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

IA(IBC)/310(CHE)2022 in MA/936/2019 in CP/507/IB/2017

(filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules, 2016)

In the matter of ***Diamond Engineering (Chennai) Pvt. Ltd.***

1. **Mr. P Mohanraj,**
   S/o. Paduvamani Nadar,
   12, Zahir Hussain Street,
   Sholinganallur, Chennai-600 119.

2. **Mr. P. Dhanaraj,**
   S/o. Paduvamani Nadar,
   12, Zahir Hussain Street,
   Sholinganallur, Chennai-600 119.

3. **Mrs. K.R.Meenakshi,**
   W/o. P. Mohanraj,
   No. 1, Kaveri Street,
   West Mambalam, Chennai-600 033.

...Applicants

-VS-

1. **Mr. V. Mahesh**-Resolution Professional &
   Chairman of the Monitoring Committee,
   Diamond Engineering (Chennai) Private Limited,
   #12/22, 2nd Floor, 7th Main Road,
   R.A.Puram, Chennai-600 028.

2. **State Bank of India,**
   Stressed Asset Management Branch,
   Red Cross Buildings, II Floor,
   No. 32, Montieth Road,
   Egmore, Chennai-600 028.

3. **AXIS Bank Limited,**
   Corporate Banking Branch,
   Kanumuthu Nilayam, Ground Floor,
   No. 192, Anna Salai, Chennai-600 002.

4. **SBI Global Factor Limited,**
Metropolitan Building, 6th Floor,
Bandra Kurla Complex, Bandra East,
Mumbai 400 025.

5. **India Factoring Limited,**
Unit No 401, Windsor House,
Off C.S.T Road, Kalina, Santacruz (E),
Mumbai 400 098.

... Respondents

Along with

IA/1266/IB/2020 in MA/936/2019 in CP/507/IB/2017

(filed under Section 33 and Punishment of Corporate Debtor for contravention of the Resolution Plan under Section 74(3) and Section 60(5) of the Insolvency & Bankruptcy Code, 2016 r/w Insolvency And Bankruptcy Board of India (Liquidation Process) Regulations, 2016)

Axis Bank Limited,
Corporate Banking Branch.
"Kanumuthu Nilayam, Ground Floor,
No. 192, Anna Salai, Chennai - 600 002.
Represented by its Authorised Signatory
Mr. C. Ravi Kumar

... Applicant/Financial Creditor

Vs

1. **Mr. V.Mahesh,** Resolution Professional
For Diamond Engineering (Chennai) P. Ltd.,
D.No. 501. Vandalur-Kelambakkam Main Road,
Mambakkam, Chennai - 600 127

2. **State Bank of India**
Stressed Assets Management Branch
Red Cross Buildings II floor
No.32, Montieth Road,
Egmore, Chennai - 600 008

3. **SBI Global Factor Limited**
Metropolitan Building,
6th Floor, Bandra Kurla Complex,
Bandra East. Mumbai - 400 051

4. **India Factoring Limited**
Unit no 401, Windsor House,
Off C.S.T. Road, Kalina, Santacruz (E),
Mumbai 400 098

5. **P. Mohanraj**
S/o. Paduvamani Nadar,
12, Zahir Hussain Street,
Sholinganallur, Chennai-600 119.

6. **Mr. P Dhanaraj**
S/o. Paduvamani Nadar,
12, Zahir Hussain Street,
Sholinganallur, Chennai - 600 119,

7. **Mrs. K. R. Meenakshi,**
W/o. P. Mohan Raj,
No. 1, Kaveri Street,
West Mambalam, Chennai-600 033.

8. **Insolvency and Bankruptcy Board of India,**
7th Floor, Mayur Bhawan, Shankar Market,
Cannaught Circus, New Delhi – 110 001.

... *Respondents*

CORAM :

R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant : *T.K. Bhaskar, Advocate*
For Applicant in IA/310/2022

For Respondents : *V. Mahesh, RP*

E. Om Prakash, Senior Advocate
K. Sugumaran, Advocate
For State Bank of India

Rohan K George, Advocate
For Axis Bank

Order pronounced on ***30th May 2022***

COMMON ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

IA(IBC)/310(CHE)/2022 is an Application filed by the Successful Resolution Applicants of ***Diamond Engineering (Chennai) Private Limited*** (hereinafter referred to as the 'Corporate Debtor') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016 seeking relief as follows;

> *"In view of the above facts and circumstances of the case, it is most humbly prayed by the Applicants that this Hon'ble Tribunal may be pleased to make necessary modifications to its order dated 30.09.2019 approving the Resolution Plan of the Corporate Debtor, as detailed in the Schedule hereunder and pass such further orders as it may deem fit and proper in the interest of justice and equity."*

2. The first Respondent is the Chairman of the Monitoring Committee. Respondent Nos. 2 to 5 are members of the Monitoring Committee.

3. In an Application filed by an Operational Creditor under Section 9 of IBC, 2016 this Tribunal vide its order dated 06.06.2017 had initiated the Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor and appointed an Interim Resolution Professional. Since the Corporate Debtor is an MSME, the promoters of the Corporate Debtor submitted a

Resolution Plan and this Tribunal vide its order dated 30.09.2019 passed in MA/936/2019 has approved the said Resolution Plan filed by the promoters of the Corporate Debtor. As per the approved Resolution Plan, the successful Resolution Applicants i.e. (i) the Financial Sponsor (FS) viz. Anacap Financial Partners LLP and (ii) the promoters of the Corporate Debtor *(hereinafter collective referred to as successful Resolution Applicant)* were required to pay to the Financial Creditors a sum of Rs.156.78 Crore within a period of 45 days. i.e. on or before 15.11.2019.

4. In the meantime, one of the Financial Creditors viz. Axis Bank moved an IA/1266/2020 seeking liquidation of the Corporate Debtor since the successful Resolution Applicant have failed to adhere to the terms of the Resolution Plan and have not paid the amount as per the terms set out in the Resolution Plan.

5. Further, it is also seen that another Financial Creditor viz. State Bank of India has also filed an Application viz. MA/75/2020 seeking implementation of the Resolution Plan along with interest. However, the said MA came to be withdrawn by the said Financial Creditor. Time and again interim orders were passed by this Tribunal and finally on 07.12.2021 in IA/1266/2020 filed by the Axis Bank Limited, this Tribunal has passed the following order;

This Application has been filed by the Axis Bank Ltd against the Resolution Applicant who is the MSME Unit which is taken over by the erstwhile promoters under Resolution Plan and the same was admitted by this Adjudicating Authority on 30.09.2019.

It is an admitted fact that the Resolution Plan could not be implemented and there is a delay in implementation of the Resolution Plan is admitted by all the parties before us.

