. (i) All actual and potential dues and liabilities under the provisions of any indirect tax laws, including but not limited to, the Central Excise Act, 1944, the Finance Act, 1994 (Service Tax), the Customs Act, 1962, Foreign Trade Policy 2009-14/2015-20, the Central Sales Tax Act, 1956, Respective State Value Added Tax Act, respective State Entry Tax Laws, the CENVAT Credit Rules, 2004, the Central Goods and Services Tax Act, 2017, Integrated Goods and Services Tax Act, 2017 and the respective State Goods and Services Tax Act, 2017 (each as amended from time to time and including the rules made thereunder) including taxes, sales tax deferral liabilities, duties, penalties, interest, fines, cesses, charges, unpaid tax deducted at source or tax collected at source, octroi tax, stamp duty, local body tax, municipal taxes, or other fiscal incentives (including without limitation, the indirect tax dues), whether admitted or not, due or contingent, whether or not set out in the Information Memorandum, Virtual Data Room, or the balance sheets of the Corporate Debtor or the profit and loss account statements of the	Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i> 2021 SCC Online SC 313



S. No.	RELIEFS AND / OR CONCESSIONS AND APPROVALS SOUGHT	ORDERS THEREON
	Corporate Debtor or the asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the Effective Date or arising on account of the acquisition of control by Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan shall stand exempted, settled and extinguished. All notices, assessments (whether commenced or not), appellate or other proceedings pending or threatened in relation to the Corporate Debtor, in relation to any period prior to the Effective Date or arising on account of the acquisition of control by Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan, or on account of the measures contemplated under this Resolution Plan shall stand terminated and withdrawn and the Corporate Debtor shall be exempted from any re-assessment, revision or other proceedings under the provisions of an indirect tax law and the Corporate Debtor or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto; (Pg.No.1123 of resolution plan)	
10	Clause 9.21.1. (j) The Debtor shall serve a notice to jurisdictional Principal Commissioner of Income-tax or the jurisdictional Commissioner of Income-tax (as appropriate) immediately after this Resolution Plan is submitted to the Adjudicating Authority for its approval, if required and that the Corporate Debtor shall be permitted to carry forward its unabsorbed business losses notwithstanding a change in the shareholding of the Company pursuant to this Resolution Plan (Pg.No.1123 of resolution plan)	Granted, subject to the provisions of IBC, 2016.
11	Clause 9.21.1. (k) As part of the order approving this Resolution Plan, NCLT is requested to issue specific directions, instructions to all relevant Governmental and Statutory Authorities	Granted, subject to the provisions of IBC, 2016.



S. No.	RELIEFS AND / OR CONCESSIONS AND APPROVALS SOUGHT	ORDERS THEREON
	(including but not limited to Ministry of Defence, Government of India, Ministry of Shipping, Government of India Ministry of Commerce and Industry, (Department of Commerce), Government of India, Office, the Development Commissioner,; Ministry of Commerce and Industry, Ministry of Environment, Forest and Climate Change, Export Promotion. Council for EoUs and SEZs, to issue/ renew and provide the Other Approvals and Intimations as identified under sub- section 8.2.4 of Part B (Financial Proposal) and waive all past non- compliances of the Corporate Debtor under Applicable Law and licenses, approvals, permissions, consent granted thereunder and the Corporate Debtor and the Resolution Applicant shall not be liable for any non-compliances under Applicable Law and licenses permissions/approvals etc granted thereunder for the period prior to the Effective Date.(Pg.No.1124 of resolution plan)	

L. ANALYSIS AND FINDINGS OF THIS TRIBUNAL

13. It is seen from Form – H that the Liquidation value of the Corporate Debtor is arrived at Rs.351.84 Crore and the Fair value is arrived at Rs.504.44 Crore. The Resolution Applicant proposes to infuse a sum of Rs. 517.90 Crore into the Corporate Debtor. It is also seen that the following applications filed by the Applicant under Section 66 of IBC, 2016 are pending adjudication before this Tribunal;

- (i) IA/169(CHE)/2021 – RP of Sical Logistics Limited -Vs- R Ram Mohan & 8 others



