

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
IA-52/2024 and IA-5176/2024**

IN

Company Petition No. (IB)- 653(PB)/2023

IN THE MATTER OF:

National Asset Reconstruction Company Ltd. *... Financial Creditor*

Vs.

Helios Photo Voltaic Ltd. *... Respondent/Personal Guarantor*

AND

IN THE MATTER OF IA 52 of 2024

ASC Insolvency Services LLP *...Applicant*

Vs.

National Asset Reconstruction Company Ltd. *...Respondents*

AND

IN THE MATTER OF IA 5176 of 2024

Gateway Investment Management Services Ltd *...Applicant*

Vs.

ASC Insolvency Services LLP & Ors. *...Respondents*

Order Under Section 31 of Insolvency & Bankruptcy Code

Pronounced on: 22.01.2025

CORAM:
JUSTICE (RETD.) RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SHRI AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Sunil Fernandes, Sr. Adv. Mr. Vaibhav Mishra Ms. Rajshree Chaudhary, Ms. Diksha Dadu, Mr. Ekansh Mishra Advs. in IA-5176/24 Sr. Adv. Vivek Sibbal, Adv. Abhishek Pariwal, Adv. Kiran Bisht, Adv. Rashmi Raj, Mr. Alok Agarwal, RP in IA-52/2024

For the Respondent: Sr. Adv. Sri Ramji Srinivasan for R-1, Sr. Adv. Niranjan Reddy, Adv. Abhishek Anand, Adv. Aditi Sinha, Adv. Dhruv Malik, Adv. Palak Arora for R-2 in IA-5176/2024 Mr. Milan Negi, Mr. Nikhil Jha, & Ms. Aakriti Gupta, advocates for respondent no. 3 in IA 5176/2024

For the SRA: Adv. Arijit Mazumdar, Adv. Akanksha Kaushik, Adv. Namrata Sarogi, Adv. Arjun Bhatia

ORDER

1. Preliminary

1.1 The present interlocutory application bearing IA **(IBC)(Plan)/ 52(PB)2024** is moved on behalf of ASC Insolvency Services LLP (“RP”/ “Applicant”) of M/S Helios Photo Voltaic Ltd. (CIN: U40106DL2005PLC143431), under the provisions of Section 30 (6) of the Insolvency and Bankruptcy Code 2016 [hereinafter referred to as “**the Code**” or “**IBC**”] for approval of the Resolution Plan in respect of M/S Helios Photo Voltaic Ltd. and seeking the following reliefs: -

- (a) Allow the present application;*
- (b) Kindly approve the Resolution Plan dated 06.06.2024 resubmitted on 05.08.2024 submitted by OCL Iron & Steel Limited along with the addendum dated 29.08.2024 as approved by the Committee of Creditors by 73.38% voting share in favour in Fifteenth meeting convened on 27.08.2024 and the voting concluded on 07.09.2024;*
- (c) Declare that upon approval of the Resolution Plan by this Hon'ble Adjudicating Authority, the provisions of the Resolution Plan shall be binding on the Company, its creditors, guarantors, members, employees, Statutory Authorities and other stakeholders in accordance with Section 31 of the Code, and shall be given effect to and implemented pursuant to the Order of this Hon'ble Adjudicating Authority;*
- (d) Approve the appointment of Monitoring Committee as proposed in the Resolution Plan and approved by the Committee of Creditors;*
- (e) Approve and grant reliefs and directions sought under the Resolution Plan by the Resolution Applicant;*
- (f) Pass such other or further order / order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.*

- 1.2 The Corporate Debtor (CD) is involved in the manufacturing of solar energy equipment including optical media storage products, photovoltaic cells, thin film modules, panels and other products of electrical equipment along with wires and cables.
- 1.3 The underlying Company Petition CP (IB) No. 653 (PB) 2023 (Old No. CP (IB) 154 (PB)/2018) filed by Financial Creditor, M/S Helios Photo Voltaic Ltd. under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor was admitted by this Adjudicating Authority vide its order dated 11.01.2024, ("Insolvency Commencement Date"), and ASC Insolvency Services LLP (IBBI Registration No. IBBI/IPE-0060/TPA-1/2022-23/50012) was appointed

as IRP who was later appointed as RP in the 1st CoC meeting dated 09.02.2024. The decision of CoC was confirmed by this Adjudicating Authority on 28.02.2024.

2. Collation of Claims by RP

2.1. The Applicant/RP has submitted that the public announcement was in FORM-A was published on 14.01.2024 in Financial Express (English), *Jansatta* (Hindi) All India Editions and *Rashtradoot* (Hindi) *Jalore-Jodhpur* Edition. The last date of submission of claims with proof was specified as 26.01.2024.

2.2. The details of claims submitted are as follows:

A. List of Financial Creditors

Sr. No.	Financial Creditor	Amount Claimed	Amount Verified	Voting Share
1.	NARCL Trust	24,65,49,87,754	24,65,49,87,754	73.38%
2.	Alchemist Asset Reconstruction Company	6,28,00,21,999	6,28,00,21,999	18.69%
3.	International Finance Corporation	2,66.36,27,601	2,66.36,27,601	7.93%
	Total	3359,86,37,354	3359,86,37,354	100.00%

B. List of Operational Creditors (Employees)

Sr. No.	Operational Creditor	Amount Claimed	Amount Verified
1	Sanjay Bhatti	15,56,86,276	1,09,49,523
	Total	15,56,86,276	1,09,49,523

C. List of Operational Creditors (Government Dues)

Sr. No.	Operational Creditor	Amount Claimed	Amount Verified
1.	EPFO	3,73,37,973.00	1,57,04,326.00
	Total	3,73,37,973.00	1,57,04,326.00

D. List of Operational Creditors (Other than Workmen and Employees and Government Dues- NIL)

E. List of Other Creditors (Other than Workmen and Employees and Government Dues- NIL)

3. Applicant/RP submits that the particulars of CoC meetings held are as follows: -

Particulars	Date of CoC Meeting
1 st CoC Meeting	09.02.2024
2 nd CoC Meeting	07.03.2024
3 rd CoC Meeting	06.04.2024
4 th CoC Meeting	23.04.2024
5 th CoC Meeting	Date and Details not provided by RP
6 th CoC Meeting	22.05.2024
7 th CoC Meeting	10.06.2024
9 th CoC Meeting	20.06.2024 & 21.06.2024
10 th CoC Meeting	25.06.2024
11 th CoC Meeting	01.07.2024 & 02.07.2024
12 th CoC Meeting	08.07.2024 & 09.07.2024
13 th CoC Meeting	31.07.2024
14 th CoC Meeting	12.08.2024
15 th CoC Meeting	27.08.2024

16 th CoC Meeting	12.09.2024
17 th CoC Meeting	14.10.2024

Note: 17th meeting was conducted after the plan had been submitted to Adjudicating Authority.

4. Valuation of Corporate Debtor

In terms of Regulation 27 of the CIRP Regulations, the resolution professional appointed two registered valuers for each class of assets to determine the Fair & Liquidation value of the Corporate Debtor in accordance with Regulation 35 of the CIRP Regulations.

In the 10th meeting, RP informed the committee that the Registered Valuers had provided the final valuation reports to the Applicant and the same was shared with the CoC members on 19.06.2024. The appointed registered Valuers have submitted their reports providing the average fair value of the corporate debtor as Rs. 122,22,98,347 (One Hundred and Twenty-Two Crores Twenty-Two Lakhs Ninety-Eight Thousand Three Hundred and Forty-Seven only) and average liquidation value of Rs. 101,38,96,559/- (One Hundred and One Crores Thirty-Eight Lakhs Ninety-Six Thousand Five Hundred and Fifty-Nine only) [**page no. 146, Volume II of petition**].

5. No PUF E Transactions

In the 11th CoC meeting, the RP informed the CoC that the avoidance transaction auditor had submitted the detailed report on 27.06.2024 and concluded that no instances of avoidance transactions had taken place.

6. Evaluation and Voting

6.1. Pertinently, the CoC in its 4th meeting held on 23.04.2024, set out the Evaluation Matrix (“EM”) considering the scale of the business of Corporate Debtor along with other requirements of the eligibility and approved the eligibility criterion of the PRA to submit the Resolution Plan.

6.2. The applicant submits that Form-G was originally published on 11.03.2024 and addendum to Form-G was published on 28.03.2024.

Through Form-G, PRAs were invited to submit the EoI for submitting a resolution plan of the Corporate Debtor on or before 06.06.2024. During 7th meeting of Committee of Creditors on 10.06.2024, the RP apprised the CoC members that resolution plans/offers were received from sixteen PRAs.

