IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-II

IA No. 1864/MB.II/2019
in
CP (IB) No.298/MB.II/2018

Vijaykumar V. Iyer, RP of Aircel Limited	…	Applicant/
In the matter of Aircel Limited	…	Petitioner/ Corporate Applicant

IA No. 1863/MB.II/2019
in
CP (IB) No.302/MB.II/2018

Vijaykumar V. Iyer RP of Dishnet Wireless Limited	…	Applicant/
In the matter of Dishnet Wireless Limited	…	Petitioner/ Corporate Applicant

IA No. 1865/MB.II/2019
in
CP (IB) No.300/MB.II/2018

Vijaykumar V. Iyer RP of Aircel Cellular Limited	…	Applicant/
In the matter of Aircel Cellular Limited	…	Petitioner/ Corporate Applicant

All three Interlocutory applications filed under section 30(6)
read with section 31(1) of the Insolvency and Bankruptcy Code, 2016

Order pronounced on: 09th June, 2020

Coram:

Mr Rajasekhar VK	:	Hon'ble Member (Judicial)
Mr Ravikumar Duraisamy	:	Hon'ble Member (Technical)

Appearances (in all three IAs):

For the Resolution Professional	:	Mr Ravi Kadam, Senior Advocate Mr Prateek Seksaria Mr Anoop Rawat Ms Salonee Kulkarni Ms Kriti Kalyani i/b Shardul Amarchand Mangaldas & Co, Advocates
For the Resolution Applicant	:	Mr Pradeep Sancheti, Senior Advocate Mr Pulkit Sharma Mr Prateek Mishra Mr Naman Singh Bagga Mr Indrajeet Hingane Mr Rugved More Mr Akhil Mahesh i/b L&L Partners, Advocates
For the Committee of Creditors (CoC)	:	Mr Chetan Kapadia Mr Madhav Kanoria Mr Anush Mathkar Mr Gautam Sundaresh Mr Yugal Jain i/b Cyril Amarchand Mangaldas, Advocates

COMMON ORDER

(in all three IAs – 1864/2019, 1863/2019 & 1865/2019)

Per: Rajasekhar V.K., Member (Judicial) & Ravikumar Duraisamy, Member (Technical)

1. Preamble

1.1. These three Interlocutory Applications (IAs) – IA No.1864/2019 in CP (IB) No.298/2018 *(in the matter of Aircel Limited)*, IA No.1863/2019 in CP (IB) No.302/2018 *(in the matter of Dishnet Wireless Limited)* and IA No.1865/2019 in CP (IB) No.300/2018 *(in the matter of Aircel Cellular Limited)* have been filed by Mr Vijaykumar V. Iyer, common Resolution Professional of Aircel Limited, Dishnet Wireless Limited and Aircel Cellular Limited *(collectively referred to as 'Corporate Applicants')*, under section 30(6) read with section 31(1) of the Insolvency & Bankruptcy Code (IBC), seeking approval of this Adjudicating Authority for the Resolution Plans submitted by UV Asset Reconstruction Company Limited for resolution of the corporate applicants.

1.2. Since there is substantial interweave of businesses between the three corporate applicants, the resolution plans are in *pari materia.* Therefore, all three IAs are being disposed of by means of a single order.

2. The journey of the Corporate Insolvency Resolution Process (CIRP)

2.1. Applications by the corporate applicants and orders thereon

2.1.1. Aircel Limited filed an application under section 10 of the IBC read with rule 7 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, before this Adjudicating Authority. The same was numbered as CP (IB) No.298/2018. Similar applications were filed by Dishnet Wireless Limited, which was numbered as CP No.302/2018, and by Aircel Cellular Limited, which was numbered as CP No.300/2018. All three application were filed on the same day, *i.e.,* 28.02.2018. After

ascertaining that the Corporate Applicant fulfilled all the requisite conditions for admission, the company petition bearing CP (IB) No.298/2018 was admitted *vide* detailed order dated 12.03.2018,[1] while CP (IB) Nos.300/2018 and CP (IB) No.302/2018 were both admitted on 19.03.2018.[2]

2.2. Appointment of IRP/RP and public announcements

2.2.1. Mr Vijaykumar V. Iyer [Reg. No.IBBI/IPA-001/IP-P00261/2017-18/10490] was appointed as the common Interim Resolution Professional (IRP) of the Corporate Applicants.

2.2.2. Public announcement of the commencement of CIRP was made on 16.03.2018 in *Business Standard* (English) and *Aj* (regional language) newspapers, inviting creditors to file their claims with the IRP by 28.03.2018.[3] Pursuant to this, the Committee of Creditors (CoC) was constituted. On 09.05.2019, the constitution of the CoC was revised upon receipt of new claims and revision of claims already filed.

2.2.3. The RP has stated that as on date of filing of the IAs, the verified and admitted financial debt of Aircel Limited stood at ₹19788,77,30,929/- (Rupees nineteen thousand seven hundred and eighty-eight crore seventy-seven lakh thirty thousand nine hundred and twenty-nine only). In the case of Dishnet Wireless Limited, the corresponding figure is ₹19488,73,02,930/- (Rupees nineteen thousand four hundred and eighty-eight crore seventy-three lakh two thousand nine hundred and thirty only) and that of Aircel Cellular Limited is ₹19484,70,62,390/- (Rupees nineteen

[1] At pages 28-41 of IA 1864/2019 (Aircel Limited)

[2] At pages 38-51 of IA 1863/2019 (Dishnet Wireless Limited) and pp.28-41 of IA 1865/2019 (in the case of Aircel Cellular Limited).

[3] At pages 42-45 of IA 1864/2019, referred to in para 4 thereof

thousand four hundred and eighty-four crore seventy lakh sixty-two thousand three hundred and ninety only).[4]

2.3. Constitution of CoC and voting share

2.3.1. The constitution of the CoC and the voting share of each of the financial creditors are as follows:[4]

Sl No.	Financial Creditor	Voting Share percentage
1.	AB Svensk Exportkredit	2.70
2.	Bank of Baroda	10.50
3.	Canara Bank	9.70
4.	China Development Bank Corporation	13.70
5.	Exim Bank	2.20
6.	Jammu & Kashmir Bank	1.70
7.	L&T Infrastructure Finance Limited	1.10
8.	Nordic Investment Bank	2.80
9.	Punjab National Bank	15.10
10.	Standard Chartered Bank	1.70
11.	State Bank of India	36.60
12.	Syndicate Bank	2.10
	Total	100.00

2.3.2. The first meeting of the CoC was held on 11.04.2018, at which the IRP was confirmed as the Resolution Professional (RP).[5] Information

[4] Para 4 in each of the IAs

[5] Para 6 at page 4 of IA 1864/2019

Memorandum as required under section 29 of the IBC and regulation 36 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 was submitted to the CoC on 01.05.2018 after receiving confidentiality undertakings from each member of the CoC.

2.3.3. The Department of Telecommunications (DoT), Govt of India, has also been invited and has been attending meetings of the CoC from the third meeting held on 06.06.2018 and thereafter. The RP has confirmed that DoT has not raised any reservation as regards claim verifications, the resolution plan process, the conduct of the CIRP in general and the Resolution Plan itself.[5]

2.4. Appointment of valuers

2.4.1. The liquidation value and fair value of the Corporate Applicant was determined by two registered valuers, *viz.,* (1) RBSA Valuation Advisors LLP; and (2) Duff & Phelps India Private Limited, as laid down in regulation 27 and 35 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.[6]

2.5. Advertisements

2.5.1. The RP issued advertisements in the Business Standard inviting resolution plans from prospective resolution applicants.[7] The last date for submission of resolution plans was 08.08.2018, which was extended from time to time, upto 07.12.2018.[8] The RP received a total of forty-five Expressions of Interest (EoIs). Out of them, twenty applicants executed the requisite

[6] Para 7 at pages 4-5 of IA 1864/2019

[7] Para 8 at page 5 of IA 1864/2019, copies of advertisement and corrigenda collectively at pages 46-62 thereof

[8] Page 61 of IA 1864/2019

confidentiality undertakings in terms of regulation 36(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. A Process Note explaining the eligibility criteria, evaluation matrix, timelines, formats for submission of resolution plans, *et al,* was also prepared.

2.6. Appointment of Process Advisor

2.6.1. The CoC appointed Alvarez & Marsal India Private Limited [CIN: U74140MH2007PTC234641] as Process Advisor for evaluating the resolution plans, at its meeting held on 06.06.2018.[9]

2.7. UVARC and Eight Capital – the only Resolution Applicants

2.7.1. Eventually, there were only two Resolution Applicants who presented their Resolution Plans in terms of the Advertisements and the Process Note, as follows: -

(a) UV Asset Reconstruction Company Limited; and

(b) Eight Capital Advisory Services Private Limited (Eight Capital).

2.7.2. The Resolution Plans were opened in the presence of, amongst others, the Process Advisor, the legal advisors to the RP and the CoC, and the representatives of the resolution applicants, on 31.12.2018. Since the plans were received after the last date, *i.e.,* 07.12.2018, the RP convened a meeting of the CoC on 02.01.2019 to seek their views on whether the plans received after the last date should be considered. At the meeting, all the CoC members except GTL Infrastructure Limited resolved to consider the plans received. GTL Infrastructure Limited abstained from voting. RP has stated

[9] Para 13 at pages 4-5 of IA 1864/2019

that GTL Infrastructure Limited has since been classified as "Operational Creditor."

2.7.3. Eight Capital withdrew its Resolution Plan after the first round of discussions, in which various concerns were raised on the compliance of the Resolution Plan that it had submitted, with the provisions of the IBC and the regulations framed thereunder.[10] That left only one Resolution Applicant (RA), *viz.,* UVARC, in the field.

