



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

IA(IBC)/Plan/08/(CHE)/2024

In

CP(IB)/64(CHE)/ 2023

*(filed under Section 30(6) of the Insolvency & Bankruptcy Code, 2016 read with Regulation
39(4) of Insolvency & Bankruptcy Board of India Regulations, 2016)
(In the matter of **Spica Metfab Solutions India Private Limited**)*

MR. ARPIT KOTHARI

**RP OF M/S SPICA METFAB SOLUTIONS INDIA PRIVATE LIMITED,
204 B BLOCK, PRINCE GARDEN APARTMENT,
40, THAMBHUSWAMY ROAD,
KILPAUK, CHENNAI,
TAMIL NADU – 600010**

... Applicant/Resolution Professional

In the matter of

FINISH FUND FOR INDUSTRIAL CORPORATION LIMITED

...Petitioner/Financial Creditor

-Versus-

SPICA METFAB SOLUTIONS INDIA PRIVATE LIMITED

... Respondent/Corporate Debtor

Order Pronounced on 18th February 2025

CORAM

**SHRI JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)
SHRI RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)**

Appearance:

For Applicant : Raj Kumar Jhabakh

ORDER

1. IA(IBC)/Plan/08/(CHE)/2024 is an application filed on 04.09.2024 by the Resolution Professional of the Corporate Debtor Viz., **Spica Metfab Solutions India Private Limited** under Section 30(6) of the



Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as (“**the Code**”)) read with Regulation 39(4) of the Insolvency & Bankruptcy Board of India Regulations, 2016 seeking reliefs as follows:

- a) *To approve the Resolution Plan (as amended by Addendum dated 29.08.2024) filed by Successful Resolution Applicant i.e., M/s Subhlaxmi Investment Advisory Pvt Ltd which has been attached as Annexure 8.*
- b) *To direct that the Plan shall be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the Resolution Plan*

2. The Corporate Debtor has been engaged in the business of sheet metal manufacturing and assembling across of the verticals like automobiles, lifts & Elevator etc The executive summary of the Corporate Debtor is as hereunder,

<i>Name of the Corporate Debtor</i>	<i>Spica Metfab Solutions India Private Limited</i>
<i>CIN</i>	U74200TN2008PTC067855
<i>Date of Incorporation</i>	23.05.2008

3. CORPORATE INSOLVENCY RESOLUTION PROCESS OF SPICA METFAB SOLUTIONS INDIA PRIVATE LIMITED

The Corporate Insolvency Resolution Process in respect of the Corporate Debtor viz., ***Spica Metfab Solutions India Private Limited*** was initiated by this Adjudicating Authority vide its order dated 04.10.2023 based on an application moved by, in the capacity of Financial creditor under Section 7 of the code in CP(IB)64/2023, Mr. Arpit Kothari was appointed as the ‘Interim Resolution Professional’. Thereafter IRP was appointed as RP. The key dates



and events during the Corporate Insolvency Resolution Process period are tabulated as hereunder,

S.No.	DATE	EVENTS
1	12.10.2023	Public Announcement regarding initiation of Corporate Insolvency Resolution Process.
2	02.11.2023	The Committee of Creditors was constituted.
3	09.11.2023	1 st CoC Meeting –Resolved to appoint the IRP as RP.
4	23.11.2023	Appointment of Registered Valuers.
5	07.04.2024	End of 180 days of Corporate Insolvency Resolution Process Period
6	15.04.2024	Corporate Insolvency Resolution Process Period was extended for 90 days by order of this Adjudicating Authority,
7	21.01.2024 26.04.2024	Form G (Expression of Interest (EoI)) was published.
8	10.05.2024 & 18.07.2024	Performance bank guarantee to the tune of Rs 20L was deposited by the SRA.
9	15.05.2024	Invitation for Resolution Plan
10	04.07.2024	Last date for submission of Resolution Plan
11	22.08.2024	CIRP period was extended up to 04.09.2024
12	29.08.2024	9 th Coc meeting- Resolved and approved the resolution plan by Coc
13.	04.09.2024	Date of Filing of resolution plan with adjudicating authority.



4. *DELIBERATION OF THE CoC ON THE FEASIBILITY OF THE PLAN*

During the 9th CoC Meeting held on 29.08.2024 deliberations were made by the members of the CoC on the Resolution Plan submitted by the SRA. Accordingly, the Resolution Plan was resolved. The resolution is as hereunder,

"RESOLVED THAT

Pursuant to section 30(4) of the Code read with regulation 39(3) & 39(3B) of the IBBI (CIRP) Regulations, 2016, the CoC hereby approves the resolution plan submitted by M/s Subhlaxmi Investment Advisory Pvt. Ltd in the matter of Corporate Insolvency Resolution Process of M/s Spica Metfab Solutions India Private Limited."

