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

**IA/1064/CHE/2021 in IBA/1181/2019**

*(Filed under Sec. 30(6) & 31 of the Insolvency & Bankruptcy Code, 2016  
read with Rule 11 & 14 of the National Company Law Tribunal Rules,  
2016)*

IN THE MATTER OF:

CA.M. Suresh Kumar,  
*Resolution Professional of*  
**Classic Knits India Private Limited**  
No. 27/9, Nivedh Vikas, Pankaja Mill Road,  
Puliyakulam,  
Coimbatore – 641 045

*... Applicant*

*Along with*

**IA/285/2021 in IBA/1181/2019**

*(Filed under Section 60(5)(c) of IBC, 2016)*

Canara Bank  
SME Tiruppur Branch  
Represented by its Chief Manager/ Authorized Officer,  
40-B, Kuruni Towers,  
Appachinagar Main Road,  
Kongunagar, Tirupur – 641 607

*... Applicant*

**Vs**

1. Mr. Mahalingam Suresh Kumar,  
Resolution Professional for the Corporate Debtor  
Classic Knits India Pvt Ltd  
SPP & Co. No.27/9, Nivedh Vikas,  
Pankaja Mill Road, Puliyakulam,  
Coimbatore – 641 045
2. Union Bank of India (Formerly Corporation Bank)  
Tiruppur Main Branch,  
No.1, Mangalam Road, Post Box No.418,  
Tiruppur – 641 604



3. IDBI Bank Ltd- Specialised Corporate Branch  
Excellence, 4<sup>th</sup> Floor, 104, Race Course Road,  
Coimbatore – 641 018
4. Registrar of Companies, Coimbatore,  
Ministry of Company Affairs,  
No.7, 1<sup>st</sup> Floor, AGT Business Park,  
Phase II, Avinashi Road, Civil Aerodrome Post,  
Peelamedu, Coimbatore – 641 014
5. Regional Director, Southern Region,  
Ministry of Company Affairs,  
5<sup>th</sup> Floor, Shastri Bhawan,  
26 Haddows Road, Chennai – 600 006
6. Mrs. S.ParvathaVarthini (DPIN 02707714)  
Erstwhile Director of the Corporate Debtor,  
Door No. 6/16D, Classic Illam, Erukkadu,  
1<sup>st</sup> Street, Jegannathan Layout, Mangalam Road,  
Tiruppur Corporation Limit,  
Tirupur District.
7. Mr.S.Goutham (DPIN 05159108)  
Erstwhile Director of the Corporate Debtor,  
Door No. 6/16D, Classic Illam, Erukkadu,  
1<sup>st</sup> Street, Jegannathan Layout, Mangalam Road,  
Tiruppur Corporation Limit,  
Tirupur District

... Respondents

Present:

- For RP : P.H.Arvinth Pandian, Senior Advocate  
For A.G.Sathyanarayana, Advocate in IA/1064/2021)
- For Applicant : M.S.Viswanathan, Advocate in IA/285/2021
- For Respondent : A.G.Sathyanarayana, Advocate for R1 in  
IA/285/2021

**CORAM :**

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

Order Pronounced on **09<sup>th</sup> November 2022**



## **ORDER**

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

### **FACTUAL MATRIX OF THE CASE:**

IA/1064/2021 is an Application which is moved by the Resolution Professional of the Corporate Debtor viz., **Classic Knits India Private Limited** under Section 30(6)& 31 of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC, 2016') read with Rule 11 & 14 of the National Company Law Tribunal Rules, 2016 (in short, 'NCLT Rules, 2016') seeking the approval of the Resolution Plan submitted by the successful Resolution Applicant viz., **M/s. Knit Prime.**

2. In an Application filed under Section 9 of IBC, 2016 by an Operational Creditor viz. Renuka Process, a Partnership Firm, this Adjudicating Authority vide order dated 03.02.2020 passed in IBA/1181/2019 initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor (CD) viz. Classic Knits India Private Limited, by appointing one Mr.Muthuraju as the Interim Resolution Professional (IRP).

