

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.305

IA/917(AHM)2023 in CP(IB) 113 of 2019

Order under Section 30(6) & 31 IBC, 2016 r.w. Reg 39(4) IBBI Reg 2016

IN THE MATTER OF:

Tejas K Shah RP For Skylead Chemicals Ltd

.....Applicant

Order delivered on: 06/12/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in open Court, vide separate sheet.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH COURT-1**

**IA/917 (AHM)/2023 in
CP(IB)/113(AHM)/2019**

[An application under Section 30(6) & 31 of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 39(4) of the Insolvency and Bankruptcy Board of India, Regulations, 2016]

In the matter of ***M/s. Skylead Chemicals Limited***

Mr. Tejas K Shah,
Resolution Professional of
M/s. Skylead Chemicals Limited
Having registered address at:
B-201, Narayan Krupa Avenue,
Opp. Prernatirth Derasar,
Jodhpur, Satellite,
Ahmedabad, 380015.

... Applicant

Order Pronounced On: 06.12.2023

CORAM:

**SHAMMI KHAN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

Appearance:

For Applicant(s) : Mr. Sumit Parikh, Adv. a/w. Ms. Aditi
Sharma, Adv.
: & Mr. Atul Sharma, Adv. Mr. Tejas
Shah, PCA

ORDER

[Per: Bench]

1. This application is filed by the Resolution Professional of Skylead Chemicals Limited (Corporate Debtor) under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) r.w. Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Process of Corporate Persons) Regulations, 2016 seeking the following prayers:

- a. *Your lordship may be pleased to allow the present application;*
- b. *Your lordship may be pleased to approve final revised Resolution Plan dated 02.06.2023 along with its addendum dated 28.06.2023 and 14.07.2023 submitted by M/s. Rolence Pharma & Chemicals LLP;*
- c. *To approve the Resolution Plan approved by the Committee of Creditors in compliance with Section 30(6) and 31(1) of the Code read with Regulation 39 of the IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016;*
- d. *Your Lordship may be pleased to grant any other relief or relief as may deem fit in the interest of justice.*

2. It is stated that this Tribunal vide its order dated 30.11.2022 admitted the Corporate Debtor – Skylead Chemicals Ltd., to Corporate Insolvency Resolution Process (“**CIRP**”) in Company Petition No. 113 of 2019 filed by Financial Creditor - Stressed Asset Stabilisation Fund under Section 7 of the Code and thereby appointed

the Applicant herein as the Interim Resolution Professional (“**IRP**”) of the Corporate Debtor.

3. It is stated that the public announcement inviting the claims from all creditors of the Corporate Debtor was made in Form-A on 03.12.2022 wherein the last date for submission of claims was 14.12.2022.
4. It is stated that pursuant to the publication of Form-A dated 03.12.2022, the IRP collated the claims and constituted the Committee of Creditors (“**CoC**”) on **22.12.2022** and report certifying the constitution of CoC was filed before this Tribunal on **23.12.2022**. Subsequently, the IRP filed a report certifying the re-constitution of the CoC, comprising of Stressed Assets Stabilization Fund (“**SASF**”), having 45.77% voting share and Gujarat State Financial Corporation (“**GSFC**”), having 54.23% voting share before this Tribunal on 24.03.2023. A copy of the same is annexed as Annexure-C at page no. 21-28 of this application.

5. It is stated that the 1st meeting of CoC was held on 28.12.2022 wherein the Applicant herein was appointed as Resolution Professional (“**RP**”).
6. It is stated that 2nd meeting of the CoC was held on 21.01.2023 wherein the CoC resolved to publish Expression of Interest (“EoI”) in Form-G. Accordingly, Form-G was published in Times of India (in English) and Divya Bhaskar (in Gujarati) and Financial Express (in English & Gujarati) on 25.01.2023 with the last date of submission of EoI as 09.02.2023. A copy of the publication of Form-G is annexed as Annexure F at page no. 53 of the application.
7. It is stated that 3rd meeting of CoC was held on 08.02.2023 wherein RP appraised the CoC that one email has been received from the Prospective Resolution Application (“**PRA**”) for the extension of time of EoI. Accordingly, the CoC resolved to extend the last date of EoI from 09.02.2023 to 20.02.2023.
8. It is stated that 4th meeting of the CoC was held on 20.02.2023 wherein the CoC gave approval for E-

valuation Matrix & Request for Resolution Plan (“**RFRP**”) and ratified the CIRP cost incurred by the Applicant.

9. It is stated that 5th meeting of the CoC was held on 12.04.2023 wherein the RP apprised the CoC that till 12.04.2023, three Resolution Plans were received from the following PRAs:-

- (i) Shiv Enterprise Jointly with Kudia Brothers,
- (ii) Prabodh Steel Pvt. Ltd., and
- (iii) Rolence Pharma & Chemicals LLP.

10. It is stated that 6th meeting of the CoC was held on 02.05.2023, wherein the CoC discussed the valuation report of the Corporate Debtor submitted by the registered valuers and further discussed the Resolution Plans submitted by the PRAs.

11. It is stated that in the 7th CoC meeting held on 12.05.2023, the CoC negotiated with the PRAs regarding the Resolution Plan submitted by them and to remove various non-compliance in respect of the Resolution Plan and requested the PRAs to increase their financial bid

substantially and submit revised Resolution Plan at the earliest.

12. It is stated that 8th CoC meeting was held on 24.05.2023 wherein the CoC with 100% voting share resolved to extend the period of CIRP by 90 days beyond 180 days. Accordingly, an application bearing, IA No. 625 of 2023 was filed before this Tribunal. This Tribunal vide its order dated 13.06.2023 extended the CIRP period by 90 days from 30.05.2023.
13. It is stated that 9th CoC meeting was held on 08.06.2023 wherein the RP apprised the CoC that out of 3 PRAs only 2 PRAs, being Prabodh Steel Pvt. Ltd., and Rolence Pharma & Chemicals LLP have increased the bid amount and submitted revised Resolution Plan.
14. It is stated that 11th CoC meeting was held on 30.06.2023 wherein the RP apprised the CoC about addendum to Resolution Plan received from 2 PRAs i.e., Prabodh Steel Pvt. Ltd. and Rolence Pharma & Chemicals LLP. In the said meeting, the CoC resolved to keep all the Resolution

Plans for e-voting for its approval. The e-voting of the said resolutions was kept from 01.07.2023 till 15.07.2023.

