

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

ITEM No.304

IA/847(AHM)2023 in CP(IB) 469 of 2019

Order under Section 30(6) r.w 31 IBC,2016

IN THE MATTER OF:

Sanjay Jitendralal Shah RP of B & C Energy Infra Ltd
V/s
CFM Asset Reconstruction Pvt Ltd & Ors

.....Applicant

.....Respondent

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
DIVISION BENCH-I, AHMEDABAD**

IA/847/AHM/2023 in CP (IB)469/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 **B & C Energy Infra Limited**

Sanjay Jitendralal Shah

Resolution Professional of
B & C Energy Infra Limited

Having office at:

501, 505-5th Floor, Abhijit-1,
Mithakhali Six roads, Navrangpura,
Ahmedabad-380059

... Applicant

VERSUS

1. CFM Asset Reconstruction Private Limited

Financial Creditor

Having address at:

A/1003, West Gate,
S.G. Highway, Makarba,
Ahmedabad-380051.

2. Bank of Baroda, Mehsana Main Branch

Financial Creditor

Having address at:

Mehsana (Main) Branch,
Station Road, Mehsana-384001.

3. Ashvinkumar Jayantilal Patel

Suspended Director of B&C Energy Ltd. and Successful
Resolution Applicant

Having address at:

H-132, Sardarshan,
G.I.D.C.-Dediyasan,
Modhera Road, Mahesana-384002

4. Lahuben Ashvinkumar Patel

Suspended Director of B&C Energy Infra Ltd.
Having address at:
H-132, Sardarshan,
G.I.D.C.-Dediyasan,
Modhera Road, Mahesana-384002

5. Manishkumar Rameshchandra Patel

Suspended Director of B&C Energy Infra Ltd.
Having address at:
8, Pink City, Opp. Man Farma,
Dediyasan-3, Mehsana-384002.

6. Creative Engineers & Services Private Limited

Operational Creditor
Having address at:
15, 16B, Sangini Complex,
Near Doctor House,
C. G. Road, Ahmedabad-380009.

7. Dakshin Gujarat Vij Company Limited

Operational Creditor
Having address at:
“Urja Sadan”, Nana Varachha Road,
Kapodara Char Rasta, Surat-395006.

8. Principal/Deputy Commissioner of Income Tax

Having address at:
IT-Office-Udyog Bhavan,
Sector-11, Gandhinagar-382010

...Respondents

In the matter of :-

Creative Engineers & Services Pvt. Ltd.

... Operational Creditor

Versus

B & C Energy Infra Ltd.

... Corporate Debtor

Order Pronounced on 06.12.2023

Appearance:

For the Applicant : Mr. Nipun Singhvi, Advocate a.w
Ms. Pragati Tiwari, Advocate

For the Respondent : None

CORAM:

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

O R D E R
(Per: Bench)

1. **IA/847(AHM)2023** is filed under Section 30(6) read with Section 31 of Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) read with Rule 11 of the NCLT Rules, 2016 seeking the following prayers:-
 - a) *Your Lordship may be pleased to allow the present application;*
 - b) *This Hon’ble Adjudicating Authority may be pleased to approve the revised Resolution Plan submitted by **Mr. Ashvin J. Patel**, the successful Resolution Applicant dated 23.05.2023 and be further pleased to order and declare that such an approved Resolution Plan is binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, the State Government, the Local Authority and other authorities, the guarantors and all other stakeholders involved in the Resolution Plan;*
 - c) *Your Lordship may be pleased to grant any other relief or reliefs as may deem fit in the interest of justice.*
 - d) *To approve the Resolution Plan (read with its addendums / Clarification of M/s Rare Asset Reconstruction Limited;*

2. It is stated that the Corporate Debtor – B & C Energy Infra Limited was admitted to Corporate Insolvency Resolution Process (“**CIRP**”) and the Applicant herein was appointed as Interim Resolution Professional (“**IRP**”) by order of this Adjudicating Authority dated 03.01.2022 passed in CP(IB)469/AHM/2019 filed by Operational Creditor – Creative Engineers and Services Private Limited under Section 9 of the IBC, 2016.
3. It is stated that public announcement was made in Form-A on 11.01.2022 in Financial Express (Gujarati and English Editions) inviting the creditors to submit their claims on or before 22.01.2022.
4. It is stated that pursuant to the public announcement dated 11.01.2022, and based on the claims received from the creditors, the Committee of Creditors (“**CoC**”) was constituted on 31.01.2022 comprising of CFM Asset Reconstruction Pvt. Ltd., having voting right of 86.37% and Bank of Baroda, having 13.63% voting right and report in this regard was filed in the Registry of this Tribunal on 02.01.2022.

5. It is stated that the first meeting of the CoC was held on 07.02.2022 wherein the CoC appointed the Applicant herein as the Resolution Professional (“**RP**”).
6. It is stated that in consultation with the CoC, the Applicant appointed registered valuers, namely, Mr. Devang Shah, Mr. Vishal Shah, Mr. Den Valuation (OPC) Private Limited, and Mr. Bhavin Patel for determining the Fair Value and Liquidation Value of the assets of the Corporate Debtor.
7. It is stated that in the 2nd CoC meeting was held on 16.03.2022, the CoC resolved to cause a public announcement in Form-G. Accordingly, Form-G was published in Financial Express (English and Gujarati) on 18.03.2022 for the invitation of Expression of Interest (“EoI”) wherein the last date for submission of EoI was 02.04.2022.
8. It is stated that the 3rd meeting of the CoC was held on 13.04.2022 wherein the Applicant appraised the CoC that Mr. Ashvin J Patel has been declared as Prospective Resolution Applicant (“PRA”) as no other EoI was received

by Applicant till the last date of submission of EoI i.e., 02.04.2022.