2.8. UVARC's Resolution Plan – consideration by CoC

2.8.1. The RP, along with his advisors, evaluated UVARC's plan. He also obtained written clarifications on several aspects. The matter was also discussed at various meetings of the CoC held on 02.01.2019, 07.01.2019, 08.01.2019, 11.01.2019, 14.01.2019, 14.02.2019.[11] After concluding that UVARC's Resolution Plan conformed to the law, the RP presented the plan to the CoC for consideration and approval. The Process Advisor prepared a detailed viability and feasibility report which was tabled before the CoC on 25.03.2019 for its consideration.

2.8.2. Based on the discussions at the CoC meeting of 25.03.2019, the RA submitted a revised plan on 30.03.2019, which was found to be compliant with the IBC. The RA also does not suffer from the ineligibilities set out in section 29A of the IBC. UVARC has also submitted an affidavit dated 29.12.2018 to this effect.[12]

2.8.3. The Resolution Plan was placed before the CoC for its consideration at its meeting held on 30.03.2019, at which the RA was also present. Based on

[10] Para 17 at page 7 of IA 1864/2019

[11] Para 20 at pages 4-5 of IA 1864/2019

[12] Para 21 at page 9 of IA 1864/2019

specific concerns raised in the meeting by the participants, UVARC submitted a further letter dated 14.05.2019 ("Addendum Letter").[13] Thereafter, the Resolution Plan was put to vote.

2.8.4. The CoC at its 19th meeting held on 13.05.2019 approved UVARC's Resolution Plan[14] by a margin of 73.88%, which is more than the statutory minimum of 66%. The Resolutions are placed at p.221. The minutes of the meeting are at p.186. The CoC also authorised the RP to file necessary application under section 30(6) of the IBC for approval of this Adjudicating Authority under section 31(1) of the IBC.

2.8.5. The RP has also submitted a detailed checklist showing compliance with the various provisions of the IBC and the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, along with the written submissions.[15]

2.9. Exclusion of time in CIRP and extension of time

2.9.1. In the meantime, this Adjudicating Authority had, *vide* order dated 09.08.2018 in MA No.754/2018, granted exclusion of time of thirty days from the CIRP period. Accordingly, the CIRP was to come to an end on 08.10.2018. By a further order dated 16.10.2018 in MA No.1137/2018, this Adjudicating Authority had also extended the CIRP period by a further period of 90 days, by invoking section 12(3) of the IBC. In the same order, it was specifically directed that the period during which the application

[13] Addendum Letter dated 14.05.2019 placed at pages 117-118 of the Additional Affidavit filed by the RP on 10.10.2019.

[14] Resolution Plan placed at pages 27-116 of the Additional Affidavit filed by the RP on 10.10.2019.

[15] Pages 9-14 of the written submissions.

remained pending before the Adjudicating Authority, *i.e.,* from 03.10.2018 to 15.10.2018, shall also be excluded from the CIRP period.

3. Corporate history of the Resolution Applicant (RA)

3.1.1. Before we come to the Resolution Plan itself, we may notice the corporate history of the RA.

3.1.2. The common Resolution Applicant, *viz.,* UV Asset Reconstruction Company Limited *("UVARC" or "RA" for short)*, is an unlisted public company limited by shares. It was incorporated on 23.08.2007 under the Companies Act, 1956, with the Registrar of Companies (RoC), Delhi, with Corporate Identity Number (CIN) U74900DL2007PLC167329.

3.1.3. Its registered office is at No.704, Deepali Building (7th Floor), No.92, Nehru Place, New Delhi 110 019.

3.1.4. UVARC's authorised capital is ₹50,00,00,000/- (Rupees fifty crore only) and its issued, subscribed and paid-up share capital is ₹42,02,50,000/- (Rupees forty-two crore two lakh and fifty thousand only).

3.1.5. As per Register of Charges maintained on the Ministry of Corporate Affairs (MCA) web portal, UVARC has a subsisting charge on its book debts to the tune of ₹1,00,00,00,000/- (Rupees one hundred crore only).

3.1.6. UVARC is an ACTIVE-compliant company, with returns filed upto 31.03.2019 with RoC Delhi.

3.2. We now evaluate the Resolution Plan submitted by the RA.

4. Salient features of the Resolution Plan

4.1. Conditions precedent to the Resolution Plan submitted by the resolution applicant

4.1.1. The Resolution Applicant, *viz.,* UVARC, has submitted Resolution Plan for all the three corporate applicants – (1) Aircel Limited; (2) Dishnet Wireless Limited; and (3) Aircel Cellular Limited. The Resolution Plan so submitted has been envisaged to be a comprehensive strategy spanning all three corporate applicants.

All-or-none strategy

4.1.2. In submitted the Resolution Plans, the RA has adopted an "all-or-none" strategy, meaning thereby, the Resolution Plan submitted in respect of each Corporate Applicant is subject to, and dependent on, the approval of the Resolution Plans submitted in respect of the other two corporate applicants.[16] This is because of the following reasons: -

(1) Dishnet Wireless Limited and Aircel Cellular Limited are subsidiaries of Aircel Limited.

(2) There is substantial interweave and interdependence amongst the three corporate applicants and the businesses are also inextricably interlinked and intertwined. The corporate applicants depended on a common set of assets for their individual functioning. The entities in the Aircel group have material dependence on each other in carrying out their business operations.

(3) Each of the three corporate applicants carried out telecom business under the common brand of "Aircel." The brand itself is owned by Aircel Limited. There was an arrangement between Aircel Limited, Dishnet Wireless Limited and Aircel Cellular Limited to pay brand royalty to Aircel Limited.

(4) The telecom business of Aircel group is spread across twenty-three circles across India, with about 53,761 Base Transceiver Stations, 143 Mobile Switching Centres and 433 Base Station Controllers, which are

[16] Clause 10.1.2 of the Resolution Plan

operated by Aircel group entities for their respective circles. This interconnected network was commonly used by all the three corporate applicants to run telecom operations across the country under the common brand name of *"Aircel."*

(5) The top management of all the three corporate applicants remained the same throughout. Additionally, there were also employees rendering services to one or more of the corporate applicants in the discharge of their official duties, while remaining on the payroll of any one of the corporate applicants.

(6) The financial creditors of the corporate applicants have acknowledged the interlinkage between the three corporate applicants even in the past, as may be seen from the fact that most of them have extended facilities to the corporate applicants as co-obligors under common documentation.[17]

(7) There is also technical interdependence of each of the corporate applicants on the other two. Post CIRP, the IT infrastructure such CRM, SAP, billing platform, Email server etc. will be commonly used across the three companies to reduce cost and bring synergies in operations. The resolution applicant will render service under the brand name of *"Aircel"* already established, since it enjoys easy brand recall amongst the clientele.

(8) The asset monetisation strategy in respect of all the three corporate applicants is also common, except for the fact that the assets will be monetised in the respective corporate applicants.

(9) The CIRP was commonly undertaken for all the three corporate applicants. Even though three separate petitions under section 10 of the IBC came to be filed, the entire CIRP was conducted on a comprehensive basis at a group level only, owing to the interconnected

[17] **Annexure 2A** in the case of Aircel Limited

Annexure 2B in the case of Dishnet Wireless Limited

Annexure 2C in respect of Aircel Cellular Limited.

nature of the businesses of each of the corporate applicants. The constitution of the CoC is identical to all the three corporate applicants, save that Standard Chartered Bank is an additional financial creditor in the case of Aircel Limited.

4.1.3. Obtaining of all regulatory approvals from RBI, if required, as mentioned in clause 5 *(Implementation Schedule, Supervision of Implementation and Term - Regulatory approvals).*

4.2. Rationale behind the Resolution Plan

4.2.1. The RP has submitted that the rationale behind the Resolution Plan is as follows: -

(a) In the current telecom market, almost all players have been destabilised. Most of the large telecom companies focus on providing data rather than voice services *(Page No. 46 - Clause 4.1.1 - Background and Current Situation of Telecom Industry).*

(b) Reviving business of the corporate applicants on the same / similar scale is commercially unviable due to complex dynamics, specifically, the lack of growth in voice segment *(Page no. 46 - Clause 4.1.2 - Effect on Corporate Debtor and Unique Situation of Corporate Debtor).*

(c) The corporate applicants operate in a highly complex and regulated sector. Most equipment of the corporate applicants is 2G / 3G designed for supporting voice calls and therefore, monetisation of assets and spectrum would be the viable resolution strategy. The corporate applicants have 30% cell sites on 3G technology whereas industry average is 70%. Converting the business to data-centric would require huge investment and in view of competition and uncertain environment, the business may not be profitable. 75 million customers of the corporate applicants have given up their connections. Hence, sale of the right to use spectrum (under 1800 MHz and 2100 MHz) is the most feasible option *(Page no. 46 - Clause 4.1.2(a) - Effect on Corporate Debtor and Unique Situation of Corporate Debtor).*

(d) Most of the equipment of the corporate applicants is obsolete and to make it usable would require substantial capital expenditure. Hence, sale of such equipment is the best option *(Page no. 47 - Clause 4.1.2(c) - Effect on Corporate Debtor and Unique Situation of Corporate Debtor).*

(e) To revive the 14,500 km of optical fibre network would require substantial capital expenditure and operational expenditure. The value of use appears to be much lesser than value of sale *(Page no.47-Clause 4.1.2(d)-Effect on Corporate Debtor and Unique Situation of Corporate Debtor).*

4.3. Resolution Strategy

4.3.1. The Resolution strategy is to take over the corporate applicants and rebuild a low capex business on the strength of the brand value of Aircel by utilising some infrastructure and at the same time monetising assets where sale value is higher than value of use (*Page no. 47 - Clause 4.2.1 - Resolution Strategy*).