15. It is stated that in response to the clarification sought from the CoC, Rolence Pharma & Chemicals LLP submitted its addendum to RP vide its letter dated 14.07.2023. Further, it is stated that the Resolution Plan dated 02.06.2023 a.w. its addendum dated 28.06.2023 and 14.07.2023 submitted by **Rolence Pharma & Chemicals LLP** was approved by the CoC with 100% votes in favour. A copy of revised Resolution Plan dated 02.06.2023 a.w. addendum dated 28.06.2023 and 14.07.2023 is annexed as Annexure-R at page no. 148-205 of the application.
16. It is stated that as per the Valuation Report, the Fair Value and Liquidation Value of the Corporate Debtor is Rs.3,11,23,885/- and Rs.2,17,61,385/- respectively.
17. It is stated that RP has preferred an application under Section 66 of the Code which remains *sub-judice* before this Tribunal. The Resolution Plan of Rolence Pharma &

Chemical LLP, as approved by CoC, provides treatment of the application under Section 66 of the Code as follows:-

- a. *That if any proceeds or amount received from the reversal of transaction under Section 66 of the Code, shall be appropriated to the Secured Financial Creditors.*
- b. *That the application filed under Section 66 of the Code, shall be pursued by the Secured Financial Creditors and all such expenses pertaining to litigation shall be borne by the Secured Financial Creditors.*

18. It is stated that this Tribunal vide its order dated 25.08.2023 had directed the Applicant to provide the chart showing the breakup of the various principal amounts disbursed, outstanding on the date of NPA, interest, penal interest, damages and other incidental charges added in the claims of the Financial Creditors and place on record details about voting results regarding approval of the Resolution Plan. Further, the RP was directed to obtain the detailed affidavit along with the proof of funds from the SRA.

19. In compliance of the order dated 25.08.2023, an affidavit under Inward Diary No. D3532 dated 13.09.2023 was filed placing on record the total outstanding of GSFC and

SASF of Rs.2,07,96,38,445/- and Rs.1,75,53,78,274 respectively as on 30.11.2022, details of e-voting results and further breakup of statements of claims/dues received from the various government and statutory bodies along with in principle letter received by SRA from Vipro Securities and Financial Limited at page 15 of the said affidavit.

20. It is stated that SRA has proposed to pay Rs.3.15 Crores out of which Rs.61.50 Lakhs are already deposited in the bank account of the Corporate Debtor through RTGS. The details of which are provided below:-

<i>Sr. No.</i>	<i>Date</i>	<i>Description</i>	<i>Amount</i>	<i>Mode of Payment</i>
1	20.02.2023	At the time of submission of Expression of Interest (Eoi)	5,00,000/-	Through RTGS bearing UTR No. UCBA52023022005
2	11.04.2023	At the time of Submission of Resolution Plan	25,00,000/-	Through RTGS bearing UTR No. UCBAH23101527922
3	22.07.2023	Towards Performance Security	31,50,000/-	Through RTGS bearing UTR No. ABHYR52023072107
		Total	61,50,000	

The remaining balance of Rs.2,53,50,000/- is to be paid within 90 days from the date of receipt of order.

21. In the said affidavit dated 13.09.2023, concerning the claim of Employee Provident Fund Organization (“**EPFO**”), Ahmedabad, it is stated that EPFO’s claim to the tune of Rs.7,54,634/- was not admitted on account of non-submission of the relevant documentary records and the said claim is not reflected in the books of accounts of the Corporate Debtor and is under verification.

22. It is stated that this Tribunal vide its order dated 09.10.2023 noted that:-

“....Additional Affidavit filed under inward Diary No. 35232 dated 13.09.2023. On-going through the affidavit particularly page no. 10 which is the voting result for the CoC meeting held to approve the plan. It is seen that Resolution no. 1(c) for the approval of the Resolution Plan was approved with 100% voting shares. Similarly, another Resolution seeking liquidation of the Corporate Debtor was voted by the CoC with 54.23% shares of voting seeking liquidation of the Corporate Debtor.

On perusal, it is seen that the CoC has given a fractured mandate which is seeking approval of the Resolution Plan as well as for liquidation of the Corporate Debtor which in our view is not correct.

CoC is to vote either to approve the Resolution Plan or to liquidate the Corporate Debtor.

*As regards the source of funds, the SRA has obtained in principle letter from Vipro Securities and Financial Services Limited. The same is attached at page no. 15 of the additional affidavit. On perusal it reveals that the said letter is not a firm commitment on behalf of the Financier. **SRA is directed to obtain a firm commitment from the new financier. RP is directed to hold another COC meeting and to get a clear mandate on approval of the Resolution Plan by the CoC.** RP may file the voting results along with firm commitment letter from new financier within a period of two weeks. RP seeks and is granted two weeks' time to file additional affidavit to cover the above..".*

23. It is stated that in compliance of the order dated 09.10.2023, an additional affidavit under Inward Diary No. D4391 dated 03.11.2023 was filed. In the said affidavit it is stated that the RP duly conveyed the 13th CoC meeting on 17.10.2023 wherein the CoC by 100% voting share approved the Resolution Plan submitted by **Rolence Pharma & Chemicals LLP** and rejected the resolution for liquidation of the Corporate Debtor. Further, with respect to the firm commitment letter, it is stated that the RP vide its email dated 12.10.2023, 20.10.2023 & 30.10.2023 informed the SRA about the observation of this Tribunal and requested firm

commitment letter from New Financial for the source of funds. Subsequently, the SRA vide its email dated 03.11.2023 informed that the partner of SRA has a bank balance of Rs.1,96,30,534/- which will be duly utilized towards the source of funds and to that effect Bank Certificate evidencing the balance of the partner of SRA has attached as Annexure-C at page 17-19 of this additional affidavit.