5. *DETAILS OF THE SUCCESSFUL RESOLUTION APPLICANT*

NAME	CATEGORY
Subhlaxmi Investment Advisory Pvt Ltd	Corporate entity

The Applicant submits that the SRA, Subhlaxmi is a private company with an expertise in providing financial services, advisory and consultancy services on shares, stocks etc. and to purchase, sell, acquire, hold, dispose off in shares, stocks, securities, bonds etc. The SRA was incorporated in the year 2008 and has been into business for the last 15 years and has experience in investments advisory and consultancy services on shares, stocks etc. Furthermore, the SRA is part of the group which has a record for buying stressed assets and has acquired three corporate debtors which were under CIRP and successfully revived them and aims to do the same for the Corporate Debtor

SOURCE OF FUND

5.1 It is submitted that the source of funds for the plan will be primarily from the Resolution Applicant's internal accruals and funds will be sourced from borrowings from promoters/ relatives or related corporates.

5.2 Application of Funds,

Type of Creditor/ Claim	Total Amount Admitted	Total amount to be paid under Resolution Plan (INR)	Schedule of Payment
CIRP Cost	16,42,623/-	20,00,000/- (Rupees twenty lakh only)	In accordance of the Code and Regulations and in priority over payment to other creditors.
Operational Creditors- Workman	NIL	NIL	In accordance of the Code and Regulations
Financial Creditor SECURED	6,56,40,355/-	44,00,000/- (Rupees forty four lakhs only)	In accordance of the Code and Regulations
Financial Creditor UN-SECURED	5,75,185/-	5,752/- (Rupees Five thousand seven hundred fifty two only)	In accordance of the Code and Regulations
Operational Creditors Government Dues	Employees State Insurance Corporation-- 7,447/-	7447 (Rupees Seven Thousand Four hundred forty seven only) subject to note below*	In accordance of the Code and Regulations
	Employee Provident Fund Organisation-- 28,06,211/-	28,06,211 (Rupees Twenty Eight Lakhs Six thousand two hundred and eleven only) subject to note below*	In accordance of the Code and Regulations
	Commercial Taxes Department-- 13,79,673/-	10,000 (Rupees Ten Thousand only)	In accordance of the Code and Regulations
Operational Creditors- Employees	1,50,95,410.32/-	2,60,820/- (Rupees Two lakh sixty thousand eight hundred twenty	In accordance of the Code and Regulations
Operational Creditors- other than workman & Employees	5,48,09,893.37 /-	5,48,099/- (Rupees Five lakh forty eight thousand ninety nine only)	In accordance of the Code and Regulations and in priority over the payment to Financial Creditors
Grand Total	141956797.69/-	10,038,329/-	

Note:

*The resolution applicant submits that claims and dues related to ESI and PF will be settled independently by resolution applicant.



5.3 vide order dated 25.11.2024 Applicant was directed to file a performance bank guarantee along with receipt of payment, It is submitted that Resolution applicant has deposited sum of Rs 20,00,000 into the account of corporate debtor.

7. SALIENT FEATURES OF THE RESOLUTION PLAN

7.1 The Applicant submits that the Resolution Plan provides a detailed business plan which stipulates that manner in which the SRA proposes to manage the Corporate Debtor and keep it as a going concern The Resolution Plan approved by the CoC has considered the interest of all the stakeholders involved and the payments to the stakeholders are being made in the manner prescribed under provisions of the Code and the Regulations therein. The manner in which the interest of each of the stakeholder has been dealt with under the Resolution Plan.

7.2 The details of the creditors is given as under in the Application filed by the applicant

8. PAY-OUT TO STAKEHOLDERS AS PROPOSED IN THE PLAN

Sl.No	Category of Stakeholder/ Claim	Amount Admitted	Amount Provided under Plan
1	CIRP Cost	16,42,623/-	20,00,000
2	Operational creditor workman	NIL	NIL



3	Secured Financial creditor	6,56,40,355/-	44,00,000/-
4	Unsecured Financial Creditor	5,75,185	5,752
5	Operational Creditor And Government dues		
	Employees State Insurance corporation	7447	7,447
	Employee Provident Fund Organisation	28,06,211/-	28,06,211
	Commercial Taxes department	13,79,673/-	10,000
6	Operational creditor Employees	1,50,95,410.32	2,60,820/-
7	Operational creditor other than workman & Employees	5,48,09,893.37/-	5,48,099
	Grand Total	141956797	10,038,329

8.1 Payment Schedule

Sl no	Payment date	Amount
1	Within 30 days from the effective date	5,00,000
2	Within 90 days from the approval date	95,38,329
	TOTAL	10,038,329/-