4.3.2. The identified businesses which the RA finds feasible to generate revenue are bulk SMS, data centre and leasing of towers. This is expected to generate a revenue of sixty-nine crore rupees in the first year, ninety-six crore rupees in the second year and one hundred and twenty-five crore rupees in the third year (*Page nos. 47 & 48 - Clause 4.2.2 - Resolution Strategy*) .

4.3.3. The existing employees in relation to these three businesses will be retained and a sum of three crore rupees will be brought out of equity commitment to restart these operations (*Page no. 49 - Clause 4.2.2 - Resolution Strategy*).

4.3.4. According to the RA, this is the most viable resolution strategy. The RA has also engaged the services of an ex-senior official of DoT for this purpose (*Page no. 49 - Clause 4.2.3 - Resolution Strategy*).

4.3.5. The strategy is similar for all the three corporate applicants (*Page no. 49 - Clause 4.2.4 - Resolution Strategy*).

4.3.6. There will be capital reduction whereby the existing share capital, both equity and preference, will stand extinguished for NIL consideration. Only the RA and the financial creditors shall remain the shareholders of the CD (*Page no. 54 - Clause 5.1.1 - Capital Reduction*).

4.3.7. The strategy also envisages issue of equity shares at face value and without premium to the RA whereby the RA will hold 76% of the share capital (*Page no. 54 - Clause 5.2.1 - Infusion by Resolution Applicant*).

4.3.8. A portion of the verified financial debt owed to the financial creditors reduced by the Debenture Verified Financial Debt shall be converted into equity shares, as a result whereof the Financial creditors shall hold 24% of the share capital in the Company. Equity shares will be issued at a premium and will be reflected in the share premium account (*Page no. 55 - Clause 5.3.1 - Conversion of Verified Financial Debt into Equity*).

4.3.9. Equity shares will be issued to financial creditors in proportion to their verified financial debt (*Page no. 55 - Clause 5.3.2 - Conversion of Verified Financial Debt into Equity*);

4.3.10. Verified Financial Debt amounting to ₹3750 crore owed to the financial creditors to be converted into Zero-Coupon Optionally Convertible Debentures (ZOCDs) on the terms set out in Annexure C of the Plan (*See Page 94)* (*Page no. 55 - Clause 5.4.1 - Conversion of Verified Financial Debt into Debentures*);

4.3.11. ZOCDs will be secured by creating Security Interest as existed before the Effective Date (*Page no. 55 - Clause 5.4.3 - Conversion of Verified Financial Debt into Debentures*).

4.3.12. Post payment of CIRP Costs as per the Resolution Plan and the payments to the Operational Creditors and employees as envisaged in the Resolution Plan, ZOCDs will be redeemed out of funds forming part of the Financial Creditor Fund Pool that are received within five years from the issue of ZOCDs or any other longer period as decided by the Reconstituted Monitoring Committee. Any ZOCDs that are not redeemed because of unavailability or insufficiency of the aforesaid funds received within the aforesaid five-year period will be converted into Equity Shares held by Financial Creditors (including Equity Shares held before aforesaid conversion) is 74% of the entire share capital of the corporate applicants (comprising of only equity share capital of the corporate applicants) with UVARC holding Equity Shares equivalent to 26% of the entire share capital of the Company (comprising of only equity share capital of the Company).

4.3.13. The entire CIRP costs, payment to employees and operational creditors will be paid in priority to the issue of equity shares; redemption of any ZOCDs or any payment to the financial creditors in respect of the ZOCDs (*Page no. 55 - Clause 5.4.4 - Conversion of Verified Financial Debt into Debentures*).

4.4. Treatment of stakeholders

4.4.1. The Resolution Plans provide for broadly a common resolution strategy as set out in Clause 4.2 of the Resolution Plans.

4.4.2. There are some differences in the actual business to be continued, the amounts to be infused by the RA in each corporate applicant[18] and the amounts being paid to each class of stakeholders in each of the Resolution

[18] ₹5 crore each in Aircel Limited and Dishnet Wireless Limited and ₹1 crore in Aircel Cellular Limited

Plans, as stated *infra*. However, the treatment of each class of stakeholders is broadly similar in each of the Resolution Plans.

4.4.3. The Resolution Plan provides for amounts to various classes of stakeholders as follows: -

A. <u>In the case of Aircel Limited</u>

Category of Stakeholder	Amount Claimed	Amount Admitted	Amount provided under the Plan[#]	Amount provided to the Amount claimed	Amount provided to the Amount admitted
	(in crore rupees)				
Financial creditors					
Secured	19,570.37	19,445.71	3750.00 *[Note 1]*	18.83%	18.95%
Unsecured	343.06	343.06			
Operational creditors					
Operational Creditors including Govt dues	17,462.79	3,128.89 *[Note 2]*	28.50	0.16%	0.91%
Employees	261.81	36.18	0.60	0.23%	1.66%
Other debts	457.58	450.48 *[Note 3]*	0.50	0.11%	1.09%
Total	38,095.61	22,999.70	3,779.60		

Amount provided over time under the Resolution Plan and includes estimated value of non-cash components and not NPV.

<u>Notes:</u>

1. The entire balance portion of the verified financial debt after reducing the ZOCD amount is being converted into equity shares of the Corporate Applicant
2. Amount admitted excludes ₹5,460.82 crore verified as contingent claim
3. Amount admitted excludes ₹404.62 crore verified as contingent claim

B. In the case of Dishnet Wireless Limited

Category of Stakeholder	Amount Claimed	Amount Admitted	Amount provided under the Plan#	Amount provided to the Amount claimed	Amount provided to the Amount admitted
	(in crore rupees)				
Financial creditors					
Secured	19614.07	19,488.73	2,830.00 *[Note 1]*	14.43%	14.52%
Unsecured	4.02	4.02			
Operational creditors					
Operational Creditors including Govt dues	16,689.60	3,925.93 *[Note 2]*	27.26	0.16%	1.48%
Employees	199.80	19.91	0.33	0.17%	1.66%
Other debts	435.64	422.52 *[Note 3]*	0.65	0.15%	1.07%
Total	36,943.13	21,411.74	2,858.24		

Amount provided over time under the Resolution Plan and includes estimated value of non-cash components and not NPV.

Notes:

1. The entire balance portion of the verified financial debt after reducing the ZOCD amount is being converted into equity shares of the Corporate Applicant.
2. Amount admitted excludes ₹5,460.82 crore verified as contingent claim.
3. Amount admitted excludes ₹404.62 crore verified as contingent claim.

C. In the case of Aircel Cellular Limited

Category of Stakeholder	Amount Claimed	Amount Admitted	Amount provided under the Plan#	Amount provided to the Amount claimed	Amount provided to the Amount admitted
	(in crore rupees)				
Financial creditors					
Secured	19610.05	19484.71	50.00 *[Note 1]*	0.25%	0.26%
Unsecured	0.00	0.00			
Operational creditors					
Operational Creditors including Govt dues	2,703.96	27.85 *[Note 2]*	0.25	0.01%	0.90%
Employees	10.35	0.64	0.01	0.10%	1.56%
Other debts	182.11	181.86 *[Note 3]*	0.04	0.02%	1.23%
Total	22,506.47	19,516.45	50.30		

Amount provided over time under the Resolution Plan and includes estimated value of non-cash components and not NPV.

Notes:

1. The entire balance portion of the verified financial debt after reducing the ZOCD amount is being converted into equity shares of the Corporate Applicant
2. Amount admitted excludes ₹1,384.18 crore verified as contingent claim.
3. Amount admitted excludes ₹178.61 crore verified as contingent claim.

4.5. Source of funds

4.5.1. Under the Resolution Plans, the following amounts have been accounted for as Available & Generated Funds:

(a) Refund of ₹298.01 crore by DoT to Aircel Limited and Dishnet Wireless Limited as per the decision of the Supreme Court dated 29.11.2018.

(b) Return of bank guarantee of ₹453.73 crore from Bharati Airtel to Aircel Limited and Dishnet Wireless Limited as per the decision of the Supreme Court dated 29.11.2018.

(c) ₹11 crore equity commitment from the Resolution Applicant excluding ₹4 crore to be incurred towards initial expenditure for restarting the identified business operations. Of these, there will be capital infusion of ₹crore each in Aircel Limited and Dishnet Wireless Limited, and ₹1 crore in Aircel Cellular Limited.

4.5.2. The RP submitted that on account of recoveries made from litigation in the Hon'ble Supreme Court during the CIRP, an amount of ₹639 crore was recovered, part of which has already been utilised for payment of CIRP costs of the corporate applicants.

4.5.3. The following sources have been identified as Generated Funds:[19]

(a) Proceeds from monetisation of assets which are not required for operations of corporate applicants on a scaled-down basis as proposed by the Resolution Applicant.

(b) Proceeds from realisation of claims to be pursued by the Resolution Applicant including those for which there are ongoing litigations.

(c) Proceeds from benefits of carry forward losses and unabsorbed depreciation proposed to be realised by the Resolution Applicant through a suitable transaction structure.

[19] Pages 7 & 8 of the Report by Alvarez & Marsal India Private Limited appointed by the CoC for evaluating the Resolution Plans

4.5.4. The current cash balance available with the corporate applicants is as follows:

(in crore rupees)

Particulars	Amount
Net Cash Balance as of end Nov 2019	171.58
Accumulated Expenses payable	(250.31)
Estimated surplus / (shortfall) as of end Nov 2019	(-78.73)

4.5.5. The available funds may not be enough to make necessary payments, as indicated above. The payment for the shortfall shall, therefore, be made from Generated Funds. As indicated by the RA, the first tranche of Generated Funds is likely to be generated within a period of three months from the Effective Date through the sale of fibre assets, as set out below in the paragraph dealing with *"Asset Monetisation."*

4.6. Details of source and timelines within which the amounts will be paid to the operational creditors, employees etc.

4.6.1. The corporate applicants do not have any workmen and hence payment to workmen is not applicable. Payment to other operational creditors shall be made from a pool of Available Funds and Generated Funds. Such payments shall be first made from available funds to the extent available and the remaining payments shall be made from Generated Funds. As indicated by the RA, the first tranche of Generated Funds is likely to be generated through sale of fibre within a period of three months from the Effective Date and payments to operational creditors shall be made as soon as the funds are available.