Ld. RP is the Chairman of the Monitoring Committee and states that out of four properties of Corporate Debtor, there are prospective buyers for two properties and there is a possibility to make the plan successful and viable one. However, the State Bank of India and the Axis Bank Ltd, the two leading creditors do not approve the stand of the Resolution Applicant and very strongly opposes to extension of time for implementation of the plan.

It is also pertinent to mention herein earlier MA/75/2020 was filed by the State Bank of India seeking a direction to the Resolution Applicant to implement the plan at the earliest. Subsequently, the State Bank of India has withdrawn MA/75/2020.

We have heard all the parties.

Liquidation being the last resort as repeatedly emphasized in various orders by the Hon'ble NCLAT and the Hon'ble Supreme Court.

We have taken the suggestions made by the Ld. RP who is also the Chairman of the Monitoring Committee. The RP is permitted to conduct the stakeholders meeting and discuss about the viability of implementation of the plan and submit the minutes of the meeting before the next date of hearing.

The RP is permitted to conduct more than one meeting, if necessary.

List this IA/1266/IB/2020 on **07.01.2022** for hearing and disposal.

No further adjournment shall be granted in this matter.

All parties are permitted to file compilation, additional documents, citations, reply, if any, on or before the next date of hearing.

6. Pursuant to the said order, the RP / Chairman of the Monitoring Committee has filed a Status Report before this Tribunal and has sought time to conduct one more meeting of the Monitoring Committee. Thereafter, the RP has conducted another meeting of the Monitoring Committee and the same is recorded in detail by this Tribunal vide its order dated 10.03.2022 as follows;

> The Monitoring Committee is led by the erstwhile RP Mr. V. Mahesh is present in person. The Resolution Applicant is represented by Learned Counsel Mr. T.K. Bhaskar. Both of them state that, as per the order of this Adjudicating Authority dated 07.12.2021, there was a meeting of the Stakeholders held on 05.01.2022 and 07.02.2022. There were two meetings held by the stakeholders committee wherein it was held discussion for modification of the Resolution Plan.
>
> The Resolution Applicant / erstwhile RP also submits that the State Bank of India, in principle has given an approval for settlement of the entire amount due and payable. However, the question before this Adjudicating Authority is that when Resolution Plan was approved on 30.09.2019 and had given 45 days' time to the Resolution Applicant for implementation of the Plan along with various reliefs and concession, it is admitted that for the reason best known to the Resolution Applicant and the Monitoring Committee, the plan could not be implemented till date.
>
> However, Learned Counsel for the successful Resolution Applicant Mr. T. K. Bhaskar made elaborate arguments as to why this **IA/1266/IB/2020** seeking for an order of liquidation ought not to be passed and the Resolution Applicant ought to be given more time for submitting a plan with modification for implementation of the Resolution Plan.
>
> The question before us is that whether the Resolution Applicant as per the provisions of the IBC, 2016 is entitled for seeking an extension of time for implementation of the Resolution Plan? Whether the Resolution Applicant, who had totally failed to implement the Resolution plan, is entitled to seek further reliefs and concession for implementation of the same?
>
> It is also pertinent to mention here that MA/75/2020 which was filed by other Financial Creditor viz., State Bank of India has

brought attention to this Adjudicating Authority regarding non-implementation of the approved Resolution Plan by the Resolution Applicant, however, subsequently, this Application was withdrawn by the State Bank of India / Financial Creditor. Whether the Adjudicating Authority has powers to extend the period for implementation of the Resolution Plan, if so, up to what time for implementation of the Resolution Plan can be extended? The 2nd issue arising out of the same proceeding is by seeking extension of time, the Corporate Debtor comes in the form of the Resolution Applicant seeks extraordinary extension of time for implementation of the Plan on one ground or the other dragging the settlement of dues to all Creditors? Whether this is only an extension of OTS proposal, which ought to have been done by the Recovery Tribunal? The Resolution Plan appears to be a mere OTS, with concessions and relief, in favour of the debtor.

Learned Counsel appearing for State Bank of India Mr. R. Sugumaran states that in respect of **IA/1266/IB/2020** was filed by the Axis Bank Ltd. The R2 herein is the State Bank of India has also filed an affidavit as sailing with the Applicant herein.

However, Learned Counsel for State Bank of India now seeks time to take further instruction from his client regarding whether State Bank of India is sailing along with Axis Bank Ltd in **IA/1266/IB/2020** or whether State Bank of India has changed its position in respect of the Resolution Plan?

List this matter on **18.03.2022** for further hearing.

7. Thereafter, it is seen that the Successful Resolution Applicant has filed an Application IA(IBC)/310(CHE)/2022 before this Tribunal seeking relief as extracted *supra.*

8. The Learned Counsel for the Successful Resolution Applicant submitted that they have held discussions with the members of the Monitoring Committee appointed under the approved Resolution Plan as well as with financial creditors of the Corporate Debtor and

that the Chairman of the Monitoring Committee convened the meeting of the Monitoring Committee on 05.01.2022 & 28.02.2022 and all the proposals and plan for settlement of the amounts, as per the Resolution Plan were submitted.

9. It was submitted that after personal interactions and discussions between the buyers of the proposed properties, State Bank of India, (*COC member with 77% stake*), Respondent No.1 *(Ex Resolution Professional and Chairman of the Managing Committee)*, the Resolution Applicants submitted a proposal in the form of a letter dated 11.02.2022.

10. It was submitted that the Chairman of the Monitoring Committee had placed the same before the Monitoring Committee in the meeting held on 28.02.2022 and it was deliberated in detail. As per the Applicant, the proposal dated 11.02.2022 does not contemplate any reduction in the resolution plan amount and does not, in any way, affect the dues payable to the stakeholders eligible to receive payment under the approved Resolution Plan. It was further submitted that the said proposal only sets out a revised timeline for payments under the Resolution Plan to be made so that it may be successfully implemented and the Corporate Debtor is revived and maintained as a going concern.

11. The Learned Counsel for the Successful Resolution Applicant submitted that the said proposal has received in principle approval from State Bank of India, and a request has been made by a letter dated 17.02.2022 for issuance of no-objection certificates in respect of the mortgaged properties of the Corporate Debtor and Promoters, being the personal guarantors. The proceeds from the sale of the properties of the Corporate Debtor shall be directly and solely applied towards making the payments under the approved Resolution Plan and that **no part** of the proceeds from the sale of these properties, shall be used for the operations of the Corporate Debtor.