9. IMPLEMENTATION & MONITORING COMMITTEE (IMC)

9.1 Implementation & Monitoring Committee shall be constituted to monitor the implementation of the Plan.

The members shall comprise –

The Resolution Professional (Chairman of the Committee)
One Representative of the CoC
One Representative of the Resolution Applicant



- 9.2 Monitoring Committee shall be responsible for effective implementation of Resolution plan and run the corporate debtor as going concern.
- 9.3 The monitoring committee shall continue to function till the payment of full consideration and transfer of the corporate debtor to the successful resolution applicant.
- 9.4 The Monitoring Committee shall further be responsible for the distribution of the proceeds received from the Resolution Applicant under the Plan. For the said purpose, the Chairman of the Monitoring Committee shall be paid a fee of Rs.2,00,000/- (Rupees Two lakhs Only) plus applicable GST per month along with out-of-pocket expenses on actuals from the date of approval of the Resolution Plan to till the period Monitoring Committee dissolves.

10. MANAGEMENT OF THE CORPORATE DEBTOR

10.1 *It is submitted in the Resolution plan Management of the corporate debtor will be as follows,*

10.2 *Board of Directors and Management team:*

(i) From the Effective Date, the powers of the existing board of directors of the Corporate Debtor shall continue to remain suspended and all powers of the board of directors of the Corporate Debtor shall be exercised by the Chairman of the Monitoring Committee.(ii) With effect from the payment of full Consideration, the Successful Resolution Applicant shall nominate its representatives to the Board of the Corporate Debtor and the Monitoring Committee shall take necessary steps to facilitate the appointment of new directors. The appointment of the then existing directors of the Corporate Debtor shall automatically terminate/expire, without requiring any further actions/approvals



on the part of the Corporate Debtor and the Registrar of Companies shall update the signatory details as reflected on the MCA portal by removing the then existing directors of the Corporate Debtor and showing the appointment of new directors as appointed by the Monitoring Committee upon nomination of the Successful Resolution Applicant.

(iii) With effect from the Effective Date, the Monitoring Committee will supervise the implementation of the Resolution Plan and operations of the Corporate Debtor. Monitoring Committee shall carry out operations and management of the Corporate Debtor, and to review, inter alia, the operations, management, record keeping, assets, compliance status of the Corporate Debtor and to perform other functions as agreed which are reproduced below:

Ensure filing of relevant e-forms with the Registrar of Companies in relation to all actions required to be taken for the purpose of completion of the acquisition of the Corporate Debtor by the Resolution Applicant, including in relation to the Capital Reduction; pay all dues of the Corporate Debtor (including but not limited to Tax dues, dues to sundry creditors, dues to workmen and Employees) in a timely manner and in accordance with the policies of the Corporate Debtor and provisions of applicable Law, limited to the amount of consideration as agreed in the resolution plan

Prepare all financial statements of the Corporate Debtor as of the Effective Date, and share the approved financial statements with the Resolution Applicant upon request; renew and maintain in force, all Business Permits; and take steps, to the extent possible, to rectify Non- Compliances of the Corporate Debtor with applicable Law.

11. MANDATORY COMPLIANCE UNDER IBC & REGULATIONS

From the averments made in the application as well as on perusal of Form -H, as filed by the Resolution Professional in relation to the procedural aspects, the same seems to have been duly complied with for which the Resolution Professional has issued a certificate and it is not necessary for this Authority to go into the same. However, this Authority is duty bound to examine the



Resolution Plan within the contours of Section 30 (2) of the IBC, 2016.

A Comparison vis-à-vis with the Mandatory compliance under the IBC and the Compliance made under the Resolution Plan

MANDATORY COMPLIANCE UNDER IBC,2016	COMPLIANCE UNDER RESOLUTION PLAN
S. 30(1) - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	Page 207-210 of the resolution plan
S.30(2)(a) - Payment of Insolvency and Resolution cost in the manner specified by the Board	Page 203 part A of the resolution plan
S.30(2)(b) -Payment of debts of Operational Creditors in such manner as may be specified by the Board, which shall not be less than the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under Sec. 53.	Page 184 of the resolution plan , resolution applicant has declared hat payment for operational creditor shall not be paid less than the amount to be paid to the operational creditor in the event of liquidation of corporate debtor under section 53.
S. 30(2)(c) – Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Page 175 part C of the Resolution Plan
S.30(2)(d) – Implementation and Supervision of the Resolution Plan.	Page 176 Part C(b) of the resolution plan
S. 30(2)(e) – The plan does not contravene any of the provisions of the law for the time being in force.	Page 160 Part IV C of the resolution plan
S.30(4) - Committee of Creditors approve the Resolution Plan by not less than 66% of the voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by the Board	Page 131 of the application