9. It is stated that 4th meeting of the CoC was held on 20.05.2022 wherein the Resolution Plan submitted by Prospective Resolution Applicant (“**PRA**”) – Mr. Ashvin J Patel was tabled before the CoC and the CoC resolved to appoint an appropriate person to conduct the due diligence of the Resolution Plan submitted by PRA. In the said meeting, the Applicant placed before the CoC the valuation reports submitted by Mr. Devang Shah dated 01.04.2022, Mr. Vishal Shah dated 11.04.2022, Bhavin R. Patel and Associates dated 28.03.2022 and Den Valuation (OPC) Private Limited dated 02.04.2022.
10. It is stated that the Applicant appointed one DCK & Associates, Chartered Accountants to conduct the exercise of due diligence of the Proposed Resolution Plan submitted by Shri Ashvin J Patel and placed the said reports dated 09.06.2022 and 13.06.2022 submitted by DCK & Associates, Chartered Accountant before the CoC.

11. It is stated that in the 5th meeting of the CoC held on 16.06.2022, the Applicant submitted a Transaction Audit Report based on the transaction audit conducted by CA Trupal Patel dated 13.06.2022 wherein it was noted that no transaction under Sections 43,45,50 and 66 of the IBC, 2016 were observed. During the said meeting, certain changes were suggested to the Resolution Applicant by the CoC to be carried out in the Resolution Plan.
12. It is stated that 6th meeting of the CoC was held on 21.06.2022 wherein the CoC upon perusal and discussion approved the same with 100% votes in favor.
13. It is stated that the Resolution Plan approved by the CoC was put before this Adjudicating Authority for approval which was filed on 24.06.2022 in IA No. 572 of 2022. However, the same was rejected by this Adjudicating Authority vide its order dated 24.01.2023 observing that:-
- “..18. It shows that the claims of the creditors which are not part of the Resolution Plan get extinguished upon approval of the Resolution Plan. In this Resolution Plan, the claims of the Directors of the Corporate Debtor are not considered by the RP as they being related parties of the Corporate Debtor. However, at the same time, the CoC in their commercial wisdom allowed the claim of those Directors of the Corporate Debtor to be carried forward against the provisions of law*

and overlooking the judgment of the Hon'ble Supreme Court as stated above. At the same time, the claims of the Operational Creditors are extinguished completely. In our considered opinion, this Resolution Plan is not only against the provisions of law but also this plan does not give equitable treatment to its creditors.

19. This Resolution Plan is a plan by the Directors of the Corporate Debtor. The Directors did not offer anything to the Operational Creditors. They did not pay dues of the Dakshin Gujarat Vij Company Limited- Government of Gujarat undertakings. But at the same time, they tried to save their claims against the Corporate Debtor and the CoC approved this plan may be only because both CoC members got 100% of their dues in return. In view of the above, we hold that Resolution Plan does not give equitable treatment to all stakeholders and it is against the provisions of the Insolvency and Bankruptcy Code, 2016. Hence, we hold that it is not in conformity with the provisions of section 30(2)(e) and (f) of the IBC, 2016. We do not wish to approve this Resolution Plan..”

14. The said order of this Adjudicating Authority was challenged before the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 417 of 2023 and the same was rejected by Hon'ble NCLAT vide order dated 18.04.2023.
15. In the meantime, the RP filed an application bearing IA No. 257 of 2023 seeking appropriate reliefs from this Tribunal to issue appropriate directions to the Applicant to prefer an application for initiation of liquidation, or in the alternative allow the Applicant to re-issue publication of Form-G, allow the Applicant to invite fresh Resolution Plan from the

erstwhile Successful Resolution Applicant for the purpose of discussion before the CoC. The Applicant had also filed an application bearing IA No. 258 of 2023 seeking exclusion of the period from 24.06.2022 to 24.01.2023 and extension of CIRP period by 90 days from 01.02.2023.

16. It is noted that this Adjudicating Authority vide its order dated 09.10.2023 dismissed the IA No. 257 of 2023 as infructuous. IA No. 258 of 2023 was disposed off by this Adjudicating Authority vide its order dated 25.10.2023 excluding the period from 24.06.2022 to 24.01.2023 and granting extension of 90 days w.e.f. 01.02.2023 of CIRP period.
17. It is stated that pursuant to the rejection of Resolution Plan by this Adjudicating Authority, the Resolution Applicant vide email dated 09.02.2023 requested the RP and CoC to grant the time of 15 days for submission of the revised Resolution Plan addressing the objections raised and removing the prayer that was found objectionable by this Adjudicating Authority. Accordingly, an addendum to the Resolution Plan was submitted by the Resolution Applicant on 18.02.2023 and a revised Resolution Plan on

23.05.2023. The said revised Resolution Plan was put before the CoC in its 7th meeting held on 05.06.2023.

18. It is stated that during the said meeting, the revised Resolution Plan dated 23.05.2023 was approved by the CoC with 100% votes in favour. Accordingly, the Applicant has filed this application under the provisions of Section 30(6) r.w. Section 31 of the IBC, 2016 seeking approval of the revised Resolution Plan dated 23.05.2023.
19. It is stated that the CoC in its 8th meeting held on 14.07.2023 has also passed resolution seeking liquidation of Corporate Debtor and appointment of Applicant as Liquidator in case of breach or contravention or rejection of Resolution Plan.
20. It is stated that the Resolution Plan proposes a total payment of **Rs.75.91 Lakhs**, Rs.6.02 Lakhs towards insolvency resolution costs, Rs.68.89 Lakhs towards Secured Creditors and Rs.1 Lakh towards Operational Creditors that would be paid within **180 days** from the effective date of implementation of the Resolution Plan.