- 6.3. Earlier on 23.04.2024, Request for Resolution Plan (“RFRP”) and Evaluation Matrix (“EM”) were approved in the 4th meeting of Committee of Creditors. The last date for submission of Resolution Plan was 06.6.2024. It was decided that, since there are core-assets of CD (which are essential for the Corporate Debtor to be kept as a going concern) and non-core assets of CD (which are not essential to keep Corporate Debtor as a going concern) and hence, he has created two options for the Resolution Applicants to submit the Resolution Plan wherein the Resolution Applicant may;

Lot 1: Submit the Resolution Plan for CD as a whole.

Lot 2: Submit the resolution plan for:

2(a): CD as a whole excluding/without Noida Unit.

2(b): Bid for assets sale of Noida Unit on a stand-alone basis.

As mentioned in RFRP, the Resolution Applicants were asked to take note that priority/preference will be given to the Resolution Plan submitted for Lot 1 subject to the Financial Proposal so offered and discretion of the CoC based on its commercial wisdom.

- 6.4. On 01.07.2024 & 02.07.2024, during 11th Meeting of Committee of Creditors, it was agreed that E-bidding shall be conducted on NPV (Net Present Value) basis to filter out serious PRAs which were further to be evaluated on the basis of Evaluation Matrix, and the reference price was set as follows: -

- a. Lot 1-Rs. 80 crores
- b. Lot 2(a)-Rs. 50 crores
- c. Lot 2(b)-Rs. 30 crores

(Annexure A-13, Page No. 335-342 in I.A NO. 52/2024)

- 6.5. On 08.07.2024 and 09.07.2024, during 12th Meeting of Committee of Creditors, the CoC decided that every PRA should include in their Final Resolution Plan retrenchment/workmen compensation, PF dues and gratuity dues.
- 6.6. Requests of the PRAs were placed before the CoC vide email dated 19.07.2024 and the CoC in its 12th meeting approved to extend the E-Bidding timelines by 1 week.
- 6.7. Final E-bidding process was concluded on 29.07.2024 and final resolution plans were submitted by PRAs on 05.08.2024. The Financial Proposal was crystallized upon conclusion of E-bidding conducted on 29 July 2024 and the Challenge Process Document as approved by the CoC and accepted by the participants of the E-Bidding Process very clearly stated as follows:

“1.4.6 The financial proposals submitted during the Challenge Process shall be unconditional and irrevocable and cannot be modified at their own behest in any manner whatsoever subsequent to the Challenge Process. In case any Eligible PRA does not participate in the Challenge Process, the last financial proposal submitted by such Eligible PRA in respect of its resolution plan on or before 6 June 2024 shall be considered as its final financial proposal and no further modification shall be permitted to such financial proposal. Any modification sought to be undertaken in breach of this provision shall be tantamount to a breach of the terms of the RFRP and shall be subject to the consequences as set out in the RFRP, the Code and CIRP Regulations.”

- 6.8. The clause 1.9 of the Challenge Process Document (**Annexure A-16, Volume IV of the IA (IBC) (Plan) 52 of 2024**) is important to extract here:

“1.9 The Eligible PRAs who do not participate in the Challenge Process or any round shall be deemed to have confirmed the financial proposal at the stage submitted immediately prior to non-participation as their final proposal to be considered for the purpose of the Challenge Process.”

6.9. The E-Bidding process was conducted on 29.07.2024 from 04:00P.M. IST. Following PRAs participated in the E-Bidding Process:

- i. OCL Iron & Steel Limited*
- ii. Gateway Investment Management Services*
- iii. JFC Finance Limited*
- iv. Aavanti Renewable Energy Private Limited*

6.10. The Auction result is at Annexure A 17 of the IA (IBC) (Plan) 52 of 2024 and is as follows: -

Under Lot 1, Rank 1 & 2 calculated on NPV basis are as follows: -

Rank 1: Gateway Investment Management Services (GIMS)

Rank 2: OCL Iron & Steel Ltd.

Under Lot 2(a), Rank 1 & 2 calculated on NPV basis are as follows: -

Rank 1: JFC Finance (India) Ltd.

Rank 2: Avanti Renewable Energy Private Ltd.

Under Lot 2(b), Rank 1 was: -

Rank 1: JFC Finance (India) Ltd.

6.11. On 12.08.2024 during 14th Meeting, the RP apprised the CoC that the Revised Resolution Plans, which were received by the Applicant team by the end of the day on 05.08.2024 were uploaded on a secured virtual network (VDR — Virtual Data Room) and the link to access the same has been shared to CoC. The CoC members informed the Resolution Professional that they have appointed an agency for assessing the feasibility and viability of the resolution plans and will

be in a position to deliberate on the feasibility and viability only after the receipt of the report from the agency. Further, the members of CoC by 100% votes approved the Tie Breaker Formula as follows: -

i. Formula-1: The plan which secures the maximum consideration for the secured financial creditors may be approved.

ii. Formula-2: The plan which secures maximum marks on Evaluation Matrix, both quantitative and qualitative parameters may be considered as approved.

iii. Formula-3: If two or more plans have equal numbers of maximum marks on Evaluation Matrix, then the plan securing more number in quantitative parameters may be considered as approved.

6.12. On 27.08.2024, 15th Meeting of Committee of Creditors was held wherein RP apprised the members that there are 15 resolution plans of which one Resolution Plan was found to be non-compliant owing to its non-compliance with the existing laws in force and the contents of process document and RFRP.

The CoC members discussed that the feasibility and viability of the resolution plans were checked on the basis the financial strength of the Prospective Resolution Applicant, the payments to various stakeholders, the payment of CIRP cost, adherence to the applicable laws for the time being in force, their past performances in similar structures, the proposed payment timelines and capability of the PRAs to implement the Resolution Plan.

The CoC further discussed and deliberated that amongst the 14 eligible resolution plans, basis the value, few resolution plans submitted by the PRAs may not be feasible and viable for the successful resolution of the Corporate Debtor.

RP presented the scores of the PRA as per the EM as under: -

Sr. No.	Names of PRA	Final Score as per the EM (Quantitative + Qualitative)
1.	Gateway Investment Management Services (DIFC) Limited	48
2.	OCL Iron & Steel Ltd	51
3.	Palika Towns LLP	33
4.	Dickey Alternative Investment Trust	38
5.	Aavanti Renewable Energy Pvt. Ltd	13
6.	JFC Finance (India) Limited (Lot 2a)	28
7.	Derit Infrastructure Private Limited	22
8.	Kundan Care Group - Ankit Sharma	25
9.	Vensar Constructions Company Limited	15
10.	Ever On Power	14
11.	HR Commercials Private Limited & Sunrise Industries	10
12.	Resurgent Property Ventures Pvt Ltd and Sanjay Lodha	15
13.	Aauthum Investment & Infrastructure Limited	15
14.	Shravan Sampath	14
15.	Orissa Metaliks Private Limited	12

6.13. Further, the CoC discussed and deliberated upon the feasibility and viability of the resolution plans of eligible PRAs and the following plans were found feasible and viable by the CoC:

Sr. No.	Name of the Resolution Applicant/s	LOT
1.	Gateway Investment Management Services (DIFC) Limited	1
2.	OCL Iron & Steel Ltd	1
3.	Palika Towns LLP	1

4.	Dickey Alternative Investment Trust	1
5.	JFC Finance (India) Limited (Lot 2a)	2 (a)
6.	Kundan Care Group - Ankit Sharma	1
7.	Derit Infrastructure Private Limited	2 (a)
8.	Ever On Power	2 (a)

6.14. The following resolution plans were not found to be feasible and viable:

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Sr. No.	Name of the Resolution Applicant/s	LOT
1.	Vensar Constructions Company Limited	2 (a)
2.	HR Commercials Private Limited & Sunrise Industries	1
3.	Resurgent Property Ventures Pvt Ltd and Sanjay Lodha	1
4.	Authum Investment & Infrastructure Limited	1
5.	Shravan Sampath	1
6.	Orissa Metaliks Private Limited	1
7.	Aavanti Renewable Energy Pvt Ltd	2 (a)

6.15. During 15th meeting of Committee of Creditors, the Applicant also apprised the members of CoC with respect to provisions pertaining to liquidation of the Corporate Debtor contained under Section 33 of the Code read with Regulation 39 C, and 39 D of the CIRP Regulations, 2016.

6.16. The last date for submission of final resolution plan was 05.08.2024 and the resolution plan dated 06.06.2024 were treated as final resolution plan for certain PRAs who did not submit a revised resolution plan. The resolution plans were reviewed for compliance under the IB Code, CIRP Regulations, other laws for the time being in force, feasibility and viability and clarifications were sought from the PRAs. The last date for submitting the clarifications was 29.08.2024, however, certain PRAs could not provide clarifications/signed

addendums by 29.08.2024 and at the instructions of the CoC, the signed addendums were accepted until 30.08.2024.