4.6.2. With respect to payment to employees, the RP has stated that an amount of ₹0.94 crore is envisaged to be paid against the total verified claim of about

₹56.73 crore. Out of the verified claim, about 97% pertains to performance-linked and other incentives like bonus payable to employees for pre-CIRP period. The entity wise break up is as follows:

(amount in crores)

Entity	Amount claimed	Amount verified	Amount provided for
Aircel Limited	261.81	36.18	0.60
Dishnet Wireless Limited	199.80	19.91	0.33
Aircel Cellular Limited	10.35	0.64	0.01
Total	471.96	56.73	0.94

4.7. Asset Monetisation:

4.7.1. The RP and the RA have submitted that, broadly, the following assets of the corporate applicants are proposed to be monetised as follows:

(a) Aircel Limited's Fibre and IE Business in the range of ₹50-60 crore by sale of shares of such business entity on a slump sale basis.

(b) Right to use spectrum including spectrum held by Dishnet Wireless Limited in the range of ₹800-1300 crore, subject to approval of DoT.

(c) Sale of other assets such as real estate, towers, equipment, IP addresses etc. in the range of ₹100-150 crore.

(d) Passing on and transferring the benefit of carry forward losses of ₹250 crore and unabsorbed depreciation of ₹200 crore.

(e) Receivables by the corporate applicants from DoT and Income Tax Department in the range of ₹390 crore, subject to incurring a cost of approximately ₹40 lakh per month to pursue such recovery.

4.8. Monetisation of unabsorbed depreciation, accumulated losses and conversion of debentures into equity in the event of default in repayment of the debentures:

4.8.1. The entity-wise value of unabsorbed depreciation and accumulated losses for Assessment Year 2017-18 is as follows:

(amount in crores)

Item	Aircel Limited	Dishnet Wireless Limited	Total
Carried forward business losses	14,667	9,228	23,895
Unabsorbed depreciation	12,216	9,900	22,116
Total	26,883	19,128	46,011

4.8.2. The RA proposes to monetise identified assets and utilise the proceeds towards redemption of debentures. The process will continue till the time all assets other than unabsorbed depreciation and carry forward losses have been monetised and corresponding number of debentures have been redeemed.

4.8.3. The RA expects that ideally by this time the outstanding debentures should be equivalent to the value expected to be realised from unabsorbed depreciation and carry forward losses only.

4.8.4. However, if the value of outstanding debentures is higher at this stage, it would mean either some of the assets could not be monetised or the realisation has taken place at a value lower than expectation. The RP submits that in either case, it would not be an event of default as the values are only indicative.

4.8.5. If the situation envisaged above arises, there would be unabsorbed depreciation and carry forward losses remaining in the corporate applicants. At this stage the outstanding ZOCDs shall be converted into equity in a way

that financial creditors hold 74% of the equity and RA the remaining 26%. The Resolution Applicant will then engage with a prospective buyer of these tax benefits and merge the Corporate Debtor companies with such prospective buyers. The shareholders of the Corporate Debtor (financial creditors: 74%; RA: 26%) will get shares in such prospective buyer which can be monetised to realise the value which would actually be the consideration for sale of unabsorbed depreciation and carry forward losses.

4.9. Commercial logic for different percentages of amounts being repaid to the financial creditors in the corporate applicants

4.9.1. The RP submits that the proposed repayments to financial creditors are based on the value of realisable assets in respective companies. However, due to the existence of obligor/co-obligor structure across all three companies, financial creditors are getting compensated for lower recovery in one of the corporate applicants by higher recovery in another corporate applicant where realisable value of assets is higher.

4.10. Commercial logic for issuing 24% equity to the financial creditors:

4.10.1. The Resolution Applicant has proposed to offer 24% equity to financial creditors with a view to –

(a) passing on the value garnered in the companies during continued operations of five years;

(b) ensuring participation of financial creditors in Resolution Process; and

(c) having fair and transparent implementation of the Resolution Plan.

4.10.2. The financial creditors get representation on the Board of Directors by virtue of being shareholders in the company. With affirmative voting rights, their larger participation has been ensured. Besides Board of Directors, the

financial creditors also get representation in Monitoring Committee for overseeing the implementation of the Resolution Plan.

4.10.3. Therefore, the RA has proposed 76% equity to be in position to implement the Resolution Plan, but participation of financial creditors has been ensured at every stage by allocation of 24% to them.

4.10.4. Further, to demonstrate the seriousness of the RA and to ensure that the RA does not exit the Company, and that the RA cannot transfer the shares it is issued upon Equity Commitment till redemption of ZOCDs or conversion of ZOCDs into Equity Shares as envisaged in the Resolution Plan, RA will pledge its shares with the Financial Creditors on terms to be mutually agreed between them prior to Effective Date.

4.11. Supervision of the Implementation Schedule by Monitoring Committee

4.11.1. On and from the Approval Date and until the Effective Date, it has been proposed that the Corporate Debtor will be managed and controlled by a Monitoring Committee of three persons, as follows: -

(a) one representative of financial creditors;

(b) one representative of Deloitte Touche Tohmatsu India LLP [LLP Identification No. AAE-8458]; and

(c) one representative of the Resolution Applicant.

4.11.2. The Monitoring Committee constituted for the purposes of supervision of the implementation of the Resolution Plan between the Approval Date and the Effective Date shall stand dissolved upon the Effective Date.

4.11.3. Upon the Effective Date, the Monitoring Committee shall be reconstituted as follows: -

(a) Three representatives of financial creditors who shall have affirmative voting rights;

(b) One representative of Deloitte Touche Tohmatsu India LLP; and

(c) Three representatives of the Resolution Applicant;

for the purpose of advising and providing recommendations to the reconstituted board of directors on the implementation of the Resolution Plan.

4.11.4. The Monitoring Committee will take important decisions such as –

(a) Identification of the buyer of the assets and approval of the value of sale.

(b) Approval of the timing of conversion of ZOCDs into equity.

(c) Timing and amount of replenishment of Expense Reserve.

4.12. Implementation Schedule:

4.12.1. The RA will use all efforts to make payments towards CIRP cost and creditors' payments within five years from the Effective Date. If such payments are not paid, ZOCD will be converted into equity shares. *(Page no. 62 - Clause 5.11 - Term and Implementation Schedule).*

4.12.2. Analysis of realisation under Resolution Plans vs Liquidation Value vs Fair Value:

4.12.3. The Applicant submits that the average liquidation value arrived at by two registered valuers appointed by the Applicant is much lower than the resolution plan value of the corporate applicants.

Item	Amount *(in crores)*	Reference to Report of the Process Advisor	Comment
Realisation (with Tax losses)	3,807-4,861	Table 3-9	Includes benefit on account of carry forward losses and unabsorbed depreciation
Realisation (without Tax losses)	1,537-2,319	Table 3-10	Excludes benefit on account of carry forward losses and unabsorbed depreciation
Liquidation Value	869	Table 3-11	Excludes the following:- - receivables from DoT and Airtel - Spectrum Value

4.12.4. The RP has also submitted that the average of fair value computed by the two registered valuers is about ₹3,282 crore. The comparison between the Resolution Plans and the liquidation scenario under various parameters is shown in the Report of the Process Advisor.

4.12.5. Therefore, the resolution of the corporate applicants as per the Resolution Plans now submitted is likely to fetch much better value for the stakeholders of the corporate applicants than the liquidation of the corporate applicants.

4.13. *Reliefs, Concession and Dispensations sought by the Resolution Applicant*

4.13.1. The Resolution Applicant has sought certain reliefs in terms of clause 9 of the Resolution Plans. These are considered in detail later in this order.

5. Oral submissions on behalf of the RP, RA and CoC

5.1. *Submissions of Mr Ravi Kadam, learned Senior Counsel for the RP*

5.1.1. Mr Ravi Kadam, learned Senior Counsel for the RP, submitted right at the outset that the three Resolution Plans will have to be considered indivisibly since there was substantial interweave between the businesses. He submitted that the obligor/co-obligor status exists in respect of all the three companies. Hence, he submitted that the figures given in the Resolution Plans should not be looked at in an isolated manner, but as a comprehensive whole.

5.1.2. Mr Ravi Kadam, learned Senior Counsel, further submitted that at the moment, the Resolution Plans submitted could probably be called "deferred resolution." While it may not be the best possible plans, they are the only are the only viable workable plans at the moment.

5.1.3. Mr Ravi Kadam also submitted that a hard commercial decision has been taken by the CoC to accept the Resolution Plans. Further, in the creditor-driven regime envisaged by the IBC, the commercial wisdom of the CoC should not be second-guessed by the Adjudicating Authority.

5.1.4. Mr Ravi Kadam submitted that since the Resolution Plans are fully compliant with the requirements under the IBC, approval of the Adjudicating Authority be granted as prayed for.

5.2. Submissions of Mr Pradeep Sancheti, learned Senior Counsel for the RA

5.2.1. Mr Pradeep Sancheti, learned Senior Counsel for the RA, submitted that in preparing the Resolution Plans, the RA had to strike a balance between curating and preserving the assets of the corporate applicants or allowing it to go into liquidation.

5.2.2. He submitted that the biggest value of the corporate applicants was its subscriber base, which has been completely lost. Further, the corporate applicants had only 2G and 3G licences. In terms of clause 10.2(c) of the

Licence Agreement for provision of Unified Access Services entered into by the corporate applicants with DoT (the Licensor), the licence was liable for suspension, revocation or termination in the event the licencees were to go into liquidation or is ordered to be wound up. However, the licences were protected from cancellation by an order of this Adjudicating Authority.[20] In case the Resolution Plans are not accepted, and the corporate applicants are ordered to be liquidated, then the licences will be revoked or terminated by DoT. Apart from the licences, the corporate applicants also have certain Enterprise Business Solutions.