24. The summary of the Resolution Plan is as under:-

1. Upon sanction of Resolution Plan, **SKYLEAD CHEMICALS LIMITED** will be under management of Resolution Applicants and Resolution Applicants will take over only the 'Reset Financial Creditors' and only 'Reset Operating Creditors' as per the terms and conditions of payment as envisaged in this Resolution Plan.
2. Change of Management by way of transfer and reshuffling of the Existing Share Capital comprising of Equity Shares of corporate debtor to the Resolution Applicants or any person nominated by Resolution Applicants. The Resolution Applicants shall decide the constitution of Board post of Approval of Resolution Plan. The Resolution Applicants shall have right to reconstitute the Board and to remove any of existing director or introduce new director as per their decision. The Decision of Resolution Applicants shall be final and any existing director or their heirs as the case may be shall not have any right to challenge the decision. Management / control / physical possession of the assets shall remain with the newly formed management as per the terms and conditions as envisaged in the Resolution Plan upon approval of resolution plan by

Adjudicating Authority.

3. *The Resolution Plan ensures continuity of business of Corporate Debtor which preserves going concern valuation of the Corporate Debtor and also to develop market and generate adequate cash flow as compared to an asset under liquidation.*
4. *The other benefits are as under:*
 - a. *Help to facilitate revival/rehabilitation of the **SKYLEAD CHEMICALS LIMITED**;*
 - b. *Result in enhancing the scale of operations and reduction in overheads, administrative, managerial and other expenditure, operational rationalization, sharing of organizational efficiency and optimal utilization of resources;*
 - c. *Expertise of Resolution Applicants to manage the business of CD and availability of talent pool and marketing personnel of the Resolution Applicants will enable to enhance the business operations and provide significant impetus to its growth and will give additional strength to the operations and management of the **SKYLEAD CHEMICALS LIMITED**.*
 - d. *Restructured and re-financed entity be able to undertake larger expansion strategies and to tap bigger opportunities in the industry in domestic and overseas market;*
 - e. *Consolidation of managerial expertise of the companies will facilitate greater focus and utilization of resources.*
5. *Pursuant to the amendment to Regulation 38 of the CIRP Regulations by the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2017 dated 7 November 2017, the prescribed details of the Resolution Applicants are provided in this Resolution Plan.*
6. *The principles to be followed for the accounting treatment of the Corporate Debtor after the Effective Date set out in the Resolution Plan (Accounting Provisions and Compliance).*
7. *Entire Resolution Plan: The Plan along with its Annexure constitutes*

the entire resolution plan of the Resolution Applicants within the meaning of Section 30 of the Code and Regulation 38 of the CIRP Regulations and supersedes and cancels any prior oral or written plan, agreement or understanding in this regard.

- 8. Based on the information made available to RA by Information Memorandum circulated by RP and further information's provided from time to time, RA proposes to pay an aggregate amount of ₹ 3,11,00,000/- within 90 days from the effective date against full and final payment for all the liabilities of the Corporate Debtor and all the Non-Current Asset and Current Assets of the corporate debtor as on 30th November, 2022 after releasing all lien/charges will be transferred to RA without making any adjustment from the amount except specifically mention in the instant resolution plan. RA accordingly devised the instant Resolution Plan.*
- 9. The obligation of the RA shall stand satisfied upon payment of proposed amounts to various stakeholders as per the resolution plan.*

25. With respect to the proposal for shareholders of Corporate Debtor, it is stated that:-

- 1. On the effective date all existing issued, subscribed and paid up share capital comprises of 6719910 equity shares of Rs. 10/- each amounting to Rs.6,71,99,100/- shall be extinguished and no money payable to the equity shareholders of the corporate debtor. Any other equity-linked securities/ warrants, securities/ warrants convertible into or exchangeable with equity shares of the corporate debtor and all other securities of the corporate debtor, if any, shall also stand cancelled and extinguished without any payment and /or further act and deed. All of the Equity Shareholders, Preference Shareholders or holder of any security / warrants convertible rights shall stand cancelled immediately upon sanction of the Resolution Plan by NCLT.*
- 2. The Resolution Applicant, upon approval; of the Resolution Plan by*

NCLT, shall bring in fresh equity to the tune of Rs.5 Lakh out of the plan amount and the balance plan amount shall be treated as unsecured loan in the books of the corporate debtor.

26. It is stated that the addendum dated 28.06.2023 and 14.07.2023 to revised Resolution Plan dated 02.06.2023 is annexed at page no. 203 to 205 of the application.

➤ The addendum dated 28.06.2023 to the revised Resolution provides below addendum:

*“1. The Resolution Applicant propose to revise the aggregate amount from **Rs. 311 lakhs (Rupees Three Hundred Eleven Lakhs only) to Rs 315 lakhs (Rupees Three Hundred Fifteen lakhs only)** against full and final payment for all the liabilities of the Corporate Debtor.*

*So the propose amount of **Rs. 311 lakhs (Rupees Three Hundred Eleven Lakhs only) to be read as Rs 315 lakhs (Rupees Three Hundred Fifteen lakhs only)** in the revised resolution plan submitted on 02-06-2023. Thus, in the revised resolution plan, wherever it is mentioned Plan amount of Rs.3,11,00,000 is to be read as **3,15,00,000**.*

*Further, the additional Rs. 4,00,000 is to be payable to the Secured Financial Creditors. Thus, in the revised resolution plan, wherever it is mentioned the payment to Secured Financial Creditors of Rs.2,85,09,932 is to be read as **2,89,09,932**.*

