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

IA(IBC)/99(CHE)/²⁰²³2022 in TCP/1/2021

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

IN THE MATTER OF:

CA M. Suresh Kumar
Resolution Professional of
Hindustan Photo Films Mfg. Co. Ltd.
M/s. SPP & Co., Chartered Accountants,
No.27/9, Nivesh Vikas,
Pankaja Mill Road, Puliyakulam,
Coimbatore – 641 045

... Applicant

Present:

For RP : T.K. Bhaskar, Advocate
A.G. Sathyanarayana, Advocate

CORAM:

Justice RAMALINGAM SUDHAKAR, PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)

Order Pronounced on 31st March 2023

ORDER

Per: Justice RAMALINGAM SUDHAKAR, PRESIDENT

IA(IBC)/99(CHE)/2023 is an Application which is moved by the
Resolution Professional of the Corporate Debtor viz., **Hindustan Photo
Films Mfg. Co. Ltd.** (hereinafter referred to as 'Corporate Debtor') on



06.01.2023 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. *To pass an order approving the Resolution Plan which was approved by the CoC in its 10th CoC meeting held on 11.11.2022 as per Sections 30(6) & 31 of the Code and consequently pass an order by waiving the requirements as mandated to be followed under Section 230 – 232 of the Companies Act, 2016 read with Companies (Compromise, Arrangements and Amalgamations) Rules, 2016;*
- B. *To pass an order approving the Scheme of arrangement (Demerger) proposed by the Resolution Applicant in the Resolution Plan for effective implementation of the plan; and*
- C. *To pass such other orders or further orders which may deemed to be fit and proper in the interest of justice;*

A. CORPORATE INSOLVENCY RESOLUTION PROCESS –
HINDUSTAN PHOTO FILMS MFG. CO. LIMITED

2.1. The Hindustan Photo Films Mfg. Co. Ltd. was incorporated in the year 1960 as a Public Sector Enterprise which is a 100% subsidiary of the Union of India through the Ministry of Heavy Industries for the purpose of Constructing an Industrial Plant for the Manufacturing of Photo Films, having its registered office at Indu Nagar, Ootacamund,



Nilgiris District, Tamilnadu – 643 005 with the Registrar of Companies, Coimbatore and it has stopped its business activities from the year 2013.

2.2 In the meantime, the Corporate Debtor became sick and reference was made to Board for Industrial and Financial Restructuring (BIFR) and the BIFR vide order dt. 31.03.2003 has passed an order to wound up since there is no feasibility and viability to revive the Corporate Debtor and the same was forwarded to the Hon'ble High Court of Madras and was numbered as C.P. No. 114 of 2003. As against the same, the Corporate Debtor preferred an Appeal No. 98 of 2003 before the Appellate Authority (AAIFR) and the said Appellate Authority vide its order dated 07.06.2005 dismissed the said appeal. Further, the Corporate Debtor has challenged the said order of AAIFR by way of a Writ Petition No. 20017/2005 before the Hon'ble High Court of Madras and the same was also dismissed by its order dated 29.08.2015.

2.3. One of the Financial Creditors of the Corporate Debtor viz. Canara bank filed an Application CA No. 429/2019 before the Hon'ble High Court of Madras to transfer the CP/114/2003 pending of the file of the Hon'ble High Court of Madras to this Tribunal for initiation of Corporate Insolvency Resolution Process under Section 7 of IBC, 2016.



The Hon'ble High Court of Madras vide its order dated 18.05.2020 has allowed the said Appeal and accordingly CP/114/2003 was transferred and numbered as TCP/1/2021 on the file of this Tribunal and was listed for hearing on 07.01.2022 and on the said date, the order of admission was passed by this Tribunal and one Mr. C. Prabakaran was appointed as the IRP.

2.4. The Applicant submits that the Financial Creditor namely M/s. Canara Bank had originally filed a Company Petition before this Hon'ble Tribunal U/s.7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "Code"), seeking for initiation of the Corporate Insolvency Resolution Process (CIRP) because of default in the CD borrowings to the tune of Rs.705 crores. The said Petition was taken on file and the same was ordered for commencement of Corporate Insolvency Resolution Process (CIRP) by appointing Mr. C. Prabakaran as the Interim Resolution Professional (IRP) on 07.01.2022.

2.5. Pursuant to the public announcement, several claims were filed with the IRP. The IRP on analysis of the Claims has constituted the CoC and voting rights were assigned and the same was updated by the present applicant RP from time to time and the details of the latest list of creditors along with voting rights are given hereunder:



| S. NO | NAME OF THE FINANCIAL CREDITOR | AMOUNT CLAIMED (IN CRORES) | | | AMOUNT ADMITTED (IN CRORES) | | |
|--------------|--|----------------------------|------------------|------------------|-----------------------------|------------------|------------------|
| | | Principal (A) | Interest (B) | Total (C) | Principal (A) | Interest (B) | Total (C) |
| 1 | Life Insurance Corporation of India | 19.98 | 657.58 | 677.56 | 19.98 | 657.58 | 677.56 |
| 2 | The Administrator of the Specified Undertaking of the Trust of India (SUUTI) | 45.93 | 5,672.84 | 5,718.77 | 45.93 | 5,550.46 | 5,596.38 |
| 3 | UTI Trustee Company Private Limited | 7.61 | 914.76 | 922.38 | 7.61 | 889.84 | 897.45 |
| 4 | Canbank Financial Services Limited | 0.15 | 4.30 | 4.45 | 0.15 | 0.48 | 0.63 |
| 5 | Indian Bank | 5.11 | 578.22 | 583.33 | 5.11 | 578.22 | 583.33 |
| 6 | Canara Bank (Asset Recovery Management) | 10.49 | 1,659.16 | 1,669.65 | 10.49 | 1,659.16 | 1,669.65 |
| 7 | Canara Bank, Ootacamund Branch | 6.23 | 47.02 | 53.25 | 6.23 | 47.02 | 53.25 |
| 8 | State Bank of India (SAMB, Cbe) | 277.79 | 30,499.10 | 30,776.90 | 277.79 | 29,344.98 | 29,622.77 |
| 9 | Ministry of Heavy Industries, Govt of India | 557.57 | 1,888.60 | 2,446.17 | 557.57 | 1,888.60 | 2,446.17 |
| 10 | Peerless General Finance and Investment Co. Ltd | 30.25 | 105.95 | 136.20 | 30.25 | 105.95 | 136.20 |
| 11 | Punjab National Bank | 0.70 | 21.65 | 22.35 | 0.70 | 2.45 | 3.15 |
| 12 | United India Insurance Company Limited | 0.85 | 95.60 | 96.45 | 0.85 | 2.98 | 3.83 |
| 13 | Canbank Mutual Fund | 0.80 | 8.31 | 9.11 | 0.80 | 2.80 | 3.60 |
| 14 | SBI Fund Management Limited | 5.00 | 144.92 | 149.92 | 5.00 | 17.51 | 22.51 |
| 15 | The New India Assurance Company Ltd | 1.00 | 582.53 | 583.53 | 1.00 | 3.50 | 4.50 |
| 16 | KIOCL Limited | 18.00 | 133.59 | 151.59 | 18.00 | 133.59 | 151.59 |
| Total | | 987.47 | 43,014.13 | 44,001.60 | 987.47 | 40,885.12 | 41,872.59 |



| S. No | NAME OF THE OPERATIONAL CREDITOR | CATEGORY | AMOUNT CLAIMED (IN CRORES) | AMOUNT ADMITTED (IN CRORES) |
|-------|--|-----------|----------------------------|-----------------------------|
| 1 | M. Ramakrishnan (Late) | Employees | 0.0105 | Nil |
| 2 | K. Unni Krishnan | | 0.1650 | |
| 3 | Subramania Koushik. G | | 31.7660 | |
| 4 | Canara Bank (Debenture Trustee) | Others | 1.8300 | 0.1830 |
| 5 | J.B. Murali (Advocate) | | 0.0419 | 0.0419 |
| 6 | Chennai Auto Ancillary Industrial Infrastructure Upgradation Company | | 0.2202 | 0.2043 |
| | Total | | 34.0336 | 0.4292 |

2.6. The CoC in its 2nd CoC meeting has proposed to appoint the Applicant herein as the Resolution Professional in respect of the Corporate Debtor and has also passed a Resolution to the said effect. Pursuant to the same the CoC has filed IA/355/2022 and this Tribunal vide its order dated 12.04.2022 has appointed the Applicant herein as the RP in respect of the Corporate Debtor.