12. It was further submitted that due to the change of the Financial Sponsor and the Resolution Plan being solely funded by the Promoters of the Corporate Debtor, it requires some consequential changes or modifications in the order approving the Resolution Plan. Further, it was submitted that on behalf of the Applicants that the Respondent No.1, being the Resolution Professional and Applicant in MA/936/2019 in CP/507/IB/2017 is aware of the modifications to the Plan having been discussed in length in the Monitoring Committee Meetings. In light of the above, given the revised timelines and the **backing-out of the financial**

sponsor initially contemplated under the Resolution Plan, it is stated that the following modifications/clarifications/concessions/ ought to be made to the order of this Tribunal dated 30.09.2019 in MA/936/2019 whereby the Resolution Plan submitted by the Promoters along with the Financial Sponsor was approved.

13. In support of his contention, the Learned Counsel for the Applicant has sought for the following modifications which has been annexed as Schedule to the Application;

(a) At para 6 of the order of this Tribunal dated 30.09.2019, the following observation is made:

> *6. The Resolution Professional has stated that the Resolution Plan submitted by the Promoters of the Corporate Debtor and supported by the Financial Sponsor, viz, Anacap Financial Partners LLP, UK is exhaustive and provides for...*

The said observation be duly modified to read as under in light of the withdrawal of support by Anacap Financial Partners LLP:

> *6. The Resolution Professional has stated that the Resolution Plan submitted by the Promoters is exhaustive and provides for...*

(b) In para 7(ii) of the order of this Tribunal dated 30.09.2019, the following table is extracted to set out the infusion of funds for the purpose of settling the financial creditors under the Resolution Plan:

To be paid by	Amount
Finance Sponsor	145.00 Crores
Promoters of Corporate Debtor	11:78 Crores
TOTAL	**156.78 Crores**

The above table be modified to read as under as per the revised proposal dated 11.02.2022

To be paid from	Amount (INR)
Sale of Non-core assets stated in the revised settlement proposal dated 11.02.2022	148.93 Crores
Promoters of Corporate Debtor	7.85 Crores
TOTAL	**156.78 Crores**

(c) In para 7(v) of the order of this Tribunal dated 30.09.2019, the following observation is made:

> The Resolution Plan provides that after its approval by this Authority, the Financial Sponsor shall hold 76% of Equity, and the Promoters/Present Shareholders of the Corporate Debtor shall hold 24% of the Equity. The value per share shall be suitably reduced. Further, if the Corporate Debtor and the Promoters achieve the projections as contemplated in the Plan, the Financial Sponsor shall transfer their shares to the promoters free of cost in the manner given below.

Shareholding Pattern of	2019-20	2020-21	2021-22	2022-23	2023-24
ANA CAP & their nominees	76%	66%	56%	46%	36%
Present Shareholders	24%	34%	44%	54 %	64%
Total shares	100 %	100%	100%	100%	100%

The said observation be duly modified to read as under in light of the withdrawal of Anacap Financial Partners LLP:

"The Shareholding Pattern of the Corporate Debtor shall remain unchanged post-Resolution Plan and the current shareholders of the Corporate Debtor shall continue to hold the shares which were held by them prior to initiation of corporate insolvency resolution process"

(d) In para 7(vi) of the order of this Tribunal dated 30.09.2019, the following observation is made in relation to concessions, reliefs, and waivers sought under the Resolution Plan:

....It is stated that the amount to be received on disposal of immovable properties of Corporate Debtor and such of the properties of the Promoters or personal guarantors which are being sold, will directly be transferred for settlement of loan to the Secured Creditors or as committed in the Resolution Plan, which should not be treated as "Capital Gain" in the hands of the Corporate Debtor or the Personal guarantors or Promoters.

The said concession has been granted by this Tribunal in para 8(vii) of the order dated 30.09.2019. It is submitted that in light of the withdrawal of Anacap Financial Partners LLP as financial sponsor, this Tribunal may be pleased to clarify that the Promoters shall have the benefit of the said concession in implementing the Resolution Plan as per the proposal dated 11.02.2022.

(e) In para 7(ii) and para 8(ii)-(iv) of the order of this Tribunal dated 30.09.2019, reference is made to a One Time Settlement proposal of Rs 17.63 crores to paid by the Promoters which has been accepted by State Bank of India. It is submitted that the Resolution Plan, envisages an One Time Settlement by the Promoters for complete release of their Personal Guarantees, though being part of the Resolution Plan, the same is an Independent Arrangement between the promoters and State Bank of India and is governed by mutual agreement between the parties, as regards settlement of the amount and release of the properties, as and when the amount is duly paid in respect of the said amount, the deposit made by the promoters in this regard and interest accrued and to be paid shall not form part of the Resolution Plan and the subsequent change may be given effect to.

14. The Learned Counsel for the Applicant further submitted that various courts from time and again have stated that the very object of the Insolvency Code is "Resolution is the rule and Liquidation is an exception", liquidation brings the life of the Corporate Debtor to an end. It was further submitted that the claim of the Resolution Applicants in respect of the concession/relaxation in the time line for payment to its Financial Creditors/Operational Creditors/Other Stakeholders, if any, is genuine and bona fide, therefore, Resolution Applicant deserves relaxations/concessions.

15. In order to buttress his arguments, the Successful Resolution Applicants have relied upon the following case laws;

SL. No.	DESCRIPTION
1	Glix Securities Private Limited vs R. D. Rubber Reclaim Limited-IA(IB) 496/KB/2021 in CP (IB) No. 1724/KB/2018 - NCLT KOLKATA
2	Kotak Mahindra Bank Ltd. vs. A.P. Enterprises Pvt - Company Appeal (AT) (Insolvency) No. 146 of 2021-NCLAT DELHI Arising out of the C.A. No. 610/2019 & IA No. 18/2020 in CP (IB) No. 119/Chd/Chd/2018 in the matter of Bhagwati Kripa Paper Mills Pvt. Ltd. vs A.P. Enterprises Private Limited
3	Cochin Shipyard Lid (Tehma Shipyard Ltd) - 1A/573/2020 in 1A/572/2020 - NCLT CHENNAI