**MANDATORY CONTENTS OF THE RESOLUTION PLAN IN TERMS OF
REGULATION 38 OF CIRP REGULATIONS.**

	MANDATORY COMPLIANCE UNDER CIRP REGULATION	COMPLIANCE UNDER RESOLUTION PLAN
38(1)	The amount due to the Operational Creditor under Resolution Plan shall be given priority in payment over Financial Creditor.	Section IV of the resolution Plan
38(1A)	A Resolution Plan shall include a statements as to how it has dealt with the interest of all stakeholders, including Financial Creditors and Operational Creditors of the Corporate Debtor.	Section IV of the resolution Plan
38(1B)	A Resolution Plan shall include a statement giving details if 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 past.	Part IV section C of the resolution plan
38(2)	a) term of the plan and its implementation schedule	Section V and section VI of the Resolution plan
	b) management and control of the business of the Corporate Debtor during its term;	Part V Section C of the Resolution Plan
	c) adequate means for supervising its implementation	Part V section A 3 of the Resolution plan
38(3)	a) it address the cause of default;	Part I of the resolution plan
	b) it is feasible and viable	
	c) it has provisions for effective implementation	Part V of the Resolution Plan
	d) it has provisions for approval required and the timeline for the same; and	Page 203 part B payment plan



	e) the resolution applicant has the capability to implement the Resolution Plan.	Part III section D of the resolution Plan
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12. JUDICIAL PRONOUNCEMENTS OF THE HON'BLE SUPREME COURT IN RELATION TO APPROVAL OF A RESOLUTION PLAN

12.1 In so far as the approval of the Resolution Plan is concerned, this Authority is not sitting in appeal against the decision of the Committee of Creditors and this Authority is duty bound to follow the Judgment of the Hon'ble Supreme Court in the matter of **K. Sashidhar –Vs– Indian Overseas Bank (2019) 12 SCC 150**, decided on 05.02.2019 wherein in para 19 and 62 it is held as under;

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

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



financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count.”

12.2 Further the Hon’ble Supreme Court in the matter of **K. Sashidhar v. Indian Overseas Bank and Ors.** (2019) 12 SCC 150 decided on 05.02.2019 has lucidly delineated the scope and interference of the Adjudicating Authority in the process of approval of the Resolution Plan and held as under;

“55. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite per cent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides: (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.

58. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2)



of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with Section 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters “other than” enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers.”

(emphasis supplied)

12.3 The Hon’ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steels –Vs– Satish Kumar Gupta & Ors.** in Civil Appeal No. 8766 – 67 of 2019 decided on 15.11.2019 at para 42 has held as under;

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

12.4 Also the Hon’ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Ors.** (2020) 8 SCC 531 decided on 15.11.2019 after referring to the decision in *K. Sashidhar (supra)* has held as under;

“73. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or sub-class of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximizing the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the



Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal."

(emphasis supplied)

12.5 The Hon'ble Supreme Court in its recent decision in **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. –Vs- NBCC (India) Ltd. & Ors** in *Civil Appeal no. 3395 of 2020* decided 24.03.2021 has held as under;

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



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

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

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

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



this aspect of value maximisation do not, by themselves, make out a case of interference in the decision taken by the Committee of Creditors in its commercial wisdom

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

12.6 The Hon'ble Supreme Court in its recent decision in Paschimanchal Vidyut Vitran Nigam Ltd. Verus Raman Ispat Private Limited & Ors. In Civil Appeal no. 7976 of 2029 decided 17.07.2023 has held as under;

49. Rainbow Papers (Supra) did not notice the 'waterfall mechanism' under Section 53 – the provision had not been adverted to or extracted in the Judgement. Furthermore, Rainbow Papers (Supra) was in the context of a resolution process and not during liquidation. Section 53, as held earlier, enacts the waterfall mechanism providing for the hierarchy or priority of claims of various classes of creditors. The careful design of Section 53, locates amounts payable to secured creditors and workmen at the second place, after the costs & expenses of the liquidator payable during the liquidation proceedings. However, the dues payable to the government are placed much below those of secured creditors and even unsecured creditors. This design was either not brought to the notice of the Court in Rainbow Papers (supra) or was missed altogether. In any event, the Judgment has not taken note of the provisions of the IBC which treat the dues payable to secured creditors at a higher footing than dues payable to central or state Government.