3. It is submitted that the IRP had caused Public Announcement in Form-A on 09.02.2020 and invited the creditors to submit the claim before the IRP on or before 21.02.2020. Thereafter, it was submitted that on the basis of the claim submitted by the



claimants, the IRP had constituted the Committee of Creditors (CoC) with Union Bank of India having 71.2% voting share, Canara Bank with 17.8% voting share and IDBI Bank Ltd having 11% Voting share.

4. It is submitted that in the 1<sup>st</sup> and 2<sup>nd</sup> CoC meeting, the agenda for the agenda for appointment for Resolution Professional (RP) was deferred. Thereafter in the 3<sup>rd</sup> CoC meeting dated 06.10.2020, the Applicant herein was recommended by the Union Bank of India for Appointment as the RP. However, the CoC members has passed a resolution with 100% voting rights to appoint the applicant as RP to conduct the CIRP. Accordingly, the IRP i.e.,S.Muthuraju, has filed an application in IA/1044/IB/2020 for appointment of the applicant CA.M.Sureshkumar as the RP and the same was allowed by this Tribunal vide Order dated 11.01.2021.

5. It is further submitted that the CoC has resolved to extend the CIRP for a period of 90 days from 06.08.2020 after excluding the Covid-19 lockdown period imposed from 25.03.2020 which caused a delay in appointment of the RP and the CIRP Process.

**EXPRESSION OF INTEREST (EOI):**

6. It is further submitted that in the 4<sup>th</sup> CoC meeting held on 27.01.2021 it was resolved to publish Form-G for Invitation for



Expression of Interest (EOI) on 01.02.2021 in The New Indian Express, English Edition and Dinamani, Vernacular Edition with the last date for submission of EOI as 15.02.2021 to invite the prospective Resolution Applicants to resolve the CD in accordance with the provisions of the Code and the copy of Form-G is annexed as "Annexure-8" of the application typeset.

7. It is further submitted that the Applicant in its 5<sup>th</sup> CoC meeting held on 17.02.2021 has requested the CoC to discuss and decide on the Minimum Eligibility Criteria of the (Prospective Resolution Applicant) PRA of the CD. Accordingly, CoC after detailed discussions and deliberations has fixed the Minimum Eligibility Criteria for PRA as 5 Crores Net worth and 2-3 years' experience in similar line of business. Further, the CoC has also discussed on Request for Resolution Plan (RFRP) and fixed 1.5 Crores as EMD to be collected from the PRA at the time of submission of the Resolution Plan. The CoC discussed the Evaluation Matrix for deciding on competing plan and the Copy of the 5<sup>th</sup>CoC Meeting Minutes and Minimum Eligibility Criteria sheet is annexed as "Annexures-9 & 10" of the application typeset.

8. It is further submitted that the Applicant in its 6<sup>th</sup> CoC meeting dated 27.04.2021 has informed to the CoC that the RP has received the Resolution Plan only from "**Knit Prime**" (PRA) a



partnership firm against receipt of 6 EoI's, wherein the Applicant RP has appraised about the plan as submitted by the "Knit Prime" to the CoC members as follows:

- a) Knit Prime has submitted the Plan for an amount of Rs.15.93 Crores;
- b) 9 months Implementation Schedule from the date of approval of the AA;
- c) Upfront amount of Rs.4 Crores will be paid within 30 days of approval of the AA;
- d) 9% Interest will be paid from the 4th month on the balance plan amount;
- e) CIRP costs at actuals shall be appropriated from the available Cash and Bank balances of the CIRP account;
- f) Rs.20 Lakhs will be paid to the Operational Creditor and Government dues; and
- g) Discharge of all personal guarantees and securities of the CD and its related parties.

RP further informed the CoC that the EPF and ESIC dues should be paid in priority.

9. After detailed discussions and due considerations, the CoC has suggested to negotiate with the PRA as hereunder:

- a) to improve the Plan Value;
- b) to reduce the implementation schedule;
- c) provision on accruals in the CD Bank account after adjustment of the CIRP costs to be distributed to the FC;
- d) the RA should remove the clause mentioning the financial creditors shall discharge the liabilities of the Personal Guarantees since the Financial Creditors has right to invoke the PG for maximum recovery possible to the extent.