2.7. Thereafter the Applicant updated the Information Memorandum and then prepared the Evaluation Matrix and Request for Resolution Plans (RFRP) and the same was placed before the CoC for its consideration and discussion in the 3rd CoC meeting held on 06.05.2022. The CoC after detailed discussions and deliberations approved the, Bid Evaluation Matrix and RFRP for issuance to the prospective

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resolution applicants and the details of the Assets of the CD and its status are as follows:

| S. No. | ASSET PARTICULARS |
|----------|--|
| A | Land & building |
| 1 | Leased Land 201.17 acres |
| 2 | Lease land 90 acres |
| 3 | Free Land 12.19 acres |
| 4 | Free Land 4.49 acres (Ambattur) |
| B | Plant & Machinery |
| 5 | Unit I & III |
| 6 | Unit IV |
| 7 | Unit II (Ambattur) |
| C | Securities & Financial Assets |
| 8 | Stock & Book Debts |

2.8. In the 4th CoC meeting held on 16.06.2022, the Applicant/RP briefed about the CIRP process and also the CIRP Costs to the CoC members. Further the RP briefed about the Form-G and responses received and informed that no plan has been received, whereas 2 PRA's has sought extension of time for completion of due diligence for submission of Resolution plans. The RP placed before CoC that some parties are interested to takeover Ambattur property for outright sale but till date no party has shown interest to revive the Corporate Debtor through plan since the Ooty



properties of the Corporate Debtor are leasehold lands allotted by the Forest Department and litigations are pending on the same. The CoC considering the above facts and circumstances after detailed deliberations has approved to re-issue EoI for revival of the Corporate Debtor.

2.9. The Applicant again published Form – G on 27.06.2022 in “Economic Times” (All India Edition) & Dinamani (Tamil Nadu Edition) inviting prospective Resolution Applicants to revive the Corporate Debtor and the last date was fixed as 13.07.2022. In the meantime the 180 days CIRP period came to an end on 06.07.2022 and this Tribunal vide its order dated 25.07.2022 passed in IA/757/2022 has extended the CIRP period for 90 days till 04.10.2022.

2.10. The 5th CoC meeting was held on 19.07.2022 and the 6th CoC meeting was convened on 22.08.2022 wherein the RP has briefed about the CIRP process and the receipt of EoI’s by the Applicant. The CoC has extended the last date for the receipt of the EoI to 15.08.2022. Thereafter, the CoC discussed in detail about the EoI timelines to revive the Corporate Debtor and to issue a Fresh EoI’s rather than going for Extension of EoI, however the considering the timelines provided under the Code, the CoC has resolved



to extend the last date for submission of Resolution Plans by the PRAs upto 12.09.2022.

2.11. In pursuance of the same, Shri M.K. Rajagopalan has submitted his Resolution Plan in a sealed cover to the Applicant on 12.09.2022 and the same was placed before the CoC in its 7th CoC meeting held on 16.09.2022. In the said CoC meeting, the request of the other PRA's for extension of timeline for submission of Resolution Plan was considered and the CoC extended the last date for submission of Resolution Plan by the PRAs till 30.09.2022.

2.12. In the 8th CoC meeting which was held on 06.10.2022 the RP briefed about the CIRP keys dates and events to the CoC members further the CoC has discussed about the resolution plans received from Shri. M.K. Rajagopalan and K R Laminates Private Limited on 12.09.2022 and 30.09.2022 respectively. Thereafter the CoC has also discussed about the fair and liquidation values of the CD and status of assets and its lease details of the CD and the litigations pending with the CD assets. After detailed discussions, the CoC members directed the RP to arrange for physical meeting with the PRA's for negotiation since Mr. M.K.Rajagopalan has proposed plan for Rs.99.80 crores including capital infusion. Therefore, it was informed to the PRA's for



submission of the revised resolution plans after detailed analysis with a better offer.

2.13. In the 9th CoC meeting held on 15.10.2022, the revised proposal submitted by the PRA on 12.10.2022 was discussed in detail and the distribution of plan proceeds to the CoC members. However, the PRA proposed to acquire assets through a Scheme of Arrangement [Demerger of part of assets of the CD i.e. freehold assets] which is anyway available in the RFRP which is a new insertion of Regulation 36B(6A) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Further in the aforesaid meeting, the plan submitted by K R Laminates Private Limited has been disqualified since they have not even submitted the EMD which is a pre requisite requirement for submission of Resolution Plan irrespective of several reminders made to them.

2.14. In the meantime, this Tribunal vide its order dated 04.11.2022 passed in IA/1123/2022 has excluded the CIRP timeline due to Covid-19 period lockdown and the CIRP timeline was extended upto 26.11.2022.


2.15. Thereafter, the revised plan received from the PRA Shri. M.K.Rajagopalan dated 31.10.2022 was placed before the CoC members. The RP has opened the plan and briefed the





CoC members that the PRA has submitted the Resolution Plan by way of a Scheme of Arrangement viz. Demerger wherein 2 of his undertakings namely Kim Ram Exports Private Limited and SGS Land Holdings Private Limited shall takeover the freehold Land of 4.49 acres of Land along with the superstructure thereon and Plant & Machineries situated at Ambattur and 12.19 acres of land situated at Ooty respectively as mentioned in the schedule.

- 2.16. It is stated that the RP has examined the Resolution Plan and the clauses therein and then sought for documents as mandated under the Companies Act, 2013. In response to the same, the PRA gave an undertaking that he will provide all the necessary documents once the proposed plan is being considered and approved by the CoC. Hence the same was provided after approval of the plan i.e. Memorandum and Articles of Association, List of Shareholders along with consent affidavits, List of Creditors including secured and unsecured along with consent affidavits by the respective creditors, Networth Certificate, Audited balance sheets of last 2 years and provisional balance sheets upto 29.12.2022, Accounting Treatment Certificate U/s.133 of the Companies Act, 2013, Auditor Certificate stating share valuation does not apply for the Resulting Companies.



2.17. Further it was submitted that the Applicant has informed the CoC that the plan value provided by the PRA and informed the CoC that the Resolution Plan is more than the Liquidation Value (Rs. 91.87 Crores) for the two assets proposed to be taken over viz. Scheme of Demerger as an Resolution Plan and further informed the CoC that the PRA has met the Minimum Eligibility Criteria as fixed by the COC and also the PRA is having valid net worth wherein almost 1/3rd amount has been provided as Bank Guarantee and Performance Bank Guarantee. The RP has also informed the CoC that the plan is in compliance with the requirements of the IBC, 2016.

2.18. The Applicant / RP further informed the CoC that he has duly verified the plan and found that the Resolution Plan submitted by Shri, M.K. Rajagopalan dated 31.10.2022 meets the conditions as laid down in the Sec. 30(2) of the Code read with IBBI (CIRP) Regulations, 2016. Further RP has submitted the Due Diligence certificate on the plan to the CoC members and the same was taken on record for discussion along with the Bid Evaluation Matrix. The due diligence certificate of the RP on compliance of Section 29A by the Resolution Applicant is appended as "Annexure 22".

2.19. It is further submitted that the Resolution Professional has placed the Resolution Plan as submitted by the Prospective



Resolution Applicant to the Committee of Creditors in accordance with section 30(3) of the Code read with Regulation 39(2) of the IBBI (CIRP) Regulations, 2016 for consideration of the CoC in its 10th CoC meeting held on 11.11.2022. The Committee of Creditors has examined the Resolution Plan in detail and the said plan was considered and approved by the CoC members with 77.94% voting in its favour. The E-voting was held from 17.11.2022 to 14.12.2022. **The CoC has passed a Resolution for part sale of the assets of the Corporate Debtor through a Resolution Plan and the remaining assets called as "Leasehold Assets" to undergo Liquidation, which is treated as "Excluded Assets" by the CoC and the following Resolution was passed to the said effect;**

"RESOLVED THAT the Revised Resolution Plan dt: 31.10.2022 submitted by Mr.M.K.Rajagopalan for acquisition of part of the assets of the Corporate Debtor is hereby approved and confirmed by this committee u/s. 30(4) of the Insolvency and Bankruptcy Code, 2016 and the RP is directed to take necessary steps for obtaining the approval of the Adjudicating Authority under the provisions of IBC".

RESOLVED FURTHER THAT the amount allocated for the Secured Financial Creditors [Rs. 100.80 Crores] in the said Resolution Plan shall be apportioned among the secured financial creditors [after payment of the expenses and the liquidation value due to the dissenting creditors] as per the inter se agreement of the financial creditors in the following manner.



a. First Charge Holders - 70% [on the basis of charge held on respective assets and related claim outstanding]

b. Second Charge Holders - 30% [on the basis of charge held on respective assets and related claim outstanding]"

AND

"RESOLVED FURTHER THAT the Corporate debtor along with its remaining assets be liquidated, subject to the approval of Hon'ble National Company Law Tribunal, Chennai Bench under Sec 33 of IBC 2016, as there is no viable Resolution Plan received for the remaining assets of the Corporate Debtor, and there is no scope for revival of the business of the Corporate Debtor for the reason of technological obsolescence, lack of working capital & lack of active market for the Corporate Debtors products"

"RESOLVED FURTHER that the CoC hereby authorize the RP to file application before Adjudicating authority for liquidation of the Corporate debtor"

RESOLVED FURTHER the COC hereby recommends to appoint the present RP (CA. Mahalingam Suresh Kumar) as the Liquidator to manage the Liquidation process of the CD and the Liquidator fees shall be paid at such rates as specified under Regulation 4(2) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 on realization and distribution of assets of the Corporate Debtor.

The aforesaid Resolution is attached as "Annexure 23" at pages No. 1096 to 1145 of the typed set filed along with the Application. The result of the E-voting is placed at



page No. 1143 of the typed set filed along with the Application.

2.20. It is submitted that the Resolution Plan submitted by Shri.M.K.Rajagoplan Viz. Scheme of Demerger was approved with requisite majority of 66% or more by the CoC i.e.77.94%. Further, the Resolution Professional has certified the Form-H in accordance with the CIRP Regulations 39(4) of the IBBI (CIRP) Regulations, 2016 and the same is filed herewith as "Annexure-24".