(emphasis supplied)



12.7 Thus, from the catena of judgments rendered by the Hon'ble Supreme Court on the scope of approval of the Resolution Plan, it is crystal clear that only limited judicial review is available for the Adjudicating Authority under Section 30(2) and Section 31 of IBC, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the Committee of Creditors. The Applicant has filed Form -H in accordance with the IBBI (CIRP Regulations, 2016) along with this Application and the same is placed along with the application. The plan value is lesser than that of the liquidation value of the Corporate Debtor. However, considering the requisite approval of the CoC this Adjudicating Authority accepts the proposed plan value. The Hon'ble Supreme Court in the case of *Maharashtra Seamless Limited versus Padmanabhan venkatesh & ors* case has observed that there is no necessity that the plan value should match with the liquidation value. The relevant extract of the decision is reproduced below:

In Para 26

No provision in the Code or Regulations has been brought to our notice under which the bid of any Resolution Applicant has to match liquidation value arrived at in the manner provided in Clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. This point has been dealt with in the case of Essar Steel.

Para 28

"The Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis. Such is the scheme of the Code. Section 31(1) of the Code lays down in clear terms that for final approval of a resolution plan, the Adjudicating Authority



has to be satisfied that the requirement of sub-section (2) of Section 30 of the Code has been complied with".

The fair value and the Liquidation Value as mentioned in Form-H is as hereunder,

1.	<i>Fair Value</i>	Plant and Machinery Rs 1,71,00,000 Securities and other Financial assets 1,13,48,073
2.	<i>Liquidation Value</i>	Plant & Machinery Rs 1,38,00,000 Securities & other Financial assets 54,20,318
3.	Plan Value	Rs. 10,038,329/-

13. RELIEF & CONCESSIONS:

The Resolution Applicant has sought for various waivers and Concessions in Clause 9 of the Resolution Plan, which are as follows,

SL. NO.	RELIEF / CONCESSIONS SOUGHT	ORDERS THEREON
1.	Corporate Debtor shall stand regularized and their asset classification shall be 'standard' for the purposes of all applicable Law. For avoidance of doubt, the Corporate Debtor shall have been declassified and not be identified as a willful defaulter, by any bank or financial institution or consortium thereof in accordance with the guidelines of the Reserve Bank of India.	Granted subject to the provisions of companies act IBC other applicable laws
2.	The Ministry of Corporate Affairs to release and extinguish all the security interests created by the Corporate Debtor in favour of the creditors on and from the Transfer Date.	Granted subject to the provisions of companies act IBC other



		applicable laws
3.	The write-back and write-off entries will be adjusted within the capital reserve account. No tax liability should arise on the surplus in accordance with the provisions outlined in the Income Tax Act. Additionally, as part of the corporate revival strategy, the applicability of Minimum Alternate Tax (MAT) will be re-evaluated, and a reasonable deferral period for MAT may be pursued to facilitate the revival process while maintaining compliance with accounting standards and taxation regulations.	CBDT authorities to consider keeping in view the object of IBC, 2016.
4.	The requirement of obtaining a no objection certificate under Section 81 of the Central Goods and Services Tax Act, 2017, Section 281 of the IT Act and provisions of taking over predecessor's Tax liability under Section 170 of the said Act shall not be applicable. Further, the transaction shall not be treated as void under Section 281 of the IT Act for any claims in respect of Tax or any other sum payable by the Corporate Debtor or its shareholders (existing or otherwise) or any principal officer as defined under Section 2(35) of the IT Act or their successors. Similarly, any requirements to obtain waivers from any Tax Authorities including in terms of Section 79 and Section 115JB or any other applicable provisions of the IT Act is deemed to have granted upon approval of this Resolution Plan on the Effective Date. In addition, the requirement of affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner of the Corporate Debtor under Section 79 of the IT Act is deemed to have been fulfilled upon approval of this Resolution Plan.	Appropriate authorities to consider keeping in view the object of IBC, 2016.
5.	The Corporate Debtor shall be considered as a closely held company for the purposes of Section 79 read with Section 2(18) of the Income Tax Act, 1961 and accordingly the change in the shareholding of the Company pursuant to this Resolution Plan approved by the Adjudicating Authority under the provisions of Code, shall not result to lapse of any brought forward	Appropriate authorities to consider keeping in view the object of IBC,



	losses of the Corporate Debtor after affording a reasonable opportunity of being heard to the jurisdictional principal commissioner or commissioner of Income tax. The benefit of carried forward losses will be available for set off to the Corporate Debtor for period of eight years from the Transfer Date.	2016.
6.	Under Section 115JB of the Income-Tax Act, 1961, assessed company for which a rehabilitation scheme was approved or reference was made under the provisions of the erstwhile Sick Industrial Companies (Special Provisions), Act, 1985 was not subject to minimum alternate tax until the net worth becomes positive. Accordingly, a similar benefit ought to be extended to a resolution plan approved in accordance with the Code since the Code supersedes all other applicable Laws and deals with the same subject matter as the erstwhile Sick Industrial Companies (Special Provisions), Act, 1985. In light of this, the Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India (hereinafter referred to as "CBDT/DOR") shall: (i) exempt income / gain / profits, if any, arising as a result of giving effect to the Plan (including but not limited to write-back of loans/debt, Capital Reduction, issuance of new equity shares to the Resolution Applicant) from being subjected to minimum alternate tax in the hands of Company under the provisions of the Income- tax Act, 1961; (ii) grant an exemption to receive all income without deduction of any Tax under the provisions of Chapter XVII-B of the Income-tax Act, 1961 for a period of 10 (ten) years from the Transfer Date (iv) waive all liabilities in respect of Taxes (including interest and penalty) arising in respect of periods up to the Transfer Date, including such Liabilities for the period up to the Transfer Date that may crystallize subsequent to the Effective Date.	Appropriate authorities to consider keeping in view the object of IBC, 2016.
7.	The Resolution Applicant shall restate the financial statements, in accordance with accounting standards and laws, post appointed date on completion of its financial obligations under the resolution plan which shall include	Granted subject to