4	Fitcast Founders & Engineers Pvt Ltd vs Shri Rajat Mukherjee RP for Shaifali Rolls Ltd & Ors. - LA 240 of 2020 in IA 352 of 2019 CP (LB) No. 162/NCLT/AHM/2018 - NCLT AHEMDABAD
5	Arcelor Mittal India P. Ltd. vs Satish Kumar Gupta & Ors (2019) 2 SCC 1
6.	Swiss Ribbons P Ltd & Ors v Union of India & Ors MANU/SC/0079/2019
7.	SC Sekaran v Amit Gupta & Ors MANU/NL/0338/2019
8.	Duncans Industries Ltd v AJ Agrochem, MANU/SC/1385/2019
9.	Vijayakumar v Gopalsamy Ganesh Babu & Ors MANU/NL/0150/2020
10	Order of the Hon'ble National Company Law Appellate Tribunal dated 30 March 2020 in Suo Moto – Company Appeal (AT) (Insolvency) No 1 of 2020
11	Liberty House Group Pte Ltd v State Bank of India & Ors, series of orders of the Hon'ble National Company Law Appellate Tribunal, Principal Bench, dated 07 January 2020, 17 January 2020, 22 January 2020, and 17 February 2020 in Company Appeal (AT) (Insolvency) 724 of 2019
12	Pacific World Shipping Pte Ltd v Dadi Impex P Ltd, at para 14 of the order of the Hon'ble National Company Law Appellate Tribunal, 227 2 Principal Bench, dated 28 February 2020 in Company Appeal (AT) (Insolvency) 728 of 2019
13	Udayraj Patwardhan v SPG Macrocosm Ltd, at para 10 of the order of the Hon'ble National Company Law Tribunal, Bangalore Bench, dated 11 March 2020 in IA 138 of 2020 in CP(IB) 136/BB/2017
14	Sunil Kumar Agarwal v Suspended Board of Directors of Digjam Ltd & Ors, at paras 19 and 22 of the order of the Hon'ble National Company Law Tribunal, Ahmedabad Bench, dated 27 May 2020 in IA 144 of 2020 in CP(IB) 594/NCLT/AHM/2018
15	Kotak Mahindra Bank Ltd v AP Enterprises P Ltd, at paras 3 to 5 of the order of the Hon'ble National Company Law Appellate Tribunal, Principal Bench, dated 03 March 2021 in Company Appeal (AT) (Insolvency) 146 of 2021

16. The 3rd Respondent i.e. Axis Bank has filed its Counter in IA(IBC)/310(CHE)/2022 on 30.03.2022 and it was submitted by the Learned Counsel for the Respondent that it is not the first time that the Successful Resolution Applicant is seeking modification in the plan. Further it was submitted that the modification of the plan was also placed before the Monitoring Committee held on 16.03.2020 wherein Respondent No. 3 has objected to the same. It was further submitted that since the Resolution Applicants failed to comply with the obligations, the 3rd Respondent filed an Application bearing IA/1266/2020 under section 33(3) of the Insolvency and Bankruptcy Code, 2016 seeking liquidation of the M/s. Diamond Engineering (Chennai) Private Limited ("Corporate Debtor) which is pending consideration of this Adjudicating Authority. It was further submitted that it has been more than 900 days from the date of the approval of the Resolution Plan, yet the Resolution Applicants have not fulfilled their obligations.

17. The 2nd Respondent i.e. State Bank of India has filed its Counter in IA(IBC)/310(CHE)/2022 on 30.03.2022 and reiterates the stand in the letter dated 25.02.2022 whereby they convey to the Applicant their approval to modify the Resolution Plan. The 1st Respondent, Mr. V. Mahesh, the RP and the Chairman of the Monitoring Committee was personally present during the hearing

and seeks appropriate directions for effective implementation of the Resolution Plan and states that if such modification is allowed and states that there is no timeline as specified under IBC, 2016 for implementation of the Resolution Plan.

18. In compliance to the directions of this Tribunal in the hearing held on 07.12.2021, the RP as the Chairman of the Monitoring Committee has filed Status Report under SR.No.2053 dated 28.03.2022. At page No. 9 to 11 the RP has given the calendar of events from 30.09.2019 (date of order of approving the Resolution Plan till 27.01.2022 which is extracted hereunder.

DIAMOND ENGINEERING (CHENNAI) PRIVATE LIMITED (DECPL) CALENDAR OF EVENTS FROM 30.09.19 to TILL DATE

Sl. No.	Dates	Event/Particulars	Remarks
1	30.09.2019	Resolution Plan approved by the Hon'ble NCLT Order.	
2	04.10.2019	Payment made to SBI against its personal Properties by Resolution Applicant/s(RA)	
3	14.10.2019 & 16.11.2019	Payment made to SBI by RA and letter reg the same	
4	16.11.2019	Letter sent to SBI by Resolution Applicant/s	Submission of Plan-B
5	25.11.2019	SBI rejected Plan-B submitted by RA	
6	03.12.2019	Payment made to SBI against its personal Properties.	Letter dated 03.12.2019

7	07.01.2020	SBI has filed an application and it was numbered as IA 75/2020	Withdrawn vide Order dated 07.12.2021
8	03.02.2020	MA/75/2020 in CP/936/IB/2019 RP directed to conduct Monitoring Committee and file Status report	Matter posted on 17.02.2020
9	07.02.2020	First Monitoring Committee Meeting of DECPL	
10	17.02.2020	MA/75/2020 in CP/936/IB/2019 Matter Adjourned to 10.03.2020	
11	02.03.2020 & 07.03.2020	RA met SBI's higher officials in Mumbai & Submitted Plan based on Sale of Assets of Corporate Debtor	
12	10.03.2020	MA/75/2020 in CP/936/1B/2019 Matter Adjourned to 30.03.2020	
13	16.03.2020	Second Monitoring Committee. Meeting of DECPL	Revised resolution plan proposal
14	20.03.2020	SBI approved and issued NOC for sale of assets.	
15	17.06.2020	Payment made to SBI against personal Properties vide letter dt 17.06.2020 of RA	
16	09.09.2020	RA submitted revised Resolution Plan to SBI	
17	29.09.2020	SBI Letter to RP rejecting the Revised proposal submitted by the promoters of CD	
18	30.09.2020	MA/75/2020 in CP/936/1B/2019 Memo seeking withdrawal of Application. Hearing posted for 18.11.2020	

19	12.11.2020	Axis bank filed a Liquidation application- IA/1266/1B/2020	
20	26.03.2021	MA/75/2020 in CP/936/1B/2019 Posted for 05.04.21	
21	05.04.20221	All parties were directed to file detailed compilation of submissions made and posted for hearing on 27.04.21 (In all the matters)	
22	12.07.2021	Not heard due to technical issues posted for 09.08.21	
23	09.08.2021	Due to paucity of time posted to 14.09.21	
24	07.12.2021	Details order of NCLT dated 07.12.21 Directed to file status report by the RP	Matter posted on 07.01.2022
25	05.01.2022	Third Monitoring Committee meeting	
26	06.01.2022	RA submits a letter to the RP – shared with all Committee Members	
27	07.01.2022	RP filed a Memo due to Covid. Matter posted for 01.02.22	
28	27.01.2022	Proposed Monitoring Committee Meeting was adjourned.	

19. Further contents of the report of the RP are also reproduced below.

> *2. It is submitted that from the Calendar of Events, as cited above, it is an admitted fact that the Resolution Plan as Approved by this Hon'ble Bench, could not be implemented. The same is recorded in the Monitoring Committee Meeting held on Feb and March 2020.*

3. The Resolution Applicants submitted a detailed revised Resolution Plan, with NO CHANGE in the Settlement Terms, once the Financial Sponsor backed out, after due discussions and deliberations with the largest COC Member and the same was under consideration.