5.2.3. Mr Pradeep Sancheti, learned Senior Counsel, submitted that the RA will control four asset categories if this Adjudicating Authority accepts the Resolution Plans, as follows: -

(a) 2G and 3G Licences: The licences would be utilised by the Resolution Applicant by leveraging the brand recall of 'Aircel.'

(b) Unabsorbed depreciation and accumulated losses: These can be carried forward upto eight years.

(c) Optical fibre network: The corporate applicants had laid about 14,500 kilometres of optical fibre. This is not being maintained in the last few years. The cables get stolen in the countryside. The corporate Applicant proposes to rectify and maintain this asset.

(d) Claims against third parties: The RA hopes to realise about ₹700 crore from claims against third parties. Further, accrued billing revenue has been valued by one valuer at zero and the other at ₹128 crore. However, the RA does not hope to realise anything in this behalf.

[20] Common Order dated 27.11.2019 in MA 337/2018 in CP (IB) 298/2018 (in the matter of Aircel Limited) and MA 336/2018 in CP(IB) 302/2018 (in the matter of Dishnet Wireless Limited) passed by this Adjudicating Authority.

Mr Pradeep Sancheti submitted that if the corporate applicants are ordered to be liquidated, all four asset categories would tend to become NIL.

5.2.4. On the other hand, the Resolution Plan is aimed at maximising the value of assets of the corporate applicants, as follows: -

(a) Given the nature of business of the corporate applicants and the current economic position, the Resolution Plans will ensure maximisation of value of the assets of the corporate applicants through the proposed sale of the Right to Use spectrum.

(b) It is submitted in this regard that a bare perusal of the terms of the prototype licence agreement issued by the DoT clearly suggests that in the event of a liquidation, the licence will be liable to be terminated.[21] Therefore, an asset which could be monetised to benefit the various categories of creditors by way of the present Resolution Plans, will not be available in the event of a liquidation leading to recovery of a substantially reduced sum by the creditors.

(c) The monetisation of assets such as fibre is contemplated after carrying out necessary repair and maintenance work which in turn will fetch significantly better value as opposed to a distress sale under liquidation.

(d) Further, the resolution plans propose substantial amounts to be generated from the monetisation of carry forward losses and unabsorbed depreciation which will only be available in the event the corporate applicants are continued to be operated as going concern and not in the event of liquidation.

(e) An amount of approximately ₹6,630 crore in total, is envisaged as a recovery for the Financial Creditors of the three corporate applicants, which will be much higher than any expected liquidation value.

[21] In terms of clause 10.2(c) of the Licence Agreement for provision of Unified Access Services circulated by DoT.

(f) The Resolution Plans also take care of the interests of all stakeholders in addition to maximising the value of the corporate applicants, since the Resolution Applicant proposes to take over the corporate applicants on an as is where is basis. Accordingly, the workmen and employees as are at present working with the corporate applicants will not end up losing their employment and will be retained for carrying out the scaled down operations envisaged under the resolution plans.

5.2.5. Mr Pradeep Sancheti further submitted that the Resolution Plan will be implemented using only the following sources of funds: -

(a) **Available Funds:** These are funds which are comprised of the funds lying with the corporate applicants as on the Effective Date in terms of the decision of the Hon'ble Supreme Court dated 12.02.2019 in *DWL and Ors v Union of India and Ors,* as follows:

"By our order dated 28.11.2018, we had directed the Union of India to refund the sum of Rs.298,00,00,000/- (Two Hundred and Ninety Eight Crores) within a period of eight weeks from 28.11.2018. Though eight weeks had expired on 24.01.2019, Mr. Vikramjit Banerji, learned ASG appears and asks for more time.

We make it clear that this refund will have to be made within a period of two weeks from today. No further extension shall be granted.

List after three weeks."

(b) **Generated Funds:** These are funds which are comprised of proceeds from the assets monetised, recoveries made under certain identified litigations / claims pursued on behalf of the corporate applicants and by transfer of certain tax benefits including unabsorbed depreciation and carry-forward losses.

(c) **Infused Funds:** Additionally, the Resolution Applicant will be infusing upfront equity to the tune of ₹11 crore collectively in the corporate

applicants, which is required to kickstart the scaled down business operations as envisaged under the Resolution Plans.

5.2.6. The aforesaid funds will be utilised as follows:

(a) Firstly, the funds will be used towards payment of the CIRP costs.

(b) A corpus titled "Expense Reserve" will be created of an amount of ₹72 crore for meeting the various expenses incurred in operating the businesses of the corporate applicants.

(c) Thereafter, the said funds will be utilised for payment to various categories of creditors, as follows:

(i) Workmen:

The collective proposal in the three resolution plans is ₹94.1 lakh or the liquidation values, whichever is higher, to be paid towards admitted workmen dues for the corporate applicants. These dues pertain to performance linked incentives and other incentives payable to employees for the pre-CIRP period. The entity-wise break-up has been given in para 58 at p.34 of the Resolution Plan. Mr Pradeep Sancheti stated during oral submissions that salaries have been paid in full.

(ii) Operational Creditors other than Workmen

With respect to the Operational Creditors, a total of ₹45.25 crore is proposed towards payment of the admitted claims, or the liquidation values, whichever is higher, to be paid towards the same.

(iii) Financial Creditors

With respect to the Financial Creditors, the admitted amount has been categorised in two portions, namely serviceable financial debt and the non-serviceable financial debt. The non-serviceable financial debt is envisaged to be either converted into equity or written off, while for the serviceable portion of the financial debt, the financial creditors will be issued Zero Coupon Optionally Convertible Debentures ("ZOCDs").

With respect to the non-serviceable debt, the Financial Creditors will be getting upfront equity to the extent of 24% and will therefore, be entitled to the profits emanating from the scaled down operations of the corporate applicants.

As regards the serviceable portion of the debt, the ZOCDs which will be issued to the Financial Creditors will be secured by the same security as is being held by the secured creditors as on date.

The ZOCDs are contemplated to be redeemed in entirety over a period of five years from the Available Funds and Generated Funds. The resolution plans protect the interests of the Financial Creditors by proposing that the ZOCDs which remain unredeemed after the expiry of such period will be converted into equity in such a manner that the Financial Creditors will hold 74% of the equity and the Resolution Applicant will hold 26%.

All the resolution plans propose that every recovery made by the Resolution Applicant during implementation of the plans, shall go towards recovery of the dues by the various categories of creditors.

For the avoidance of doubt, the entire mechanism for redemption of ZOCDs is based on the amount realised from the various identified sources of funds *i.e.,* Available and Generated Funds.

5.2.7. In so far as the reliefs and concessions proposed in the Resolution Plan in clause 9 is concerned, Mr Pradeep Sancheti, learned Senior Counsel, urged that this be granted in full.

5.3. Submissions of Mr Chetan Kapadia, learned Counsel for the CoC

5.3.1. Mr Chetan Kapadia, learned Counsel appearing for the CoC, completely agreed with the submissions of the learned Senior Counsel for the RP and for the RA. He, however, added that at the end of the process, there was

only one RA who was found to be compliant with the stipulations laid down in IBC and the regulations framed thereunder. The one other prospective RA, Eight Capital, backed out during negotiations.

5.3.2. Mr Chetan Kapadia, learned Counsel, submitted that the inferior economic outcome in the event of liquidation, arising out of the possible loss of value attributable to the spectrum, weighed in the minds of the CoC in recommending this resolution plan for approval.

6. Decision of the Adjudicating Authority

6.1.1. We have perused the three IAs and the Resolution Plans. We have also heard at length Mr Ravi Kadam, learned Senior Counsel for the RP, Mr Pradeep Sancheti, learned Senior Counsel for the RA, and Mr Chetan Kapadia, learned Counsel for the CoC. We have also considered the written submissions filed by the RP, and the brief note submitted on behalf of the RA.

6.2. Statutory provisions

6.2.1. The IAs have been filed under section 30(6) of the IBC seeking approval of this Adjudicating Authority under section 31(1) of the IBC. Section 31(1) *ibid* mandates that the Adjudicating Authority shall by order approve the resolution plan if it is satisfied that such resolution plan as approved by the CoC under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30. The relevant portions of section 30 are extracted below: -

"30. Submission of resolution plan.—

(1) ***

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan –

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than –

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the 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 provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1.— For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2.— For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor –

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;

(c) provides for the management of the affairs of the corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.[22]

Explanation.— For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six per cent of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, where the resolution applicant is ineligible

[22] The relevant regulation is regulation 39(3) of the Insolvency & Bankruptcy Board of India ((Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which stipulates that – *"the committee shall evaluate the resolution plans received under sub-regulation (1) strictly as per the evaluation matrix to identify the best resolution plan and may approve it with such modification as it deems fit: Provided that the committee shall record its deliberations on the feasibility and viability of the resolution plans."*

under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section.

Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018."

6.2.2. Section 31 of the IBC which empowers the Adjudicating Authority to approve or reject the resolution plan, reads as follows: -

"31. Approval of Resolution Plan. —

(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which 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, creditors, guarantors and other stakeholders involved in the resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1), –

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later.

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors."

6.2.3. Thus, the Adjudicating Authority is mandated by law to see, in the first instance, whether the requirements as mentioned in section 30(2) of the IBC are fulfilled or not. These requirements are: -

1. That the resolution plan provides for payment of CIRP costs in priority to all other debts;

2. The amounts payable to the operational creditors shall not be less than the amounts to be paid to such creditors in the event of liquidation of the corporate debtor,

   (or)

   The amounts payable to the operational creditors respects the waterfall method of payments envisaged under section 53(1) of the IBC,

   whichever is higher; and

3. The amounts payable to the financial creditors who do not vote in favour of the resolution plan shall not be less than the amount to be paid to such creditors envisaged under section 53(1) of the IBC in the event of a liquidation of the corporate debtor.