	<p>(i) finalise /recast / resubmit the financial statements and accounts of the Corporate Debtor for financial years 2022-23 and 2023-24 in compliance with the applicable accounting standards/Ind-AS such as to reflect fair value of the assets as may be determined by the Corporate Debtor/ Resolution Applicant. For the above purposes, the Corporate Debtor shall be permitted to adjust the unamortized expenses, write off assets, create additional liabilities or expenses, write back of loan/liability or provision in books of account of the Company (including accounting adjustments arising on account of merger, if any, as part of the resolution plan) and such adjustment shall be recorded/ adjusted as/ against the 'Capital Reserve' (including arising on Capital Reduction of shares of the Corporate Debtor) and/or reserves and surplus, as may be determined by the Corporate Debtor/ Resolution Applicant, which shall be deemed to be in compliance with applicable accounting standards/ Ind-AS.</p>	<p>provisions of Companies Act.</p>
8.	<p>The Resolution Applicant shall be granted a waiver, from all actions, Proceedings or penalties under any applicable Law for any Non-Compliance (including in relation to levy of stamp duty) for an additional period of 12 months starting from the day following the Transfer Date.</p>	<p>Granted for waiver from all actions until Effective date.</p>
9.	<p>The Corporate Debtor and the Resolution Applicant shall be granted an exemption from all Taxes, levies, surcharges, cess, fees, transfer charges, stamp duty, registration charges, transfer premiums, and surcharges that arise from or relate to implementation of the Resolution Plan</p>	<p>Appropriate authorities to consider keeping in view the object of IBC, 2016.</p>
10.	<p>All actions undertaken pursuant to implementation of the Resolution Plan approved by the Adjudicating Authority shall be deemed to be exempt from any Tax and stamp duty.</p>	<p>Appropriate authorities to consider keeping in view the object of IBC, 2016.</p>
11.	<p>All Business Permits of the Corporate Debtor that may have lapsed or expired, shall stand</p>	



<p>renewed by the respective Governmental Authorities with effect from the Transfer Date and the Resolution Professional shall take all necessary steps to ensure such renewal in furtherance of its statutory duties under Section 20(1) read with Section 23 (2) of the Code. For avoidance of doubt, it is hereby clarified that, all Business Permits, rights, entitlements, benefits, subsidies and privileges whether under applicable Law, contract, lease or license granted in favor of the Corporate Debtor or to which the Corporate Debtor is entitled to or accustomed to, which have expired on the Transfer Date, shall be deemed to be renewed by the relevant Governmental Authority on an expedited basis and pending receipt of such Business Permits, the Corporate Debtor shall be permitted to continue to operate its business as a going concern, without disruption for the benefit of the Corporate Debtor for a period of 24 months or until renewed by the relevant Governmental Authority whichever is later. Without any liability for Non-Compliance by the Corporate Debtor, during the time specified above, the Resolution Applicant undertakes to cause the Corporate Debtor to obtain / renew such expired consents, licenses, approvals, rights, entitlements, benefits, incentives, subsidies and privileges, whether under law, contract, lease or license, granted in favor of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to, evaluate the steps required to address the same and take steps remedy the same to the extent possible. During the 24 month- period, the Resolution Applicant and the Corporate Debtor shall have immunity from any actions and penalties under any applicable Law for any Non-Compliance of applicable Law in relation to the Corporate Debtor as well as with the terms of any agreement or arrangement entered into with the Corporate Debtor which was existing as on the Effective Date and which continues for a period of 24 months from the date of acquisition of Control by the Resolution Applicant. If (i) any Governmental Authority</p>	<p>Appropriate authorities to consider keeping in view the object of IBC, 2016.</p>
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	<p>has suspended, cancelled, revoked or terminated any Business.</p> <p>Permits of the Corporate Debtor; or (ii) any Governmental Authority has threatened to suspend, cancel, revoke or terminate any Business Permits or the operations of any unit or facility of the Corporate Debtor; or (iii) where the Corporate Debtor has been in breach of the terms of any Business Permits or the provisions of applicable Law, then all such relevant Governmental Authorities shall provide 24 months after the Transfer Date in order for the Resolution Applicant to assess the status of these Business Permits or such Non-Compliances and ensure that the Corporate Debtor is compliant with the terms of such Business Permits and applicable Law - without such Governmental Authorities initiating any investigations, actions or Proceedings in relation to such Non- Compliances or taking any adverse measure which may interrupt or suspend the operations of the Corporate Debtor or any facility/ unit thereof.</p>	
12.	<p>From the Effective Date, all inquiries, investigations, suits, Claims, disputes, counter-claims, Proceedings (including any Tax Proceedings), Non-Compliances against the Corporate Debtor, pending or threatened, present or future in relation to any period until the Transfer Date, or arising on account of implementation of this Resolution Plan, shall stand withdrawn and dismissed and all liabilities and obligations therefore, whether or not set out in the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor will be deemed to have been written off fully, and permanently extinguished and no adverse orders passed in the said matters should apply to the Corporate Debtor or the Resolution Applicant. Upon approval of this Resolution Plan, all new inquiries, assessments, reassessments, rectifications, revisions, surveys, summons, investigations, notices, suits, claims, disputes, litigations, arbitrations or other</p>	<p>Granted in terms of the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited. 2021 SCC Online SC 313</p>