21. The position of claims are as under:-

Sr. No.	Category of Stakeholders	Amount claimed	Amount admitted	Amount provided under the Plan	Amount provided to amount claimed
1	Secured Creditors	98,98,672	68,88,960	68,88,960	100%
2	Unsecured Financial Creditor	5,77,13,947	5,76,83,947	Nil	0.00%
3	Operational Creditor	90,46,045	45,58,265	1,00,000	02.19%
	Total	7,66,58,664	6,91,31,172	69,88,960	10.11%

22. It is stated that Clause 5.4 of the plan provides resolution for Secured Creditors and Clause 5.4.1 of the plan which provides the amount of claim admitted by the RP against the claims submitted by the Secured Financial Creditors who are members of the CoC as on the cut-off date are as under;-

Sr. No.	Name of Financial Creditor	Verified Amount of claims	Nature of Claim	Amount offered as part of Resolution Plan	% of Amount offered as part of Resolution Plan
1.	CFM Asset Reconstruction Private Limited	59,50,078/-	Secured Loan	Rs. 9,50,078/-	100%

2.	<i>Bank of Baroda, Mehsana Main Branch</i>	9,38,882/-	Secured Loan	Rs. 9,38,882/-	100%
3.	<i>Ashvinbhai J Patel</i>	2,75,22,445/-	Unsecured Loan (Related Party – Director)	<i>As this is a related party debt, no amount shall be offered as part of the Resolution Plan and accordingly same stands extinguished.</i>	
4.	<i>Labhuben A Patel</i>	1,11,66,502/-	Unsecured Loan (Related Party – Director)	<i>As this is a related party debt, no amount shall be offered as part of the Resolution Plan and accordingly same stands extinguished.</i>	
5.	<i>M/s Megha Industries</i>	1,89,95,000/-	Unsecured Loan (Related Party – Ex.Director)	<i>As this is a related party debt, no amount shall be offered as part of the Resolution Plan and accordingly same stands extinguished.</i>	
TOTAL		6,76,12,619/-		68,88,960/-	

23. It is stated that Clause 5.4.2 of the Plan envisages payment of Rs.68.89 Lakh at 100% of the admitted amount to Secured Creditors as per below payment plan:-

<i>Kind of Payment</i>	<i>Proposed timeline</i>	<i>Amt (INR)</i>
<i>1st Tranche - Upfront</i>	<i>Within 45 days from the effective date</i>	<i>Rs. 13.48 Lakh</i>
<i>2nd Tranche – Upfront</i>	<i>Within 90 days from the effective date</i>	<i>Rs. 18.47 Lakh</i>
<i>3rd Tranche</i>	<i>Within 135 days from the effective date</i>	<i>Rs. 18.47 Lakh</i>

4 th Tranche*	Within 180 days from the effective date	Rs. 18.47 Lakh
Total		Rs. 68.89 Lakh

* 4th Tranche Payment will be made after adjusting performance security amount as per Clause 14.1

Resolution Applicant proposes for the payment of Rs 68.89 Lakh to Secured Creditors as an entire class of creditors. **Distribution of payment is though proposed in clause 5.4.1, however any alteration in the distribution within the class of creditors is left at the discretion of the committee of creditors.** Committee may decide and direct the Resolution Applicant for the internal distribution within the class of creditors.

Committee may propose for the internal distribution considering priority amongst creditors as laid down in sub-section (1) of Section 53 of the code, after considering the priority and value of the security interest of secured creditors as per provisions of Section 30(4) of the Insolvency and Bankruptcy Code, 2016 and if any alteration is proposed by committee, then distribution as proposed under clause 5.4.1 shall stand changed as per the discretion of the committee of the creditors.

24. It is stated that during the hearing on 01.12.2023, learned counsel for the Applicant had undertaken to file an affidavit giving the status of the Performance Security Deposit received and affirming that the same is lying in control of the RP. Accordingly, the affidavit under Inward Diary No. D4856 dated 05.12.2023 was filed. Perusal of the same reveals that Performance Security of Rs.10,00,000/- was submitted in the CIRP account of the Corporate Debtor

opened in ICICI Bank bearing Account Number 230805500369 through RTGS. The Performance Security of Rs.10,00,000/- provided by SRA is lying unencumbered in the CIRP account of the Corporate Debtor. Copy of bank statement evidencing receipt of RTGS and balance statement is annexed as Annexure-I of this affidavit.

25. It is stated that as per Clause 5.6 of the Plan, Rs. 1 Lakh is being paid amongst the Operational Creditors in the following manner:

Sr. No.	Name of Operational Creditor	Verified Amount of claims	Amount Offered	% of Claim Amount offered
1.	<i>Creative Engineer & Services Pvt Ltd.</i>	16,31,107	48,069	3%
2.	<i>M/s Balaji Electricals (Proprietary Firm of Ashvinbhai J</i>	11,65,000	NIL (* Related Party)	0%
3.	<i>Dakshin Gujarat Vij Company Limited (DGVCL)</i>	14,40,971	42,466	3%
4.	<i>Atul N. Vakil (Arbitrator)</i>	3,21,187	9,465	3%
TOTAL		45,58,265/-		

3.1.1. According to the provisions of Section 30(2)(b) of the Code, the Resolution Plan must provide for at least such amounts to be paid to Operational Creditors to which they would be entitled in the event of liquidation of the Company under Section 53, which amount is to be paid prior to payments to financial creditors.