4. It is submitted that on 29.09.2020, SBI had conveyed their decision "Rejecting" the Revised Resolution Plan for the reasons stated therein. All these being part of the records are not traversed herein to avoid repetition. Axis Bank had communicated their views on the same seeking "parity" as per Voting Share in the COC. All these are part of the pleadings in 1A/1266/2020 filed by Axis Bank.

5. It is submitted that subsequently, SBI, preferred MA 75 of 2020, where the Prayer was seeking "to Implement the Resolution Plan along with interest" among other things. Axis Bank filed an Impleading IA In this MA 75/2020 and also a separate IA 1266/2020 seeking Liquidation of the CD, for non- implementation of the Resolution Plan, as cited above. **Annexure B: The status report and counter filed by the RP in Feb and Dec 2020 in IA/1266/2020 are enclosed.**

6. It is submitted that the matter was posted from time to time, giving adequate opportunity to all the parties to file their submissions, pleadings and type set of documents and finally on 07.12.2021, this Hon'ble Bench, passed a detailed Order.

7. In pursuance of the aforesaid Order dated 07.12.21, it is submitted that the Resolution Professional and Chairman of the Monitoring Committee, inspected the Core and Non-Core Assets/Immovable Properties of the CD, had discussion with the CD's core working team, discussed and negotiated with the proposed buyers for the Immovable Properties of the CD, as informed in the hearing held on 07.12.2021 and the best of the offers were finalized. These were placed before the Monitoring Committee of DECPL (shared through mail before the meeting) held through VC on 05.01.2022. The minutes of the same are enclosed. Subsequent to this one more better offer also has been received, which is being discussed, as it offers Rs. 300 L more than the Best Offer.

Annexure C: Minutes of Monitoring Committee Meeting held on 05.01.2022

8. It is further submitted that subsequent to the said meeting the proposed buyers for these Two Properties, met SBI for clarification regarding the process of buying the properties, as it involved, release of mortgage on these properties and NOC from them. The process was clearly explained to them and they have agreed to the same.

9. The Resolution Professional herein, submits that the CD is a Going Concern, as stated earlier and the present operational details of the CD, in terms of Orders, receivables, stock, advances received, status of completion of present orders, etc for the kind perusal of the Bench.

Annexure D: Operational status of CD as on 31.12.2021

10. The Resolution Professional, was in receipt of a written proposal from the Resolution Applicants after the Monitoring Committee Meeting and the same has been shared with the Committee. The same is enclosed for ready reference of the Bench.

Annexure E: Proposal dated 06.01.2022 received from Resolution Applicant/s

20. This Tribunal vide Order dated 03.02.2020 directed the RP to file a report in relation to implementation of the Resolution Plan. Pursuant to the said directions Ld. Chairman of the Monitoring Committee has filed another report on 17.02.2020 under SR.No.1108, this report is dated 14.02.2020. Under the said report at para 3, the RP has reported as under: -

"It is hereby submitted that the Financial Sponsor (FS) M/s. AnaCap UK earlier submitted an offer for Rs.145 crores and the committee was informed by the

Resolution Applicants that the FS ready for an investment of only Rs.60 crores. The Resolution Applicant gave a letter dated 07.02.2020 and read out the same during the meeting, partly explaining the reasons for non implementation of the plan as approved. The Committee took note of the same but did not agree or approved the same."

Under para 5 of the said report, the RP reported as under: -

> *"The RP hereby submits that the Liquidation Application has been circulated to CoC members in December 2019 and the same was to be considered if the Resolution Applicant/s failed to honour the plan approved by this Hon'ble Bench, even after sufficient time provided to them, to negotiate and finalise the terms with the Financial Sponsor."*

21. We have heard the submissions made by the Learned Counsel for both the parties. From the submissions made and from perusal of the documents, it becomes imperative for this Tribunal to address the following issues;

(i) Whether the present IA's more particularly IA No. 310/2022 seeking modification of resolution plan as approved by this Adjudicating Authority is valid?

(ii) Should extension of time for payment be allowed to the successful resolution applicant at this stage?

(iii) Whether the resolution plan as approved by this Adjudicating Authority has been contravened?

<u>Observations:-</u>

- Corporate Debtor is MSME.
- Corporate Debtor is a going concern.
- Employing more than 1500 employees.

- Resolution Plan with respect to the Corporate Debtor was approved on 30.09.2019.
- Last date for making payment as per approved Resolution Plan was 15.11.2019.

<u>ISSUE NO. (I) & (II)</u>

22. Para 7.ii of the Order of this Adjudicating Authority dated 30.09.2020 records as under :-

ii. Claims of the Financial Creditors and settlement thereof:

The Resolution Professional has submitted that a time period of 45 (Forty Five) days would be required from the date of approval of the Resolution Plan by this Authority for making the payments to Financial Creditors as detailed below:

NAME OF THE COC MEMBER	AMOUNT
State Bank of India	127.37 Crore
AXIS Bank	21.56 Crore
India Factoring	1.00 Crore
SBI Global Factor	6.85 Crore
Total	156.78 Crore

The requirement of the funds is proposed to be financed from the following resources:

TO BE PAID BY	AMOUNT
Finance Sponsor	145.00 Crores
Promoters of Corporate Debtor	11.78 Crores
TOTAL	156.78 Crore

It is further stated by the Resolution Professional that the Promoters / Resolution Applicants will pay a sum of Rs. 17.63 Crores to the Financial Creditor viz., State Bank of India by way of One Time Settlement (OTS) in addition to the Resolution Plan amount of Rs.127.37 Crores. Upon receipt of full and final consideration, the State Bank of India would initiate adequate steps for releasing all the mortgaged properties (properties of Corporate Debtor as well as personal properties of the Guarantors) by filing necessary Application before the DRT, Chennai.

23. In addition to the above, para 8.ii of the Order dated 30.09.2020 records as under.

8. OBSERVATIONS/APPROVAL:

ii. It is noted that in addition to the Resolution Plan 'One Time Settlement' (OTS) is offered to State Bank of India (SBI) whose percentage of stake in the total voting power is 78%. The pattern of payment for the OTS is described below::

SL. NO.	SCHEDULE OF PAYMENT	RUPEES IN CRORES
1	*10% of offer value along with submission of OTS proposal.*	*1.76*
2	*40% of the Offer Value within one month from the date of sanction order.*	*7.05*
3	*Balance 50% of the offer value to be paid within 6 months from the sanction order.*	*8.81*
	TOTAL	***17.63***

24. Besides the above, the several concessions were granted to the Corporate Debtor. The chart contained in para 7.iii relating to Operational Creditors. Para 7.iv relating to the statutory authorities and other liabilities

Para 7.v is reproduced below.