10. Accordingly after due discussions, the CoC decided to discuss the said agenda on the Plan in the next CoC meeting after having due negotiations made with the RA and the copy of the 6<sup>th</sup> CoC



Meeting Minutes are attached as "Annexure-11" to the typeset of the application.

11. The Resolution Applicant informed the CoC that he will submit a revised plan segregating the values into two proposals based on the ownership title of the land. Hence, in discussion with all the CoC members, it was decided to cancel the adjourned meeting to be held on 07.07.2021 and further decided to call for CoC after getting the revised plan from the Resolution Applicant (RA) and the same was intimated through mail to the CoC members.

12. It is further submitted that the Applicant has placed the revised plan as submitted by the RA to the CoC in its 8<sup>th</sup> CoC meeting held on 27.07.2021. However, the CoC has discussed on the changes made in the plan wherein RA has made a separate clause for 14.86 acres of land (Land in Promoters name) that either the land should be transferred in the name of the CD /RA since the said land was utilized for ingress and egress to the CD's factory. Further the CoC has requested the RA to mention a specific clause for distribution of outstanding ECGC Claims to the respective Financial Creditor's as per their claim before the ECGC department. Accordingly, 8<sup>th</sup>CoC meeting was concluded without passing any resolution for approval of plan as the CoC has



suggested these some minor changes and further sought 2 weeks' time for obtaining their internal approvals.

13. In the meantime, Mr. Gautam, Suspended Director who is the owner of the aforesaid 14.86 acres of land (Mortgaged Land) has come forward upon the advice of the CoC members and gave an undertaking viz. No objection Certificate (NoC) i.e. to transfer the said 14.86 acres of land in favour of the RA subject to the approval of the Adjudicating Authority as part of the plan and the copy of the said undertaking is enclosed as part and parcel of the plan as last annexure of the application typeset.

14. It is further submitted that the Applicant/RP has duly verified the plan and found the Final Resolution Plan as submitted by M/s.Knit Prime on 30.07.2021 satisfies the conditions as laid down under Section 30(2) of the Code read with IBBI (CIRP) Regulations, 2016. Further, the Applicant has informed the CoC that the Resolution Plan value is more than the Liquidation Value of Rs.14.32 Crores (including 0.45 Crores worth of land in Directors name& mortgaged to the bank) and further informed the CoC that the RA has met the Minimum Eligibility Criteria as fixed by the CoC and also the RA is engaged in the same line of business. The summary of the Resolution Plan Proposed by the Resolution Applicant is as follows:



**15. SALIENT FEATURES OF THE RESOLUTION PLAN :**

15.1. The Total Plan value is Rs. 16.02 Crores and the split of the same is as under:

PARTICULARS	AMOUNT (IN Rs)
CIRP Expenses	(Provision made in the plan for adjustment from the available CIRP Current A/ c balance)
Payment to Secured FC's	14.61 Crs
Payment to OC (Including PF)	0.80 Crs
Capex & Working capital	0.50 Crs
Interest for the deferred payment	0.11 Crs
<b>TOTAL</b>	<b>16.02 Crs</b>

\*\*\* The distribution to the operational creditors shall be in priority over the Financial Creditors as per Sec.53 of the Code.

15.2. Further, the RA has made a provision in the plan that the RP should distribute the amount realized and retained in the CIRP designated current (net of CIRP expenses) to the Financial Creditors in pro-rata basis after the plan was implemented by the RA and the snapshot of resolution plan timeline is shown under:

PAYMENT PLAN	AMOUNT (IN Rs.)
EMD already received**	1,50,00,000
Performance guarantee amount upon approval of plan by COC (total 10% of plan value incl. EMD)**	10,00,000
Within 30 days from the date of approval of Adjudicating Authority	3,81,00,000
Within 6 Months from the date of Adjudicating Authority (incl. interest from 4th Month to 6th Month)	10,61,00,000
<b>Total</b>	<b>16,02,00,000</b>

\*\* Note the above amount is already deposited in the escrow account and the same will be distributed to the stakeholders upon AA approval.