2. Part A of SECTION - IV of Resolution Plan on Page no. 22 regarding Cost of CIRP of the Revised Resolution Plan dated 02-06-2023 which is to be read as under:

As per information provided to the Resolution Applicants, the business of the Corporate Debtor is not going concern. The revenue of the Corporate Debtor is not sufficient to pay the Insolvency Resolution Process Costs which has been estimated at an amount of Rs. 25.00 Lakh which includes the payment to Interim Resolution Process and/ or Resolution Professional and all amount of expenses incurred by IRP and/ or RP, or any other expenses to the extent duly ratified or approved by the committee of creditors (COC). Hence, the

resolution Applicants proposes to pay ₹ 25.00 Lakh towards Corporate Insolvency Resolution Process Cost within 30 days from effective date. **However, if the actual CIRP cost exceeds the estimated CIRP cost of ₹ 25.00 Lakh, such shortfall amount will be additionally to be paid by Resolution Applicants from its internal accruals.** If the actual CIRP cost is less than Rs.25 lakhs, the difference amount shall be paid to secured financial creditors. The CIRP cost will be paid in full and in priority to any other creditors of the corporate debtors within 30 days of the effective date.

Rest all the terms and conditions will remain same as per the revised resolution plan dated 02.06.2023 except above two points:

- The addendum dated 14.07.2023 to the revised Resolution Plan dated 02.06.2023 along with the addendum given on 28.06.2023 provide below additional information:

1. Definition 13 of Section-III of Revised Resolution Plan on Page no. 15 regarding Definition of Effective Date to be read as under:

“Effective Date means the date of receipt of Certified Copy of Order of Hon’ble NCLT by Resolution Applicants / Resolution Professional”.

Rest all the terms and conditions will remain same as per the revised resolution plan dated 02.06.2023 in addition to addendum given on 28.06.2023 except above one point:

Please read our Revised Resolution Plan dated 02.06.2023 along with the addendum submitted on 28.06.2023 and 14.07.2023.

27. With respect to the preferential, undervalued, fraudulent and extortionate (“PUFE”) transactions, it is stated that:-

*“In case of any reversal of Preferential transactions under section 43 of IBC, and / or Undervalued transactions under section 45 of IBC and / or Extortionate credit transaction under section 50 of IBC and / or any fraudulent and wrongful trading under section 66 of IBC in respect of transaction carried out by existing promoters or management of the corporate debtor, effectuated by NCLT order in future only the secured financial creditors shall have the right to the benefits of such reversal transactions or order even if the same is after effective date. Any amount received by way of reversal of transaction, shall be appropriated to the secured financial creditors in the ratio of security value held by the respective secured financial creditors. **The applications filed by resolution professional shall be pursued by the representative of secured financial creditors as decided by the CoC. All the expenses pertain to such litigations shall be borne by the secured financial creditors against the benefits to be received upon by such financial creditors.**”*

28. With respect to the Performance Security, it stated that:-

“Resolution Applicants undertakes to provide the performance security of 10% of Resolution Plan Value as payable as envisage under resolution plan by whatever mean decided by the Committee of Creditors within 7 business days post approval of resolution plan by the Committee of Creditors subject to conveyed the decision of manner of Performance Security to the Resolution Applicants. The amount of performance security shall be adjusted only at the last payment against the amount payable to secured creditors if performance security is given by way of RTGS to the account of corporate debtor as proposed in this resolution plan. The Performance Security shall be returned in a period of fourteen (14) working days from the later of (a) transfer of control of the Corporate Debtor to the Successful Applicant and (b) receipt of entire amount of Resolution Plan Value payable by the Successful Applicant to the Financial Creditors, unless such Performance Security has been invoked/forfeited/encashed.

29. During the course of the final hearing on 06.11.2023, this Tribunal noted that “on perusal of the additional affidavit dated 03.11.2023 filed under Diary No. D4391 shows that no revised Form-H has been filed by the Applicant/RP mentioning the subsequent minutes of the CoC meeting held on 17.10.2023” and directed to file Form-H along with additional affidavit. Accordingly, a revised Form-H was filed under Inward Diary No. D9501 dated 10.11.2023 mentioning the 13th CoC meeting held on 17.10.2023.

30. The position of claims are as under:-

Amount in Rs. Lakh					
Sr. No.	Category of Stakeholders	Amount claimed	Amount admitted	Amount provided under the Plan	The amount provided to the amount claimed
1	Secured Creditors	38350.16	38350.16	289.10	0.75%
2	Unsecured Financial Creditor	Nil	Nil	Nil	0.00%
3	Operational Creditor	135.55	90.07	0.90	1%
	Total	38484.72	38440.23	290.00	0.75%

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

(Amount in Rs. lakh)

Sl. No.	Category of Stakeholder *	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	NA	NA	NA	NA
		(ii) who voted in favour of the resolution plan	38350.16	38350.16	289.10	0.75%
		Total[(a) + (b)]	38350.16	38350.16	289.10	0.75%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	NA	NA	NA	NA
		(ii) who voted in favour of the resolution plan	NA	NA	NA	NA
		Total[(a) + (b)]	NIL	NIL	NIL	NIL
3	Operational Creditors	(a) Related Party of Corporate Debtor	NA	NA	NA	NA
		(b) Other than (a) above:				
		(i) Government	54.95	47.40	0.47	1%
		(ii) Workmen	NA	NA	NA	NA
		(iii) Employees	NA	NA	NA	NA
		(iv) other operational creditor	79.60	42.67	0.43	1%
		Total[(a) + (b)]	134.55	90.07	0.90	1%
4	Other debts and dues	Contingent liabilities	-	-	-	-

5.	CIRP Cost	Estimated Cost	CIRP			25.00	100.%
Grand Total				38484.72	38439.28	315.00	

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

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

32. The source of the above is as under:

Sr. No.	Plan Value	Amount already deposited	Amount lying in the bank account	Remaining Amount
1.	Rs.3.15 Crore	Rs.61,50,000/- (Through RTGS)	Rs.1,96,30,534/-	The remaining amount will be paid from internal accrual as well as from loan