- 6.17. That subsequently, the CoC decided to put all fourteen eligible resolution plans for e-voting from 31 August 2024, till 07.09.2024.
- 6.18. On 28.08.2024, this Court allowed the extension of CIRP period in I.A No. 4145/2024 and the last date for completion of CIRP is 07.10.2024. **(Annexure A-14, Page No. 343-344 in I.A NO. 52/2024).**
- 6.19. In the e-voting that commenced at 11:30 AM. IST on 31.08.2024 and concluded by 10:00 PM. IST on 7 September 2024, the resolution plan submitted by OCL Iron & Steel Limited was approved by 73.38% of the CoC (which is more than the required threshold of 66%) and therefore, pursuant to regulation 39(3B) of the CIRP Regulations, the resolution plan submitted by OCL Iron & Steel Limited was approved by the CoC.
- 6.20. In terms of Regulation 36B sub-regulation 4A of the CIRP Regulations, Performance Bank Guarantee Rs.11,33,20,433/- (Rupees Eleven Crores Thirty-Three Lakhs Twenty Thousand Four Hundred and Thirty-Three Only) has been submitted by the Resolution Applicant. **(Page 413-416, Volume IV)**
- 6.21. In terms of Regulation 39(4) of the CIRP Regulations, a Compliance Certificate from RP in Form-H is annexed to the application as **“Annexure-25”**.
- 6.22. In terms of section 30(6) of Insolvency and Bankruptcy Code, 2016 read with Regulations 37 to 39 of the CIRP Regulations, Resolution Professional by filing I.A. (IBC)(Plan) 52 of 2024 is praying for approval of the Resolution Plan submitted by Resolution Applicant **OCL IRON & STEEL LIMITED** as approved by the Committee of Creditors of the Corporate Debtor with 73.38% voting in the 15th CoC meeting dated as required under section 30(4) of IBC, 2016 in the 15th Meeting of CoC held on 27.08.2024. The voting on resolution plan was concluded on 07.09.2024 and the application for approval of the resolution plan was filed before this Adjudicating Authority by the RP on 07.10.2024.

7. Details of Resolution Applicant and Payment Schedule

7.1. The SRA is **OCL Iron and Steel Limited ("OCL"/ "SRA")**, the successful resolution applicant, whose resolution plan for M/s Helios Photo Voltaic Ltd. ("Corporate Debtor") has been approved by the Committee of Creditors ("CoC"). OCL, Iron and Steel Limited, a public company incorporated under the provisions of the Companies Act, 1956 under the Corporate Identity Number: U27102WB2006PLC270990 and having its registered office at Godrej Waterside, Tower-1, 5th Floor, Block DP, Sector V, Kolkata 700091.

7.2. The indicative implementation schedule of the Resolution Plan is as tabulated below:

Activity	Days
Receipt of Letter of Intent from the CoC	Y
Issuance of Performance Bank Guarantee (as per the terms of RFRP)	Y+1
Receipt of certified copy of Approval from Adjudicating Authority	X
Appointment of Interim Board and Management Committee	X+1
Payment in the CD Account	X+30
Payment to the Creditors (as provided under the Plan)	
Splitting of the Existing Equity Shares into Re./- each from Rs. 10/- each.	
Capital Reduction	
Infusion of Equity (allotment of Equity Shares)	

Merger, amalgamation, and de-merger in accordance with the scheme	
Execution of the assignment agreement and modification of the charge on the Underlying Security Interest for the Sustainable Debt Discharge Amount and Unsustainable Debt on <i>pari passu</i> basis.	
Conversion of the Unsustainable Debt into ZCCBs.	
Release of Encumbrance on all assets of the Corporate Debtor other than the Underlying Security Interest.	
Financial Creditors to release Encumbrances (including making filings with ROC/sub-registrar of assurances and other governmental agencies for recording such release), execute re-conveyance deeds, issuance of no-dues certificates and redeliver documents in relation to the Resolution Plan.	Within 5(Five) days of execution of the assignment agreement.
Necessary statutory approvals.	Within 12 months from X (In accordance with Sec. 31 (4) of the Code

- ❖ Note: - As per Section VI of Financial Proposal of the Plan, Sustainable Debt Discharge is the payment proposed by the RA to the Secured FCs

whereas Unsustainable Debt is the balance amount claim of Secured Creditors.

- ❖ The aforementioned timeline is indicative and a delay on account of regulatory reasons shall not be considered to be a contravention of this Resolution Plan, if all the steps are not completed in accordance with this Plan or that the Closing Date could not be achieved.

8. Compliance of the Successful Resolution Plan with various provisions:

8.1. The Applicant has submitted the details of various compliances as envisaged by the Code and the CIRP Regulations which a Resolution Plan is required to adhere to, which are as follows:

Compliance with Section 30(2) of the Code:

Clause of Sec. 30 (2)	Requirement	How dealt with in this plan
(a)	Plan must provide for the Payment of CIRP Cost in priority to the repayment of other debts of CD in the manner specified by the Board	<p>Yes, the plan provides for payment of CIRP Cost in priority to repayment of any other debtors of the Corporate Debtor.</p> <p>Section VI, Clause A of Resolution Plan.</p> <p>As per the information provided in Information Memorandum and Data Room, there are no outstanding CIRP Cost. In an event, during the course of CIRP Period, the Resolution Professional provides any information for any outstanding CIRP Cost, the Resolution Applicant proposes to pay such CIRP Cost within 30 (Thirty) days from the Effective Date (date of approval of this Adjudicating Authority) in full in priority to any other Creditors.</p>

		The Resolution Applicant also proposes to pay the regulatory fees under Regulation 31 A of the CIRP Regulations from the Upfront Amount of Rs. 113 Crores approx..
(b)	<p>i) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53;</p> <p>or</p> <p>ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall be not less than amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher and</p> <p>provides for payment of debts of financial creditors who do not vote in favor of the</p>	<p>i) As per the information available from the Information Memorandum, there are no Claim of the Operational Creditors (excluding employees and Workmen and Government dues) hence the Resolution Applicant has not proposed for payment of any Operational Creditors (excluding employees and Workmen and Government dues). (Section VI, Clause A of Resolution Plan.)</p> <p>The entire claim of all Operational Creditors apart from EPF and gratuity dues shall be fully and finally settled by the Resolution Applicant.</p> <p><i>For the claim of EPF and gratuity dues to workmen and employees separate observations are made in the later part of this order</i></p>

	resolution plan, in such manner as may be specified by the Board.	Yes, Section IV, Clause C of Resolution Plan, & pg. 69 of IA(IBC)(Plan) 52 of 2024
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Yes, Section IV, Clause E (I) of Resolution Plan. Immediately upon the receipt of certified copy of the Resolution Plan, Monitoring Committee shall be appointed, comprising of equal members from the Resolution Applicant and equal number of representatives from Resolution Professional/Independent Resolution Professional and Secured Financial Creditor.
(d)	Implementation and Supervision of Resolution Plan.	Yes, Annexure II of Resolution Plan & Section VII Part B. The Resolution Applicant shall bring in an amount of agreed upfront consideration equivalent to Rs. 1,13,32,04,326/- (Rupees One Hundred Thirteen Crore and Thirty-Two Lakh Four Thousand Three Hundred Twenty-Six Only) (" Upfront Amount ") in an account of the Corporate Debtor controlled by the Monitoring Committee (" CD Account "). Details of Resolution Applicant and their connected persons and persons who will be promoters or in management or control of the business of the Corporate Debtor during implementation of this Plan are provided under Annexure II.
(e)	Plan does not contravene any of the provisions of	Clause (j) of Format VI.

	law for the time being in force.	The Resolution Plan complies in all respects with the provisions of the IB Code (including specifically Regulation 38 of the CIRP Regulations) and does not contravene any of the provisions of the Applicable Law for the time being in force;
(f)	Conforms to such other requirements as may be specified by the Board.	Yes.