2.21. Further to the approval of the Resolution Plan, the RP has given a letter dated 15.12.2022 declaring the PRA as the Successful Resolution Applicant (SRA) and further requested them to submit the required documents including 10% Performance Bank Guarantee and the same was provided by the SRA and the copy of the letter along with Performance Bank Guarantee is enclosed herewith as "Annexure-26".

2.22. Further it was submitted that the excluded assets in the plan shall go for liquidation along with the CD and the RP was recommended as the Liquidator of the CD and he has submitted his consent viz. Form-AA along with AFA and the same was resolved by the CoC with 77.94% voting



rights and 13.37% voted against and remaining 8.69% abstained.

2.23. The Applicant submitted that no transaction/forensic audit arises since the CD is a government company and the audit is carried by the CAG department hence the same was informed by the nominee directors to the CoC members and the same was agreed by them and did not propose to conduct any audit more particularly the CD was in BIFR since 2003 and the same was referred to Hon'ble High Court for initiation of winding up proceedings further it stopped its business activities in 2013 itself hence there is no scope arise for conducting the Transaction/Forensic audit to find out PUFÉ transactions.

2.24. Further, it was submitted that the Applicant has filed a separate application for liquidation of the Corporate Debtor which is numbered as IA(IBC)/204(CHE)/2023 and the same shall be decided by this Tribunal without prejudice to the present plan approval application. Further the said plan shall be effective from the date of implementation of the plan and the liquidation proceedings for the excluded assets shall be separate which cannot be combined with this plan approval unless otherwise it will cause severe prejudice and irreparable loss to the applicant herein.

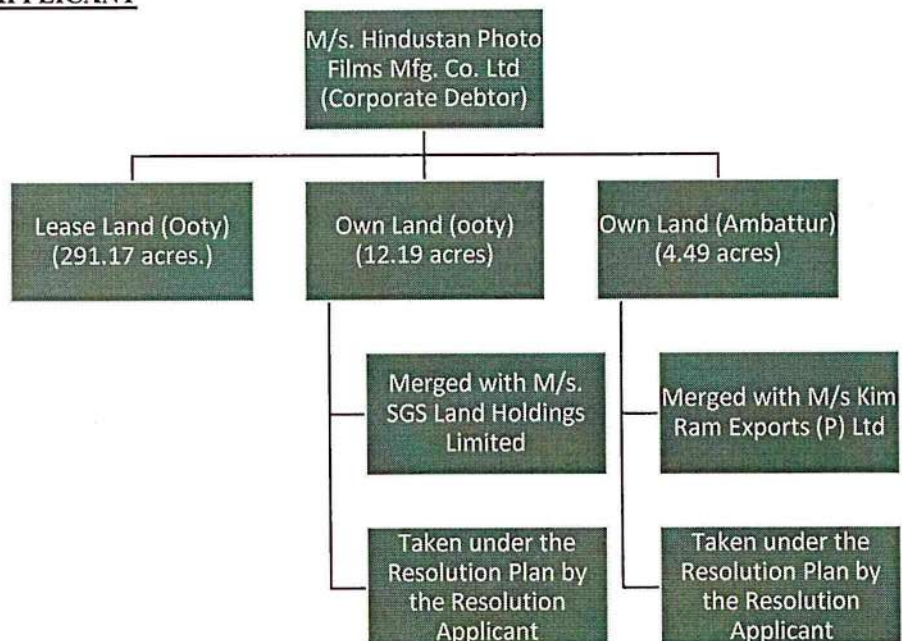
2.25. The Applicant has filed a Compliance Certificate in the prescribed form i.e. Form 'H' in compliance with Regulation 39(4) of the CIRP Regulations, 2016. A brief snapshot of the Resolution Plan submitted by the Successful Resolution Applicant, is as follows;

| Sl. No | Category of Stakeholder | Sub-Category of Stakeholder | Amount Claimed | Amount Admitted | Amount Provided under the Plan# | Amount Provided to the Amount Claimed (%) |
|--------|-------------------------------|---|---------------------|--|---------------------------------|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| 1 | CIRP Costs | | | | **180 | |
| 2 | Secured Financial Creditors | (i) who did not vote in favour of the resolution Plan | 737,443.27 | 663,877.35 | 10,080 | 0.0023% |
| | | (ii) who voted in favour of the resolution plan | 3,402,940.78 | 3,263,605.66 | | |
| | | Total[(a) + (b)] | 4,140,384.05 | 3,927,483.01 (Prin. 987.46 crs) | 10,080 | 0.0023% |
| 3 | Unsecured Financial Creditors | (i) who did not vote in favour of the resolution Plan | 259,776.02 | 259,776.02 | NIL | NIL |
| | | Total[(a) + (b)] | 259,776.02 | 259,776.02 | - | - |



| | | | | | | |
|--------------------|-----------------------|---------------------------------------|---------------------|---------------------|---------------|----------------|
| | | | | | | |
| 4 | Operational Creditors | (a) Related Party of Corporate Debtor | - | - | - | - |
| | | (b) Other than (a) above: | - | - | - | - |
| | | (i)Government | - | - | - | - |
| | | (ii)Workmen | - | - | - | - |
| | | (iii)Employees | 209.21 | 42.92 | Nil | Nil |
| | | (iv) Others | 3,194.15 | Nil | Nil | Nil |
| | | Total[(a) + (b)] | 3403.36 | 42.92 | Nil | Nil |
| 5 | Other debts and dues | | - | - | - | - |
| Grand Total | | | 44,03,563.42 | 4,187,301.94 | 10,260 | 0.0023% |

3. STRUCTURE OF THE RESOLUTION PLAN SUBMITTED BY THE RESOLUTION APPLICANT



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4. LIQUIDATION VALUE OF CORPORATE DEBTOR FOR THE PROPOSED ASSETS UNDER THE RESOLUTION PLAN



Total Liquidation Rs. 91.87 Crores
 Resolution Plan Amount- Rs. 100.80 Crores
 (+) CIRP costs – Rs.1.80 Crores

The Financial Creditor of M/s. **Hindustan Photo Films Mfg. Co. Limited** approved the plan with **77.94135% In Favour; 8.69340 % Abstained from voting; and 13.36527% Dissented.**

5. SALIENT TERMS AND CONDITIONS OF THE RESOLUTION PLAN ARE AS BELOW:-

| 1 | Amount of payment to creditors under the Resolution Plan EMD- 20 Crores Bank Guarantee (Pg. 1159 of Vol 6) | <p>Rs. 100.80 Crores</p> <p>Allocation of the Plan value to charge holders – Pg 1119 of Vol 6</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="5" style="text-align: center;">Allocation of the plan value to charge holders as per 70:30 agreement</th> </tr> <tr> <th rowspan="2" style="text-align: center;">As per the 70:30 Agreement</th> <th colspan="2" style="text-align: center;">As per Liquidation Value</th> <th colspan="2" style="text-align: center;">As per Plan Value</th> </tr> <tr> <th style="text-align: center;">Ambattur Property</th> <th style="text-align: center;">Ooty Property</th> <th style="text-align: center;">Ambattur Property</th> <th style="text-align: center;">Ooty Property</th> </tr> </thead> <tbody> <tr> <td>1st Charge holders - 70%</td> <td style="text-align: center;">51.21</td> <td style="text-align: center;">13.10</td> <td style="text-align: center;">55.51</td> <td style="text-align: center;">14.20</td> </tr> <tr> <td>2nd Charge holders - 30%</td> <td style="text-align: center;">21.95</td> <td style="text-align: center;">5.62</td> <td style="text-align: center;">23.79</td> <td style="text-align: center;">6.09</td> </tr> <tr> <td>TOTAL</td> <td style="text-align: center;">73.16</td> <td style="text-align: center;">18.72</td> <td style="text-align: center;">79.30</td> <td style="text-align: center;">20.29</td> </tr> </tbody> </table> | Allocation of the plan value to charge holders as per 70:30 agreement | | | | | As per the 70:30 Agreement | As per Liquidation Value | | As per Plan Value | | Ambattur Property | Ooty Property | Ambattur Property | Ooty Property | 1st Charge holders - 70% | 51.21 | 13.10 | 55.51 | 14.20 | 2nd Charge holders - 30% | 21.95 | 5.62 | 23.79 | 6.09 | TOTAL | 73.16 | 18.72 | 79.30 | 20.29 |
|---|---|---|---|---------------|--|--|--|----------------------------|--------------------------|--|-------------------|--|-------------------|---------------|-------------------|---------------|--------------------------|-------|-------|-------|-------|--------------------------|-------|------|-------|------|--------------|--------------|--------------|--------------|--------------|
| Allocation of the plan value to charge holders as per 70:30 agreement | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| As per the 70:30 Agreement | As per Liquidation Value | | As per Plan Value | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Ambattur Property | Ooty Property | Ambattur Property | Ooty Property | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1st Charge holders - 70% | 51.21 | 13.10 | 55.51 | 14.20 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2nd Charge holders - 30% | 21.95 | 5.62 | 23.79 | 6.09 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| TOTAL | 73.16 | 18.72 | 79.30 | 20.29 | | | | | | | | | | | | | | | | | | | | | | | | | | | |