16. The envisaged Resolution Plan is to ensure the revival and continuity of business along with most effective use of the Corporate Debtor business. With a view of maintaining the spirit of the Code, the Resolution Applicant wished to continue and manage the Corporate Debtor's entity as same as a "Going Concern" thereby keeping the brand value intact. The Resolution Applicant proposed to pay 23.40% i.e. Rs. 14,61,00,000/- out of the total claim of Rs. 62,42,57,028.80/- to the financial creditor. The resolution applicant has already paid a sum of Rs. 1.5 Crores towards EMD in separate escrow account as security deposit and Rs.0.10 Crs (towards Performance Guarantee shortfall deposit) and the balance amount will be paid as per the above-mentioned implementation Schedule from the effective date of approval of this plan by this Tribunal and the copy of the Resolution Plan is enclosed as "Annexure-14".

17. It is further submitted that the Resolution Professional placed the resolution plan as submitted by the Resolution Applicant to the Committee of Creditors in accordance with section 30(3) of the code read with Regulation 39(2) of the CIRP Regulations 2016 for consideration /approval of the CoC in its 9<sup>th</sup> CoC meeting held on 18.09.2021, the RP has placed the Final Resolution Plan as





submitted by the PRA for an amount of Rs.16.02 Crores to the CoC for discussion and the same is as follows;

- a) CIRP costs at actuals till the date of approval of the Plan will be adjusted/paid from the Current account of the CD upon time to time approvals of the CoC and as on 30.09.2021 a sum of Rs.20,01,927/- were incurred towards CIRP expenses and the same was approved. The future CIRP expenses to be incurred upto the date of successful implementation of the Resolution plan shall be paid out from the said current account and the balance remaining in the said current account shall be distributed to the financial creditors in pro-rata basis as CIRP cost paid out of operations.
- b) 14.61 crores will be Paid to the Secured Financial Creditors;
- c) 0.80 Crores will be paid to the Operational Creditors including PF authorities;
- d) 0.50 Crores will be brought for Capex& Working Capital for revival of the CD;
- e) 0.11 Crores will be provided as Interest for deferred Payments to the financial creditors;

18. The Committee of Creditors had detailed discussions on the resolution plan submitted to the CoC and observed the following while approving the Resolution Plan:

- a) it provides for payment of entire CIRP costs.
- b) it provides for payment to operational creditors on priority.
- c) it addresses the cause of default.
- d) it is feasible and viable as the resolution applicant proposes to pay@ 23.40% of the admitted amount to the financial creditors.
- e) the RA has the capacity to implement the resolution plan and will arrange the settlement amount from their own sources or borrowed funds within the time limit as provided in the plan.
- f) on settlement of Rs14.61 Crores by the RA, the financial creditor will release all collaterals, security interest, encumbrance, legal cases against the Corporate Debtor.
- g) It has proposed for its effective implementation within Six months from the date of approval of NCLT.
- h) Pending balance in the CIRP account will be distributed to the CoC members in pro-rata basis post adjustment of the CIRP costs.
- i) As only one plan is submitted for consideration application of evaluation matrix does not arise.
- j) It is compliance with the applicable laws and has provision for approval required and the timelines for the same.



19. The summary of payment particulars as follows:

(Amount in Lakhs)

S. No	CATEGORY OF STAKEHOLDER *	AMOUNT ADMITTED	AMOUNT PROPOSED UNDER THE PLAN	% OF REALIZATION
1	CIRP Costs	[Incurred- Rs.20.02 upto 30/09/2021]	To be debited from the CIRP current a/c balance	100%
<b>PAYMENTS FROM RA</b>				
2	Secured Financial Creditors	6242.57	1461	23.40%
3	Operational Creditors (incl.Statutory Dues – EPFO & ESIC)	490.62	80	16.31%
<b>Total [Excl.CIRP Cost]</b>		<b>6733.19</b>	<b>1541</b>	<b>22.89%</b>

\*\*\* The Plan will be implemented within a period of 6 months from the date of approval of the Adjudicating Authority.