Measures required for implementation of Resolution Plan in terms of Regulation 37 of CIRP Regulations:

Regulation 37 (1)	Requirement	How dealt with in the Plan
	A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor, for maximization of value of its assets, including but not limited to the following:-	
(a)	Transfer of all or part of the assets of the corporate debtor to one or more persons;	Not envisaged under the plan
(b)	Sale of all or part of the assets whether subject to any security interest or not;	Not envisaged under the plan
(c)	Restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	In accordance with the Scheme
(ca)	The substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	Section VI, Clause F and in accordance with the Scheme
(ca)	Cancellation or delisting of any shares of the corporate debtor, if applicable;	Cancellation of the issued and paid up capital of the Corporate Debtor in accordance with the Scheme.
(d)	Satisfaction or modification of any security interest;	Section VI, Clause E(v)
(e)	Curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Section VI, Clause E(ii)

(f)	Reduction in the amount payable to the creditors;	Section VI, Clause E(ii)
(g)	Extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	No such proposal is made under the Plan.
(h)	Amendment of the constitutional documents of the corporate debtor;	Constitutional documents of Company are proposed to be amended appropriately as per requirements of the Resolution Plan.
(i)	Issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Issuance of ZCCB's in accordance with Clause E (v).
(j)	Change in portfolio of goods or services produced or rendered by the corporate debtor;	The Resolution Plan does not envisage any change in portfolio of goods or services produced or rendered by the Corporate Debtor. Post submission and approval of the Resolution Plan, the Resolution Applicant shall have the right to make change in portfolio of goods or services produced in any manner as they desire
(k)	Change in technology used by the corporate debtor; and	The Resolution Plan does not envisage any change in the technology used by the Corporate Debtor. Post Submission and approval of the Resolution Plan, the Resolution Applicant shall have the right to make change in technology used

		which may be deemed more beneficial for the Company
(l)	Obtaining necessary approvals from the Central and State Governments and other authorities.	Section II, Part B, Clause 7, Annexure I, Part A.

Mandatory contents of Resolution Plan in terms of Regulation 38 of CIRP Regulations:

Regulation	Requirement	How dealt with in the plan
38 (1)	(b) The amount payable to the operational creditors under a resolution plan shall be paid in priority over financial creditor.	Section IV, Clause B.
38 (1 A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor.	Section IV, Clause D.
38 (1 B)	A resolution plan shall include a statement giving details of the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the	Declaration provided under Section IV, Clause H.
38 (2)	A resolution plan shall provide:	
	(a) The term of the plan and its implementation schedule;	Section VII, Clause A & B
	(b) The management and control of the business of the corporate debtor during its term; and	Section VII, Clause E

	(c) Adequate means for supervising its implementation	Section VII, Clause (E)(I)
38 (3)	A resolution plan shall demonstrate that-	
	(a) It addresses the cause of default;	Section III
	(b) It is feasible and viable;	Section V
	(c) It has provisions for its effective implementation;	Section VII, Clause (E) (I)
	(d) It has provisions for approvals required and the timeline for the same; and	Section II, Part B, Clause 7; Section 7, Clause C; Annexure I, Part A.
	(e) The Resolution Applicant has the capability to implement the resolution plan	Section II, Part B, Section 7, Clause C; Annexure I, Part A.

8.2. The successful Resolution Applicant has submitted a certificate of eligibility under section 29A of the Code as required by Regulation 39(1)(a) of the CIRP Regulations and declared that the Resolution Applicant is eligible to submit the Resolution Plan. The certificate of the Resolution Applicant is at page 426 (Annexure A-26).

9. Details of Resolution Plan/Payment Schedule

9.1. The Applicant submits that the application of funds under the

Sl. No.	Parameter	Admitted Claims as per updated sheet (in Crores)	Payments as per the Resolution Plan (In Crores)	Days
1.	CIRP Cost	N/A	N/A	N/A
2.	Secured Financial Creditors	3,359.86	99.05	E+30
3.	Unsecured Financial Creditors	N/A	N/A	N/A
4.	Operational Creditors (other than workmen and employees)	N/A	N/A	N/A
5.	EPFO to be paid (Government Dues)	3.73	1.57	
6.	Payment to Workmen and Employees	15.57	0.5	During the course of proceedings, RP's counsel mentioned E+30
	Total		101.12	

Note: 7.2 Crores will be paid to Noida Project Land & Building Lease Rent along with 5 Cr to be infused as Capex. taking the total plan value to be Rs. 113,32,04,326 INR.

*E=Effective Date is the date of receipt of certified copy of approval by NCLT

The entire fund shall be infused and payment to the stakeholders to be completed in 30 days from the date of approval of the Resolution Plan by Hon'ble NCLT. **(Clause B sub of Section VII of the Resolution Plan @ Pg. 494-498 Volume V)**

10. Sources of Funds

The entire contribution from the Resolution Applicant shall be funded from internal accruals and from borrowings to be undertaken by the Corporate Debtor in form of debt or equity in the books of the Company or Equity Linked Instruments or Debt Instruments on the terms and conditions to be decided by the Resolution Applicant.

11. Details on Management/Implementation of the Resolution Plan

The Resolution Plan provides for: -

- a.) Management of the affairs of the Corporate Debtor in Section VII Clause (E) (III) of the Resolution Plan.
- b.) Term of the Resolution Plan in Section VII Clause (A) of the Resolution Plan.
- c.) Implementation and Supervision in Section VII Clause (E) (I) of the Resolution Plan.

Immediately upon the receipt of the certified copy of the order approving the Resolution Plan (“Order”), Monitoring Committee shall be appointed. Monitoring Committee shall be composed of

- ✓ equal members of the Resolution Applicant (to be identified by the Resolution Applicant) and
- ✓ equal representatives to be selected from the Secured Financial Creditors and the Resolution Professional or any independent Resolution Professional.

Note: If, the Resolution Professional is unwilling to take up the assignment, then any resolution professional or any independent Resolution Professional, as the case may be, shall be the chairman of Monitoring Committee (“**Chairman**”).

12. Waivers, Reliefs and Exemptions

This will be dealt with strictly in accordance with law.

13. OBJECTIONS

- 13.1 Before considering the application for approval of Resolution Plan, an application i.e. IA-5176/2024 has been filed by Gateway Investment

Management Services Ltd (“GIMS”) being the unsuccessful resolution applicant of the CD seeking the rejection of Resolution Plan submitted by OCL Iron & steel Ltd (“SRA”). Prayer in **IA-5176/2024** read as follows:

- a) *Allow the Instant Application*
- b) *Reject the Resolution Plan as approved by Respondent Nos 2, 3 and 4 (Committee of Creditors) in its meeting dated in the ongoing Corporate Insolvency Resolution Process of M/s Helios Photo Voltaic Ltd.*
- c) *Direct the Respondents to consider and approve the revised offer submitted by the applicant vide email dated 07.10.2024*
- d) *Pass any such or further orders as this Hon’ble Tribunal may deem fit and proper in facts and circumstances of the instant case.*

13.2 Ld. Sr. Counsel Mr. Sunil Fernandes appeared for the applicant/GIMS and submitted that GIMS is the highest bidder both in terms of monetary value and NPV. It is submitted that in the challenge process, plan value submitted by it was Rs. 109.875 Crores wherein the 25% of the plan value amounting to Rs. 27,47,70,000 was proposed to be paid within 45 days of the effective date and the balance amounting to Rs. 82,39,80,000 was proposed to be paid in 46 days to 12 months, whereas the SRA in its plan proposed to pay Rs 99.05 Crores within 30 days.

13.3 Ld. Sr. Counsel for the applicant further submits that there was material irregularity committed by the RP which had vitiated the entire process in which the resolution plan was approved by the CoC. The voting on final resolution plans received from all PRAs commenced on 31.08.2024 and was scheduled to conclude on 07.09.2024, however before the voting had concluded, on 05.09.2024 GIMS addressed a clarification vide email to the RP and CoC stating therein that the 2nd instalment of 75% amounting to Rs. 82,39,80,000 which was earlier proposed to be paid within 12 months, will now be paid within 90 days.

13.4 The RP replied on 09.09.2024 that he did not submit the GIMS clarification dated 05.09.2024 before the CoC as the voting had already

commenced on 31.08.2024. Ld. Sr. Counsel for the applicant submits that this stand of RP is misconceived as when the clarificatory email was issued on 05.09.2024, the voting lines were still open and they closed only on 07.09.2024. Secondly, the RP was duty bound to place the material clarification given by GIMS in its email before the CoC and by not doing so, the RP has not only committed a material irregularity but has also vitiated the entire process where the OCL Iron & steel Ltd was declared as the SRA. Had the CoC members been granted access to the material clarification that GIMS had submitted, the CoC members would have voted differently.

13.5 On 23.09.2024 GIMS filed a Writ Petition bearing no. W.P. (C) No. 13278/2024 before the Hon'ble Delhi High Court seeking directions against the RP and the CoC to initiate the process of fresh voting on the resolution plan submitted by GIMS after taking into consideration clarification dated 05.09.2024.

Hon'ble Delhi High Court vide its order dated 23.09.2024 dismissed the writ petition.