- 3.1.2. *The estimated liquidation value as per the resolution applicant is not sufficient to meet the dues of secured financial creditors. Accordingly, the Resolution Applicant, for the purpose of this plan, has assumed that the estimated liquidation value due towards the operational creditors is **Nil**;*
- 3.1.3. *However, the Resolution Applicant proposes **Rs 1.00 Lakh** as payment to the class of non-related operational creditors (Claimed/Unclaimed) in full and final settlement of their claims proposed to be paid by the Resolution Applicant **within 45 (forty-five) Business Days from the Effective Date**, to be internally distributed within the class in their admitted claim ratio. This payment is proposed to comply the spirit of the code to balance the interest of all the stakeholders as per provisions of Regulation 38(1A) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;*
- 3.1.4. *Distribution of payment is though proposed in clause 5.6, however any alteration in the distribution within the class of operational creditors including any new claimants in the said class of creditors is left at the discretion of the committee of creditors. Committee may decide and direct the Resolution Applicant for the internal distribution within the class of creditors.*
- 3.1.5. *The entire due towards the Operational Creditors as on the Cut-off Date shall stand satisfied, settled and extinguished, and no claims whatsoever, of any nature, shall subsist.*

26. The general conditions applicable to Operational Creditor are summarized as under:-

- a) The amount payable to the Operational Creditor shall be paid prior to making payment to the Financial Creditor. But, since no amount is offered to Operational Creditor, priority of payment does not arise.
- b) The existing securities created/lien marked/attachment made over the assets of the Corporate Debtor shall be

- released immediately upon the payment of the resolution amount as proposed above without any further act/deed.
- c) In case any additional claims from “Operational Creditors of respective category” are accepted by the Resolution Professional / CoC / Adjudicating Authority before the Approval Date, the proposed resolution amount for the “respective category of Operational Creditors”, as stated above, shall not be revised upwards. In such a situation, the proposed resolution amount shall be taken out from the payment proposed towards the Financial Creditors.
 - d) Withdraw all the cases/applications, if any, pending in any Court, Tribunal, Forum etc., initiated against the Corporate Debtor and not to initiate any fresh one on the claims arising prior to the appointed date.
 - e) Handover all custody of the documents relating to the security interest to the Corporate Debtor.
 - f) The Resolution Plan shall not carry any interest or any other charges.
 - g) Post approval of the Resolution Plan which includes the payments as proposed, the claims of all the creditors shall be considered as resolved and they shall have no further claims against the Corporate Debtor.
 - h) Any invocation or appropriate or other enforcement action or demand made in respect of any security, guarantee etc., at any time shall stand automatically abated, discharged, revoked and cancelled and demand null and void.
 - i) For the avoidance of any doubt, all accrued or unpaid interest on or after the CIRP date till the date of payment

of resolution amount in relation to the Operational Creditor shall be written-off in full and shall be permanently extinguished and the Corporate Debtor or the Resolution Applicant shall at no point of time be, directly or indirectly held responsible or liable in relation thereto.

27. The Key proposition in the Resolution Plan is reproduced as below:-

“6.1. Capital Reduction: *The existing subscribed capital of the corporate debtor is Rs. 65,50,000/- which is divided into 6,50,000 share of face value Rs. 10/- each. The existing shareholders of the corporate debtor are as under:*

Sr. No.	Name of the Share Holder	No. of Shares Held	% of holding
1.	<i>Ashvin J. Patel</i>	<i>3,55,000</i>	<i>54.20%</i>
2.	<i>Labhuben A. Patel</i>	<i>67,500</i>	<i>10.31%</i>
3.	<i>Mauleshkumar Patel</i>	<i>60,000</i>	<i>9.16%</i>
4.	<i>Jitendrabhai Patel</i>	<i>57,000</i>	<i>8.70%</i>
5.	<i>Manojkumar Tanwani</i>	<i>45,000</i>	<i>6.87%</i>
6.	<i>Prakashbhai Prajapati</i>	<i>40,500</i>	<i>6.18%</i>
7.	<i>Manish R. Patel</i>	<i>30,000</i>	<i>4.58%</i>
Total:		6,55,000	100.00%

6.1.1. **Resolution** *Applicant proposed to cancel all the shares issued to the existing shares, hence making their % of shareholding as Nil. There shall be no requirement to add "and reduced" in the name of the Company and all liabilities of the Company appearing as current borrowings in respect of such equity shares that have been reduced will be completely reduced to nil without any liabilities, claims or obligations by virtue of the order of*

the Adjudicating Authority approving this Resolution Plan and the Company, the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation hereto.

6.1.2. The Capital Reduction shall not require the Consents of any of the creditors of the Company or approval of any of the shareholders of the Company, or any other person having any security interest over such shares and the approval of the Adjudicating Authority to the reduction of share capital and shall be binding on the Company and its stakeholders (including its creditors and shareholders').

6.1.3. The share certificates held by the shareholders of the Corporate Debtor shall stand cancelled without any further act, instrument or deed and the shares of the Corporate Debtor held by any of the shareholders shall stand cancelled by appropriate corporate action.

6.1.4. The Resolution Applicant and the new management of the Company will comply with the requirements of SEBI, Companies Act 2013, FEMA and any other law for the time being in force as applicable, subject to the relaxations that have been announced and that may be announced prior to the implementation of the Resolution Plan.

6.2. Capital Infusion

6.2.1. Regulation 37(1)(I) of CIRP Regulations 2016, provides for inclusion in any Resolution Plan as follows "Issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests,"

6.2.2. Resolution Applicant shall issue fresh equity of 10,000 equity shares of face value Rs. 10/- each as per the table mentioned in Clause 6.2.3 below.

6.2.3. With the proposed allotment, share holding pattern will be as follows

Name of the Shareholder	Face Value	No. of shares to be Issued	Value Rs	% Holding (New)
Mr. Ashvin J Patel	Rs 10/-	5,100	51,000	51%
Mrs. Labhuben A Patel	Rs 10/-	4,000	40,000	40%

Mr. Jigar Kaushikbhai Patel	Rs 10/-	900	9,000	9%
Total		10,000	1,00,000	100%

6.4. Infusion and Utilization of funds by Resolution Applicant

6.4.1. Sourcing of Funds and Utilisation of Funds: Resolution Applicant proposes to raise funds from own sources as well as by getting a loan from his proprietary firm. Main sources of funds will be as below.