- (ii) IA/170(CHE)/2021 – RP of Sical Logistics Limited -Vs- R Ram Mohan & 7 others
- (iii) IA/171(CHE)/2021 – RP of Sical Logistics Limited -Vs- R Ram Mohan & 8 others
- (iv) IA/172(CHE)/2021 – RP of Sical Logistics Limited -Vs- R Ram Mohan & 6 others
- (v) IA/128(CHE)/2022 – RP of Sical Logistics Limited -Vs- R Ram Mohan & 6 others
- (vi) IA/1053(CHE)/2021 – RP of Sical Logistics Limited -Vs- R Ram Mohan & 6 others

14. In so far as the fate of these Applications are concerned, Clause 3.6.4 of the Resolution Plan states as follows;

3.6.4. It is clarified that the past and/or existing Promoters or Promoter Group, managers, Directors, officers, or person in charge of the affairs and/or management of the Corporate Debtor (including any person who was an 'officer in default', 'principal employer', or 'occupier', other than the Resolution Professional, his Representatives and team) prior to the Effective Date shall continue to be responsible and liable for all the liabilities, claims, demand, obligations, penalties etc. arising out of any (i) proceedings, inquiries, investigations, orders, show causes, notices, suits, litigation etc. (including those arising out of any orders passed by the NCLT pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73, 74 of the Code) or any acts or omissions in breach of Applicable Law which occurred prior to the Effective Date; or (ii) that may arise out of any proceedings, inquiries, investigations, orders, show cause, notices, suits, litigation etc. (including any orders that may be passed by the NCLT pursuant to Sections 43, 45, 49,



50, 66, 68, 70, 71, 72, 73, 74 of the Code) ("Avoidance Proceedings"). In the event any transaction is avoided/set aside by the Adjudicating Authority in terms of Sections 43, 45, 47, 49, 50 or 66 of the Code, and any amount is received by the Resolution Professional or the Corporate Debtor in furtherance thereof, such sums shall accrue to the benefit of the Approving Financial Creditors. Further, for the avoidance of doubt and without prejudice to the generality of the foregoing, it is expressly clarified that no liabilities, claims or obligations of any nature whatsoever arising out of or in relation to such Proceedings, shall arise in respect of the Corporate Debtor or the Resolution Applicant who shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto to any Stakeholder. If any Proceedings initiated against the officers of the Corporate Debtor prior to the Effective Date cannot be disposed of by the NCLT under Applicable Law, the same shall continue against such officers. However, any liability accruing to the Corporate Debtor or the Resolution Applicant as a result of such Proceedings against the officers of the Corporate Debtor shall be deemed to have been permanently extinguished by the NCLT order approving this Resolution Plan. Further, for the avoidance of doubt and without prejudice to the generality of the foregoing, it is expressly clarified that any amount that is received by the Corporate Debtor in furtherance of the Avoidance Proceedings and paid to the Approving Financial Creditors shall be at all times be paid net of all Taxes and costs. All costs for pursuing the Avoidance Proceedings shall be borne by the members of the COC, and the Resolution Applicant and/or Corporate Debtor shall not be liable to provide any funds for the same.

15. In so far as the subsidiaries of the Corporate Debtor, Clause 3.11 of Part – B of the Resolution Plan deals with the same and more particularly, Clause 3.11.5, 3.11.6 and 3.11.7 states as follows;



3.11.5. It is asserted that by virtue of the approval of this Resolution Plan by the Adjudicating Authority, the Resolution Applicant shall take over the Corporate Debtor on a fresh slate. The fresh slate principle has been enunciated by the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel Limited v. Satish Kumar Gupta and Others*, Civil Appeal No. 8766-67 of 2019 and further ratified and crystallised by the Hon'ble Apex Court in *Ghanashyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited*, Civil Appeal No. 8129 of 2019 wherein the Hon'ble Supreme Court stated that "*A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed o by us hereinabove*".

3.11.6. Therefore, basis the fresh slate principle, all liabilities of the Corporate Debtor (if any) in its capacity of shareholder of its Subsidiaries, joint ventures and associate companies, investee companies and entities where Corporate Debtor is a shareholder including PSA SICAL Terminals Limited and SICAL Mining Limited shall stand extinguished, settled, abated and written off with effect from the NCLT Approval Date, by virtue of the order of the NCLT approving this Resolution Plan and the Resolution Applicant or the Corporate Debtor shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