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| | | |
|----|---|---|
| | | In addition to the above, vide affidavit dated 14.02.2023, an amount of Rs. 15,00,000/- will be paid by the Resolution Applicant to the Unsecured Financial Creditor and Operational Creditor. |
| 2 | Balance Payment of Rs. 80.80 crores | Within 45 days from Approval of Resolution Plan by NCLT |
| 3 | Proposed instruments for repayment | Loan/Debt instruments – NIL Quasi Equity, if any - NIL Equity, if any - NIL Entire amount is paid upfront in cash |
| 4 | Interest Rate/Coupon and frequency of payment | Loan/Debt instruments - Not Applicable Quasi Equity, if any - Not Applicable Entire amount is paid upfront in cash |
| 5 | Repayment Schedule | Loan/Debt instruments - Not Applicable Quasi Equity, if any - Not Applicable Entire amount is paid upfront in cash |
| 6 | Security | Details to be mentioned for each instrument/facility - Not Applicable Entire amount is paid upfront in cash |
| 7 | Conversion terms for quasi equity | Not Applicable Entire amount is paid upfront in cash |
| 8 | Any equity being offered to Financial Creditor and terms for the same | Not Applicable Entire amount is paid upfront in cash |
| 9 | Amount of fresh equity being infused into the Corporate Debtor | No fresh equity is proposed to be infused Terms - Not Applicable |
| 10 | Corporate Guarantee or additional collateral/security being offered by the Resolution Applicant | Amount - Not Applicable Name of Corporate Guarantor - Not Applicable External Credit Rating of Corporate Guarantor- Not Applicable |
| 11 | Any third-party collateral being offered as additional security by the Resolution Applicant(s) | Description and value to be mentioned - Not Applicable |



| | | |
|----|---|---|
| 12 | Details of Key Management Personnel of the Resolution Applicant(s) with a brief description of experience in managing capital intensive assets | Clause 3 of the Resolution plan for details |
| 13 | Details of prior experience of the Resolution Applicant(s) in managing capital intensive business | Clause 3 of the Resolution plan for details |
| 14 | Brief description of successful turnaround case studies in India or abroad | Clause 3.12 of the Resolution Plan for details |
| 15 | Credit Rating of the Resolution Applicant(s). For Unrated Corporates, please provide details of Net worth For Funds please provide details of Assets Under Management | Auditor Certificate for Net worth - Enclosed Resolution Applicant(s) should submit a satisfactory credit opinion from their lead/primary Banker - Enclosed Resolution Applicant(s) should submit copies of last three audited annual reports - Enclosed |

6. THE FOLLOWING IS THE RESOLUTION PLAN AMOUNT PROPOSED BY THE RESOLUTION APPLICANT:

| Resolution Plan Amount | Rs. in Crores | Remarks |
|-------------------------------|---------------|---|
| CIRP Costs | 1.80 | The entire CIRP costs as may be duly approved by the CoC will be paid in priority over all other payments. As per the information provided by the RP, Rs. 1.80 crores has been provided as CIRP costs. |
| Financial Creditors (Secured) | 100.80 | An amount of Rs. 100.80 crores is proposed for payment to Financial creditors (Secured) as full and final settlement to such extent and as provided for in the Plan. The remaining balance of their respective claims against the Corporate Debtor will continue to be treated in accordance with the |

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|---|----------------------|---|
| | | provisions of IBC. The amount proposed will be distributed amongst the Secured Financial Creditors as decided by the CoC in this category. |
| Financial Creditors (unsecured)* | 0.00 | An amount of Rs. 151.59 Crores claimed by Financial creditors (unsecured) has been admitted by the RP. No payment has been proposed to Financial Creditors (unsecured). Their respective claims against the Corporate Debtor will continue to be treated in accordance with the provisions of IBC. |
| Operational Creditors – workmen & employees | 0.00 | No claim has been admitted and therefore no amount is proposed to this category of creditors. |
| Operational creditors -trade creditors * | 0.00 | An amount of Rs. 0.43 Crores claimed by operational creditors (Trade creditors) has been admitted by the RP. No payment has been proposed to Operational Creditors (Trade creditors). They will be treated as settled. Their respective claims against the Corporate Debtor will continue to be treated in accordance with the provisions of IBC. |
| Resolution Plan Amount | Rs. in Crores | Remarks |
| Operational creditors – statutory authorities | 0.00 | No claim has been filed by any statutory authority and therefore no amount is proposed in the resolution plan |
| Equity Shareholders | 0.00 | The paid-up equity share capital is Rs. 206.86 Crores. No amount is proposed in the resolution plan by the RA to the equity shareholders. |
| Total Outlay | 102.60 | |
| Fresh infusion | 2.70 | Will be brought in within 45 days from the date of approval of the Resolution Plan, for capital expenditure and working capital requirements. |
| Total Resolution Plan Amount | 105.30 | |

***In addition to the above, vide affidavit dated 14.02.2023, the Resolution Applicant has proposed to pay an additional amount of Rs. 15,00,000/- to the Unsecured Financial Creditor and Operational Creditor.**



7. SOURCE OF FUND

7.1. Upon approval of the Resolution Plan by the AA, the resolution applicant will bring in the entire amount of Rs. 102.60 crores (Rupees One Hundred and Two crores and Sixty Lakhs only) within 45 days of approval of the Resolution Plan by the Adjudicating Authority and credit the amounts to separate "No-Lien" current account for Resolution Plan account, which would be opened and operated by the Resolution Professional.

7.2. The Resolution Applicant confirms that he has sufficient funds to make the payments described in clause 5.5.10 above and / or has the ability to raise such amounts from other sources also.

7.3. The Resolution Applicant retains the right to arrange for this funding from various banks or financial institutions or any other lenders. The Resolution Applicant has obtained a certificate from Indian Bank, Puducherry confirming the availability of funds for this transaction and also his credit standing (Copies of letters attached).

7.4 The Resolution Applicant hereby affirms that he has more than adequate wherewithal for arranging the entire payment, within 45 days of approval of the Resolution Plan.



7.5. The Resolution Applicant plans a fresh infusion of Rs. 2.70 Crores into the respective Resulting Companies, in the form of loan, within 45 days from the date of approval of the Resolution Plan by the Adjudicating Authority, as indicated in the Resolution Plan to meet the Capital expenditure and Working Capital requirements.

8. IMPLEMENTATION OF THE RESOLUTION PLAN

8.1. Pursuant to the order of the Adjudicating Authority approving this plan, the Resolution Professional shall operate the "No-Lien" current account and disburse the amounts deposited in therein by the Resolution Applicant and disburse the same as envisaged in this Resolution Plan. To clarify, **since the Resolution Professional as well as the CoC will continue to be in the control of affairs of the Corporate Debtor even after the approval of the Resolution Plan by the Adjudicating Authority, the CoC shall act as the Monitoring Committee till the Total Outlay Amount is disbursed.** Given this, the Resolution Plan shall be deemed to be fully implemented and completed upon payment of the Total Outlay amounts and other eligible amounts in the "No-Lien" current account and upon giving effect to demerger.




9. **PAYMENT SCHEDULE OF THE RESOLUTION PLAN AMOUNT:**

| Payment proposal | Total Plan Amount – upfront within 45 days |
|---|--|
| Payment after NCLT approval in => | Rs. Crores |
| CIRP costs (estimated) | 1.80 |
| Secured Financial creditors | 100.80 |
| Unsecured Financial Creditors | NIL |
| Operational creditors (Workmen and employees) | NIL |
| Operational creditors (Trade creditors) | NIL |
| Operational creditors (statutory dues) | NIL |
| Equity Shareholders | NIL |
| Total Outlay | 102.60 |
| Fresh Capital Infusion | 2.70 |
| Total Resolution Plan Amount | 105.30 |

(*In addition to the above, vide affidavit dated 14.02.2023, the Resolution Applicant has proposed to pay an additional amount of Rs. 15,00,000/- to the Unsecured Financial Creditor and Operational Creditor.)

10. **DETAILS OF THE SCHEME OF ARRANGEMENT (DEMERGER)**


10.1. The Scheme of Arrangement presented under sections 230 to 232 of the Companies Act, 2013 read with regulation 36B(6A) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process against Corporate Persons) Regulations, 2016 and other applicable provisions, is to be treated as an integral part of the Resolution Plan submitted by the Resolution Applicant in the course of Corporate Insolvency Resolution Process of Hindustan Photo Films Manufacturing Company Limited, for the demerger of



Demerged Undertaking I (as defined hereinafter) and Demerged Undertaking 2 (as defined hereinafter) of Hindustan Photo Films Manufacturing Company Limited (hereinafter referred to as the “Demerged Company”) into **SGS LAND HOLDINGS PRIVATE LIMITED** (Resulting Company 1) and **KIM RAM EXPORTS PRIVATE LIMITED** (Resulting Company 2) respectively (hereinafter collectively referred to as the “Resulting Companies”) as per the terms and conditions mentioned in the Scheme.

10.2. **SGS Land Holdings Private Limited** is a private company incorporated on the 8th day of March, 2004 having CIN U70101TN2004PTC052689 and registered office at 30A, Beach Villa, Beach road, Kapaleeswarar Nagar, Neelankarai, Chennai : 600115, Tamilnadu. It is engaged in the business of real estate development. It is an unlisted private company and the entire issued, subscribed and paid up equity share capital is held by Mr. M K Rajagopalan (“**Resolution Applicant**”) and his family members.