20. However, the said plan was approved by all the CoC members with 100% voting rights (final ballot sheets received on 30.09.2021). Further the analysis under Evaluation Matrix does not arise as there is only one plan for consideration. Further, the RA meets the Eligibility Criteria of both the net worth and the industry experience as engaged in the same line of business. Thus, the Committee after detailed discussions has approved the Resolution Plan by passing the following resolution and the copy of the 9th CoC Meeting minutes is placed as "Annexure-15 of the application typeset and the same is extracted hereunder:



**"RESOLVED THAT the Resolution plan (As amended dated 30.07.2021) submitted by the Resolution Applicant M/s. Knit Prime is hereby approved and confirmed by this committee u/s. 30(4) of the Insolvency and Bankruptcy Code, 2016 and the RP is directed to take necessary steps for obtaining the approval of the Adjudicating Authority under the provisions of IBC."**

**CAPITAL STRUCTURE AS ENVISAGED UNDER THE PLAN:**

21. The capital structure is envisaged Clause 3 of Section 1 of the Resolution plan and the same is reproduced below:

**21.1. CURRENT STRUCTURE:**

As on 31.03.2019, Corporate Debtor has an authorized share capital of Rs. 16,00,00,000/- (Rupees Sixteen Crores Only) divided into 1.60.00.000 (One Crore and Sixty Lakh Only) equity shares of Rs. 10/- (Rupees Ten Only) each. As on 31.03.2019. The Corporate Debtor has an issued, subscribed and paid-up capital of Rs. 15,52,00,000 (Rupees Fifteen Crores Fifty Two Lakhs Only) divided into 1,55,20,000 (One Crore Fifty Five Lakhs and Twenty Thousand Only equity shares of Rs. 10/- (Rupees Ten Only) each.

21.2. Based on disclosures provided in the Information Memorandum, the Shareholding pattern of Corporate Debtor is as follows:

S.No	NAME OF SHAREHOLDER	DESIGNATION	NO OF SHARES HELD	PERCENTAGE (%)
1	Shanmugam Parvathavarthini	Managing Director	1,00,88,000	65
2	Shanmugam Goutham	Director	54,32,000	35
	<b>Total</b>		<b>1,55,20,000</b>	<b>100</b>

**21.3. Restructured Capital:**

As part of the Resolution Plan, the Resolution Applicant is eligible to open and operate an Escrow Account in the name of the Corporate Debtor. The entire share capital of Corporate Debtor shall be



restructured in tranches within a span of time such that the resultant shareholding of Corporate Debtor is as follows:

S.No	CATEGORY OF SHAREHOLDER	PERCENTAGE (%)
1	P.N.Kumaresan (Partner of the Resolution Applicant)	50
2	P.N.Padmanabhan (Partner of the Resolution Applicant)	50
	<b>Total</b>	<b>100%</b>

22. It is further submitted that the Resolution Plan is approved by all the CoC members with requisite majority of 66% or more by the CoC i.e.100%. Further, the Resolution Professional has certified the Form-H in accordance with the CIRP Regulations 39( 4) and the same is Annexed as "Annexure-16" of the application typeset.

23. It is further submitted that the CoC has approved the Resolution Plan in the CoC meeting held on 18.09.2021 (voting completed on 30.09.2021 through Ballot Sheet) which is well within the 270 days of CIRP period timeline as prescribed U/s. 12 of the Code.

24. It is further submitted by the Applicant that since the resolution plan is approved by all the CoC members with 100% Voting Rights, the Resolution Applicant shall implement the plan post approval of the Adjudicating Authority without continuation of any liabilities and keep the Corporate Debtor as a "Going Concern" in spirit of the Code.



25. In the meantime, the Applicant submits that an Application in IA/288/CHE/2021 was filed seeking exclusion of the Covid-19 lockdown period from the CIRP Timeline and also Extension of CIRP period by 90 days and the same was ordered by this Tribunal vide order dated 04.10.2021 whereby 355 days [From 25.03.2020 to 14.03.2020] was excluded from the CIRP timelines and also extension of 90 days was granted and the 270 days of CIRP in relation to the CD would come to an end only on 30.11.2021. Thus, a period of 43 days is still available for the completion of the CIRP under Section 12 of the Code and the said order is placed as "Annexure-18" of the application typeset.

**MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS**

26. From the averments made in the Application as well as in Form-H as filed by the Resolution Professional in relation to the procedural aspects, the same seems to have been duly complied with for which the Resolution Professional has issued a Certificate and it is not necessary for this Authority to go into the same. However, this Authority is duty bound to examine the Resolution Plan within the contours of Section 30(2) of the IBC, 2016. A comparison *vis-à-vis* with the Mandatory compliance under the IBC and the Compliance made under the Resolution Plan is captured hereunder;



<b>MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS</b>	<b>COMPLIANCE UNDER RESOLUTION PLAN</b>
<b>S. 30(1)</b> - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	The Affidavit of the Resolution Applicant (RA) is filed vide Diary No. 2381 dated 08.04.2022, wherein it was stated that he / she is eligible under Section 29A of IBC, 2016 to submit a Resolution Plan and the same is placed under Clause 17 of Section 2 of the Resolution Plan.
<b>S. 30(2)(a)</b> - Payment of Insolvency and Resolution cost in the manner specified by the Board	Section I - 2.Settlement of claims- Point (v) at Page 18 of the Resolution Plan
<b>S. 30(2)(b)</b> - Payment of debts of Operational Creditors in such manner as may be specified by the Board, which shall not be less than the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under Sec. 53	Section I- 2.Settlement of claims- Point (viii) at Page 18-19 of the Resolution Plan
<b>Reg. 38(1)</b> - Resolution Plan identifies specific source of funds that will be used to pay the (a) Insolvency Resolution Process cost? (b)Liquidation value due to Operational Creditors? (c) Liquidation value due to dissenting financial creditors	Section 1-2.Settlement of claims- Point (viii) at Page 18-19 of the Resolution Plan.
<b>Reg. 38(1A)</b> - Resolution Plan shall include a statement as to how it has dealt with the interest of all the stakeholders, including financial creditors and operational creditors of the Corporate Debtor	Section 1-2.Settlement of claims at Pages 16-20 of the Resolution Plan
<b>S. 30(2)(c)</b> - Management of the affairs of the Corporate Debtor after approval of the Resolution Plan	Section 1 - Point 3.7 at Page 23-27 of the Resolution Plan
<b>S. 30(2)(d)</b> - Implementation and Supervision of the Resolution Plan	Section I - Point 3.8 at page 27 of the Resolution Plan



<p style="text-align: center;"><b>and</b></p> <p><b>Reg. 38(2)</b> – Resolution Plan shall provide:</p> <p>a) term of plan and its implementation schedule</p> <p>b) management and control of the business of the Corporate Debtor during its term;</p> <p>c) it has provisions for effective implementation</p> <p>d) it has provisions for approval required and the timeline for the same; and</p> <p>e) the Resolution applicant has the capability to implement the Resolution Plan.</p>	<p>Section – I- Point 3.8 at page 27 -29 of the Resolution Plan</p> <p>Section –I – Point 3.7 at page 23- 24 of the Resolution Plan</p> <p>Section –I – Point 3.7 at page 24 of the Resolution Plan</p> <p>Section 1– 4.Licenses, Approvals &amp; Permits at Page 29-30 of the Resolution Plan.</p> <p>Annexure –C to the Resolution Plan</p>
<p><b>Reg. 38(3)</b> - Resolution Plan shall demonstrate:</p> <p>a) it address the cause of default</p> <p>b) it is feasible and viable</p> <p>c) it has provisions for effective implementation</p> <p>d) it has provisions for approval required and the timeline for the same</p> <p>e) the resolution applicant has the capability to implement the resolution plan</p>	<p>Clause vii Page 18 of the Resolution plan</p> <p>Annexure –C to the Resolution Plan</p> <p>Section 2- Page 27 and Point 12, 13 &amp; 14 at Page 34 of the Resolution Plan</p> <p>Section 1– 4.Licenses, Approvals &amp; Permits at Page 29-30 of the Resolution Plan.</p> <p>Annexure –C to the Resolution Plan</p>
<p><b>S. 30(2)(e)</b> - Does not contravene any of the provisions of the law for the time being in force</p>	<p>The Resolution Professional in Form H has confirmed that the Resolution Plan is not in contravention with the provisions of any Applicable Law.</p>
<p><b>S. 30(4)</b> - Committee of Creditors approve the Resolution Plan by not less than 66% of voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by</p>	<p>The CoC, in its 9<sup>th</sup> meeting has approved the Resolution Plan in the following voting pattern;</p>



the Board	<b>S.No</b>	<b>Name of Creditor</b>	<b>Assent (%)</b>	<b>Dissent (%)</b>
	1.	Union Bank of India	71.2%	-
	2.	Canara Bank	17.8%	-
	3.	IDBI Bank	11%	-
		<b>TOTAL</b>	<b>100%</b>	<b>-</b>