33. The interests of existing shareholders have been altered by the Resolution plan as under:

Sl. No	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity	6131990	Nil	100%	0%
2	Preference	-	-	-	-

34. The compliances of the Resolution Plan is stated to be as under:-

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria	The resolution applicant meets the eligibility criteria as approved by COC.	Yes

	<p>(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?</p> <p>(d) provides for the management of the affairs of the corporate debtor?</p> <p>(e) provides for the implementation and supervision of the resolution plan?</p> <p>(f) contravenes any of the provisions of the law for the time being in force?</p>	<p>of admitted claims.</p> <p>(c)Page no. 24 of Part-B Clause no. 1.</p> <p>(d) Page no. 38 Para L of point 1 of the Resolution Plan</p> <p>(e) Page no. 38 Para L of point 1 of the Resolution Plan</p> <p>(f) The resolution applicant has prepared resolution plan taking into consideration of compliance of all applicable laws</p>	<p>(c) Yes</p> <p>(d) Yes</p> <p>(e) Yes</p> <p>(f) No</p>
Section 30(4)	<p>Whether the Resolution Plan</p> <p>(a) is feasible and viable, according to the CoC?</p> <p>(b) has been approved by the CoC with 66% voting share?</p>	<p>(a) Included on page no. 48 of Point no. 7 of Section VI of the Resolution Plan.</p> <p>(b) Resolution Plan has been passed by the CoC with 100.00% voting in favour.</p>	<p>(a) Yes</p> <p>(b) Yes</p>
Section 31(1)	<p>Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?</p>	<p>Included in Page no. 39 of Part-M of Section IV of Resolution Plan. Discussion on effectiveness of implementation and supervision of resolution plan has taken place in detail during the meetings of committee of Creditors & after due consideration, Resolution Plan has been passed by the CoC with</p>	<p>Yes</p>

		100.00% voting in favour	
Regulation 35A	Where the resolution profesional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	RP has determined the fraudulent transactions u/s 66 of Rs. 772.98 Lakhs on the basis of forensic audit report received from Mahenshwari & Co., Chartered Accountants and has filed an application u/s. 66 of 08-07-2023.	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?	Page no. 27 Part E of point 1 of the Resolution Plan	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Page no. 40 Point no. 1 of Part N of the Resolution Plan.	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?	(i) Page no. 40 Point no. 2 of Part N of the Resolution Plan. (ii) Not Applicable	(i) Complied
Regulation 38(2)	Whether the Resolution Plan		

	<p>provides: (a) the term of the plan and its implementation schedule?</p> <p>(b) for the management and control of the business of the corporate debtor during its term?</p> <p>(c) adequate means for supervising its implementation?</p>	<p>(a) Page no. 37 of Point no. 1 and 2 of Part K of Resolution Plan</p> <p>(b) Page no. 38 of Point no. 1 and 2 of Part L of Resolution Plan</p> <p>(c) Page no. 39 of Part M. of Resolution Plan</p>	<p>(a) Yes</p> <p>(b) Yes</p> <p>(c) Yes</p>
38(3)	<p>Whether the resolution plan demonstrates that –</p> <p>(a) it addresses the cause of default?</p> <p>(b) it is feasible and viable?</p> <p>(c) it has provisions for its effective implementation?</p> <p>(d) it has provisions for approvals required and the timeline for the same?</p> <p>(e) the resolution applicant has the capability to implement the resolution plan?</p>	<p>(a) Page no. 41-42 of Point no. 3 of Part N of Resolution Plan.</p> <p>(b) page no. 48 of Point no. 7 of Section VI of the Resolution Plan.</p> <p>(c) Page no. 38 Para L of point 1 of the Resolution Plan</p> <p>(d) Page no. 48 of Point no. 8 of Section VI of the Resolution Plan.</p> <p>(e) Page no. 37-28 of Part K of the Resolution Plan</p>	<p>(a) Yes</p> <p>(b) Yes</p> <p>(c) Yes</p> <p>(d) Yes</p> <p>(e) Yes</p>
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Yes the RP has filed an application before the Adjudicating Authority on 08-07-2023 for fraudulent transactions under section 66 of the Code.	Yes
Regulation 39(4)	Provide details of performance security received, as referred	Resolution Applicant M/s. Rolence Pharma & Chemicals LLP has	Yes

	<i>to in sub-regulation (4A) of regulation 36B.</i>	<i>transferred the performance security of Rs. 31.50 Lakh by way of RTGS vide UTR no. ABHYR5202307210750033 4 to the bank account of the corporate debtor on 21/07/2023 within 7 days of the approval of the resolution plan by CoC.</i>	
--	---	--	--

35. Relief and Concession:

Sr. No.	Particulars	Concessions / Reliefs / Directions sought	Orders thereon
FROM THE GOVERNMENT			
1.	To exempt the Corporate Debtor and / or Resolution Applicants from payment of any charges, duty etc.	To exempt the Corporate Debtor and / or Resolution Applicants from payment of any charges, duty, levy for transfer / recognizing change in Share Holding of the Company pursuant to the Resolution Plan sanctioned by Adjudicating Authority.	To approach relevant authority who may consider the same in terms of objectives of IBC, 2016
2.	Exemption from stamp duty, registration charges etc.	Stamp duty, registration charges, levies and taxes on the transactions undertaken pursuant to the order of NCLT to be exempted.	To approach relevant authorities who may consider the same in terms of the objectives of IBC, 2016
3.	Resolution Applicants will not be liable for any liabilities which are neither appearing in the Balance Sheet nor mentioned in	The Resolution Applicants will not be liable for any liabilities which are neither appearing in the Balance Sheet nor mentioned in Information Memorandum under Regulation 6 of the Insolvency and Bankruptcy	Granted