10.3. **Kim Ram Exports Private Limited** is a private company incorporated on the 21st day of March, 1990 having CIN U18209TN1990PTC018899 and registered office at Plot no. 356, Nehru Nagar, First Cross Street, Old Mahabalipuram road, Kottivakkam, Chennai : 600096, Tamilnadu. It is engaged in the business of buying, selling, import, manufacture, processing of various goods. It is an unlisted private company and the entire issued, subscribed and paid up equity share capital is held by the




Mr. M K Rajagopalan (“**Resolution Applicant**”) and his family members

11. RATIONALE OF THE SCHEME

11.1. As part of an overall business reorganization plan and in order to provide for the optimum value to the creditors of the Demerged Company and in the interests of the Demerged Company it is considered necessary to segregate and realign the assets of the Demerged Company appropriately. In these circumstances, it is considered desirable and expedient to restructure the businesses of the Demerged Company by demerging, transferring and vesting the Demerged Undertaking 1 of the Demerged Company into the Resulting Company 1 and the Demerged Undertaking 2 of the Demerged Company into the Resulting Company 2 in the manner and on the terms and conditions stated in this Scheme of Arrangement (Demerger).

11.2. In order to ensure optimum value to the creditors and other stakeholders, it would be advantageous for the Demerged Company to give value addition to the creditors and other shareholders by demerging the verticals representing the Demerged Undertakings and retaining the verticals representing the Remaining Undertakings to have a positive impact on the company’s revival plan. The re-organisation is essentially to ensure higher returns to the creditors and other stakeholders and is also in general public interest.






11.3. As the Demerged Undertakings are located at two different Districts in Tamilnadu, it would be advantageous to demerge the undertakings at each District to the respective Resulting Companies. Further, it is opined that any potential financial investor or other strategic partner interested in supporting and taking an equity stake in the business comprised in the Demerged Undertakings may not be interested in the Remaining Undertakings and vice versa by reason of the difference and divergence in the location and nature of such Undertakings. The Scheme will enable independent evaluation of the said respective Undertakings through separate companies and enable participation therein of suitable investors and strategic partners. The same will enable running and operation of the said businesses and facilitate growth and development plans thereof to be funded independently and unlock and enhance value.

11.4. The Scheme will have beneficial results for the said Companies, their shareholders and all concerned. The Scheme is proposed accordingly.

12. CONSIDERATION

12.1. In consideration of the demerger of the Demerged Undertaking 1 and the Demerged Undertaking 2 and in consideration of the terms and conditions of this Scheme of




Arrangement read with the Resolution Plan submitted by the Resolution Applicant, the Total Consideration of **Rs. 102.60 Crores (Rupees One Hundred and Two Crores and Sixty Lakhs only)** shall be payable in the manner as indicated in clause 3.23 towards Demerged Undertaking 1, referred therein as “Consideration 1”, and in clause 4.23 towards Demerged Undertaking 2, referred therein as “Consideration 2”.

13. CAPITAL RESTRUCTURING, FUNDING AND UTILIZATION:

13.1. The RA proposes to demerge the Identified Properties of the Corporate Debtor, pursuant to regulation 36B(6A) of the CIRP Regulations, to another company identified for the purpose as per the Scheme of Arrangement (Demerger) enclosed in **Annexure 1** forming integral part this Resolution Plan, while the remaining properties/assets of the Corporate Debtor shall be retained by it, at its disposal:

- i) Demerged Undertaking 1 comprising of all that piece and parcel of freehold land together with building, trees, machineries, materials, inventories, etc. situated at (i) the Freehold land in Ootacamund, Dist. Nilgiris, Tamilnadu admeasuring about 6.22 Acres and (ii) the Freehold land in Ootacamund, Dist. Nilgiris, Tamilnadu admeasuring about 5.97 Acres more fully described in Schedule A of the Scheme of Arrangement (Demerger), shall be demerged into and taken-over by the Resulting Company 1.



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- ii) Demerged Undertaking 2 comprising of all that piece and parcel of freehold land together with building, trees, machineries, materials, inventories, etc. situated at Plot No 60 (South Phase), Ambattur Industrial Estate, Chennai, Tamilnadu admeasuring about 4.49 Acres more fully described in Schedule B of the Scheme of Arrangement (Demerger), shall be demerged into and taken-over by the Resulting Company 2.

13.2. For the purpose of this Resolution Plan, the Resolution Applicant proposes to bring-in a Total Resolution Plan Amount of Rs. 105.20 crores. Out of this amount, a total of Rs. 102.60 crores are proposed to be disbursed towards CIRP costs and payment to Secured Financial Creditors and the remaining Rs. 2.70 crores are to be brought-in, after the demerger, as infusion of funds in the Resulting Company 1 and Resulting Company 2 for the purpose of developing the Demerged Undertaking 1 and the Demerged Undertaking 2. The utilization of funds is more specifically described in paragraph named "Payment Terms". The proposed infusion of funds in the Resulting Companies are as below:

- a) Rs. 0.50 crores as loan either by the Resolution Applicant, or any other person or entity named by him for the purpose, to the Resulting Company 1 and
- b) Rs. 2.20 crores as loan either by the Resolution Applicant, or any other person or entity named by him for the purpose, to the Resulting Company 2.





SCHEDULE - A

Schedule of the properties forming part of the Demerged Undertaking 1 proposed to be transferred, vested and demerged into the Resulting Company 1

5.97 ¼ acres of land together with buildings, trees etc in Survey Nos. 4860/1, 4863/1, 4864/1, 4867/1 and 4868/1 which were acquired by Hindustan Photo Films Manufacturing Company Limited, Ootacamund in the award No. 4/64 dated 08-09-1964 of the Tahsildar, Ootacamund from the Revenue Inspector, Ootacamund town as detailed hereunder:

- i. Ryotwari dry T.S. No. 4860-1 bounded on the north by T. S. No. 4863-1, south by T. S. Nos. 4857 and 4860-2, East by T. S. No. 4860-2 and West by T. S. No. 4857 – 1.15 ¼ acres
- ii. Ryotwari dry T.S. No. 4863-1 bounded on the north by T. S. No. 4864-1, south by T. S. Nos. 4860-1, East by T. S. No. 4863-2 and West by T. S. No. 4857 -3 – 3.60 acres
- iii. Ryotwari dry T.S. No. 4864-1 bounded on the north by T. S. No. 4867-1, south by T. S. Nos. 4863-1, East by T. S. No. 4864-2 and West by Ooty Rural village – 0.67 acre
- iv. Ryotwari dry T.S. No. 4867-1 bounded on the north by T. S. No. 4868-1, south by T. S. Nos. 4864-1, East by T. S. No. 4867-2 and West by Ooty Rural village – 0.45 ¼ acre
- v. Ryotwari dry T.S. No. 4868-1 bounded on the north by T. S. No. 4868-2, south by T. S. Nos. 4867-1, East by T. S. No. 4868-2 and West by Ooty Rural village – 0.09 ¾ acre

2. 6.22 acres of land together with buildings, trees etc in Survey Nos.137, 409 in Ootacamund town





3. Buildings on the above lands, as detailed below, together with machineries, materials, inventories and other assets thereon:

| Building Type | Covered Area |
|----------------------------|---------------|
| Health Centre, Residential | 26,04,01 SQFT |
| Miscellaneous activities | 2,70,656 SQFT |

SCHEDULE- B

Schedule of the properties forming part of the Demerged Undertaking 2 proposed to be transferred, vested and demerged into the Resulting Company 2

All that place and parcel of land measuring 4.490 acres known as Plot no. 60 (South phase), in the Industrial Estate, Ambattur, Chennai : 600 058 comprised in S.F. No. 19pt, 202 pt, 65 pt, 70 pt, 71 pt, 73 pt, 74 pt, 78 pt, 76 pt, 75 pt, 69 pt of Athipattu village, Ambattur Taluk, Trivellore District bounded on the

East by Plot no. 61-A
West by 120'-0' road
North by 120-0' road
South by Private land

East to West on North side – 400' – 0'
East to West on South side – 412' – 0'
North to South on East side – 512' 0'
North to South on West Side – 467' 0'

and situated within the Sub Registration District of Ambattur and Registration District of Chennai North.