	judicial, regulatory (including any Tax Proceedings) or administrative proceedings will be deemed to be barred and will not be initiated or admitted against the Corporate Debtor in relation to any period until the Transfer Date and the Corporate Debtor and/ or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.	
13.	From and on the Transfer Date, all assets of the Corporate Debtor (whether under dispute or not) (including freehold properties, leasehold interests, or rights of the Corporate Debtor under leave and license agreements executed by it until the Transfer Date) shall be vested in the Corporate Debtor, free and clear of all Encumbrances, other than Encumbrances required to be assigned to the Resolution Applicant (to the extent applicable).	Granted in terms of the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited. 2021 SCC Online SC 313
14.	With effect from the Transfer Date, all Encumbrances created or suffered to exist over the assets of the Corporate Debtor or over the Securities of the Corporate Debtor, whether by contract or by applicable Law, created for the benefit of any third party shall stand unconditionally and irrevocably released (including return of title deeds and other documents held by the Financial Creditors) and all enforcement of security by any Persons commenced over any of the assets of the Corporate Debtor or over any Securities of the Corporate Debtor shall stand released and reversed, without the requirement of any further deed or action on the part of the Resolution Applicant or the Corporate Debtor (including any priority of claims that could have otherwise been claimed by the Tax authorities under Section 281 of the IT Act)	Granted subject to the provisions of companies act IBC other applicable laws
15.	No Governmental Authority (including	Granted



	regulatory, judicial and quasi-judicial authority) shall issue any orders, directions, decrees, Judgments etc. that will be in contravention of the provisions of the Resolution Plan (including the financial plan)	
16.	Any approvals that may be required from Governmental Authorities (including Tax authorities) in connection with the implementation of the Resolution Plan including on account of change in ownership / Control / voting power of the Corporate Debtor shall be deemed to have been granted on the Transfer Date. Further, upon approval of the Resolution Plan by the Adjudicating Authority, as a part of the implementation thereof no Tax shall be levied on the Corporate Debtor and / or the Resolution Applicant in connection with any steps undertaken as part of the Implementation Plan including but not limited to: (a) Capital Reduction of the Corporate Debtor, in order to provide exit to the existing shareholders of the Corporate Debtor; and (b) the issue of Securities of the Corporate Debtor, or receipt of any new debt or funds infusion by other funding mechanism under the Income Tax Act, 1961 and rules made thereunder.	Granted subject to provisions of companies act
17.	The Corporate Debtor and / or the Resolution Applicant and its Affiliates shall not in any manner be implicated in, or in any manner adversely affected by, or have any liability (including for any liability incurred in relation to the Corporate Debtor) in relation to, any investigations / proceedings / orders or any matters relating to the existing Promoters, holding companies, subsidiary companies, associate companies and/or group companies of the Corporate Debtor	Granted subject to companies act and applicable laws
18.	The provisions of this Resolution Plan shall prevail over the provisions of all agreements / arrangements / purchase orders / work orders, etc. entered into by the Corporate Debtor to the extent of any inconsistencies	Granted
19.	All pre-emptive rights, transfer restrictions, share retention obligations or other limitations or restrictions applicable to the Corporate Debtor in respect of its subsidiaries, joint	Granted in terms of the judgment of the Hon'ble