(v) Shareholding Pattern of Corporate Debtor post Resolution Plan:

The Resolution Plan provides that after its approval by this Authority, the Financial Sponsor shall hold 76% of

Equity, and the Promoters/Present Shareholders of the Corporate Debtor shall hold 24% of the Equity. The value per share shall be suitably reduced. Further, if the Corporate Debtor and the Promoters achieve the projections as contemplated in the Plan, the Financial Sponsor shall transfer their shares to the promoters free of cost in the manner given below:

Shareholding Pattern of	2019-20	2020-21	2021-22	2022-23	2023-24
ANA CAP & their nominees	76%	66%	56%	46%	36%
Present Shareholders	24%	34%	44%	54 %	64%
Total shares	100%	100%	100%	100%	100%

25. Para 7.vi provides concession / reliefs gave with respect to Income Tax, EPF, ESIC, ETCP, GST/ELT and TDS. Para 8.v records "the Resolution Plan in general contains cash flow statement for a period of 6 years with average growth of 10% in the range of 7% to 12%. It also takes into account the payment projections to various stakeholders for the period of 6 years in the pattern of payment to various stakeholders.

26. It is also required to be noted that majority of the payments as per approved Resolution Plan were to be made within 45 days of approval of the Plan by this Authority which was on 30.09.2019 and as such the **last date for payment was 15.11.2019**. It is also apparent that a sum of Rs.145 crores was to be brought in by the Financial Sponsor i.e., AnaCap Financial, Partners, LLP, UK.

The said Financial Sponsor was to hold **76% of the equity of the Corporate Debtor** upon implementation of the Resolution Plan.

27. In light of the above discussion, the summary as on date on the status of the Resolution Plan is provided as below.

SL. No.	MAJOR CONDITIONS FOR APPROVAL OF RESOLUTION PLAN	PRESENT STATUS
1	Investment by Financial Sponsor within 45 days of approval of Resolution Plan.	Not complied with
2	Equity shareholding of Financial Sponsor at 76% in Corporate Debtor	Not complied with
3	Payment to Financial Creditors amount to Rs.156.78 crores by 15th of November 2019.	Not complied with

28. In the present case, it is an admitted fact that only payment of about Rs. 11.07 crores have since been made, which also includes the performance security deposit of Rs. 5.00 Crores and nearly Rs. 1.50 Crore by way of sale of assets and as such the total payments so far made are a meagre 7.06% of the total payments as per the approved resolution plan dated 30.09.2019. Thus, the analysis of the above would lead to an irresistible conclusion that;

(i) Financial Sponsor viz., AnaCap is nowhere on the scene and is not involved in the implementation of the resolution plan at all.

(ii) The said Financial Sponsor has not invested a single rupee in the equity subsequent to the approval of the said resolution plan by this Authority.

(iii) Projected sales, profits, as per the approved resolution plan have not been met.

29. The Chairman of the Monitoring Committee / RP, R1, and the other constituents of the Managing Committee, more particularly R2 had several times changed their stand in relation to this particular Corporate Debtor. At one point of time, all of them wanted liquidation and other point of time they wanted extension of time for implementation of the plan. To know what is the desire of the Managing Committee an opportunity was given by this Adjudicating Authority vide order dated 07.12.2021. It is noticed that two meeting of the Managing Committee were held and in the first meeting the stake holders decided not to allow any modification of the plan, however when the second meeting was convened, majority stake holder i.e. State Bank of India, agreed to provide further time, and Axis Bank continued to oppose the decision. As such during these meetings too, there was no unanimity between the stake holders.

30. Through the present IA(IBC)/310(CHE)/2022 entirely new terms have been presented before us and it is now proposed after 2½ years of the last date for implementation of the plan, that certain assets of the Corporate Debtor and its promoters will now be sold after the realization of money and the same will be paid to

the Financial Creditors. In order to complete these exercise, time period sought for is till 30.09.2022.

31. At this stage it will be pertinent to quote what Hon'ble NCLAT has said in its order in Company Appeal (AT) (Insolvency) No. 202 of 2020 in the matter of **Kridhan Infrastructure Pvt. Ltd. (Now Known as Krish Steel And Trading Private Limited) & Anr. VS Versus Venkatesan Sankaranarayan & Anr.** Para 77 of the said order is reproduced below:-

> *"It is well settled principle in Law that an 'inherent power' cannot be resorted to when there are specific provisions in Law to deal with the situations. In this connection, this Tribunal worth recalls and recollects the decision of Hon'ble Supreme Court in 'Durgesh Sharma' V. 'Jayshree' reported in Air 2009 Supreme Court at page 285 wherein it is observed and held that the inherent power cannot be exercised in contravention or in conflict or ignoring express provision of Law, since law relating to transfer is contained in Section 22 to Section 25 of the Code and they are exhaustive in nature."*

32. Para 86 of the order in the matter of Kridhan Infrastructure Pvt. Ltd. (supra) further records as under :-

> "this tribunal comes to an inevitable, irresistible and inescapable conclusion that an opportunity to revive the 'Corporate Debtor' as per terms of 'Resolution Plan' is not to be provided to the Appellant(s)/ 'Resolution Applicant' to prevent an aberration of justice and also to better preserve the 'economic value of assets' because of the reason that the instant case is not an exceptional or extraordinary one to invoke the ingredients of Rule 11 of

'NCLAT' Rules, besides the provisions of 'I&B' Code cannot be diluted in any manner whatsoever."

33. Order of Hon'ble NCLAT in the matter of Kridhan Infrastructure Pvt. Ltd. was challenged before the Hon'ble Supreme Court in Civil Appeal No 3299 of 2020. Para 11 of the said Judgment which was delivered on 01.03.2021, their Lordship have written and we quote:-

> *"The appellant has been unable to raise the funds. The fact of the matter, as it emerges from Mr Vishwanathan's submissions, is that the appellant will be unable to raise funds from the Term Lenders who are insisting that the status of the Company should change from a company under liquidation to an active status. The order of liquidation has not been set aside. Ultimately, what the request of the appellant reduces itself to, is that it would raise funds on a mortgage of the assets of the Company and unless the Company is brought out of liquidation, it would not be in a position to raise the funds. This is unacceptable. At this stage, the order of liquidation has only been stayed, but a final view was, thus, to be taken by this Court. Sufficient opportunities were granted to the appellant earlier during the pendency of the proceedings both before the NCLT and NCLAT. The orders of the NCLT and NCLAT make it abundantly clear that despite the grant of sufficient time, the appellant has not been able to comply with the terms of the Resolution Plan. Since 9 October 2020, despite the passage of almost five months, the appellant has not been able to deposit an amount of Rs 50 crores. Time is a crucial facet of the scheme under the IBC. To allow such proceedings to lapse into an indefinite delay will plainly defeat the object of the statute. A good faith effort to resolve a corporate insolvency is a preferred course. However a resolution applicant must be fair in its dealings as well. The appellant has failed to abide by its obligations. In that view of the matter, we see no reason or justification to entertain the Civil Appeal any further. The consequence envisaged under the order of this Court shall accordingly*

ensue in terms of the forfeiture of the amount of Rs 20 crores. As a consequence of this order, the management shall revert to the liquidator for taking steps in accordance with law. The Civil Appeal is accordingly dismissed."