6.4.1.1. Gold of 800 Grams : Rs. 45,00,000/- (approximate value)

6.4.1.2. Loan from proprietorship firm : Rs. 35,00,000/-

Resolution Applicant is owning 800 Grams of Gold, which will be liquidated to fund the initial tranche payment of Resolution Plan – net worth statement is attached with the Resolution Plan wherein holding of Gold is mentioned. Subsequent, tranches of Resolution Plan payment would be funded by securing loan from M/s Balaji Electricals, authorisation letter from the firm is attached along with the Resolution Plan.

6.4.2. Funding of Resolution Plan and payment of tranches are summarised in below table:

Rs in Lakh

Sr No.	Particulars	0 - 45 Days	45 - 90 Days	91 - 135 Days	136 - 180 Days	Total
	Source of Funds					
	Liquidating Gold worth Rs 45.00 Lakh and Loan from M/s Balaji Electricals Rs 35.00 Lakh					
a.	Equity Share Capital	1.00				1.00
b.	Infusion as Loan	19.50	18.47	18.47	18.47	74.91
a + b	Total:	20.50	18.47	18.47	18.47	75.91
	Application of Funds					
c.	Payment of CIRP Cost	6.02	-	-	-	6.02
d.	Payment to Financial Creditors	13.48	18.47	18.47	18.47	68.89
e.	Payment to Operational Creditors	1.00	-	-	-	1.00
c + d + e	Total:	20.50	18.47	18.47	18.47	75.91

28. With respect to the management of the company, it is stated that the company shall continue as a going concern and operate in its normal course of business upon implementation of the proposed plan. The affairs of the management of the company after approval of the plan would be done as follows:-

7.1 Appointment of a Monitoring Committee

7.1.1 *Resolution Applicant propose for constitution of monitoring committee, as per the provisions of the Code.*

7.1.2. *The Monitoring Committee, shall monitor the day-to-day operations of the Company and compliances as per the provisions of The Insolvency and Bankruptcy Code, 2016.*

7.1.3. *The Monitoring Committee would also supervise the implementation of the resolution plan and would continue to do so even after formation of a Board until the claims of secured financial creditors are settled fully.*

7.2. Constitution of new Board of Directors

7.2.1. *It is proposed that the Company shall be a Board managed company upon approval of the Proposed Plan. A Board would be formed within 30 days of the date of approval of Resolution Plan by the Adjudicating Authority and other approvals, if any, required. The new Board shall be accountable for the day-to-day operations of the Company and shall be bound as per applicable law to protect and preserve the value in the Company.*

7.2.2. *Highlights of the composition of the Board is as below:*

Sr No	Name of the Director	Category
1	Mr. Ashvin J Patel	Managing Director
2	Mrs. Labhuben A Patel	Director
3	Mr. Jigar Kaushikbhai Patel	Director

The Composition of Board of Directors may be changed as deemed fit by

the Resolution Applicant, on or after approval of the Resolution Plan by the Adjudicating Authority.

The Constitution of the Board shall at all times comply with the provisions of the Companies Act, 2013 and the SEBI Regulations and LODR applicable to listed companies, subject to any relaxation being available to the company whose Resolution Plan is approved as per the provisions of IBC, 2016.

29. With respect to the Performance Guarantee/Security, it is stated as under:-

14.1. Resolution Applicant undertakes to furnish performance security of Rs. 10 Lakh as envisaged under the RFRP within 7 working days from the date of communication of approval of Resolution Plan by Committee of Creditors in accordance with the provisions contained in Regulation 36B (4A). This security amount shall be adjusted in 4th Tranche Payment proposed on T + 180 days; i.e. 4th Tranche Payment will be made for balance payment only after adjusting performance security of Rs 10 Lakh.

14.2. The performance security shall be valid in the form of RFRP for a period of twelve months which shall be renewed as per the mutual consent of the RA and the assenting secured financial creditors.

14.3. Performance security will be valid till last tranche of payment.

30. It is stated that the Corporate Debtor is MSME and certificate of MSME dated 04.02.2016 is annexed as Annexure-B at page no. 85-86 of the application.

31. It is stated that in compliance of the order of this Adjudicating Authority dated 09.10.2023 wherein the Applicant had undertaken to file undertaking of Successful Resolution Applicant (“SRA”), an affidavit under Diary No. D4122 dated 18.10.2023 was filed wherein the Successful Resolution Applicant has given its undertaking to comply with Regulation 31A(1) of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2017 and to make payment of Rs. 17,473/- to the Board within 30 days from the date of approval of the Resolution Plan as the plan value is more than liquidation value.

32. Perusal of Form-H reveals that the Fair Value of the Corporate Debtor is Rs.60,84,031/- and Liquidation Value is Rs.40,47,826/-

33. The amounts provided for the Stakeholders under the Resolution Plan is as under:

7. The amounts provided for the stakeholders under the Resolution Plan is as under:
(Amount in Rs.)

Sl. No.	Category of Stakeholder *	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)

1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NA	NA	NA
		(b) Other than (a) above:	98,98,672	68,88,960	68,88,960	100.00%
		(i) who did not vote in favour of the resolution Plan	NIL	NA	NA	NA
		(ii) who voted in favour of the resolution plan	98,98,672	68,88,960	68,88,960	100.00%
		Total[(a) + (b)]	98,98,672	68,88,960	68,88,960	100.00%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	5,77,13,947	5,76,83,947	NA	0.00%
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	NIL	NA	NA	NA
		(ii) who voted in favour of the resolution plan	NIL	NA	NA	NA
		Total[(a) + (b)]	5,77,13,947	5,76,83,947	NA	0.00%
3	Operational Creditors	(a) Related Party of Corporate Debtor	11,65,000	11,65,000	NA	0.00%
		(b) Other than (a) above:				