### **MONITORING COMMITTEE:**

27. Further, it can be seen from the Resolution plan placed as 'Annexure-14' of the Application typeset, envisages the appointment of the 'Monitoring agent' for the supervision of proper implementation of the Resolution plan. From the date of approval of this Resolution Plan by NCLT till the Transfer Date, the Corporate Debtor will be managed by a three- member Monitoring Committee ("MC") comprising of (i) the RP; (ii) one nominated members from the CoC; and (iii) representative of the Successful Resolution Applicant wherein the decision of the majority shall prevail. Furthermore, the voting rights of the existing shareholders shall stand dissolved and shall not be exercised, whatsoever while conducting the affairs of the Corporate Debtor. The MC will be chaired by the erstwhile RP for a fee consideration equivalent to his monthly fee for the CIRP.

### **MANAGEMENT AND CONTROL OF BUSINESS OF THE CORPORATE DEBTOR**

28. It can be seen from Resolution plan placed at page Nos 157 to 158 of the application typeset that, the proposed directors for the Corporate Debtor would be Mr. P.N.Padmanabhan, Mr.



P.N.Kumaresan, pursuant to the approval of the Resolution Plan by this adjudicating authority.

**RELIEF / CONCESSIONS:**

29. The Resolution Applicant in Clause 5 of Section – 1 of the Resolution Plan has sought for a total of 9 Reliefs and concessions from this Adjudicating Authority so as to implement the Resolution Plan. These are ordered as follows;

<b>SL. No.</b>	<b>RELIEF / CONCESSIONS SOUGHT FOR</b>	<b>ORDERS THEREON</b>
1	Pass necessary orders/give appropriate directions that the Financial Creditors shall waive their rights to further proceedings against the Corporate Debtor in respect of existing claims	<b>Granted, subject to the provisions of IBC, 2016</b>
2	All the necessary approvals/ licenses permits from the Governmental Authority available with the Corporate Debtor, including but not limited to all export related quotas permits/benefits/ incentives, should remain with the Corporate Debtor post the Transfer Date and shall be renewed from time to time. We pray for appropriate directions from the Honorable Adjudicating Authority for the purpose of facilitating renewal of all the necessary approvals.	<b>Section 31(4) of IBC, 2016 provides a one-year window from the date of approval of the resolution plan to obtain necessary approvals under any law. The successful resolution applicant is expected to keep these timelines in mind.</b>
3	The land admeasuring 14.86 acres is not in the name of the Corporate Debtor, and is in the name of the director of the Corporate Debtor, however, the same is an integral part to the Corporate Debtor's factory premises and since the Resolution Applicant is paying additional Rs. 0.51 crores for the said land, approval of the Financial Creditors has also been granted for extinguishment of all their rights, title and interests over the said land. Accordingly, after approval of the resolution plan by the Adjudicating Authority and upfront payment to the Financial Creditors in the manner contemplated herein, the said 14.86 acres land shall stand sold to and transferred in favour of the Corporate Debtor, the Resolution Applicant and/or its nominees free of all encumbrances.	<b>Granted, since the owner of land Mr.Goutham has given No Objection Certificate (NOC) dated 09.07.2021</b>