	venture companies and associate companies, if any, shall immediately, irrevocably and unconditionally stand extinguished and waived and to that extent, the provisions of this Resolution Plan shall be binding on such subsidiaries, joint venture companies, associate companies of the Corporate Debtor and their respective shareholders, and no consent or approvals shall be required for the implementation of this Resolution Plan from any of the foregoing persons, and, and the Corporate Debtor shall have no liability to any person in this regard.	Supreme Court in Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited. 2021 SCC Online SC 313
20.	The Resolution Applicant and the Corporate Debtor shall have immunity in respect of any Proceedings initiated by any Person at any time in connection with any matter whatsoever which relates to the period prior to the Transfer Date. For the avoidance of doubt, it is hereby clarified that such immunity shall also extend to any individual who becomes a director or officer of the Corporate Debtor following the Transfer Date	Granted until the Effective date

SL. No.	RELIEF / CONCESSIONS SOUGHT FROM INCOME TAX	ORDERS THEREON
1.	The Central Board of Direct Taxes shall consider the Corporate Debtor as a widely held Corporate Debtor for the purposes of Section 79 read with Section 2(18) of the Income Tax Act, 1961 ("IT Act") and that the change in shareholding of the Company pursuant to the Resolution Plan shall not lead to lapse of brought forward losses of the Company.	CBDT authorities to consider keeping in view the object of IBC, 2016.
2.	The Central Board of Direct Taxes shall exempt income/ gain/ profits, if any, arising as a result of giving effect to the Resolution Plan from being subjected to tax under the provisions of the Income Tax Act, 1961.	CBDT authorities to consider keeping in view the object of IBC, 2016.
3	That there will be complete ceasure of any/ all prosecution, attachment and/or seizure against	CBDT authorities to



	the corporate debtor under any law for the time being in force pursuant to Section 32A Read with Section 238 of I B Code, 2016	consider keeping in view the object of IBC, 2016.
4	All MAT credit of the Company will continue with the Corporate Debtor (on a going concern basis).	Granted
5	Any requirements to obtain waivers from any Tax Authorities including in terms of Section 79 of the IT Act is deemed to have granted upon approval of this Resolution Plan on the Effective Date.	CBDT authorities to consider keeping in view the object of IBC, 2016.
6	Upon approval of the Resolution Plan, in case the SRA decides to expand or change the line of business, the Corporate Debtor will continue to avail the benefit of carry or set off of losses pursuant to the provisions of Section 79 of the Income tax Act, 1961, however, the SRA will ensure to comply with the requirements of the Companies Act, 2013	CBDT authorities to consider keeping in view the object of IBC, 2016.

SL. No.	OTHER RELIEFS	ORDERS THEREON
1	Notwithstanding anything contained in the RFRP, upon approval of the Plan by the Committee of Creditors in accordance with Section 30(4) of the IBC, 2016 and subsequent issuance of a letter of intent to the Resolution Applicant by the Committee of Creditors, the Resolution Applicant is required to submit a performance bank guarantee equivalent to 100% of the consideration proposed in the Resolution Plan. However, the Resolution Applicant hereby submits that the PBG @10% will be submitted instead of 100%.	NA

14. It is submitted in from Form-H, that there are no avoidance application filed/pending against the corporate debtor.



15. It is seen that the resolution plan has been approved with 100% voting share. As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, all the compliances have been made by the RP and the Resolution Applicant for making the plan effective after approval by this Authority. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Section 30 & 31 of the IBC and also in compliance with regulations 38 & 39 of the IBBI (CIRP) Regulations, 2016.

16. In the light of the aforesaid, it is hereby ordered that the payment to the members of the Monitoring Committee shall be made by the Corporate Debtor on such terms and conditions agreed between the parties for the entire period of implementation as mentioned in this resolution plan.

17. In case of non-compliance/non-implementation/ failure during implementation of this order or withdrawal of the Resolution Plan by the Successful Resolution Applicant, the RP shall forfeit the EMD/Performance Guarantee or any further amount paid as per the terms of the resolution plan without any recourse to this Authority.

18. Subject to the observations made in this Order, the Resolution Plan is hereby **APPROVED** by this Adjudicating Authority. The Resolution Plan shall form part of this Order. 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. The Moratorium Imposed under section 14 shall cease to have effect from the date of this Order.



19. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for its record and also return to the Resolution Applicant. The Resolution Professional is further directed to hand over all records/premises/factories/documents to the Resolution Applicant to finalize the further line of action required for starting the operation of the Corporate Debtor under the control of the Resolution Applicant.

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

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

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

23. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.

24. **IA (IBC)/Plan/08/CHE/2024** stands **disposed of** accordingly.

25. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsel for information and for taking necessary steps.

26. File be consigned to the record room.

-Sd/-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-Sd/-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)

Rannika