		(i)Government				
		(ii)Workmen	NIL	NA	NA	NA
		(iii)Employees	NIL	NA	NA	NA
		(iv) Other	NIL	NA	NA	NA
			78,81,045	33,93,265	1,00,000	02.95%
		Total[(a) + (b)]	90,46,045	45,58,265	1,00,000	02.19%
4	Other debts and dues		NIL	NA	NA	NA
Grand Total			7,66,58,664	6,91,31,172	69,88,960	10.11%

**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.]

34. 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	6,55,000	10,000	64.51%	91.00%
2	Preference	NA	NA	NA	NA

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

“..9. The compliance of the Resolution Plan is 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	Clause-1, Section 240A	Yes

	<i>Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?</i>	<i>of IBC,MSME Registration Certificate available of the Resolution Plan and Email from Resolution Professional dated 12.04.2022</i>	
Section 29A	<i>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?</i>	<i>Affidavit from Resolution Applicant submitted along with Resolution Plan</i>	Yes
Section 30(1)	<i>Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?</i>	<i>Affidavit from Resolution Applicant submitted along with Resolution Plan</i>	Yes
Section 30(2)	<i>Whether the Resolution Plan-</i> <i>(a) provides for the payment of insolvency resolution process costs?</i> <i>(b) provides for the payment to the operational creditors?</i> <i>(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?</i> <i>(d) provides for the management of the affairs of the corporate debtor?</i> <i>(e) provides for the implementation and supervision of the resolution plan?</i> <i>(f) contravenes any of the provisions of the law for the time being in force?</i>	<i>Clause – 5.3</i> <i>Clause – 5.6</i> <i>No such Clause in which FC not voted in favor of Resolution Plan</i> <i>Clause – 7</i> <i>Clause – 8</i> <i>Clause – 10.2,10.3</i>	Yes Yes NA Yes Yes NA
Section 30(4)	<i>Whether the Resolution Plan (a) is feasible and viable,</i>		Yes

	<p><i>according to the CoC?</i></p> <p><i>(b) has been approved by the CoC with 66% voting share?</i></p>		
Section 31(1)	<p><i>Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?</i></p>	Clause – 7,8,9 & 12	Yes
Regulation 35A	<p><i>Where the resolution professional 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?</i></p>	No such transactions have been determined	N.A
Regulation 38 (1)	<p><i>Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?</i></p>	Clause – 5.6	Yes
Regulation 38(1A)	<p><i>Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?</i></p>	Clause – 9	Yes
Regulation 38(1B)	<p><i>(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.</i></p> <p><i>(ii) If so, whether the</i></p>	Clause – 10.1	Yes

	<i>Resolution Applicant has submitted the statement giving details of such non-implementation?</i>		NA
<i>Regulation 38(2)</i>	<p><i>Whether the Resolution Plan provides:</i></p> <p><i>(a) the term of the plan and its implementation schedule?</i></p> <p><i>(b) for the management and control of the business of the corporate debtor during its term?</i></p> <p><i>(c) adequate means for supervising its implementation?</i></p>	<p><i>Clause – 5, 7, 8 & 9</i></p> <p><i>Clause – 8</i></p> <p><i>Clause – 8.1.1</i></p>	<p><i>Yes</i></p> <p><i>Yes</i></p> <p><i>Yes</i></p>
<i>38(3)</i>	<p><i>Whether the resolution plan demonstrates that –</i></p> <p><i>(a) it addresses the cause of default?</i></p> <p><i>(b) it is feasible and viable?</i></p> <p><i>(c) it has provisions for its effective implementation?</i></p> <p><i>(d) it has provisions for approvals required and the timeline for the same?</i></p> <p><i>(e) the resolution applicant has the capability to implement the resolution plan?</i></p>	<p><i>Clause – 4</i></p> <p><i>Clause – 4,5,8</i></p> <p><i>Clause – 7, 8</i></p> <p><i>Clause – 13</i></p> <p><i>Clause – 1 & 6.4</i></p>	<p><i>Yes</i></p> <p><i>Yes</i></p> <p><i>Yes</i></p> <p><i>Yes</i></p> <p><i>Yes</i></p>
<i>39(2)</i>	<i>Whether the RP has filed applications in respect of transactions observed, found or determined by him?</i>	<i>No such transaction observed, found or determined</i>	NA

<i>Regulation 39(4)</i>	<i>Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.</i>	<i>Clause-14</i>	Yes
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36. Relief and Concession:

Sr. No.	Particulars	Concessions / Reliefs / Directions sought	Orders thereon
1	After payment of financial debt settlement all and any guarantees are considered a full and final settlement.	The Resolution Applicant has provided for the distribution of the Resolution Debt Amount in the Resolution Plan as per the various provisions of the Code. Resolution Applicant presumes that all the lenders where the Corporate Debtor has given any guarantees have submitted their claim, if any. After payment of the financial debt settlement amount, all and any guarantees given by the Corporate Debtor or Personal Guarantor to the Corporate Debtor are considered a full and final settlement.	- Granted
2	Guarantors for and on behalf of shall not be entitled to exercise any subordinate rights in respect of such guarantees	On the Effective Date, the guarantors that have provided guarantees for and on behalf of and in order to secure the Debt availed by the Corporate Debtor, shall not be entitled to exercise any subordinate rights in respect of such guarantees, however Corporate Debtor new management after effective date should have right to exercise legal remedies against the	- Granted