4	Pass necessary orders/give appropriate directions to give effect to the reorganization of share capital of the Corporate Debtor as contemplated in the Resolution Plan. The Corporate Debtor's assets and liabilities should be re-casted with the intent that the Corporate Debtor has been restructured and reborn.	<b>Granted</b>
5	Waiver of all past claims/ demands/ interest/ penalties/ levies by income tax/indirect tax authorities or any other Governmental Authority whatsoever till the Transfer Date. Please note that the amount payable to any Governmental Authority will be as per the terms contained in the Resolution Plan only.	<b>Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited</i>. 2021 SCC Online SC 313</b>
6	Pass appropriate order/direction to direct tax authorities to allow benefit of carry-forward and set-off of losses to the Resolution Applicant post implementation of this Resolution Plan under the relevant provisions of the Income Tax Act, including Section 79 of the Income Tax Act.	<b>This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016</b>
7	The available GST credit in the account of the Corporate Debtor shall be carried forward in accounts.	<b>Granted, subject to the provisions of IBC, 2016 and other Applicable laws.</b>
8	All the power of attorneys provided to any person by the Corporate Debtor shall forthwith stand revoked after approval of the Resolution Plan.	<b>Granted, subject to the provisions of IBC, 2016 and other Applicable laws.</b>
9	Resolution Applicant shall not assume any liability after settling the claims as listed out in this Resolution Plan. After the Term of the Resolution Plan is over, the Corporate Debtor will not have any debts, Liabilities, claims (including any pending Litigations), statutory dues from any authorities in its books of accounts except, to the extent of funds mobilized by us. Resolution Applicant prays to the Honourable Adjudicating Authority to give appropriate directions in this regard.	<b>Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited</i>. 2021 SCC Online SC 313</b>



**IA/285/CHE/2021**

30. In relation to IA/285/2021 filed by the Applicant /Canara Bank under Section 60(5)(c) of the IBC,2016 seeking the following reliefs :

- i. To declare the Applicant Bank as a first paripassu charge holder on the assets of the Corporate Debtor jointly with the Second Respondent.*
- ii. To direct the 1<sup>st</sup> Respondent explicitly declare the Applicant Bank as a first pari-passu charge holder on the assets of the Corporate Debtor jointly with the Second Respondent before finalising the successful resolution plan or Liquidation or any other outcome in the course of the CIRP.*
- iii. Pass such orders as may be just and expedient in the circumstances of this case.*

31. During the hearing, the Learned Counsel for the applicant states that he has no objection if the Tribunal approved the resolution plan and the said statement made by the applicant is taken on record and this IA becomes infructuous. Accordingly, IA/285(CHE)/2021 stands **dismissed as infructuous**.

32. It is seen from Form - H, that the RP has not filed any avoidance transactions under Section 43, 45 and 50 and fraudulent trading / wrongful trading applications under Section 66 of IBC, 2016.



33. The Applicant has also filed Form – H in accordance with the IBBI (Corporate Insolvency Resolution Process for Corporate Persons) Regulations, 2016 along with this Application and the same is placed as Annexure-16 to the Application typeset. Further, it can be seen from FORM-H that the Resolution plan that has come for approval before this adjudicating authority is much higher than the liquidation value. The fair value and liquidation value as per the Form-H filed is extracted hereunder:-

1.	<b>FAIR VALUE</b>	Rs. 16,29,58,970
2.	<b>LIQUIDATION VALUE</b>	Rs. 14,32,20,798

**RELEVANT JUDICIAL PRONOUNCEMENTS OF THE HON'BLE SUPREME COURT:**

34. In so far as the approval of the Resolution Plan is concerned, this Authority is not sitting on an appeal against the decision of the Committee of Creditors and this Authority is duty bound to follow the much celebrated Judgment of the Supreme Court in the matter of **K. Sashidhar –Vs– Indian Overseas Bank (2019) 12 SCC 150**, wherein in para 19 and 62 it is held as follows;

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



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

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

42. ....Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of Section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and Section 32 read with Section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in *K. Sashidhar (supra)*.

36. 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)*

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

"73. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or sub-class of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal."

*(emphasis supplied)*



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

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

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

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



financial creditors; (d) for management of affairs of corporate debtor after approval of the resolution plan; and (e) implementation and supervision of the resolution plan.

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

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

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



would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by Code and exposted by this Court.

39. 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.

**CONCLUSION:**

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



Applicant into the shoes of the erstwhile Company and taking over the business, the provisions of Companies Act, 2013 shall be applicable and because of this reason a copy of this Order is to be submitted in the Office of the Registrar of Companies, Coimbatore.

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



- Sd -

**SAMEER KAKAR**  
MEMBER (TECHNICAL)



- Sd -

**JUSTICE RAMALINGAM SUDHAKAR**  
PRESIDENT

*Sriram Annath.V*