2. Building of 70,033 square feet on the above lands, as detailed below, together with machineries, materials, inventories and other assets thereon

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

| List of Factory Buildings at Ambattur Plant, Chennai | | | |
|--|--|----------------|-----|
| | | In Sq.m | |
| a | Conversion area | 1868.84 | ACC |
| b | Utility | 502.61 | ACC |
| c | Processing chemicals Plant | 257.71 | RCC |
| d | Technical Service Centre | 519.33 | RCC |
| f | Stores | 2318.21 | ACC |
| g | Stores Miscellaneous | 185.81 | ACC |
| h | Others (Cooling Tower, Diesel Tank area etc.,) | 207.55 | |
| i | Administration | 742.57 | |
| | TOTAL | 6602.63 | |

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:

| Section of the Code / Regulation No. | Requirement with respect to Resolution Plan | Clause of Resolution Plan | Compliance (Yes / No) |
|--------------------------------------|--|---|-----------------------|
| 25(2)(h) | Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD? | Clause 3 of the Resolution Plan Pg.747-757 of Vol 4 | Yes |



| | | | |
|---------------|--|--|--|
| Section 29A | Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority? | RA is Eligible to submit the resolution plan. | Yes |
| Section 30(1) | Whether the Resolution Applicant has submitted an affidavit stating that it is eligible? | Enclosed 29A affidavit [Appendix No.10 of the RP] Pg. No. 894-899 of Vol 5 | Yes |
| Section 30(2) | Whether the Resolution Plan- | | |
| | (a) provides for the payment of insolvency resolution process costs? | Clause 5.4.1 and 5.5.1 of the Resolution Plan Pg. No. 770 & 775 of Vol 4 | Yes |
| | (b) provides for the payment to the operational creditors? | Clauses 5.4.5 to 5.4.7 and 5.5.5 to 5.5.7 of the Resolution Plan. Pg. No. 773 & 776 of Vol 4 | Yes |
| | (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan? | Clause 5.4.4 Pg. No. 770 A to 773 of Vol 4 | Yes |
| | (d) provides for the management of the affairs of the corporate debtor? | Clause 5.9.3 and 5.9 of the Resolution Plan Pg. No.795 to 796 & of Vol 5 | Yes |
| | (e) provides for the implementation and supervision of the resolution plan? | Clause 5.9 of the Resolution Plan Pg. No. 795 of Vol 5 | Yes |
| | (f) contravenes any of the provisions of the law for the time being in force? | Clause 5.11 & 5.12 of the Resolution Plan Pg. No. 797 to 798 of Vol 5 | Yes |
| Section 30(4) | Whether the Resolution Plan (a) is feasible and viable, according to the CoC? | Clause 5.1 of the Resolution Plan Pg.766 of Vol 4 | Yes [Approved with 77.914% voting share] |



| | | | |
|-------------------|--|--|-----|
| | (b) has been approved by the CoC with 66% voting share? | | |
| Section 31(1) | Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC? | Clause 5.9 of the Resolution Plan Pg.795-796 of Vol 5 | Yes |
| Regulation 38 (1) | Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors? | Refer Clauses 5.4.5 to 5.4.7 and 5.5.5 to 5.5.7 of the RP. Pg. No. 773 and 776 of Vol 4 | Yes |
| Regulation 38(1A) | Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders? | Clause 5.3 and 5.4 of the Resolution Plan. Pg. No. 770 to 775of Vol 4 | Yes |
| Regulation 38(1B) | (i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?] | Clause 3.13 of the Resolution Plan Pg. No. 757 of Vol 4 | Yes |
| Regulation 38(2) | Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation? | Refer Clause 5.8 and 5.7 of the Resolution Plan Pg. No. 779 to 794 of Vol 4 and 5 | Yes |
| 38(3) | Whether the resolution plan demonstrates that – (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan? | Clause 4.6,5.1,5.9,5.6,5.12 and 5.8 (xxxv) of the Resolution Plan Pg. No. 761 to 762, 766, 795 to 796, 778, 797 to 798, 780 to 794 of Vol 4 and 5 | Yes |



| | | | |
|------------------|---|---|------------------------------------|
| 39(2) | Whether the RP has filed applications in respect of transactions observed, found or determined by him? | No such transactions identified. | No |
| Regulation 39(4) | Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.] | PBG dt.26.12.2022 Pg.1159-62 of Vol 6 | Yes (Received on 28/12/2022) |

15. 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 5.4.5, 5.4.6 and 5.4.7 of the Resolution Plan. |
| 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 5.3 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 3.13 of the Resolution Plan. |
| 38(2) | A Resolution Plan shall provide (a) the term of the plan and its implementation schedule | Clause 5.8 and 5.7 of the Resolution Plan. |
| | (b) the management and control of the business of the Corporate Debtor during its terms; and | Clause 5.9.3 and 5.9 of the Resolution Plan. |
| | (c) adequate means for supervising its implementation | Clause 5.9 of the Resolution Plan. |
| 38(3) | A Resolution Plan shall demonstrate that (a) It addressed the cause of default; | Clause 4.6 of the Resolution Plan. |



| <i>Reference to relevant Regulation</i> | <i>Requirement</i> | <i>How dealt with in the Resolution Plan</i> |
|---|--|--|
| | (b) It is feasible and viable; | Clauses 5.1 of the Resolution Plan. |
| | (c) it has provisions for its effective implementation; | Clause 5.9 of the Resolution Plan. |
| | (d) it has provisions for approvals required and the timeline for the same; and | Clauses 5.8(xxxv) and 5.12 of the Resolution Plan. |
| | (e) the Resolution Applicant has the capability to implement the Resolution Plan | Clause 5.6 of the Resolution Plan. |

16. RELIEFS AND CONCESSIONS

| SL. NO | RELIEF AND/OR CONCESSIONS AND APPROVAL SOUGHT BY RESOLUTION APPLICANT (CLAUSE 10 OF RESOLUTION PLAN) | ORDERS THEREON |
|--------|---|--|
| 1 | The Resolution Applicant, Resulting Company 1 and / or Resulting Company 2 shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation to any and all dues to, liabilities or obligations payable to, claims, counter-claims, demands, actions or penalties, made or imposed by or any arrears, dividend or obligations owed or payable to (including but not limited to all interests, damages, losses, expenses and third party claims), and any right, title, interest enjoyed by, any actual or potential other stakeholders of the Company including any Group Company(ies) whether under law or otherwise, whether or not claimed, whether or not filed, whether or not crystallised, whether or not accrued, whether or not admitted, whether or not notional, whether or not known, whether | Granted, subject to the provisions of the Companies Act, 2013. |



| | | |
|---|---|---|
| | <p>due or contingent, whether or not disputed, present or future, whether or not being adjudicated in any proceedings, whether or not decreed, whether or not reflected in the financial statements of the Company, or whether or not reflected in any record, document, statement, statutory or otherwise, arising prior to or after the date of approval of this Plan by the AA, but pertaining to period prior to the date of approval of this Plan by AA and / or arising in connection with assignment or acquisition of shares of the Company or conversion of the Debt into Equity or in any other manner as a result of or in connection with this Resolution Plan, shall be deemed to have been irrecoverably waived and permanently extinguished and written off in full with effect from the date of Order of Adjudicating Authority approving this Resolution Plan in respect of the Identified Properties. To give effect to such waiver and extinguishment, any contract, agreement, deed or document, whether oral or written, expressed or implied, statutory or otherwise, pursuant to which any such dues, liabilities, obligations, claims, counterclaims, demands, actions, penalties, right, title or interest is claimed (other than as specifically mentioned herein) shall stand modified with effect from the date of Order of the AA approving the Resolution Plan without any further act, deed by the RA/Resulting Company 1/Resulting Company 2 and approval of the Resolution Plan by AA shall be deemed to be sufficient notice which may be required to be given to any person for such matters and no further notice shall be required to be given</p> | |
| 2 | <p>All Governmental authorities to waive the non-compliances of the corporate debtor prior to the date of approval of resolution plan by Hon'ble Adjudicating Authority in respect of the Identified Properties. The</p> | <p>Granted, subject to the provisions of Section 32A of IBC, 2016 and</p> |



| | | |
|---|--|--|
| | <p>relevant governmental authorities shall also not initiate any investigations, actions or proceedings in relation to any non-compliance with applicable law by the corporate debtor during the period prior to the date of approval of resolution plan by Hon'ble Adjudicating Authority in respect of the Identified Properties. Neither shall the resolution applicant, nor the Resulting Company 1 / Resulting Company 2, nor their respective directors, officers and employees appointed on and as of the date of approval of resolution plan by AA be liable for any violations, liabilities, penalties or fines with respect to or pursuant to the CD not having in place the requisite licenses and approvals required to undertake its business as per applicable law, or any non-compliances of applicable law by the Corporate Debtor</p> | <p>other applicable laws</p> |
| 3 | <p>Upon approval of this Resolution Plan by the AA, all new inquiries, investigations, whether civil or criminal, notices, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings will be deemed to be barred and will not be initiated or admitted against the Resolution Applicant or his nominees or Resulting Company 1 or Resulting Company 2 in relation to any period prior to the date of approval of this Resolution Plan by Hon'ble Adjudicating Authority or on account of the acquisition of control by the Resolution Applicant over the Identified Properties pursuant to this Resolution Plan</p> | <p>Granted, subject to the provisions of the IBC, 2016.</p> |
| 4 | <p>Statutory dues like ESI, EPF, Professional Tax, Income tax, Wealth Tax, Sales tax, Service Tax, Goods and Service Tax, VAT, import duty, property tax, vacant land tax, Lease Rents due to Government departments, electricity dues, water dues, customs or excise dues, confiscatory rights for non-fulfilment of any obligations including any export obligations undertaken by the corporate debtor in the past</p> | <p>Granted, subject to the Judgment of the Hon'ble NCLAT in the matter of Jet Aircraft Maintenance</p> |