	Information Memorandum	Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 except those liabilities which are mentioned in this Resolution Plan	
4.	All licenses & consents to operate to be available within 12	All licenses & consents to operate to be available within 12 months of completion date without any further act and deed	Granted
5.	Full waiver of other contingent dues and unconfirmed dues.	Full waiver of other contingent dues and unconfirmed dues subject to provisions envisage under resolution plan.	Granted
6.	Waiver/dropping of the proceedings and consequently waiver of liability on shortfall of mortgage deed	Waiver / dropping of the proceedings and consequently waiver of liability on shortfall of mortgage deed duty along with the interest and penalty (levied if any if affixed) if any for the past period	Granted
7.	All Government Authorities to grant any relief, concession or dispensation as may be required	All Government 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.	To approach relevant authorities who may consider the same in terms of objectives of IBC, 2016
8.	The revenue department will	The Purchaser is entitled to change of the land usage and	To approach relevant

	give them permission in 60 days from the completion of plan	the revenue department will give them permission in 60 days from the completion date as envisage under this resolution plan.	authorities who may consider the same in terms of objectives of IBC, 2016
GENERAL:			
9.	All business permits required by the Corporate Debtor at no additional cost/ claim to the Resolution Applicants	All business permits required by the Corporate Debtor to conduct its business and which have not been granted / cancelled / terminated / revoked / suspended or not renewed may please be directed to be granted / restored / renewed / reinstated as the case may be (by the concerned competent authority of local body/ State / Central Government / any other competent authority/ Board / Tribunal) at no additional cost/ claim to the Resolution Applicants.	Granted subject to payment of cost as demanded w.e.f. approval of this plan by the Adjudicating Authority
10.	All Statutory authorities to accept "Reset Financial Creditors'	All Statutory authorities to accept "Reset Financial Creditors' and Reset Operational Creditors for the purpose of making any future assessment / proceedings.	Granted

11.	Concern Electricity Board / Company / shall transfer the connection in the name of Resolution Applicant	Concern Electricity Board / Company / shall transfer the connection in the name of Resolution Applicant wherever applicable without payment of any additional fees/deposits on approval of resolution plan or outstanding if any till the date of resolution plan approved by the NCLT.	No such transfer envisaged as the company remains the same. This is holding these rights.
EXTINGUISHMENT OF CLAIMS/ RIGHTS			
12.	all claims against the Corporate Debtor along with any related legal proceedings, shall stand irrevocably and unconditionally abated, settled and extinguished	Save and except specifically dealt with under the instant Resolution Plan, no other payments or settlements (of any kind) shall be made to any other Person in respect of claims filed under the CIRP (including, for the avoidance of doubt, any unverified portion of their claims) and all claims against the Corporate Debtor along with any related legal proceedings, including criminal proceedings and other penal proceedings, shall stand irrevocably and unconditionally abated,	Granted

		settled and extinguished in perpetuity without any further and act on the Effective Date .	
13.	The payment to Persons contemplated in this Resolution Plan shall be the Corporate Debtor's and Resolution Applicants' full and final performance	The payment to Persons contemplated in this Resolution Plan shall be the Corporate Debtor's and Resolution Applicants' full and final performance and satisfaction of all its obligations to such Persons and all Claims (including, for the avoidance of doubt, any unverified portion of their Claims) of such Persons against the Corporate Debtor shall stand irrevocably and unconditionally settled and extinguished in perpetuity on the Effective Date.	Granted
14.	All claims along with any related legal proceedings, including criminal proceedings and other penal proceedings, shall stand irrevocably and unconditionally abated, settled and	The Interim Resolution Professional/ Resolution Professional issued a notice under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person)	Granted

	extinguished in perpetuity	<p>Regulations, 2016 to invite all potential claimants to submit their proofs of Claim. This Resolution Plan is being proposed in order to restructure the assets and liabilities of the Corporate Debtor and for the best interests of stakeholders of the Corporate Debtor to the extent possible. With this objective, the Resolution Applicants assumes that all creditors of the Corporate Debtor that have any claims against the Corporate Debtor have filed their respective claims and the verifiable claims have been admitted by the Resolution Professional and disclosed in the Information Memorandum and its schedule. Accordingly, the Resolution Applicants and the Corporate Debtor shall have no responsibility or liability in respect of any claims against the Corporate Debtor attributable to the period prior to the Effective</p>	
--	----------------------------	---	--

		Date other than any payments to be made under this Resolution Plan and all claims along with any related legal proceedings, including criminal proceedings and other penal proceedings, shall stand irrevocably and unconditionally abated, settled and extinguished in perpetuity.	
15.	All pending proceedings/ actions relating to the recovery of dues of the Corporate Debtor shall also stand irrevocably and unconditionally abated in perpetuity	Upon the approval of the Plan under Section 31 of the Code, all pending proceedings/ actions relating to the recovery of dues of the Corporate Debtor of whatsoever and howsoever nature under any law/ act shall also stand irrevocably and unconditionally abated in perpetuity.	Granted
16.	All enforcement commenced by any person over any of the assets of the Corporate Debtor or over any securities of the Corporate Debtor shall stand	On the Effective Date, all encumbrances, security interest, liens, charges, decree and/or attachments (including pursuant to applicable Law) created or	Granted

	released and reversed in favor of the Resolution Applicants	suffered to exist over the assets of the Corporate Debtor (charged or not charged with the lenders) or over the securities of the Corporate Debtor, whether by contract or by Applicable law, shall be allowed to exist only to the extent of the balance amount due to the secured financial creditors ; and irrevocably released and all enforcement commenced by any person over any of the assets of the Corporate Debtor or over any securities of the Corporate Debtor shall stand released and reversed in favor of the Resolution Applicants upon full and final settlement of the dues (as proposed under this Resolution Plan) of the Secured Financial Creditors, without the requirement of any further deed or action on part of the Resolution Applicants or the Corporate Debtor.	
17.	All the outstanding negotiable instruments issued	On the Effective Date, all the outstanding negotiable instruments issued by	Granted