Para 14, 15, 16 and 17 of the order dated 23.09.2024 as passed by Hon'ble Delhi High Court read as under:

14. In view of the aforesaid guidelines coupled with the relevant provisions of the IBC, which have been referred to during the course of arguments, this Court is not enjoined upon to exercise its power of judicial review and thereby usurp upon the powers of the NCLT to inquire into the commercial wisdom of the CoC whereby the Resolution Plan of the petitioner was rejected *vide* impugned letter dated 18.09.2024.

15. In the end, a last desperate attempt is made by the petitioner that it is willing to renew its offer and match the offer given by the SRA in every aspect, but the same cannot be entertained by this Court. Although there is no gainsaying that in matters of public funds auction

the best methodology for discovering fair value and the principle criteria is to ensure maximizing the recovery, the bottom line is that the decision of the CoC shall definitely be considered by the NCLT in a just and expedient manner, and if it deems fit it, may even allow “Open Court Bidding” in accordance with law.

16. In view of the foregoing discussion, the present writ petition is dismissed with liberty to the petitioner to take appropriate recourse before the NCLT, which forum alone shall decide the objections of the petitioner, if any preferred, on its own merits in accordance with law.

17. The present writ petition, along with the pending application, accordingly stands disposed of.

On 04.10.2024 Review application filed by GIMS before the Hon’ble Delhi High Court was disposed of wherein in paras 7 and 8, Hon’ble Delhi High Court recorded as follows:

7. In view of the peculiar facts and circumstances, suffice to provide that if the applicant/ petitioner is so advised and it chooses to make a renewed or better offer, it is at liberty to do so. Likewise, it could only be provided that so long as the Resolution Plan is not considered and approved by the NCLT⁴, the applicant/petitioner may make a fresh offer or a renewed offer which, if permitted, may be considered in accordance with law. No further issues arise in the present review petition.

8. The present review petition is disposed of accordingly.

Pursuant to the order dated 04.10.2024 passed by Hon’ble Delhi High Court, GIMS submitted its revised offer to pay Rs. 120 Crores within 30 days

13.6 Ld. Sr. Counsel further submits that the undisputed fact as things stand today, is that GIMS offer is clearly the highest and if the stated objective of COC (excluding NARCL), is value maximization, then it belies logic as to why NARCL is not agreeable to consider the Revised

Offer of GIMS. He further stated that GIMS herein is even willing to enter into inter-se bidding with the SRA, which would undoubtedly fetch a much higher offer which will be in the interest of all the stakeholders and also of the Public Exchequer.

- 13.7 Further, NARCL is a government entity and is bound by Article 14 of the Constitution and cannot indulge in discriminatory and arbitrary decision making process. A COC member that is not a 'State' or its instrumentality thereof, can lay a claim to 'Commercial Wisdom', i.e., its Commercial Wisdom will be de hors the imperative of Article 14 of the Constitution. However, a 'State' and its instrumentality, in its Commercial Wisdom will be governed not only by the provisions of IBC and CIRP Regulations, but also by the mandate of Article 14 of the Constitution of India and has to conduct its affairs in a non-discriminatory, non-arbitrary and reasonable manner.
- 13.8 Revised Offer of Rs. 120 Crores submitted by GIMS on 7.10.2024 is Rs. 21 Crores higher than the offer made by SRA. Therefore, this Revised Offer should be placed before the COC for its consideration and voting in the interest of value maximization. Denial of the same will not only result in denying value maximization but also violation of Article 14 of the Constitution of India.
- 13.9 Per Contra, Mr. Vivek Sibbal, Ld. Sr. Counsel for the RP submits that GIMS is wrongfully claiming that it did not get an adequate and sufficient opportunity to clarify its financial proposal to the CoC. On the contrary, it is a matter of record that the equal opportunities like other PRAs' were granted to GIMS for providing clarifications. The resolution plans were put to vote only after receipt of final clarifications from the PRAs. It is a matter of record that the financial proposals were finalized upon conclusion of the E-Bidding process conducted on 29 July 2024 and the final resolution plans were submitted by the PRAs on 5 August 2024. It is only thereafter clarifications to queries were requested from the PRAs and upon receipt of the clarifications from the PRAs, the final resolution plans alongwith the clarifications were put to vote on 31

August 2024. M/S GIMS itself provided the final clarifications vide email dated 31 August 2024. Hence this plea is an after thought.

13.10 Ld. Sr. Counsel for the RP further submits that GIMS deliberately withheld material information that the financial proposal was crystallized upon conclusion of E-Bidding conducted on 29 July 2024 and that the Challenge Process Document as approved by the CoC and accepted by the participants of the E-Bidding Process which very clearly stated as follows:

“1.4.6 The financial proposals submitted during the Challenge Process shall be unconditional and irrevocable and cannot be modified at their own behest in any manner whatsoever subsequent to the Challenge Process. In case any Eligible PRA does not participate in the Challenge Process, the last financial proposal submitted by such Eligible PRA in respect of its resolution plan on or before 6 June 2024 shall be considered as its final financial proposal and no further modification shall be permitted to such financial proposal. Any modification sought to be undertaken in breach of this provision shall be tantamount to a breach of the terms of the RFRP and shall be subject to the consequences as set out in the RFRP, the Code and CIRP Regulations.”

This is binding on the applicant

13.11 Ld. Sr. Counsel submits that on 05.09.2024 GIMS sent an email to the RP clarifying that the 2nd instalment to the Secured Financial Creditor (SFC) would be paid within a period of 90 days (which was earlier stated as within 365 days). GIMS was provided with reasonable and ample opportunities to clarify its revised resolution plan. However, regardless of these opportunities, GIMS chose to send its email while the e-voting on the resolution plans by the CoC members was already in progress. This is a breach of process.

13.12 Without prejudice he further submits that the increment in the bid amount to pay Rs. 120 Cr. Within 30 days is an afterthought and the said offer was emailed to the CoC members on 7 October 2024 after the Hon'ble High Court order dated 23 September 2024 and 4 October 2024 were passed. GIMS having actively participated in the resolution plan process of the CD was well aware that the resolution plans were put to vote on 31 August 2024.

13.13 Ld. Sr. Counsel for the RP submits that the plan submitted by SRA was approved by 73.38% of the CoC and pursuant to this the RP filed an application before this adjudicating authority for the approval of resolution plan. He further submits that there is no provision in the code or the CIRP regulations permitting acceptance of offers while the CoC approved resolution plan is pending for approval before this Adjudicating Authority. In this regard he draws our attention to the case of **Kalinga Allied Industries (P) Ltd v. CoC (Bindals Sponge Industries Ltd.)**, Company (AT) (Ins) No. 689 of 2021 dated 19.09.2022 wherein in para 9 Hon'ble NCLAT observed as follows:

This Order has attained finality and no fresh consideration of any Resolution Plan at this stage can be entertained. It is reiterated that the 'Maximisation of Value of Assets' ought to be 'within the specified timelines' and if it is not a 'timebound process', the entire scope and objective of the Code would fail merely because there is another higher offer made by a third party, the CoC cannot consider another Plan of a third party who did not participate in the CIRP Proceedings.

For all the ongoing reasons, this Tribunal is of the earnest view that once Plan is submitted for approval, it is binding between the CoC and the SRA, unless there is any material irregularity or is against the provisions of Section 30(2) of the Code the Adjudicating Authority cannot, in its limited jurisdiction, interfere.

13.14 Ld. Sr. Counsel for the RP states that the mere fact that the highest value resolution plan was not approved by the majority of the CoC members neither makes the approved resolution plan non-compliant in terms of code, nor does it prove abuse of discretionary power or an arbitrariness. Further, the approval or rejection of any resolution plan was clearly based on the scores of EM and the RFRP as approved by the CoC. In the quantitative parameters of the EM, 50% of the weightage was allocated to the upfront cash recovery for SFCs within 45 days. In its revised resolution plan dated 05.09.2024, GIMS proposed to make the upfront cash payment to SFCs within 365 days of this Adjudicating Authority's approval, whereas the SRA committed to providing the upfront cash payment within 30 days of this Adjudicating Authority's approval. Therefore, the CoC in its commercial wisdom and in accordance with the RFRP and EM rightfully approved the resolution plan of OCL Iron & Steel Limited (SRA).

13.15 Respondent No. 2 (NARCL), Respondent No. 3 (Alchemist ARC) and the SRA OCL Iron & Steel Limited also made their submissions in response to the application filed by GIMS. The submissions made by Ld. Counsels appearing for R2, R3 and SRA are captured in the subsequent paragraphs.