| | | |
|---|--|---|
| | <p>under the provisions of DGFT, or any other claims from statutory authorities, etc. for the period prior to the approval of resolution plan will not be paid by the Resolution Applicant unless valid claims have been filed by respective statutory authorities during the CIRP period.</p> | <p>Engineers Welfare Association -Vs- Ashish Chhawchharia Resolution Professional of Jet Airways (India) Ltd. and Others; 2022 SCC OnLine NCLAT 418</p> |
| 5 | <p>If certain Business permits (including but not limited to permission for supply of water, electricity, construction of sites, operation of lifts, fire, sanitation, health or any other relevant licenses/permit, not limited to those stated herein) of the corporate debtor which would be required for the corporate debtor to utilise the identified properties have lapsed, expired, suspended, cancelled, revoked or terminated or the corporate debtor has non compliances in relation thereto, necessary steps have to be taken by RP to set it right. Accordingly, all governmental authorities to provide reasonable time period after the date of approval of resolution plan by AA for the resolution applicant to assess the status of these approvals and permits and ensure that the corporate debtor is compliant with the terms of such approvals and permits and applicable law without initiating any investigations, penalty, actions or proceedings in relation to such non compliances;</p> | <p>This is for the appropriate authorities to consider keeping in view of the clean slate principle envisaged under IBC, 2016</p> |
| 6 | <p>Waiver of any Income Tax and Minimum Alternate Tax (MAT) liability or consequences (including interest, fine, penalty, etc) on the Resulting Companies and the Resolution Applicant on account of various steps as proposed in the Resolution Plan, including but not limited to liabilities if any under Section 28, Section 43,</p> | <p>This is for the appropriate authorities to consider</p> |



| | | |
|---|--|---|
| | <p>Section 50, Section 56, Section 79 and Section 115JB of the Income-tax Act, 1961, including, without limitation.</p> <p>a. Waiver of MAT arising due to the impact of the implementation of the resolution plan in the books of accounts of the Company without any impact on brought forward tax and books loss/depreciation, pursuant to this Resolution Plan.</p> <p>b. Waiver of Income Tax under the provisions of the Income Tax Act arising due to impact of the implementation of the resolution plan in the books of accounts of the Company without any impact on brought forward tax and books loss/depreciation, pursuant to this Resolution Plan.</p> <p>c. Any requirements to obtain waivers from any Tax Authorities including in terms of Section 79 of the Income Tax Act is deemed to have granted upon approval of this Resolution Plan on the date of approval of this Resolution Plan by Hon'ble Adjudicating Authority.</p> <p>d. The Scheme of Arrangement (Demerger) envisaged to transfer the identified properties to the Resulting Companies as detailed in Annexure – 1 to this Resolution Plan shall not be subjected to the provisions of section 56 of the Income Tax Act, upon implementation of the Resolution Plan</p> | <p>keeping in view of the clean slate principle envisaged under IBC, 2016</p> |
| 7 | <p>The implementation of the Resolution Plan shall not any affect the carried forward business losses and/or unabsorbed depreciation and its set off against the future taxable income of the Resulting Companies post implementation of the Resolution Plan. Any delay in filing the return of income by the Resulting Companies</p> | <p>This is for the appropriate authorities to consider</p> |



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| | upto to the implementation of the Resolution Plan shall stand condoned and the RA shall be permitted to setoff these losses against the future taxable income subject to the time limit applicable for such set off. | keeping in view of the clean slate principle envisaged under IBC, 2016 |
| 8 | Post the order of the NCLT, no re-assessment/ revision or any other proceedings under the provisions of the Income Tax Act initiated on the Resulting Companies in relation to period prior to acquisition of identified properties by the Resolution Applicant and any consequential demand should be considered non-existing and as not payable by the Resulting Companies. Any proceedings which were kept in abeyance in view of the insolvency process or otherwise shall not be revived post the order of NCLT. | Granted, subject to the provisions of IBC, 2016 and other applicable laws |
| 9 | Post the order of the NCLT, the RA shall be permitted to withdraw or continue at his discretion, all pending income tax litigations filed by the CD, if any in respect of the business of the identified properties or RP or by the Income tax Authorities before any adjudicating / appellate authorities or Courts in India. | Granted |
| 10 | Post the order of the NCLT, all appeals other than those the RA propose to continue, assessment, reassessment or any other proceedings initiated under the provisions of Income Tax shall stand abated and non-existing. | Granted, in respect of identified properties which are subject matter of Resolution Plan |
| 11 | Post the order of the NCLT, the RA shall be provided waiver from all Tax dues including any interest and penalties in respect of the identified properties demerged to Resulting Company 1 and Resulting Company 2, by way of the Scheme of Arrangement (Demerger) which forms part of this Resolution Plan; | This is for the appropriate authorities to consider keeping in view of the clean slate principle envisaged under IBC, 2016 |



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| 12 | Post the order of the NCLT, the RA shall be allowed to write-offs of assets (if any) as a tax deduction in the year of such write-off pertaining to the identified properties demerged in Resulting Companies. | Granted, subject to provisions of Income Tax Act and other Applicable laws |
| 13 | All MAT credit entitlement in respect of the identified properties will be transferred to the Resulting Companies and will be available and accrue for the benefit of the Resulting Companies. | Not Granted |
| 14 | Without prejudice to the rights available to the Corporate Debtor to otherwise carry forward its accumulated Tax losses, the Corporate Debtor shall be permitted recourse to the third proviso to Section 79(2)(c) of the IT Act. | Not Granted |
| 15 | While filing the application for approval of the plan with the Adjudicating Authority under Section 30(6) of the Code, the Resolution Professional shall issue notice to the Principal Commissioner or Commissioner of Income Tax having jurisdiction over the Corporate Debtor to provide such Principal Commissioner or Commissioner of Income Tax with an opportunity of being heard (Section 79 Notice"). If no representation is received from the Principal Commissioner or Commissioner of Income Tax within 30 (thirty) days of issuance of the Section 79 Notice or the Approval Date, whichever is earlier, it shall be deemed that the Principal Commissioner or Commissioner of Income Tax has no objections to the Corporate Debtor carrying forward its accumulated Tax losses and such notice shall be treated as accorded a reasonable opportunity of being heard to the Principal Commissioner or Commissioner of Income Tax in relation to the Resolution Plan. | This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016 |



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| 16 | The transactions contemplated under this Resolution Plan (including a potential Merger) shall not be considered void under any Applicable Laws, including without limitation, Section 281 of the Income Tax Act, 1961 and Section 81 of the Central Goods and Service Tax Act, 2017. | Granted |
| 17 | To provide relief to the Resolution Applicant and/or Resulting Companies from all past litigations up to the date of implementation of this Resolution Plan pending at different levels and provide waiver from all tax dues including interest, penalty & prosecution for all historic disclosed tax dues and undisclosed tax dues. All pending notices, assessment order, pending summons and pending assessments (including those set out in the table below) in respect of the business of the identified properties envisaged to be transferred to the Resulting Companies would be treated as closed. Further no action would be taken for any action / transaction carried out before the Implementation Date It is clarified that no tax (including interest & penalty) would be paid for any liability or claim raised or non-compliance for period up to the Implementation Date. Further, any re assessment, revision or other proceedings under the provisions of the Income Tax Act would be deemed to be barred in relation to any period prior to the Implementation Date, by virtue of the order of the NCLT approving this Resolution Plan and the Resulting Companies or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relations thereto. | 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 |
| 18 | It is prayed that the respective Governmental Authorities (including but not limited to the Central Board of Direct Taxes, Central Board of Indirect Tax and Customs / respective Value Added Tax / GST Authorities, tribunals, arbitral body, land revenue records, stamp authorities) shall provide relief from applicability of and payment of | This is for the CBDT and other appropriate authorities to consider keeping in view |



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| | Taxes (including under the provisions of Goods and the Services Taxes) which may arise as a result of implementation of this Resolution Plan either on the Resolution Applicant or the Corporate Debtor or any other Person who is likely to be impacted due to the implementation of this Resolution Plan (including but not limited to Sections 50B, 50C, 50CA, 50D and 56 under the Income Tax Act as well as the Central Goods and Services Tax Act, 2017 and the provisions of the Indian Stamp Act, 1899 and other laws relating to payment of stamp duty applicable in any state). | the object of IBC, 2016 |
| 19 | The Resolution Applicant shall not be treated as a predecessor for the purpose of enforcing any income tax liability under the provisions of sub-section (2) of section 170 of the Income Tax Act. | Granted, in respect of the identified properties |
| 20 | The Resolution applicant shall not be treated as assessee in default in respect of any non-compliance with the provisions of Chapter XVII – B and/or Chapter XVII – BB of the Income Tax Act, 1961 upto the date of implementation of the resolution plan. | This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016 |
| 21 | To provide relief to the Resolution Applicant or Resulting Companies such that all pending litigation, notices, past and on-going assessments, past and on-going investigations, tax demands under all Indirect Tax statutes (including those set out in the table below), in respect of the businesses of the identified properties proposed to be transferred to the Resulting Companies would be treated as closed and no further action would be taken for any action / transaction carried out before the implementation of this resolution plan. It is clarified that no tax (including interest and penalty) would be paid for | This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016 |