	by Director or by any Person on behalf of the Corporate Debtor for any dues of Corporate Debtor including demand promissory notes, post-dated cheques and letters of credit, shall stand terminated	Director / promoter / officers of Corporate Debtor or by any Person on behalf of the Corporate Debtor for any dues of Corporate Debtor including demand promissory notes, post-dated cheques and letters of credit, shall stand terminated and the Corporate Debtor's liability under such instruments shall stand extinguished in perpetuity.	
18.	The rights of any Person to call for the allotment, Issue, sale or transfer of shares etc. of the Corporate Debtor, shall stand unconditionally and irrevocably extinguished.	On the Effective Date, the rights of any Person (whether exercisable now or in the future and whether contingent or not) to call for the allotment, Issue, sale or transfer of shares or loan capital of the Corporate Debtor, whether on a change of control, or otherwise, shall stand unconditionally and irrevocably extinguished in perpetuity.	Granted
19.	Under the Income Tax Act, 1961	All dues under the provisions of Income Tax Act, 1961("IT Act"), including taxes, duty, penalties, interest, fines, cesses, unpaid TDS / TCS, whether admitted or not, due	To approach relevant authorities who may consider the same in terms of the objectives of IBC, 2016

		<p>or contingent, whether part of above claim of Income-tax authorities or not, whether part of Tax due diligence finding or not, asserted or unasserted, crystallized or not crystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the Effective Date pursuant to this Resolution Plan, shall stand extinguished by virtue of the order of the NCLT approving this Resolution Plan and the Corporate Debtor and Resolution Applicants shall not be liable to pay any amount against such demand/ claim. All assessments/appellate or other proceedings pending in case of the Corporate Debtor, on the date of the order of NCLT relating to the period prior to that date, shall stand terminated and all consequential liabilities, if any, shall be deleted and shall</p>	
--	--	---	--

		<p>be considered to be not payable by the Corporate Debtor by virtue of the order of the NCLT. All notices proposing to initiate any proceedings against the Corporate Debtor in relation to the period prior to the date of the NCLT order and pending on that date, shall be considered deleted and shall not be proceeded against. Post the order of the NCLT, no re-assessment / revision or any other proceedings under the provisions of the Income Tax Act 1961 or allied Act shall be initiated on the Corporate Debtor or Resolution Applicants in relation to period prior to the Effective Date and any consequential demand shall be considered non-existing and as not payable by the Corporate Debtor. Any proceedings which were kept in abeyance in view of insolvency process or otherwise shall not be revived post the order of the</p>	
--	--	--	--

		NCLT.	
20.	All dues under the provisions of all the indirect taxes	All dues under the provisions of all the indirect taxes, including but not limited to, the Central Excise Act, 1944, the Finance Act, 1994 (Service Tax), the Customs Act, 1962, Goods and Service Tax Act, 2017, Gujarat VAT Act, 2002, and any other indirect tax laws, including taxes, duty, penalties, interest, fines, Cess, charges, unpaid TDS/ TCS (to the extent applicable), whether admitted or not, due or contingent, whether part of the above mentioned contingent liability schedule dues or not, whether claimed by the tax authorities or not, asserted or unasserted, crystallized or not crystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the acquisition of control by the Resolution Applicants over the Corporate Debtor	To approach relevant authorities who may consider the same in terms of the objectives of IBC, 2016

		<p>pursuant to this Resolution Plan, shall stand extinguished by virtue of the order of the NCLT approving this Resolution Plan and the Corporate Debtor or Resolution Applicants shall not be liable to pay any amount against such demand. All outstanding litigations/ demands, assessments/ appellate or other proceedings, including but not limited to any audits, investigations, search and seizure, pending in case of the Corporate Debtor, on the date of the order of NCLT relating to the period prior to that date, shall stand terminated and all consequential liabilities, if any, shall be deleted and shall be considered to be not payable by the Corporate Debtor by virtue of the order on the NCLT. All notices proposing to initiate any proceedings against the Corporate Debtor in relation to the period prior</p>	
--	--	---	--

		to the date of the NCLT order and pending on that date, shall be considered deleted and shall not be proceeded against. Post the order of the NCLT, no re-assessment/ revision or any other proceedings under the provisions of any of the Indirect Tax laws shall be initiated on the Corporate Debtor or Resolution Applicants in relation to the period prior to acquisition of control by the Resolution Applicants and any consequential demand shall be considered non-existing and as not payable by the Corporate Debtor. Any proceedings which were kept in abeyance in view of insolvency process or otherwise shall not be revived post the order of NCLT.	
21.	All remaining claims, dues, outstanding amount shall waived	The payment to all persons contemplated in this Resolution Plan shall be the Resolution Applicants' full	Granted

		and final performance and satisfaction of all its obligations towards any dues or outstanding against Corporate Debtor and all remaining claims, dues, outstanding amount shall waived by whatever name called like unverified dues, interest, penal interest, compound interest, damages, compensation, trusteeship charges, other commitment charges and any other amount of whatsoever and howsoever nature in terms of Regulation 37 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.	
22.	Resolution plan and stakeholders would not be eligible to recourse in any form for the past commitment in terms of the value and time.	The past payment obligation to secured creditor, unsecured creditors, employees dues, government/ semi government dues, workmen dues or any type of other liabilities shall stand revised as per this Resolution plan	Granted

		and these stakeholders would not be eligible to recourse in any form for the past commitment in terms of the value and time	
23.	All the rights and claims (whether contingent or otherwise) of every member of the Promoter Group against the Corporate Debtor shall stand irrevocably and unconditionally extinguished	On the Effective Date, the guarantors that have provided guarantee for and on behalf of and in order to secure the Debt availed of by the Corporate Debtor shall not be entitled to exercise any subrogation rights under Indian Contract Act in respect of such guarantees. Since the guarantor's subrogation rights would be an unsecured right, their liquidation value is NIL and accordingly, settlement amounts payable to them is Nil. On the Effective Date and with effect from the Appointment Date, all the rights and claims (whether contingent or otherwise) of whatsoever nature of every member of the Promoter Group against the Corporate Debtor shall stand irrevocably and unconditionally	Granted