6.3. Our critical analysis of the Resolution Plan

6.3.1. We could not but help undertake a critical and conscientious analysis of the approved Resolution Plan. Our observations are as follows: -

(a) The total loan amount outstanding to all Financial Creditors(Financial Creditor), by all the three companies is approximately ₹58,760 crore. whereas the successful the Resolution Applicant has proposed to pay ₹19,600 crore. Out of this ₹19,600 crore, approximately ₹6,630 crore is to be paid by way of ZOCDs and balance amount of ₹12,970 crore is given up.

(b) Only ₹11 crore is brought upfront by the Resolution Applicant and balance by various ways, such as asset monetisation, sale of the right to use spectrum (₹800 to ₹1300 crore) is the most feasible option, sale of equipment, sale of real estate, towers, etc. (₹100 to ₹150 crore), sale of fibre assets, proceeds from realisation of claims, proceeds from benefit of carry forward losses and unabsorbed depreciation.

(c) The Resolution Applicant would retain a fraction of the business which is expected to generate approximately ₹69 crore, ₹98 crore, ₹125 crore

for the first three years. The Resolution Applicant states that this is the most viable strategy.

(d) 76% of Equity shares would be allotted to the Resolution Applicant at face value and balance 24% equity shares would be allotted to Financial Creditors at premium. However, the premium at which the shares would be allotted is not stated.

(e) ZOCDs will be secured by creating security interest as existed before the effective date. If the security provided by one of the Corporate Debtors itself is worth approximately ₹3750 crore, normally more than 100% of the debt value, the Financial Creditors could very well monetise the same and get huge amount which can be adjusted towards its outstanding from the Corporate Applicants. Since the Liquidation value is very less the value of the existing security is also eroded substantially. However, the same security is again considered by the Financial Creditors. This is intriguing, to say the least.

(f) In the case of Aircel Limited, amount provided under the plan is 16.43% of the total amount admitted. Amount admitted excludes approximately of ₹5867 crore verified as contingent claim. In the case of Dishnet Wireless Limited, amount provided under the plan is 13.35% of the total amount admitted. Amount admitted excludes the same amount of approximately of ₹5,867 crore verified as contingent claim as in the case of Aircel Limited. In the case of Aircel Cellular Limited, amount provided under the plan is just 0.257% of the total amount admitted which is infinitesimal. The amount admitted excludes approximately ₹1,563 crore verified as contingent claim.

(g) Fair value of both the registered valuers approximately ₹3,282 crore and liquidation value is ₹869 crore.

(h) An amount of be ₹6,630 crore in total is envisaged as recovery for the financial creditors of the three Corporate Applicants.

6.3.2. The source of funds has been stated to be the following:

(1) Refund of ₹298.01 crore by DoT to Aircel Limited and Dishnet Wireless Limited.

(2) Return of Bank Guarantee of ₹453.73 crore from Bharati Airtel Limited to Aircel Limited and Dishnet Wireless Limited.

(3) ₹11 crore equity commitment from the Resolution Applicant.

(4) An amount of ₹639 crore already recovered from litigation and part of the same has already been utilised for making payment of CIRP costs of all the corporate applicants which shows that the Resolution Applicant did not either bring – or was not capable of meeting – even the primary expenditure towards CIRP costs, which is the cost to be borne by the Resolution Applicant before other costs or dues are paid. Further, the total cost of CIRP of all the corporate applicants is ₹298.48 crore approximately, as mentioned in the Resolution Plan.

(5) Monetisation of unabsorbed depreciation of ₹22,116 crore and carry forward business losses of ₹23,895 crore of both Aircel Limited and Dishnet Wireless Limited, totalling to ₹46,011 crore approximately and realisable value is ₹4000 crore approximately.

(6) In the event of a contingency as mentioned in para 4.8.5 of this order, the outstanding ZOCDs shall be converted into equity in a way that financial creditor will hold 74% of the equity and the Resolution Applicant 26%.

(7) The Resolution Applicant will engage with a prospective buyer of these tax benefits and merge the corporate applicants with such prospective buyers. The shareholders of the corporate applicants will get shares in such prospective buyer which can be monetised to realise the value which would actually be the consideration for sale of unabsorbed depreciation and carry forward losses.

6.3.3. Further as per various provisions of Income Tax Act, the benefit of unabsorbed Depreciation can be availed only if the business is continued.

However, from the perusal of the plan the Resolution Applicant is planning to monetise most of the assets and will continue only with a small portion of the business operations as stated above. Therefore, we feel that the Resolution Plan is not in accordance with the provisions of Income Tax Act and the existing benefits envisaged thereunder may not be available.

6.3.4. The plan also gives commercial logic for issuing 24% of equity to Financial Creditor as passing on the value garnered by the companies during continuous operations of five years. However, we are afraid that the Resolution Applicant may generate very negligible amount from actual business operations for three years as stated above. Therefore, this logic also appears to be flawed.

6.3.5. It is stated that the Monitoring Committee will take important decisions such as identification of the buyer of the assets and approval of the value of sale, approval of the timing of conversion of ZOCDs into equity etc. If this is the role of the Monitoring Committee, then we wonder what the role of the newly constituted Board of Directors would be.

Apparent contradictions in the Resolution Plan

6.3.6. In Implementation schedule as stated in para 4.12 above, it is stated that the Resolution Applicant will use all efforts to make payment towards CIRP cost and other payment to creditors. However, in other places it was mentioned that the entire CIRP costs had borne out of the recoveries made pursuant to the orders of the Hon'ble Supreme Court.

6.3.7. It was also submitted that the licences were protected from cancellation by an order of this Adjudicating Authority. Mr Pradeep Sancheti, learned Senior Counsel for the Resolution Application also submitted that with regard to optical fibre network, the Corporate Applicant proposes to rectify

and maintain the assets whereas the entire plan is to monetise the assets of Corporate Applicants.

6.3.8. The Resolution Plan also states that the workmen and employees working at present will be retained but in other places it is stated the CA s stopped its operations since Feb/March 2018.

6.3.9. It is also proposed that in respect of the non-serviceable debt, the Financial Creditor will be getting upfront equity to the extent of 24% and will therefore be entitled to the profits from the scaled down operations of the Corporate Applicants. However, nowhere in the plan has it been mentioned as how much 24% of equity translates into and what the source of funds for the same would be, whether the same is tied up, etc. It is also not mentioned how much approximately amount, percentage will be realised, redeemed and to be converted in to equity etc. in case of any shortfall from the projected realisation, the ways of compensating the same etc.

6.3.10. A bare reading of this entire proposal is very optimistic at best and comes with lot of uncertainties. Therefore, the plan does not appear to a Resolution plan but appears to be a winding up, liquidation plan while just retaining a small portion of the business operations of the corporate applicants.

6.4. Supreme Court judgments

6.4.1. In *K. Sashidhar v Indian Overseas Bank & others,*[23] the Hon'ble Supreme Court examined the situations arising in terms of section 31 of the IBC and held that the legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial

[23] (2019) 12 SCC 150, decided by Hon'ble Supreme Court on 05.02.2019

decision of CoC. Further, it was laid noticed that the commercial wisdom of CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the IBC. In laying down the law, the Hon'ble Supreme Court observed that –

"52. … There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject-matter expressed by them after due deliberations in CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable."

6.4.2. In para 53, the Hon'ble Court noticed that in the report of the Bankruptcy Law Reforms Committee of November 2015, primary has been given to the CoC to evaluate the various possibilities and make a decision.

6.4.3. The Hon'ble Court went on to observe in para 55 that –

"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 percent 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. … The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. … 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."

6.4.4. The Hon'ble Court then stated in para 59 as follows: -

"59. In our view, neither the adjudicating authority (NCLT) nor the appellate authority (NCLAT) has been endowed with the jurisdiction to reverse the commercial wisdom of the dissenting financial creditors. …"

6.4.5. Mr Ravi Kadam, learned Senior Counsel appearing for the RP, Mr Pradeep Sancheti, learned Senior Counsel appearing for the RA, and Mr Chetan Kapadia, learned Counsel appearing for the CoC, all stressed on this judgment of the Hon'ble Supreme Court and urged that the resolution plan as approved by the CoC be approved in respect of all the three corporate applicants.

6.4.6. In *Committee of Creditors of Essar Steel India Limited v Satish Kumar Gupta & others*,[24] the Hon'ble Supreme Court noticed the decision in *K Sashidhar (supra)* and held that –

"54. … 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; 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."

[24] (2019) SCC Online SC 1478, decided on 15.11.2019

6.4.7. The law laid down by the Hon'ble Supreme Court is binding in terms of Article 141 of the Constitution, and we are duty bound to follow it.