		personal guarantors to the erstwhile debts of the corporate debtor for initiating recovery actions.	
3	All the outstanding negotiable instruments issued by the Corporate Debtor shall stand extinguished.	On the Effective Date, all the outstanding negotiable instruments issued by the Corporate Debtor or by any person acting on behalf of the 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.	- Granted
4	RA not be liable against all legal issues and litigations prior to approval of Plan.	The Resolution Applicant would not be liable for any other liabilities, either contingent or otherwise, other than those mentioned above and summarized in the financial plan and would be fully indemnified against all legal issues and litigations of the previous years of the company after approval of the Resolution Plan.	- Granted
5	All liabilities in relation to any corporate guarantees shall stand extinguished.	All liabilities (whether contingent or crystallized) in relation to any corporate guarantees, indemnities, and all other forms of credit support provided by the Corporate Debtor prior to the Effective Date shall stand extinguished and discharged RE on the Effective Date.	- Granted
6	Payments to all persons contemplated in the Plan shall be full and final performance and satisfaction of all its obligations towards any dues	The Payments to all persons contemplated in this Resolution Plan shall be the Corporate Debtor's and Resolution Applicant's full and final performance and satisfaction of all its obligations towards any dues or outstanding against the Corporate Debtor and all	- Granted

	or outstanding against the Corporate Debtor.	remaining claims, dues, outstanding against the Corporate Debtor and all remaining claims, dues, outstanding amount shall be waived by whatever name called like interest, penal interest, compound interest, damages, other commitment charges and any other amount of whatsoever nature.	
7	Seek complete exemption from both pecuniary and non-pecuniary liabilities arising out of any act done prior to the period of Effective Date	The other unpaid creditors, shareholders, and other stakeholders would have nil liquidation value towards the existing and future liabilities. The Resolution Applicant proposes to seek complete exemption from both pecuniary and non-pecuniary liabilities arising out of any act done prior to the period of Effective Date so as to limit its liability to the extent of Resolution Debt Amount only	- Granted
8	Extinguishment of all claims which are listed as per Information Memorandum point no 12 and as per latest claim list.	Save as otherwise committed under this Resolution Plan, extinguishment of all the kinds of liabilities and claim, whether claimed or not, whether actual or contingent, whether existing or probable, which are based upon or arise on account of any act or contravention committed prior to the effective date. We are seeking extinguishment of all claims listed at page 72 and 73 of the Application as well as unlisted claim which may or may not have been listed below but committed prior to the effective date.	- Granted
9	Extinguishment of all kinds of claims	Save as otherwise committed under this Resolution Plan, extinguishment of all the kinds of liabilities and claim, whether claimed or not, whether actual or contingent, whether	- Granted

		<p>existing or probable, which are based upon or arise on account of any act or contravention committed prior to the effective date. This shall include but not limited to liabilities, penalties, interest on statutory payments arising out of act, deed, conduct, non-filing of returns or/and regulatory non-compliance committed by the Corporate Debtor prior to or during the CIRP including but not limited to under the Indian Income Tax Act, 1961; the Companies Act, 2013; the Goods and Service Tax Act, 2017.</p> <p>Except to the extent of payments to be made to the creditors as proposed under this Resolution Plan, the Resolution Applicant and the Corporate Debtor shall have no liability towards any claimant including the Government Authorities with respect to any claims (as defined under the Code) relating in any manner to the period prior to the Effective Date. All such liabilities shall immediately, irrevocably and unconditionally stand fully and finally discharged and settled with there being no further claims whatsoever, and all forms of security created or suffered to exist, or rights to create such security, to secure any obligations towards the creditors shall immediately, irrevocably and unconditionally stand released and discharged, and the creditors shall waive all rights to invoke or enforce the same.</p>	
10	Under the Incomes Tax Act, 1961	(a) Any requirements to obtain waivers from any Tax Authorities including in terms of section 79 and section the Income Tax Act, 1961 is deemed to have granted upon approval of this Resolution Plan on the Approval Date. Tax Authorities be directed to grant exemption from all taxes, levies, fees, transfer	- Directed to approach the concerned authority who may

		<p>charges, transfer premiums and surcharges that arise from or relate to the implementation of this Resolution Plan, including exemption from transfer of assets as a part of this Resolution Plan which may involve capital gains/business income to the Corporate Debtor, since payment of these amounts may make the Resolution Plan unfavorable. This would include waiver of MAT and Income tax implications arising due to write back / write off of liabilities in the books of accounts of the Corporate Debtor, without any impact on brought forward tax and book loss/depreciation, pursuant to this Resolution Plan.</p> <p>(b) To provide the extension for carry forward and set off of business losses for 3 assessment years against future profits under section 72 of the Income Tax Act, 1961.</p> <p>(c) To exempt / grant relief to the company from the provisions of Section 41(1), 45, 72 (3), 43-8, 79, 80 read with 139, 115JB and 269-SS, 269-T and 281 provisions of Chapter XVII. To waive the interest and penalty on delayed payment of income tax and tax deducted at source of the Income Tax Act till effective date.</p>	consider the same in terms of objectives of IBC, 2016
11	Under GST Act, 2017 and Rules Framed thereunder	Any requirements to obtain waivers from any Tax Authorities including in terms of section 16 of the GST Act, 2017 and Rule 37 of CGST Rules, 2017 is deemed to have been granted upon approval of this Resolution Plan on the Approval Date. Tax Authorities be directed to grant exemption from all taxes, levies, fees, transfer charges, transfer premiums, and surcharges that arise from or	- Directed to approach the concerned authority who may consider the same in terms of objectives of IBC, 2016

		relate to the implementation of this Resolution Plan.	
12	Penalties pertaining to regulatory non compliances:	The Resolution Applicant shall not be liable for any action. Neither the Resolution Applicant nor the Corporate Debtor, nor their respective directors, officers and employees appointed shall be liable for any violations, liabilities, penalties, interest on statutory payments and / or fines with respect to or pursuant to any order of any Governmental Authority or on account of non-compliance of Applicable laws by the Corporate Debtor or due to the Corporate Debtor not having in place requisite approvals and licenses to undertake its business as per Applicable Law.	- Granted
13	Accounting Treatment	<p>(a) Permission to draw up the financial statements of the Company for a period ending on the Effective Date (or any date closest to that date as may be practicable) in compliance with applicable accounting standards such that it truly reflects the restructured liabilities as committed to be paid under this Resolution Plan and the realisable, fair value of the assets as may be determined by the board of directors of the Resolution Applicant.</p> <p>(b) For the above purpose, 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 by creating Goodwill/ Free Reserve Account (as the case</p>	- Granted