13.16 R3 (Alchemist ARC) in its pleadings submit that out of the three CoC members (Respondent Nos. 2 to 4), only Respondent No. 2 (being the sole largest creditor having 73.38% voting share) voted in favor of the Plan submitted by OCL Iron & Steel (SRA), and the other two members (Respondent Nos. 3 and 4) voted in favor of the Plan submitted by the GIMS. Evidently, the value offered by the GIMS in its revised Resolution Plan was higher in value, as compared to the value offered by the SRA. Therefore, the R3 herein has, since the stage of deliberation upon the Resolution Plan in the first instance, has voted in favor of the Resolution Plan submitted by the GIMS as it is not only in compliance with the provisions of the IBC but maximises the value of the CD, and provides for revival of the Corporate Debtor CD as a going concern. However, being a minority creditor in the CoC, the outcome of the Plan Approval

Process was entirely based upon the vote cast by Respondent No. 2 herein. Further, strictly in the commercial interest of the R3 as well as with an intent to maximise the value of the CD, the R3 also undertakes to consider the revised proposal dated 07.10.2024 submitted by the GIMS, since the said proposal significantly increases the value to be received by the R3 herein.

13.17 Ld. Sr. Counsel Mr. Niranjan Reddy appearing for the R2 (NARCIL) submits that GIMS has wrongly portrayed R2 as acting in an arbitrary and discriminatory manner in approving the resolution plan of the SRA. He further submits that it is a settled position of law that once a resolution plan has been approved by the CoC, there is no provision permitting reconsideration of the resolution plan because otherwise/it would render the CIRP to be a never ending process as opposed to a time bound process as envisaged under the Code. M/s GIMS is seeking rejection of the resolution plan without any legal basis or provision, when it has adopted a not so serious approach throughout the CIRP. Further, the resolution plan of the GIMS even with the purported clarification dated 05.09.2024 did not attain a score higher than that of the SRA and therefore GIMS is only attempting to derail the CIRP knowing fully well that time is of the essence to the IBC proceedings.

13.18 Further, Hon'ble Supreme Court in a plethora of judgments held that the decision of the CoC in accepting or rejecting the resolution plan is purely in exercise of its commercial wisdom and cannot be subjected to judicial scrutiny, save and except for non-compliance of the limited grounds laid down under Section 30(2) of the Code. Moreover, R2 as a member of the CoC, has exercised its commercial wisdom by assessing the overall feasibility and viability of the resolution plan of the SRA as a whole in accordance with the RFRP, EM, the Code and the Regulations thereto.

13.19 Further, M/s GIMS has misled this Adjudicating Authority by presenting an incorrect interpretation of the order dated 04.10.2024 passed in Review Petition (C) No. 367 of 2024 by the Hon'ble Delhi High Court as there was no direction in the order for M/s GIMS to submit a

revised proposal prior to approval of the resolution plan by this Adjudicating Authority. Hon'ble Delhi High Court only observed that if M/s GIMS is so advised to make a revised proposal it would have to be considered in accordance with law.

13.20 Ld. Sr. Counsel appearing for the OCL Iron & Steel (SRA) also submits that GIMS has no locus to challenge the resolution plan approved by the CoC as the Resolution Plan of OCL Iron and Steel offered an upfront payment of Rs. 101.12 Crores (being the full and final settlement of all dues of the creditors), within a period of 30 days from the date of approval of the resolution plan by this Tribunal as opposed to which the Applicant offered an amount of Rs. 27.477 Crores within a period of 45 days from the date of approval of the resolution plan and the balance amount of Rs. 82.398 Crores within 365 days from the date of approval of the resolution plan by this Tribunal. Further, the resolution plan of OCL also provided an additional amount of Rs. 7.2 Crores for the purpose of settling dispute of the land situated at Gautam Buddha Nagar, which is necessary for complete revival of all business activities of the CD.

13.21 This amount of Rs. 7.5 Crores has not been taken into consideration for the computation of NPV as the said amount was not intended for settlement of the dues of the creditors but an additional infusion by OCL for the purpose of revival of business activities of the CD.

13.22 Further, M/s GIMS was afforded ample time and opportunity to revise its bid during the Challenge Process. The Challenge Process documents explicitly stated that this bidding would be final, and all PRAs would be bound by the outcome. Consequently, there is no provision for revising bids post-Challenge Process. Furthermore, GIMS signed and unconditionally accepted the Challenge Process terms before its commencement, acknowledging the finality of the bidding process. Therefore, any requests for bid revisions after the Challenge Process are untenable. M/s GIMS vide email dated 05.09.2024, (i.e. after commencement of voting on the resolution plans) offered to pay the second instalment to the secured financial creditors within 90 days.

M/s GIMS could not have been permitted to revise its offer after the commencement of voting and the RP rightly did not take the same into consideration.

14. Analysis and Findings

- 14.1 We have heard the Ld. Sr. Counsel appearing for the applicant/GIMS in IA-5176/2024 and Ld. Sr. Counsels appearing for NARCL, Alchemist Asset Reconstruction Company Limited, RP and SRA and perused the documents/ pleadings. Further, Ld. Sr. Counsel for the RP also made submissions and presented the resolution plan approval application (IA-52/2024). Before proceeding to adjudicate on the plan approval application, we will deal with the issues raised in IA-5176/2024. Salient dates and events in respect of the present case which are relevant to be noticed for consideration are as follows:
- 14.2 Vide order dated 11.01.2024, this Adjudicating Authority admitted the Section 7 application against the CD. On 11.03.2024 the RP issued Form G dated 11.03.2024 and addendum to Form G dated 28.03.2024 wherein the last date for submitting EOI was 02.04.2024. Thereafter, on 23.04.2024 in the 4th CoC meeting the RFRP and Evaluation Matrix was approved by the CoC with 81.31% voting. On 06.06.2024, being the last date for submitting the resolution plans, GIMS along with other PRAs submitted their resolution plans. In the 11th CoC meeting dated 01.07.2024 and 02.07.2024 the CoC members deliberated that since the difference between the highest and lowest plan value is considerable, challenge process may be adopted to filter out the non-serious PRAs. The CoC agreed to adopt an E-bidding process and discussed upon the nuances of the challenge process, it was agreed that the E-bidding shall be conducted on NPV basis.
- 14.3 Thereafter, the E-bidding process was conducted on 29.07.2024. In the 13th CoC meeting dated 31.07.2024 the RP updated the CoC about the conclusion of E-bidding process and presented the results before it. The CoC in this meeting agreed to grant time until 05.08.2024 to the PRAs to submit their revised resolution plan with the clarifications and the

revised financial proposal. M/s GIMS and other PRAs submitted their revised resolution plan on 05.08.2024. In the 14th CoC meeting dated 12.08.2024 the RP apprised the CoC that the revised resolution plan which were received by the end of the day on 05.08.2024 were uploaded on a secured virtual network (VDR- Virtual Data Room) and the link to access the same has been shared with the CoC members. In the 15th CoC meeting dated 29.08.2024 the RP apprised CoC regarding quantitative and qualitative parameters on the CoC approved format of Evaluation Matrix (EM) and presented the scores of the PRAs as per the EM for the consideration of the CoC. The compilation of the scores of the fifteen PRAs on both quantitative and qualitative parameters is as under:

Sr. No	Names of PRA	Final Score as per Evaluation Matrix (Quantitative + Qualitative)
1.	Gateway Investment Management Services (Difc) Limited	48
2.	OCL Iron & Steel Ltd	51
3.	Palika Towns LLP	33
4.	Dickey Alternative Investment Trust	38
5.	Aavanti Renewable Energy Pvt. Ltd	13
6.	JFC Finance (India) Limited (Lot 2a)	28
7.	Derit Infrastructure Private Limited	22
8.	Kundan Care Group - Ankit Sharma	25
9.	Vensar Constructions Company Limited	15
10.	Ever On Power	14
11.	HR Commercials Private Limited & Sunrise Industries	10
12.	Resurgent Property Ventures Pvt Ltd and Sanjay Lodha	15
13.	Authum Investment & Infrastructure Limited	15
14.	Shravan Sampath	14
15.	Orissa Metaliks Private Limited	12

14.4 The last date for submitting the clarifications on the resolution plans was 29.08.2024, however, certain PRAs could not provide clarifications/signed addendums by 29.08.2024 and at the instructions of the CoC, the signed addendums were accepted until 30.08.2024. After the receipt of clarifications/signed addendums, the RP further put forth all the fourteen Resolution Plans (one Plan being non-compliant)

along with the clarifications/addendum before the members of the CoC for their consideration and requested them to vote upon the same. On 30.08.2024 the RP issued an email to M/s GIMS to modify the resolution plan as per his comments and on 31.08.2024 M/s GIMS submitted its last addendum to the Resolution Plan, after addressing the clarification sought by the RP.