3.11.7. That the Corporate Debtor shall not be classified/construed as a promoter of its Subsidiaries, joint ventures, associate companies, investee companies and entities where Corporate Debtor is a shareholder, in any circumstances



whatsoever. By virtue of the approval of this Resolution Plan by the NCLT, the Corporate Debtor shall be deemed to be declassified as the promoter of any its Subsidiaries, joint ventures, associate companies, investee companies and entities where Corporate Debtor is a shareholder. All consents, waivers, no objections etc. required to be provided by any Person for any change in control or management of the Subsidiaries, joint venture companies, associate companies, investee companies of the Corporate Debtor and entities where Corporate Debtor is a shareholder or for undertaking any actions contemplated in this Resolution Plan shall be deemed to have been provided. Further, any obligation or covenants or any restrictions in relation to maintaining any minimum shareholding by the Corporate Debtor in its Subsidiaries, joint venture companies, associate companies, investee companies and entities where Corporate Debtor is a shareholder, change in control or management of the Subsidiaries, joint venture companies, associate companies, investee companies and entities where Corporate Debtor is a shareholder or any other such obligation/liability/restriction shall be extinguished/waived off by virtue of the NCLT Order approving this Resolution Plan.

16. The Monitoring Committee of the Corporate Debtor as per Clause 2.1.2 of Part – A of the Resolution Plan comprises of the following:

- (i) Existing Resolution Professional
- (ii) Two Nominees / Representative of approving Financial Creditor.
- (iii) Two Nominees of the Resolution Applicant

17. In relation to the Formation of Board of Directors and credentials of Board Members, it is stated in Clause 2.2 of Part – A of Resolution Plan as follows;



On the Effective Date, the existing suspended Board of the Corporate Debtor shall be dissolved, and all directors of the existing Board shall be deemed to have resigned without any further act or deed from any other person, and the Resolution Applicant shall reconstitute the Board of the Corporate Debtor on such date in accordance with Applicable Law and in accordance with the terms of this Resolution Plan.

18. In relation to Acquisition of the Corporate Debtor as a going concern, Section – 4 of Part B of the Resolution Plan states as follows;

Step I : Initial Fund Infusion

The Resolution Applicant shall, infuse /arrange funds into the Corporate Debtor by way of equity, equity-linked, quasi equity and/or other securities and/or shareholder debt and/ or deposits, third party debt or a combination thereof, as determined at the sole discretion of the Resolution Applicant and the amount equivalent to the Initial Fund Infusion Amount which shall be utilized towards discharge/settlement of the Admitted Operational Creditors Debt; Allocated CIRP Cost Amount and Mandatory Dissenting Financial Creditor Payments and Upfront FC Debt Payment in a manner and on such terms as provided under the Resolution Plan,

Step II: Assignment of Balance FC Debt and Admitted Other Operational Creditor Debt

The Resolution Applicant shall take over the Balance FC Debt (including that owed to the Related Parties) and the Admitted Other Operational Creditor Debt by way of an assignment for a consideration equivalent to the Balance FC Debt Assignment Consideration and Other Operational Creditor Payments, on the Effective Date, on and with effect from the NCLT Approval Date by virtue of the order of the NCLT approving the Resolution Plan.

Step III: Cancellation of Promoters Shares

Entire paid-up equity shares held by the Promoters/Promoter Group, shall stand fully extinguished and cancelled as part of the Resolution Plan on the Effective Date.



Step IV: Reduction and Reconstitution of Public Shareholding:

The share capital of the Corporate Debtor shall be reconstituted in such a manner that the share capital of the existing public shareholders of the Corporate Debtor shall get reduced/diluted/restructured/consolidated in a manner such that post Debt into Equity Conversion, the public shareholding is reduced/diluted/restructured/consolidated to 5% of the total paid-up share capital of the Corporate Debtor ("Capital Reduction"). Prior to the Effective Date, the Resolution Applicant will propose a suitable structure to the Monitoring Committee for the aforesaid reduction and reconstitution of the share capital of the Corporate Debtor. It is clarified that:

- (a) Upon pro rata dilution/reduction/consolidation of equity shares of the existing public shareholders, they shall have no claim of whatsoever nature against either the Resolution Applicant or the Corporate Debtor.*
- (b) Resolution Applicant does not propose any reduction of the authorized share capital of the Company.*

Step V: Debt Into Equity Conversion

Simultaneous to the process contemplated under Step II and 111 above, the PC Assigned Debt and OC Assigned Debt as determined by the Resolution Applicant shall be converted into fully paid-up equity shares of the Corporate Debtor such that the resultant equity shareholding of the Resolution Applicant shall be 95% of the fully paid-up equity share capital of the Corporate Debtor.