		<p>may be) in the books of accounts of the Company pertaining to the period till the Effective Date or any date closest to the effective date.</p> <p>(c) Pursuant to the order of the NCLT approving this Resolution Plan, any debit or credit, being the balancing figure, arising as a result of giving effect to the Effective Date actions as mentioned in this Resolution Plan, shall be adjusted by the Resolution Applicant in the Goodwill / Bargain Purchase / Free (General) Reserves Account. Such amount in any case will not be debited / credited/ charged/accounted for through Profit and Loss Account.</p> <p>(d) Permission to the Corporate Debtor to continue to use the licenses, approvals, registrations from the Government Authorities in respect of its business, despite their expiry or lapse, till the same are not renewed by the Resolution Applicant with directions to the relevant Governmental Authority to immediately consider the renewal of all licenses, consents or approvals of the Corporate Debtor without considering any of the non-compliance observed by the Corporate Debtor committed prior to the Effective date.</p>	
14	Right to continue with the litigation initiated by the company.	As per the information memorandum point no 12, details of litigations initiated by the company is given. The RA would like to keep the rights to the litigation initiated by the company	- Granted

		or will have right to initiate new litigations for the events prior to the CIRP date.	
15	Waiver from the levy of Stamp Duty and fees by the stamp authorities and Ministry of Corporate Affairs	Waiver from the levy of Stamp Duty and fees by the stamp authorities and Ministry of Corporate Affairs, applicable in relation to this Resolution Plan and its implementation, including on transfer of corporate debtor to the Resolution Applicant, on increase of authorised capital and issuance of new shares to the Resolution Applicant (or its nominees)	- To approach the concerned authority who may grant keeping the object of IBC, 2016
16	Waiver from applicability of Gujarat Land Reforms (Fixation of Ceiling on Land) Act, 1961	Waiver from the applicability of Gujarat Land Reforms (Fixation of Ceiling on Land) Act, 1961 and any other applicable requirements for acquisition and transfer of lands/assets by the Corporate Debtor.	- To approach the concerned authority who may grant keeping the object of IBC, 2016
17	Exemption from Taxes, fees, etc. in the implementation of the Resolution Plan	Corporate Debtor and the Resolution Applicant shall be granted an exemption from all taxes, levies, fees, transfer charges, transfer premiums and surcharges that arise from or relate to the implementation of the Resolution Plan.	To approach the concerned authority who may grant keeping the object of IBC, 2016
18	Directions to various Govt. Authorities	Direction to the concerned Government Authorities including the Registrar of Companies, Income Tax Authorities, GST	To approach the concerned authority

		Authorities, Stamp Authorities to allow the implementation of this Resolution Plan as per its terms.	who may grant keeping the object of IBC, 2016
19	Directions to various Govt. Authorities	Adjudicating Authority to pass necessary orders/ give appropriate directions to the Ministry of Corporate affairs, Registrar of Companies, Government of India, Provident Fund Authorities, Sales Tax Authorities, Services Tax Authorities, GST Council, Income Tax, Fringe Benefit Tax, etc. to waive interest and penal charges for past dues on settlement of dues as per the Resolution Plan.	To approach the concerned authority who may grant keeping the object of IBC, 2016
20	Directions to various Govt. Authorities	Adjudicating Authority to pass necessary orders / give appropriate directions to the Ministry of Corporate affairs, Government of India, Provident Fund Authorities, Sales Tax Authorities / Services Tax Authorities / GST Council to waive interest and penal charges for past non-compliance of filling/secretarial obligations.	To approach the concerned authority who may grant keeping the object of IBC, 2016
21	Directions to Govt. of Gujarat	Directions to the Government of Gujarat to grant all reliefs and concessions available under the GR dated 11 Sep 2017 with respect to incentive towards additional capital expenditure made by sick enterprise, electricity duty reimbursement , etc.	To approach the concerned authority who may grant keeping the object of IBC, 2016

37. 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 of 3 members comprising of:

- (i) One person nominated by the Financial Creditor,
- (ii) One person nominated by the Resolution Applicant and
- (iii) RP/nominated by RP.

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

38.1. It is seen from Form – H that the Liquidation value of the Corporate Debtor is arrived at **Rs.40,47,826/-** and the corresponding Fair value is arrived at **Rs. 60,84,031/-**. The Resolution Plan is for an amount of **Rs.75,91,000/-**.

38.2. Further, it is seen from Form – H, that presently no Application under Section 43, 45, 49 and 66 of IBC, 2016 in the present matter is pending on the file of this Tribunal.

38.3. 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.”

38.4. 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)

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

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

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

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

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

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

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

- 38.6.** 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.
- 38.7.** 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.
- 38.8.** 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.

38.9. 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.

38.10. 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.

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

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

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

38.14. Accordingly, IA/847/AHM/2023 stands **disposed off.**

38.15. The Monitoring Committee is directed to file a status report after 180 days from the approval of the Resolution Plan.

39. 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
SHAMMI KHAN
MEMBER (JUDICIAL)**

Rajeev/P.S
Shubhanshu/LRA