- 14.5 The e-voting on approval of resolution plan commenced at 11:30 AM on 31.08.2024 and concluded at 10:00 PM. on 07.09.2024. This resulted in the resolution plan submitted by OCL Iron & Steel Limited being approved by 73.38% of the CoC. Thus, OCL Iron & Steel Limited emerged as the successful resolution applicant (“Successful Resolution Applicant”) and its plan dated 06.06.2024 as revised on 05.08.2024 along with the addendum dated 29.08.2024 was approved. The other two CoC members IFC Limited (7.93% voting share) and Alchemist ARC (18.69% voting share) did not voted in favour of the Resolution Plan of OCL Iron and Steel Limited and voted in favour of resolution plan of M/s GIMS.
- 14.6 Further when the voting was going on till 07.09.2024, on 05.09.2024 M/s GIMS submitted a clarification to the CoC and RP that 2nd instalment of payment (75% amounting to Rs 82,39,80,000) shall be paid within 90 days from the effective date instead of earlier stated 360 days. On 09.09.2024 the RP notified M/s GIMS that the clarification dated 05.09.2024 cannot be considered after the resolution plan have been put to vote on 31.08.2024 and the process is going on.
- 14.7 In its pleadings M/s GIMS has contended that non placement of the 05.09.2024 clarification is a material irregularity committed by the RP which had vitiated the entire process in which the resolution plan was approved by the CoC. The voting on final resolution plans received from all PRAs commenced on 31.08.2024 and was scheduled to conclude on 07.09.2024, however before the voting had concluded, on 05.09.2024 M/s GIMS addressed a clarification vide email to the RP and CoC stating therein that the 2nd instalment of 75% amounting to Rs.

82,39,80,000 which was earlier proposed to be paid within 12 months, will now be paid within 90 days.

14.8 The RP has replied on 09.09.2024 that he did not submit the GIMS clarification dated 05.09.2024 before the CoC as the voting had already commenced on 31.08.2024. Ld. Sr. Counsel for the applicant submits that this stand of RP is misconceived as when the clarificatory email was issued on 05.09.2024, the voting lines were still open and they closed only on 07.09.2024. Secondly, the RP was duty bound to place the material clarification given by GIMS in its email before the CoC. Had the CoC members been granted access to the material clarification that GIMS had submitted, the CoC members would have voted differently. We take note that this contention of GIMS is not correct as on 05.09.2024 the CEO of GIMS Mr. Haider Bangash wrote to the CoC members conveying in its material clarification that 2nd instalment will now be paid within 90 days. The relevant extract of email dated 05.09.2024 is extracted as under:

From: Haider Bangash
Sent: Thursday, September 5, 2024 1:45 PM
To: taveesh@blackdiamondpe.in; keyur.thar@idrel.co.in; pankaj.agnihotri@idrel.co.in; zng@ifc.org; sanjay.sipani@idrel.co.in; arhawnn.singh@idrel.co.in; makveyune@ifc.org; manish@alchemistarc.com; jeevan@alchemistarc.com; manish@alchemistarc.com
Subject: Revised Payment Proposal from RA

Annexure A-16

Dear Sirs,

With reference to Resolution Plan submitted by us, RA had proposed to pay 2 installments.

We hereby confirm that we shall make payment of second installment to SFCs (in lieu of Assignment of Debt in favor of RA) within 90 days.

Regards

Haider Bangash

CEO

Gateway Investment Management Services (DIFC) Limited

21-01 ICD Brookfield Place

DIFC, Dubai

00971 (0) 4323 1234

00971 (0) 5616 40472

Thereafter, on 09.09.2024 the RP also wrote an email Mr. Haider Bangash thereby conveying to him that the CoC members are aware of the changes proposed by GIMS. However, the RP has not received any instructions from any CoC member to consider the changes proposed by it. The relevant extract of email dated 09.09.2024 is extracted as under:

Steno Typist

Annexure A-17

From: .ibc 2024helios <ibc24helios@gmail.com>
Sent: 09 September 2024 13:23
To: Haider Bangash
Cc: Alok Kumar Agarwal; abhishek@insolvencyservices.in; rohil@insolvencyservices.in; Rashmi Raj; Kiran Bisht
Subject: Re: Revised Payment Proposal from RA

Dear Sir,

As you are aware, the resolution plans were put to vote on 31 August 2024 and no clarifications could have been accepted by the undersigned after the resolution plans were put for approval of the CoC.

You may appreciate that time and reasonable opportunities were accorded to the PRAs for submitting their resolution plan and the clarifications after the E-bidding concluded on 29 July 2024. After the receipt of the final resolution plans on 5 August 2024, considerable opportunities were granted to the PRAs to provide clarifications until 30 August 2024. Subsequently, all eligible resolution plans along with the addendums/ clarifications received until 30 August 2024 were put for approval of the CoC.

We also note that you have conveyed the proposal to the CoC members before the email was sent to the undersigned and the CoC members are aware of the changes proposed by you. However, the RP has not received any instructions from any CoC member to consider the changes proposed by you.

The outcome of the e-voting shall be conveyed to the PRAs in accordance with the RFRP.

On Thu, Sep 5, 2024 at 6:25 PM Haider Bangash <hbangash@gatewavims.com> wrote:

Please see our revised offer below. Apologies for not sending you the email earlier.

It was an inadvertent mistake.

Regards

We hold that there was no necessity to consider the 05.09.2024 clarification as the process document bars such a intrusion at this stage. The applicant unsuccessful resolution applicant is bound by the terms of process and it is applicable to all eligible participants. Applicant cannot plead for special treatment because he thinks that the revised proposal will be appealing to the CoC. If the window is opened for one proponent, then all eligible participants will have to be given a chance. This will defeat the very process of timely resolution. The applicant knew that all parties were given a chance to improve their offer. A time limit was fixed and extended for all. This window was closed to all on a date and it cannot and should not be opened, just for the asking basis the clarification or improved offer as in this case. When time is the essence in IBC we cannot allow applicant of this kind to stall

the process. In view of the above we reject the above contention made by GIMS.

14.9 In the 4th CoC meeting dated 23.04.2024 the RFRP and Evaluation Matrix was approved with 81.31% of voting percentage wherein it was decided that the resolution plans will be divided into two sections and evaluated based on a defined set of evaluation parameters as defined below:

Sr. No.	Parameter	Weightage
Part A	Quantitative Parameters	80
Part B	Qualitative Parameters	20
	Total	100

Sr. No.	Quantitative Parameters	Weightage	Effective Bid Value (EBV): Illustrative Example	Remarks
A.	Upfront Cash recovery to Secured Financial Creditors with minimum upfront cash recovery of 25% as per Resolution Plan payable within 45 days of approval by NCLT.	50%	A= 50% X upfront cash offered for Secured Financial Creditors Example: If upfront cash offered to Secured Financial Creditors is INR 100 Cr. A= 50% X 100 i.e. 50	Resolution Plan involving minimum upfront cash payment of 25% to Secured Financial Creditors shall specify the sources of funds, with evidence to the satisfaction of RP/CoC. To be paid within 45 days from Adjudicating Authority approval of the resolution plan.
B.	NPV of continuing portion of debt for	40%	B=40% X NPV arrived Post discounting for	Maximum permissible

	payment to Secured Financial Creditors maximum of 2 year. Discounting factor shall be as follows: up to 45 days: Nil ; 46 days to 1 year: 12%; more than 1 year to 2 year: 15% ; more than 2 year to 3 year: 100%		payment offered to Secured Financial Creditors. Example: If NPV works out to INR 50 Cr. B=40% X 50 i.e. 20	tenure of 3 years from the approval of the Adjudicating Authority.
C.	Payment to operational and unsecured financial creditors	5%	Summation of C (i) and (ii) C= 0.40+0.60= 1	
(i)	Payment to Operational Creditors	2%	C(i)=2% X amount to be paid to Operational Creditors. Example: If payment to OC is INR 20Cr. C(i)=2% X 20 i.e. 0.40	RA to propose payment to Operational Creditors.
(ii)	Payment to Unsecured Financial Creditors	3%	C(ii)=3% X amount to be paid to Unsecured Financial Creditors. Example: If payment to Unsecured Financial Creditors is INR 20Cr. C(ii)=3% X 20 i.e. 0.60	RA to propose payment to Unsecured Financial Creditors.
D.	Fund infusion in the Company for the purpose of capital expenditure and working capital requirement	5%	D=5% X fund infusion. Example: If fund infusion of INR 20 Cr is proposed. D=5% X 20 i.e. 1.00	Infusion of amount any envisaged after 1 year would not get any mark.
	Effective Bid Value [A+B+C+D]	100%	50+20+1+1=72	