34. The facts of the present case and that of Kridhan Infrastructure Pvt. Ltd. are almost similar, in both the cases, the Resolution Applicant have failed to bring in equity as envisaged in the Resolution Plan, in both the cases, alternate arrangements were suggested, in both the cases hardly few amounts were paid to the lenders. The fact which are unique in the present matter are:-

a. Inordinate delay in payments.

b. Total absence of Financial Sponsor who was to make majority of the payments.

c. Certain assets of the Corporate Debtor/Promoters are to be sold at this stage to pay the lenders.

d. How far and how quickly the amounts can be realized from such sale is a question.

35. We nonetheless bow down after going through the above orders of Hon'ble NCLAT and Hon'ble Supreme Court and refrain to use our inherent powers in the present case.

36. In view of the above discussions, we conclude that the IA(IBC)/310(CHE)/2022 seeking modification of resolution plan as approved by this Adjudicating Authority cannot be allowed and consequently the extension for payment of time for the payment

cannot be granted to the successful Resolution Application. Accordingly, issue no. (i) and (ii) are answered.

ISSUE NO. (III)

37. In so far as Issue No. (iii) is concerned as to whether the successful resolution Applicant has contravened the Resolution Plan, we observe as follows;

(a) It is seen that the Resolution Plan in respect of the Corporate Debtor was approved by this Adjudicating Authority vide order dated 30.09.2019 passed in MA/936/2019. As per the approved Resolution Plan, the successful Resolution Promoter who is the Promoter of the Corporate Debtor is required to pay to the Financial Creditor a sum of Rs.156.78 Crore within a period of 45 days i.e. on or before 15.11.2019. Further, it is also seen that as per the approved Resolution Plan a Financial Sponsor viz. Anacap Financial Partners LLP, UK is required to infuse a sum of Rs.145 Crore and the balance sum of Rs. 11.78 Crores is required to be infused by the Promoters of the Corporate Debtor. It is a fact borne on record that even after the expiry of 900 days, let alone 45 days as stipulated in approved Resolution Plan, neither the Financial Sponsor nor the Promoters of the Corporate Debtor has pumped in the said amount of Rs.156.78 Crore. This act on the part of the Resolution Applicant would amount to blatant violation of the Resolution Plan and would attract penal provisions as contemplated under Section 74 of IBC, 2016.

(b) In the present case, it is required to be noted that the entire Resolution Plan amount was required to be paid to the Financial Creditors on or before 15.11.2019. The Learned Counsel for the Promoters of the Corporate Debtor has taken a plea that due to Covid – 19, they were unable to adhere to the timelines. The said plea raised by the Learned Counsel is unsustainable in view of the fact that the during the month of November 2019 the pandemic was not rampant in India and as such it is not right on the part of the Resolution Applicant to take such a ground for non-payment of the Resolution Plan amount.

(c) It is also required to be noted that, after the approval of the Resolution Plan, and after expiry of more than 900 days, it is seen that the Promoters of the Corporate Debtor has till date paid only a sum of Rs.11.07 Crore, as part of their contribution which includes the performance security deposit of Rs.5 Crore and as such the total payments so far made is only a meagre 7.06% of the total Resolution Plan amount. Even in the modified Resolution Plan, which did not garner the vote of Axis Bank, which is one of the Financial Creditor, it is seen that the Promoter of the Corporate Debtor is trying to infuse the fund by liquidating the immovable properties of the Corporate Debtor. Apart from the same, there is no infusion of funds shown by the Promoter of the Corporate Debtor / Resolution Applicants.

(d) Another important and vital factor, which this Tribunal wishes to point out here is that the Monitoring Committee which is incharge of the Supervision and Implementation of the Resolution Plan has not brought to the notice of this

Adjudicating Authority, after the expiry of 45 days from the date of approval of the Resolution Plan that the successful Resolution Applicants of the Corporate Debtor has failed to implement the Resolution Plan. Further, the moment the Resolution Applicant has failed to pay the Resolution Plan amount, the Monitoring Committee is required to immediately move an Application for Liquidation of the Corporate Debtor and the Monitoring Committee has no powers to negotiate or to grant time to the Successful Resolution Applicant for payment of the Resolution Plan amount.

(e) The Learned Counsel for the Promoters of the Corporate Debtor submitted that they are MSME and that Liquidation should be the last resort and they should be granted time to implement the Resolution Plan. In the present case, it is not the question of granting time to implement the Resolution Plan, however the modified Resolution Plan which is placed before us, would amount to amending the basic structure of the Resolution Plan in and by which the Financial Sponsor in the Resolution Plan is replaced by the Promoters of the Corporate Debtor and there is a change in the shareholding pattern and also there is no infusion of fresh funds by the Promoters of the Corporate Debtor and all the infusion of funds is only by selling the assets of the Corporate Debtor. In the present case, only by invoking the provisions of Section 240A of IBC, 2016 the Promoters of the Corporate Debtor has given a Resolution Plan, which was approved by this Adjudicating Authority vide order dated 30.09.2019 and again the Promoters of the Corporate Debtor cannot seek shelter under Section 240A of the IBC, 2016 to say that they are MSME and they should be granted the benefit of modification of Resolution Plan. Granting such a relief would defeat the very purpose of IBC, 2016.

(f) It is also required to be noted that the Axis Bank, who is one of the Secured Financial Creditor of the Corporate Debtor has already brought to the knowledge of this Tribunal that the Corporate Debtor has contravened the provisions of the Resolution Plan and that there is a blatant violation of the Resolution Plan by the Corporate Debtor in terms of Section 33(3) of IBC, 2016 and thus by operation of law and in terms of Section 33(4) of IBC, 2016 once this Adjudicating Authority is satisfied that the Corporate Debtor has contravened the provisions of the Resolution Plan, it shall pass an order of Liquidation as referred to in sub-clause (i), (ii) and (iii) of clause (b) of sub-section (1) of Section 33 of IBC, 2016. Thus, it is required to be noted that the IBC, 2016 never contemplates for accepting any modification to the Resolution Plan. Further, the Learned Counsel for the Applicant has put forth a contention that since the majority of the stakeholders viz. SBI which is holding 77% has voted in favor of the modification and the same is binding upon the all the creditor. We are unable to accept the said contention raised by the Learned Counsel for the Applicant in view of the fact that the modification of the Resolution Plan, is a principle that is unfounded under the provisions of IBC, 2016 and hence the question of majority votes binding upon the minorities does not arise. Further, it is no longer *res integra* that this Adjudicating Authority, which is a creature of a statute is bound by the statute and cannot exercise its equity jurisdiction.