6.5. Findings with reference to section 30(2) of the IBC

6.5.1. In this background, our first task is to evaluate the Resolution Plan presented against the requirements of section 30(2) of the IBC. The following table captures the position:

Requirement	Compliance	Comment
CIRP costs to be paid	Yes Clause 6.2	CIRP costs will be paid from Available Funds in priority to any other creditor.
Debts of operational creditors	Yes Clauses 6.4 & 6.5	An amount of ₹60 lakh has been earmarked for employees in proportion to their claims. In case any claim is still pending for verification, the amounts that are verified shall also be considered for proportionate distribution. As regards other operational creditors, an amount of ₹28.50 lakh has been earmarked for distribution. However, if liquidation value is higher, then such value shall be paid.
Management of corporate debtor after approval	Yes Clause 5	From the Approval Date till the Effective Date, the corporate applicants will be managed and controlled by a Monitoring Committee, comprising of 1 (one) representative of Financial Creditors (FCs), 1 (one)

Requirement	Compliance	Comment
		representative of Deloitte Touche Tohmatsu India LLP (the "Deloitte Representative") and 1 (one) representative of the RA. On the Effective Date, a new board of directors shall be constituted, which shall consist of three directors to be nominated by the RA, an independent director nominated after mutual agreement between the RA and the FCs, and one director nominated by the FCs. The FC-nominated director shall have affirmative voting rights.
Implementation of the Resolution Plan	Yes Clause 5	The following steps have been envisaged: 1. Existing share capital shall be extinguished, and fresh equity capital shall be infused, wherein the RA shall hold 76% and the FCs shall hold 24%. 2. ZOCDs to the extent of ₹6630 crore shall be given to the FCs. 3. At the end of five years, even if ZOCDs remain unpaid in part, they will be converted into equity, such that the FCs put together will become 74%. Therefore, the value of the FCs is not diminishing at all
Contraventions of law, if any	No Clause 2.6(c)	No comments are necessary.

6.5.2. We have examined the relevant clauses of the Resolution Plan and find the same to be in conformity with the law. Further, the Resolution Plan has provisions for its effective implementation.

6.6. *Approvals from regulatory authorities*

6.6.1. Approval of the Competition Commission of India (CCI) under sections 5 and 6 of the Competition Act, 2002, has already been obtained by the RA.[25]

6.6.2. The RA is an asset reconstruction company, having been licensed to act as such by RBI. Hence, RA will require approval of RBI to acquire shares in the corporate applicants. The RA submits that it shall apply for such approval after the Resolution Plan is approved by this Adjudicating Authority.[26]

6.6.3. The RA further undertakes that if any other approval is required for any of the transaction contemplated in the Resolution Plans, including conversion of Debenture Verified Financial Debt into ZOCDs, redemption of such ZOCDs, conversion of Converted Verified Financial Debt into equity with reference to any financial creditor, then such approval shall also be taken by the corporate applicants acting through the Monitoring Committee, after the plan is approved by this Adjudicating Authority. This undertaking is accepted.

6.6.4. Since the corporate applicants are licencees of spectrum by DoT, approval of DoT for Spectrum Transaction and AL Fibre and Business Transactions, and activities ancillary thereto or required therefor, will also be taken by the

[25] Clause 5.14.1 at p.38 of the Resolution Plan.

[26] Clause 5.14.2 at p.38 of the Resolution Plan.

corporate applicants acting through the Monitoring Committee after the Resolution Plans are approved by this Adjudicating Authority.

6.7. *Reliefs, Concession and Dispensations sought by the RA, and orders thereon*

6.7.1. The RA has sought certain reliefs, concessions and dispensations in clause 9 of the Resolution Plans. These are ordered as follows: -

Clause	Dispensation	Orders thereon
9.1.1.	Neither the Resolution Applicant, nor any of its Affiliates, will be disqualified from or considered ineligible under the Code for proposing and/ or implementing a plan in relation to the insolvency resolution of any Person, merely on account of the implementation of the Resolution Plan by the Resolution Applicant.	Granted.
9.1.2.	The requirement of obtaining a no objection certificate under section 281 of the Income-tax Act, 1961 and provisions of taking over its predecessor's tax liability under section 170 of the Income Tax Act, 1961 shall not be applicable. Similarly, any requirements to obtain waivers from any Tax authorities including in terms of section 79 and section 115B of the Income Tax Act, 1961 is deemed to have been granted upon approval of this Resolution Plan on the Approval Date.	Granted.

Clause	Dispensation	Orders thereon
9.1.3.	The Corporate Debtor would be considered as a widely held company for the purposes of section 79 read with section 2(18) of the Income Tax Act, 1961. Having said that, the change in the shareholding of the Corporate Debtor pursuant to this Resolution Plan approved by the NCLT shall not result in lapse of any losses of the Corporate Debtor that are brought forward.	Granted.
9.1.4.	The Central Board of Excise and Customs to not void the transactions contemplated under the Resolution Plan (including a potential sale of Assets) under section 81 of the Central Goods and Service Tax Act, 2017 and not impose any successor liability on the Resolution Applicant and the Corporate Debtor.	Granted.
9.1.5.	The Corporate Debtor and the Resolution Applicant shall not be required to deal with the Dissenting Financial Creditors in any manner other than as provided in the Code	Granted.
9.1.6.	The requirement of adding "and reduced" in the name of the Corporate Debtor to be dispensed with (on account of reduction of share capital of the Corporate Debtor).	This requirement is no longer there under the Companies Act, 2013. This existed only under section 102(2)(a) & 102(3)

Clause	Dispensation	Orders thereon
		of the Companies Act, 1956.
9.1.7.	The approval of the Resolution Plan by the NCLT shall be deemed to have waived all the procedural requirements in terms of the Act including section 66, section 42 and section 62(1)(c) of the Act, and the NCLT (Procedure for Reduction of Share Capital) Rules, 2016 for reduction of share capital and issuance of Equity Shares to Resolution Applicant.	Explanation below sec. 30(2) 2(f), inserted *vide* IBC (Second Amendment) Act, 2018, with effect from 06.06.2018, makes it clear that if any approval of shareholders is required under the Companies Act, 2013, or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be regarded as a contravention of that Act or law.
9.1.8.	The approval of resolution Plan by NCLT shall constitute adequate and final approval of NCLT for: (a) cancellation of the existing share capital of the Corporate Debtor (as may be agreed upon) in terms of section 66 and other provisions of the Act and other Applicable Law without any compliance of any provisions of the Act which shall stand exempted without any further actions on part of any Party; and (b) for issuance of new Equity Shares/ preference shares	Explanation below sec. 30(2) 2(f), inserted *vide* IBC (Second Amendment) Act, 2018, with effect from 06.06.2018, makes it clear that if any approval of shareholders is required under the Companies Act, 2013, or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it

Clause	Dispensation	Orders thereon
	and/ or convertible securities in terms of the Act and other Applicable Law and accordingly, no approval/ consent shall be necessary from any other Person in relation to any of these actions including under any agreement, the constitution documents of the Corporate Debtor or any Applicable Law, other than what is provided under Clause 5.14.2 of this Resolution Plan.	shall not be regarded as a contravention of that Act or law. In other words, there is single-window clearance of the Resolution Plan.
9.1.9.	All Relevant Authorities (including RBI) to waive any and all non-compliances of the Corporate Debtor prior to the Effective Date (including but not limited to those relating to Tax). All penalties, liabilities and claims by whatever name called shall in relation to the aforesaid non-compliances shall stand extinguished permanently. The Resolution Applicant shall be granted a waiver, from all actions, proceedings or penalties under any Applicable Law for any non-compliance, for an additional period of 12 (twelve) months starting from the day following the Effective Date.	This in effect amounts to – (1) extension of the period of moratorium; and (2) encouragement to violate the law; both of which cannot be accepted. On and from the Appointed Date, the RA shall be responsible for all compliances with the law of the land.
9.1.10.	All actions undertaken pursuant to implementation of the Resolution Plan approved by the Adjudicating Authority shall be	No such blanket approval can be given. The RA is, however, free to bring specific matters to the

Clause	Dispensation	Orders thereon
	deemed to be exempt from all Taxes, levies, fees, transfer charges, transfer premiums and surcharges duty that arise from or relate the implementation of the Resolution Plan.	notice of the Adjudicating Authority for a decision thereon.
9.1.11.	The Resolution Applicant (and its Affiliates) and any future buyers of the Assets of the Corporate Debtor including Right to Use Spectrum and AL Fibre and IE Business shall not be liable, in any way, for any criminal proceedings or actions that have been initiated against the Corporate Debtor or its existing or former promoters, shareholder or directors, employees, officers, at any point of time, before or after the Approval Date.	Granted in terms of section 32A of the IBC, which was inserted *vide* IBC (Amendment) Act, 2020, and notified in the Gazette of India Extraordinary on 13.03.2020, which took retrospective effect from 28.12.2019.
9.1.12.	(i) Department of Registration and Stamps and Relevant Authorities of Andhra Pradesh, Delhi, Karnataka, Maharashtra, Gujarat, Tamil Nadu, Rajasthan and such other States and geographies where the Corporate Debtor or the Resolution Applicant carries on its business and operations or where its Assets are located; and (ii) Ministry of Corporate Affairs,	Again, no such blanket approval can be given. Further, it is the duty of the RA and the corporate debtor to comply with the provisions of the Stamp Act of the respective States.