Sr. No.	Qualitative Parameters	Weightage	Effective Bid Value (EBV): Illustrative Example	Remarks
A.	Presence /Expertise in Solar/Power Industry	50%	Resolution Applicants with direct or indirect presence in Solar/Power Industry shall be awarded 5 points. Example: In case of experience A=50% X 5 i.e. 2.5	The sector experienced RA is better equipped to identify and implement value-enhancing measures.
B.	Ability to turnaround distressed companies' Managerial competence and technical abilities	50%	Resolution Applicants with the ability to turnaround distressed companies - Managerial competence and technical abilities shall be awarded 5 points. Example: In case of experience B=50% X 5 i.e. 2.5	Turnaround experience will indicate the resolution applicant's ability to execute and implement the proposed plan effectively.
	Effective Bid Value [A+B]	100%	2.5+2.5=5	

In the 12th CoC meeting dated 08.07.2024 & 09.07.2024 the CoC also decided to conduct a challenge mechanism wherein the CoC was of the view that the basis for voting on resolution plans will be the evaluation matrix and the commercial wisdom of the CoC. In the challenge mechanism at clause 1.4.6 it was categorically stated that as follows:

The financial proposals submitted during the Challenge Process shall be unconditional and irrevocable and cannot be modified at their own behest in any manner whatsoever subsequent to the Challenge Process. In case any Eligible PRA does not participate in the Challenge Process, the last financial proposal submitted by such Eligible PRA in respect of its resolution plan on or before 6 June 2024 shall be considered as its final financial proposal and no further modification shall be permitted to such financial proposal. Any modification sought to be undertaken in breach of this provision shall be tantamount to a breach of the terms of the RFRP

and shall be subject to the consequences as set out in the RFRP, the Code and CIRP Regulations.

It is this clause when it binds all proponents it binds applicant as well. If in the name of clarification something better as pleaded is sought to be done, then the process will have to be restarted. Giving the applicant to improve the offer will tantamount to arbitrariness in the process. The timelines and active deliberation of the CoC has been captured. The plans of eligible persons have been analysed, discussed and parameters have been set the rules of the game and the applicant seeks to change it on the fallacious premises that its offer is better. We cannot subscribe to this view because the commercial wisdom to accept one or the other is with the CoC and they have completed their role. We find no infirmity in the CoC proceedings or the RPs conduct in the entire process. The allegation of arbitrariness is devoid of merits. The CoC it appears have accepted that commercially it was attractive for the CoC to receive amount earlier and the CoC in the commercial wisdom was of the view that the amount that is received first has to be evaluated on a higher footing as opposed to receiving more payment but at a later date. That The SRA offered to pay the entire amount in its plan in 30 days and therefore its final score after the Evaluation matrix (both quantitative + qualitative parameters) was 51 and that of GIMS was 48 is the CoC wisdom. Further, the RFRP dated 23.04.2024 at Annexure-I also included in the CoC's wisdom the Evaluation Matrix (Page 258 of Vol-3 of IA-52) which was categorically shared, with all PRAs, along with the Challenge Process document being issued upon the PRAs including GIMS. This shows that GIMS including other PRAs were well aware of the terms of the evaluation criterion to be followed while voting on the plan. It is binding on M/s GIMS.

14.10 Pursuant to Hon'ble Delhi High Court order dated 04.10.2024 (para 13.5 above), GIMS wrote an email dated 07.10.2024 to the RP conveying to RP that the revised payment in its plan will be Rs. 120 Crores, increased from the previously stated Rs. 109.875 Crores and this amount shall be payable within 30 days from the NCLT approval date

of the plan. The RP thereafter convened the 17th CoC meeting dated 14.10.2024 in which the CoC discussed on the email dated 07.10.2024 as sent by GIMS to the RP. All the CoC members as well as the legal counsel gave their views on the email dated 14.10.2024 and the team of RP, finally concluded the discussion to which all CoC members agreed upon as:

"The CoC members are in favour of Value, provided it adheres strictly to the provisions of the IB Code. CoC does not intend to breach established procedures, IB Code, or any relevant rules and regulations, and will follow orders passed by NCLT"

As to what is best offer in value maximisation is the sole domain of CoC. We also find that the orders of Hon'ble Delhi High Court provide for treating the applicant as per law and we have heard the applicant on law and facts and find none to grant any relief. The discussion of CoC basis the Hon'ble Delhi High Court order is with due respect to the orders of Hon'ble High Court. The opinion expressed by the participants CoC members cannot be the basis for change of circumstance as pleaded. The RFRP/EM and other parameter along with timelines have to be implicitly followed, as otherwise the IBC process will be defeated.

14.11 Further, it is imperative to emphasise that CIRP is a time bound process and allowing unsuccessful resolution applicants to keep revising their offer during the voting process and after the resolution plan has been approved by the CoC, will open a floodgate of legal proceedings which would derail and delay the successful resolution of the CD which is against the spirit and objective of the Code. It is a settled position of law that once a resolution plan has been approved by the CoC with majority voting as per Section 30(4), the commercial wisdom of CoC is paramount and the threshold voting share of approving a Resolution Plan is 66% as per Section 30 (4). There is no provision permitting reconsideration of the resolution plan; as otherwise, it would render the CIRP to be a never ending process as opposed to a time bound process

as envisaged under the Code. As far as the objection raised by other CoC members on value maximisation and therefore Swiss challenge among the two cannot be permitted. The majority decisions of CoC is binding on the others. The CoC members approved the RFRP/EM and the process. The rules set therein binds them as well. When the voting is going on no applicant can intercede and break the process. One CoC members cannot be allowed to disregard the approved process. This will be nothing but defiance to their own set of rules. Such conduct of CoC members will derail IBC process and may also set a bad precedent. In any event we find no legal infirmity in the process as alleged to interfere grant reliefs sought.

14.12 In view of the reasons mentioned above, IA-5176/2024 in the form of objection to the resolution plan is hereby dismissed.

14.13 Since the application opposing the approval of resolution plan has been dealt with, we will examine the plan approval application bearing No. IA No. 52/2024

14.14 We find the Resolution Plan of OCL Iron and Steel Limited was approved by 73.38% of voting share by the CoC members voting in favour of the Resolution Plan. As per the resolution of the CoC, the Plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Adjudicating Authority.

14.15 On perusal of the pleadings, the events and proceedings of CoC and the documents on record, we are satisfied that the Resolution Plan is in accordance with provisions of Sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

14.16 The reliefs, concessions and waivers sought by the SRA will be dealt with strictly as per law even if not specifically indicated.

14.17 As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the SRA is permitted to do the same within one year as

prescribed under section 31(4) of the Code or within such period as provided for in such law, whichever is later.

14.18 In case of non-compliance with this order or withdrawal of the Resolution Plan within the stipulated time, in addition to other consequences which follow under law, the CoC shall forfeit the Performance Security, already paid by the SRA.

15. Orders

15.1. Subject to the observations made in this Order, the Resolution Plan size of Rs. 101,12,00,000/- (Rupees One Hundred One Crores and Twelve Lakhs) as payment towards CIRP costs and towards claims of Creditors (FC settlement + workmen and employees + statutory dues), AND Rs. 12,20,00,000 (Rupees Twelve Crores Twenty Lakhs) for payment towards NOIDA land (7.2 crores) and CAPEX (5 Crores) is hereby **approved. The Resolution Plan shall form part of this Order.**

15.2. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that the revival of the Debtor Company shall come into force with immediate effect.

15.3. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.

15.4. Accordingly, **IA No.52/2024** is allowed and disposed of.

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

15.6. A copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies, NCT of Delhi & Haryana.

15.7. The Resolution Professional is further directed to hand over all records, premises/ factories/documents and all other relevant

records, available with it to the Resolution Applicant to finalize and co-operate on the further line of action required for starting the operation and implementation. The Resolution Applicant shall have access to all the records and premises through the Resolution Professional to finalize the further course of action required for starting and running the operations of the Corporate Debtor.

15.8. The Registry is directed to send copies of the order forthwith to IBBI, all the parties and their Ld. Counsels for information and for taking necessary steps.

15.9. Certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

15.10. **To summarize:**

- a. IA-52/2024 for seeking approval of resolution plan is **allowed**
- b. IA-5176/2024 which is an objection to the resolution plan is dismissed
- c. File be consigned to record storage (current)

Sd/-

**RAMALINGAM SUDHAKAR
PRESIDENT**

Sd/-

**AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)**