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| | any liability or claim raised for period up to the Implementation Date. | |
| 22 | The Resulting Companies shall not be liable in any manner whatsoever or otherwise prosecuted (threatened, impleaded or otherwise) as a result of any tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized, any contravention of any provisions of any Indirect Tax acts or the rules made thereunder as may be prescribed, by the Company or Existing Promoter, subsidiary companies and/or group companies of the Company for the period up to the Implementation Date. | Granted, subject to the provisions of Section 32A of IBC, 2016, the Income Tax Act, 2013 and other applicable laws |
| 23 | The Resulting Companies shall be entitled to carry forward the accumulated input tax credit balances under the Indirect Tax laws and to utilize such amounts to set off against tax liability arising in future in accordance with Applicable Laws; | Not Granted |
| 24 | All benefits, exemptions, deductions, rebates, reliefs, credits etc. under any tax laws in India available to the Company shall not lapse pursuant to the Resolution Plan and shall be available post the Implementation Date in respect of the Identified Properties. | Not Granted |
| 25 | It is prayed that the Resolution Applicant or the Resulting Company 1 or Resulting Company 2 or any other person in management and control of the Resulting Company 1 or Resulting Company 2 (including for the avoidance of doubt any subsidiaries, associate companies or affiliates) shall not be held liable for any continuing Non-Compliance (including for any interest and penalty) of the Corporate Debtor under any Applicable Law which had arisen or started during the period prior to the date of approval of this Resolution Plan by Adjudicating | Granted, however a time period of 1 year is envisaged under IBC, 2016 for compliance |



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| | Authority. Post the date of approval of this Resolution Plan by Adjudicating Authority, the Resolution Applicant may be provided a reasonable time period by various authorities for curing such non compliances post take over of control from Resolution Applicant in respect of the Identified Properties. In respect of Non-compliances not pertaining to the identified properties, the Corporate Debtor shall continue to be liable in accordance with the provisions of IBC. | |
| 26 | All Governmental authorities to grant any relief, concession or dispensation as may be required for implementation of the transactions contemplated under the plan in accordance with its terms and conditions; | This is for the appropriate authorities to consider keeping in view the object of IBC, 2016 |
| 27 | Identified Properties of the corporate debtor shall be free and clear of all encumbrances, on demerger thereof. | Granted |
| 28 | The Resolution Applicant shall be allowed to terminate / renegotiate material contracts including but not limited to agency agreements entered by the corporate debtor in respect of the Identified Properties before the insolvency commencement date without any penalty or interest at its own discretion. | Granted |
| 29 | All creditors of the corporate debtor to withdraw all legal proceedings commenced against the corporate debtor in relation to claims, including without limitation all criminal proceedings, proceedings under section 138 of the Negotiable Instruments Act, 1881 and proceedings under SARFAESI and RDDBFI, within 60 (sixty) days of the approval date and not undertake or omit to take any action which precipitates the proceedings against the corporate debtor in respect of the Identified Properties. | Granted, in respect of the Identified properties |



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| 30 | All approvals necessary under Applicable Laws including but not limited to Companies Act, 2013, Foreign Exchange Management Act, 1999, and rules/ regulations made thereunder and all other statutory and regulatory approvals required for the implementation of the Plan shall be deemed to have been complied with pursuant to receipt of the order of AA approving the Plan. | This is for the appropriate authorities to consider keeping in view the object of IBC, 2016 |
| 31 | All the claims / litigations / proceedings by employees/ workmen or before any labour department for non-payment of any dues/ contribution or any other moneys such as and including but not limited to terminal benefits and voluntary retirement dues shall be withdrawn and stand dismissed accordingly and the Resolution Applicant, Resulting Company 1 and Resulting Company 2 shall no longer be required to make any payments/ dues by whatsoever name called in relation to such litigations/proceedings/dues by whatever name so called. | Granted, in respect of the identified properties |
| 32 | It is inferred from the Information Memorandum of the Corporate Debtor and the from the balance sheet of the Corporate Debtor, that it holds the following Freehold properties: i. 4.490 acres of land located at Plot no. 60 (South phase) in Industrial Estate, Ambattur, Chennai : 600058 allotted to the Corporate Debtor vide Deed of assignment dated 23-03-1978 and Sale deed dated 29-05-2009 along with buildings thereon ii. 6.22 acres of land or thereabouts located at The Nilgiris District, Ootacamund Taluk allotted to the | Granted in respect of past liabilities in terms of Section 32A of IBC, 2016. Any fresh cause of action, not covered |





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| | <p>Corporate Debtor by the Government of Madras by way of G.O. 840 dated 27th June 1961 and notified in the Official Gazette on 5th July 1961</p> <p>iii. 5.97 ¼ acres of land or thereabouts located at The Nilgiris District, Ootacamund Taluk allotted to the Corporate Debtor by the Government of Madras by way of G.O. no. 15611 dated 30th December 1963.</p> <p>It is held out by the Corporate Debtor that the abovesaid properties are rightfully and validly owned by the Corporate Debtor and that it enjoys peaceful possession of the Freehold properties since the aforementioned respective dates. The continued enjoyment of the abovesaid Freehold properties, free from any conditions in the hands of this Resolution Applicant, form the basis of this Resolution Plan and on the strength of these freehold properties, that this Resolution Applicant submits the instant Resolution Plan.</p> <p>A specific prayer is made that the Central Government / Government of Tamil Nadu shall not put forth any condition in the future to peaceful and unhindered enjoyment of the abovesaid properties by the Resolution Applicant or its successors or any other person rightfully acquiring from the Resolution Applicant in future.</p> | |
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17. PAYMENT TO THE UNSECURED AND OPERATIONAL CREDITORS

In so far as the payments related to Unsecured and Operational Creditors are concerned the Resolution Applicant has filed an Affidavit before this Tribunal dated 14.02.2023 wherein it has been stated that the Resolution Applicant has proposed to bring in additional amount of Rs.15,00,000/- (Rupees Fifteen Lakh only) to be paid to the Unsecured Financial Creditors and Operational Creditors of the Corporate Debtor, in addition to the Resolution Plan amount of Rs.105.30 Crore. The said Affidavit filed by the Resolution Applicant is taken on record. The said amount of Rs.15,00,000/- shall be distributed to the Unsecured Financial Creditors and to the Operational Creditor as follows;

| Category of Creditors | Amount (Rs.) |
|--|--------------|
| Financial Creditors (Unsecured) | 11,00,000 |
| Operational Creditors (Trade Creditors) | 4,00,000 |
| TOTAL | 15,00,000 |

18. ANALYSIS AND FINDINGS OF THIS TRIBUNAL

18.1. It is seen from Form – H that the Liquidation value of the Corporate Debtor in so far as the Resolution Plan is concerned is arrived at Rs.91.80 Crore and the corresponding Fair value is arrived at Rs.112.55 Crore. The Resolution Applicant proposes to infuse a sum of Rs. 105.30 Crore into the Corporate Debtor.





18.2. It is also required to be noted here that the Applicant has filed a separate Application for Liquidation of the Corporate Debtor in so far as the “Excluded Assets” are concerned and the same is numbered as IA(IBC)/204(CHE)/2023 and the order for Liquidation of the Corporate Debtor is passed by way of a separate order.

18.3. Further, it is seen from Form – H, no Applications under Section 43, 45, 49 and 66 of IBC, 2016 has been filed by the RP in the present matter.

18.4. A perusal of the Resolution Plan manifest the fact that the Plan proposed by the Resolution Applicant is by way of a Scheme of Demerger subject to the payment obligations of the Resolution Applicant and such other terms and conditions of this Resolution Plan. At this juncture, this Tribunal deems it fit to refer to Regulation 37 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, is as follows;

37. Resolution plan.

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: -

(a) transfer of all or part of the assets of the corporate debtor to one or more persons;





(b) sale of all or part of the assets whether subject to any security interest or not;

(ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;

(c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;

(ca) cancellation or delisting of any shares of the corporate debtor, if applicable;

(d) satisfaction or modification of any security interest;

(e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;

(f) reduction in the amount payable to the creditors;

(g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;

(h) amendment of the constitutional documents of the corporate debtor;

(i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;

(j) change in portfolio of goods or services produced or rendered by the corporate debtor;

(k) change in technology used by the corporate debtor; and

(l) obtaining necessary approvals from the Central and State Governments and other authorities.

18.5. It is seen by way of Notification No. IBBI/2019-20/GN/REG052, dated 27th November, 2019 with effect from




28.11.2019, clause (ba) of Regulation 37 was inserted so as to imply that a Resolution Plan may also provide for merger, amalgamation and demerger.

18.6. 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.”

18.7. 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)*.

18.8. 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)






18.9. 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)

18.10. 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.

18.11. 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.

18.12. On hearing the submissions made by the Ld. Counsel for the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with 77.94% 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,

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

18.14. 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.

18.15. The Resolution Plan in question is hereby **Approved** by this Adjudicating Authority, subject to the observations made in this order. The Resolution Plan and the Scheme of Demerger shall form part of this Order. The Resolution Plan is binding on the Corporate Debtor and other stakeholders.

18.16. The Resolution Applicant is directed to make payment of the entire Resolution Plan amount within a period of 45 days from the date of this order, failing which the entire amount paid by the Resolution Applicant (*including the*





Performance Guarantee) as on the said date would stand automatically forfeited, without any recourse to this Tribunal.

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

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

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

19. IA(IBC)/99/CHE/2023 shall stand **disposed of** accordingly.

20. 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. Files be consigned to the record.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

Justice RAMALINGAM SUDHAKAR
PRESIDENT

Raymond