		extinguished in perpetuity.	
24.	All the liabilities (whether contingent, undisclosed, hidden or crystallized shall stand extinguished and discharged on the Effective Date	All the liabilities (whether contingent, undisclosed, hidden or crystallized) in relation to any corporate guarantee, indemnities and all other forms of credit support provided by the Corporate Debtor prior to the Effective Date shall stand extinguished and discharged on the Effective Date and with effect from the Appointment Date.	Granted
25.	Respective Gas agencies to transfer the connection in favour of Resolution Applicant	Respective Gas agencies are directed to transfer the connection in favour of Resolution Applicant / Demerged entities on approval of this resolution.	No such transfer envisaged as the company remains the same. This is holding these rights.
26.	Any liability that arises in future due to judiciary orders, modification of law, no additional amount shall be paid by resolution applicant	Any liability that arises in future due to judiciary orders, modification of law, no additional amount shall be paid by resolution applicant. The said liability if arise, shall be adjusted from the payment towards secured financial creditors during the	Denied

		implementation of the resolution plan	
27	ACCOUNTING PROVISIONS AND COMPLIANCE	<p>A. Upon approval of the Plan by the NCLT, the Resolution Professional shall draw up the financial statements of the Corporate Debtor for a period ending on the date of approval of resolution plan by NCLT in compliance with applicable Accounting Standard adopted in India.</p> <p>B. Thereafter, the Resolution Applicants be permitted to carry out necessary write off of assets, creation of additional liability or expenses or write back of liability or provision (as the case may be) in the books of accounts of the Corporate Debtor or in the books of the Resolution Applicants on approval of the Resolution Plan as per the applicable provisions under the Companies Act 2013. Such balance sheet would be binding to all the stakeholders and shall prevail for all</p>	Granted

		<p>purpose and to all intents</p> <p>C. Upon payment to the creditors as per the approved resolution plan, the excess amount of liability as per the books of accounts shall be transferred to the capital reserve account and the resolution applicant / new management shall not be responsible for any tax liability under any law on the said differential excess amount.</p> <p>D. The resolution applicant / new management, if required, shall be empowered to replace or change the existing statutory auditors.</p>	
--	--	--	--

36. The Implementation and Monitoring Committee (“**IMC**”) shall supervise the implementation of the Resolution Plan with the help of the newly constituted board till the implementation of the proposed transaction under the Resolution Plan i.e., payment of the committed cash payment/amount to the Secured Financial Creditor

(Lenders). The Committee shall include total 4 members comprising of:

- (i) Resolution Professional
- (ii) 1 Member from Resolution Applicants
- (iii) 1 Member from each Secured Financial Creditor.

The cost or expenses of the Monitoring committee shall be paid out of the business of the Corporate Debtor.

37. **ANALYSIS AND FINDINGS OF THIS TRIBUNAL**

- I. It is seen from revised Form – H that the Liquidation value of the Corporate Debtor is arrived at **Rs. 2.18 Crore** and the corresponding Fair value is arrived at **Rs. 3.11 Crore-**. The Resolution Plan is for an amount of **Rs. 3.15 Crore**.
- II. There are two secured lenders in the matter viz., GSFC and SASF. The principal dues of both the lenders taken together is Rs.8.55 Crore. The account of the Corporate Debtor has turned as NPA in the books of the Financial Creditor sometime during the period 2001-2002 which is nearly 20 years back. Though, the total of the claims received during the

resolution process from the Financial Creditor aggregates to Rs.383.50 Crore. The principal outstanding is only Rs.8.55 Crore. The Financial Creditors are getting a payment of Rs.2.89 Crore in the resolution process which is nearly 34% of the principal amount.

- III. Affidavit dated 13.09.2023 states that the claim of EPFO for its dues amounting to Rs.7.54 Lakhs is under verification. In terms of the decision in the matter of ***Jet Aircraft Maintenance Engineers Welfare Association v. Ashish Chhawchharia***, the RP is directed to keep a sum of **Rs.7.54 Lakhs** in a separate fix deposit account with Public Sector Nationalised Bank till the final decision is arrived in the matter out of the total Resolution Plan of Rs.3.15 Crore and the same may be distributed after obtaining orders from this Tribunal.
- IV. Further, it is seen from revised Form – H, that presently application under 66 of IBC, 2016 in the present matter is pending on the file of this Tribunal which in term of the Resolution Plan will be

continued by **“Secured Financial Creditor as decided by CoC.**

V. 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 Judgment of Hon’ble 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.”

VI. Further the Hon’ble 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)

VII. 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 exposited by this Court.

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

IX. 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 **100%** 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.

- X. 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.
- XI. The Resolution Plan in question is hereby **approved** by this Adjudicating Authority, subject to the observations made in this order. The Resolution Plan shall form part of this Order. The Resolution Plan is binding on the Corporate Debtor and other stakeholders.
- XII. The Resolution Applicant is directed to make payment of the entire Resolution Plan amount within the time period stipulated under the Resolution Plan, failing which the entire amount paid by the

Resolution Applicant (*including the Performance Bank Guarantee*) as on the said date would stand automatically forfeited, without any recourse to this Tribunal.

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

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

XV. A copy of this Order is to be submitted to the concerned Office of the Registrar of Companies.

38. **IA/917/AHM/2023** shall stand **disposed off** accordingly.

39. The Monitoring Committee is directed to file a status report after 90 days from the approval of the Resolution Plan

40. 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)**

*Rajeev Kr. Sen/P.S
Shubhanshu/L.R.A*

**-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)**