(g) Comparative study of IBC and other recovery law would posit the fact that once OTS is violated the Bankers get entitled to claim entire outstanding dues. In the present case, in order to revive the company, various reliefs and concessions were granted in the commercial wisdom of the CoC. Furthermore, MSME being the backbone of economy, Section 240A of IBC, 2016 was introduced to support the MSME units. However, that cannot be extended to the ridiculous extent of defeating the very purpose of IBC, 2016 and allowed to defeat the creditors at large. This case is a clear misuse of the provisions of Section 240A of IBC, 2016 and inspite of sufficient opportunity being granted, more than 900 days have lapsed and the Resolution Applicant till date is unable to implement the approved Resolution Plan. As per the facts narrated above, the Resolution Applicant is seeking extension of time for implementation of the Resolution Plan by liquidating the assets of the Corporate Debtor in order to settle the dues of the Creditors under the Resolution Plan. Hence, it is clear that the successful Resolution Applicant has failed to implement the Resolution Plan and furthermore has no means to fund the project. Hence this Adjudicating Authority is left with no option than to order for Liquidation of the Corporate Debtor.

38. Apart from the above observation made by this Tribunal, it can be seen that arguments were advanced by the Ld. Counsel for the Resolution Applicant regarding use of inherent power vested in

this Tribunal to approve the revised resolution plan keeping in view that Liquidation is the last resort and that the Corporate Debtor is MSME and employing more than 1500 persons. The revised proposition before us, simply says that certain properties will be sold and dues of the lenders be paid by 30.09.2022. Promoters have never agreed to induct any further funds in the company.

39. We categorically say that selling the properties of the company was never the intention at the time when the resolution plan was approved by this Adjudicating Authority. The Corporate Debtor was to be kept as going concern. It was to be revived with **induction of fresh blood by way of introduction of fresh capital** and that was the reason huge reliefs and concessions were agreed to be given by this Tribunal. In our view the present proposition, totally breaches the Resolution Plan.

40. <u>We would wish to point out here that someone was projected as Financial Sponsor just to seek approval of the Resolution Plan hoodwinking this Adjudicating Authority and once the plan was approved, the Financial Sponsor vanishes from the scene and the Corporate Debtor is left in the lurch. The Financial Sponsor has not invested a single rupee in the Corporate Debtor thus far. Financial Sponsor was never interested in participating in the Resolution of</u>

the Corporate Debtor is clear from the fact that post approval of the Resolution Plan, Financial Sponsor never participated in any of the meetings of the Managing Committee.

41. In view of the above discussions, we conclude that the Issue No. 3 is answered in affirmative. The Resolution Plan as approved by this Adjudicating Authority has been contravened.

CONCLUSION

42. Thus, the aforesaid discussion would lead us to the conclusion that the Successful Resolution Applicant i.e. the promoter of the Corporate Debtor has contravened the provisions of the Resolution Plan and as such the Financial Sponsor viz. Anacap Financial Partners LLP, UK and the Corporate Debtor viz. Diamond Engineering (Chennai) Private Limited are debarred from participating in any other Resolution Process under the provisions of IBC, 2016.

IA/1266/IB/2020

43. In so far as **IA/1266/IB/2020** is concerned, it has been filed by Axis Bank Ltd seeking liquidation of the Corporate Debtor. The prayer(s) sought for in this Application are extracted hereunder:-

(a) *Pass an order directing the Corporate Debtor to be liquidated under Section 33 of the IBC and to initiate the process of Liquidation of the Corporate Debtor under Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.*

(b) *Pass an order appointing a Liquidator for the Corporate Debtor.*

(c) *Pass an order dissolving the Monitoring Committee of the Corporate Debtor.*

(d) *Pass an order referring the matter to the Insolvency and Bankruptcy Board of India for the punishment of the 5th Respondent, 6th Respondent and 7th Respondent for contravention of the approved Resolution Plan under Section 74(3) of the Insolvency and Bankruptcy Code, 2016.*

(e) *Pass such other order or orders or directions as this Hon'ble Adjudicating Authority may deem fit and necessary in the interest of justice.*

44. At this juncture, we find it apt to reproduce Section 33(3) and (4) of the Insolvency & Bankruptcy Code, 2016, which states as under:-

> *(3) Where the resolution plan approved by the Adjudicating Authority (under section 31 or under sub-section (1) of section 54L,] is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii), (iii) of clause (b) sub-section (1).*
>
> *(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution*

plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

45. As already discussed *supra*, a concrete finding has been given by this Tribunal that the successful Resolution Applicants have contravened the Resolution Plan and the same is also brought to our knowledge by one of the Financial Creditors in terms of Section 33(3) of IBC, 2016. In view of the contravention of the Resolution Plan by the Corporate Debtor and its Financial Sponsor, we hereby order Liquidation of the Corporate Debtor. Keeping in mind the provisions of Section 33(4) of IBC, 2016 and the resolution plan has not been implemented and has been blatantly violated as discussed *supra*, this Tribunal is left with no other choice but to order for liquidation of the Corporate Debtor as from this day. This Tribunal also appoints **Mr. Lakshmanan Krishnan** having Registration No. *IBBI/IPA-002/IP-N00783/2019-2020/12511*, (email id: *kichaa_feb05@yahoo.co.in*) as the Liquidator to carry out the liquidation process of the Corporate Debtor subject to the following terms of the directions.

a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended upto date enjoined upon him.

b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.

c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.

d) The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;

e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.

f) The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.

g) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.

h) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.

i) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

j) Copy of this order be sent to the Financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor, viz., company-in-liquidation.

46. The Liquidator is directed take steps under Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016 for exploring the possibility of inviting a Scheme under Section 230 of the

Companies Act, 2013 and also for sale of the Corporate Debtor as a going concern as stipulated under Regulation 32(e) and (f) of the IBBI (Liquidation Process) Regulations, 2016.

47. The *Registry* of this Tribunal is directed to forward a copy of this order to IBBI and Ministry of Corporate Affairs for their information and further actions, if any.

48. Accordingly, IA(IBC)/310(CHE)/2021 and IA/1266/IB/2020 stands **disposed of**.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
R. SUCHARITHA
MEMBER (JUDICIAL)

Raymond