Once the share capital of the Corporate Debtor is reorganized pursuant to Cancellation of Promoters Shares and Capital



Reduction and Debt into Equity Conversion, the resultant shareholding pattern of the Corporate Debtor will be as below.

SHAREHOLDERS	SHAREHOLDING PATTERN
Resolution Applicant	95%
Existing Shareholder	5%
Total	100%

It is clarified that the shares of the Corporate Debtor will remain listed on the Bombay Stock Exchange and National Stock Exchange of India Limited. In this regard, it is also made clear that Bombay Stock Exchange and National Stock Exchange of India Limited will not be entitled to make any claim against the Corporate Debtor in relation to any outstanding fee, cost, or other levy, in relation to any period prior to the NCLT Approval Date. The Existing Shareholders will be entitled to trade the equity shares issued to them under this Chapter as per law.

For the avoidance of doubt, and subject to Applicable Law, it is clarified that filings to be made with the jurisdictional Registrar of Companies in relation to the transactions under this Resolution Plan, as required, shall be completed after the Effective Date, in accordance with the timelines prescribed under Applicable Law.

For the purposes of and in connection with the transactions contemplated under this Resolution Plan:

- (a) The cancellation of shares, capital reduction as contemplated in this Resolution Plan shall be applicable to erstwhile shareholders of Corporate Debtor,*
- (b) The order of the Adjudicating Authority approving this Resolution Plan pursuant to the IBC shall be deemed to be adequate compliance with all provisions of any Applicable Law that would otherwise have required compliance in relation to the steps that comprise any part of the*



Resolution Plan, including but not limited to compliance with Section 66 of the Companies Act, regulations of SEBI, SCRR, SCRA etc.

- (c) *The steps set out above shall be deemed, without any further act by any person, to take effect as mentioned below and as an integral part of the Resolution Plan.*

Provided however that, the Monitoring Committee, the Corporate Debtor and the Resolution Applicant, as applicable, shall take appropriate actions necessary for seeking approvals required under other Applicable Laws for implementation of the Resolution Plan.

19. In so far as the approval of the Resolution Plan is concerned, this Authority is convinced on the decision of the Committee of Creditors, following the much-celebrated Judgment of the Supreme Court in the matter of **K. Sashidhar –Vs– Indian Overseas Bank (2019) 12 SCC 150**, wherein in para 19 and 62 it is held as follows;

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

62.In the present case, however, we are concerned with the provisions of I&B Code dealing with the resolution process. The dispensation provided in the I&B Code is entirely different. In terms of Section 30 of the I&B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC and they express their



opinion on the proposed resolution plan in the form of votes, as per their voting share. In the meeting of the CoC, the proposed resolution plan is placed for discussion and after full interaction in the presence of all concerned and the Resolution Professional, the constituents of the CoC finally proceed to exercise their option (business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, non-recording of reasons would not per-se vitiate the collective decision of the financial creditors. The legislature has not envisaged challenge to the "commercial/business decision" of the financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count."

20. 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).

21. 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)

22. 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)

23. 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.

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



25. On hearing the submissions made by the Ld. Counsel for the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with 77.55 % voting share. As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Bench. On perusal of the documents on record, we are also satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016,

26. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.

27. In case of non-compliance with this order or withdrawal of the Resolution Plan by the Successful Resolution Applicant, the CoC shall



forfeit the Performance Security furnished by the Resolution Applicant in the form of Performance Bank Guarantees.

28. Subject to the observations made in this Order, the Resolution Plan in question is hereby **APPROVED** by this Adjudicating Authority. The Resolution Plan shall form part of this Order. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that the revival of the Debtor Company shall come into force with immediate effect. The Moratorium imposed under section 14 shall cease to have effect from the date of this Order.

29. 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. The Resolution Professional is further directed to hand over all records, premises/factories/documents to the Resolution Applicant to finalize the further line of action required for starting the operation of the Corporate Debtor under the control of the Resolution Applicant



30. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.

31. Liberty is hereby granted for moving any Application if required in connection with the implementation of this Resolution Plan.

32. A copy of this Order is to be submitted to the Office of the Registrar of Companies, Chennai.

33. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.

34. IA(IBC)/366/CHE/2022 shall stand **disposed of** accordingly.

35. The *Registry* is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsel for information and for taking necessary steps. File be consigned to the record.

- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

- Sd -

Justice RAMALINGAM SUDHAKAR
PRESIDENT

Raymond