Clause	Dispensation	Orders thereon
	shall exempt the Resolution Applicant and the Corporate Debtor from the levy of stamp duty and fees, applicable in relation to this Resolution Plan and its implementation including issuance of or conversion into ZOCDs and Equity Shares as provided in this Resolution Plan.	
9.1.13.	Upon approval of the Resolution Plan by the Adjudicating Authority: a) moratorium granted to the Corporate Debtor from any actions/ penalties under any Laws for any non-compliance, existing on or prior to the Approval Date will continue from Approval Date to Effective Date and post Effective Date; and b) waiver shall be deemed to have been granted to the Corporate Debtor from all actions, Proceedings or penalties under any Applicable Law for any non-compliance, post Effective Date.	Granted in terms of section 32A of the IBC, which was inserted *vide* IBC (Amendment) Act, 2020, and notified in the Gazette of India Extraordinary on 13.03.2020, which took retrospective effect from 28.12.2019.
9.1.14.	All Business Permits of the Corporate Debtor that may have lapsed or expired, shall be renewed by the respective Relevant Authorities including DoT with effect from the	The RA shall make necessary applications to the concerned regulatory or statutory authorities for renewal of such business permits, and such authority

Clause	Dispensation	Orders thereon
	Approval Date. For avoidance of doubt, it is hereby clarified that, all Business Permits rights, entitlements, benefits and privileges whether under Applicable Law, contract, lease or license granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled to or accustomed to, which have expired on or prior to the Approval Date or the Effective Date, shall be renewed by the 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 so as to implement the Resolution Plan until renewed by the Relevant Authority, whichever is later.	shall consider the same keeping in mind the objectives of the IBC, which is to enable resolution of the corporate debtors in a time-bound manner for maximisation of value of assets of such corporate debtors. Such authorities shall also bear in mind that the RA is acquiring the corporate debtors on a "going concern" basis.
9.1.15.	If any Governmental Authority has suspended, cancelled, revoked or terminated any Business Permits of the Corporate Debtor; or any Relevant Authority has threatened to suspend, cancel, revoke or terminate any Business Permits or 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	The RA shall make necessary applications to the concerned regulatory or statutory authorities for renewal of such business permits, and such authority shall consider the same keeping in mind the objectives of the IBC, which is to enable resolution of the corporate debtors in a time-bound manner for maximisation

Clause	Dispensation	Orders thereon
	Governmental Authorities shall waive such non-compliances so as to allow implementation of the Resolution Plan. Post Approval Date, the Relevant Authorities shall not initiate any investigations, actions or Proceedings in relation to such non-compliances or taking any adverse measures in this respect.	of value of assets of such corporate debtors. Such authorities shall also bear in mind that the RA is acquiring the corporate debtors on a "going concern" basis.
9.1.16.	From the Approval Date, all inquiries, investigations and proceedings, suits, claims, disputes, proceedings in connection with the Corporate Debtor or affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the Approval 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	Granted, subject to the condition that these shall pertain to any inquiries, investigations, proceedings, suits, claims, disputes, etc. only in relation to the period prior to the Approval Date, and not thereafter. From the Approval Date, the corporate applicants now controlled by the RA shall be responsible for their own destinies arising out of non-compliance for the period after such approval.

Clause	Dispensation	Orders thereon
	approval of this Resolution Plan, all new inquiries, investigations, notices, suits, claims, disputes, litigations, arbitrations or other judicial, regulatory 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 prior to the Effective Date.	
9.1.17.	No Governmental Authority (including 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.	The RA shall make necessary applications to the concerned regulatory or statutory authorities for renewal of such business permits, and such authority shall consider the same keeping in mind the objectives of the IBC, which is to enable resolution of the corporate debtors in a time-bound manner for maximisation of value of assets of such corporate debtors. Such authorities shall also bear in mind that the RA is acquiring the corporate debtors on a "going concern" basis.
9.1.18.	Any approvals that may be required from Governmental Authorities (including Tax authorities) in connection with	Granted.

Clause	Dispensation	Orders thereon
	the implementation of the Resolution Plan including on account change in ownership/ control of the Corporate Debtor shall be deemed to have been granted on the Approval Date.	
9.1.19.	Access to Assets of the Company: Upon approval of this Resolution Plan by Adjudicating Authority, each of the lessors/ owners of the Assets where the Company conducts its business shall provide unrestricted access to the Resolution Applicant, the Company, and each of their respective Representatives, employees, officers and agents to such locations without holding any asset of the Company located at such premises for ransom.	Granted.
9.1.20.	Upon approval of this Resolution Plan by Adjudicating Authority, all actions stated in this Resolution Plan shall be deemed to be approved. Accordingly, any action or implementation of this Resolution Plan shall not be a ground for termination of any Business Permits or the like that has been granted to the Company or for which the Company has made an application for renewal or grant.	The RA shall make necessary applications to the concerned regulatory or statutory authorities for renewal of such business permits, and such authority shall consider the same keeping in mind the objectives of the IBC, which is to enable resolution of the corporate debtors in a time-bound manner for maximisation of value of assets of such corporate debtors. Such

Clause	Dispensation	Orders thereon
		authorities shall also bear in mind that the RA is acquiring the corporate debtors on a "going concern" basis.
9.1.21.	The Resolution Applicant has also considered that by virtue of the order of the Adjudicating Authority approving this Resolution Plan and since the Resolution Applicant would acquire the Company on a 'going concern' basis, all consents, licences, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Company or to which the Company is entitled or accustomed to shall, notwithstanding any provision to the contrary in their terms and notwithstanding that they may have already lapsed or expired due to any non-compliance or efflux of time, be deemed to continue without disruption for the benefit of the Company and the Resolution Applicant as required for implementation of the Resolution Plan.	Granted.
9.1.22.	Save and except the Business Permits such as requisite licences from DoT, permission and contract for using spectrum and	Granted. However, the RA shall make formal applications to the concerned regulatory or

Clause	Dispensation	Orders thereon
	other telecom infrastructure allocated to the Corporate Debtor, including those permissions, approvals and contracts related to AL Fibre and IE Business and contracts related to telecom towers owned by Corporate Debtor, all other contracts (including contracts related to towers leased to Corporate Debtor and related services as mentioned in VDR) entered into by the Company with any counterparty, shall be deemed to be terminated. All liabilities, damages or claims arising therefrom, whether admitted or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, disputed or undisputed, in relation to any period prior to or post the Effective Date (in respect of terminating contracts), or on account of the measures and implementation plan contemplated under this Resolution Plan pursuant to all the aforesaid contracts and approvals/ clearances (including those being terminated) including termination of these contracts shall be deemed to be permanently extinguished by	statutory authorities for renewal of such business permits, and such authority shall grant approval keeping in mind the objectives of the IBC, which is to enable resolution of the corporate debtors in a time-bound manner for maximisation of value of assets of such corporate debtors. Such authorities shall also bear in mind that the RA is acquiring the corporate debtors on a "going concern" basis.

Clause	Dispensation	Orders thereon
	virtue of the order of the Adjudicating Authority approving this Resolution Plan and the Company and the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.	
9.1.23.	Allow the Corporate Debtor to enjoy and avail in future any tax benefits, deductions, exemptions as per the relevant provisions of the Applicable Law which the Corporate Debtor was entitled to before the commencement of CIRP for the balance period as per the relevant provisions of the Applicable Law.	Granted.
9.1.24.	Direction that all the non-compliances under the Act including but not limiting to violation of section 185, 186 of the Act should be regularised and all penalties payable in relation to the non-compliances stand waived off	Granted.
9.1.25.	On Approval Date, all pending Proceedings relating to the winding-up of the Corporate Debtor shall stand irrevocably and unconditionally extinguished in perpetuity. All Financial Creditors, Operational Creditors, Relevant Authorities, employees and workmen, shall be deemed to	Granted.

Clause	Dispensation	Orders thereon
	have waived all termination rights and rights to payment beyond that which is contemplated under this Resolution Plan.	
9.1.26.	The Resolution Applicant and the Company shall not be liable towards any claims or obligations (present or future, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, disputed or undisputed) towards or relating to the subsidiaries or associate companies of the Company, domestic or foreign, including in relation to any undertakings or guarantees issued by the Company for such subsidiaries and associate companies, in any manner whatsoever. Without prejudice to the aforementioned, all guarantees/ supports/ credit comforts/ put options/ indemnities or any agreement of similar nature given by the Company in relation to such subsidiaries or associate companies before the Approval Date shall stand irrevocably and unconditionally withdrawn for no consideration and no claim shall be made pursuant to such guarantees/supports/credit comforts/ put options/	Granted.

Clause	Dispensation	Orders thereon
	indemnities or any agreement of similar nature.	
9.1.27.	Any security, guarantee, indemnity, pledge, charge, Encumbrance, or any other form of collateral (whether over immovable, movable assets, fixed deposits, margin money, cash collateral or any other rights, including subrogation rights arising out of invocation of guarantees or privileges and including without limitation, any guarantee, indemnity, security, letter of credit or pledge provided by the erstwhile promoters of the Company) that was created/ granted/ arranged in connection with any Financial Debt or Operational Debt or any other debt or obligation of the Company (including in relation to its parent or sister concern) or to any other Person in favour of whom the Company has granted any guarantee or security, at any time prior to Approval Date (whether in favour of or for the benefit of a person appearing in the List of Creditors or not and any enforcement actions in this respect thereof) shall automatically fall away, revoked, cancelled and stand null & void as the case may be and all liabilities,	Granted.

Clause	Dispensation	Orders thereon
	claims and obligations in relation to such security, guarantee (including subrogation rights arising out of invocation of such guarantees), pledge, charge, fixed deposits, margin money, cash collateral Encumbrance or other form of collateral shall, stand permanently extinguished post Effective Date simultaneous with creating of Debenture Security Interest as contemplated above in Clause 5 of this Resolution Plan.	
9.1.28.	If any Person has any call option, put option or any right of pre-emption against the Company including right of first refusal, right of first offer, all such options and rights shall, in accordance with the CIRP Regulations, be deemed to be permanently extinguished, and all such rights against the Company will be deemed to be terminated without any liabilities, claims or obligations whatsoever arising out of or in relation to such contracts, by virtue of the order of the Adjudicating Authority approving this Resolution Plan and the Company and the Resolution Applicant shall at no point of time, directly or indirectly, have any obligation,	Granted.

Clause	Dispensation	Orders thereon
	liability or duty in relation thereto.	
9.1.29.	Resolution Applicant proposes that post obtaining control of the Corporate Debtor in accordance with the Resolution Plan, the Corporate Debtor will gradually terminate or lay off employees of the Corporate Debtor for running the Corporate Debtor on a significant scaled down basis without providing any notice period even if such notice period is mentioned in their employment contract with the Corporate Debtors, or providing any payment in lieu of such notice period with any liability towards the same extinguishing as mentioned below. Upon the NCLT approval of this Resolution Plan, all the employment contracts or existing employment policies will stand automatically amended and Corporate Debtor will get exempted from compliance with any Applicable Law, such that upon termination of any of the employees, Corporate Debtor is not obliged to provide any notice period to any of the employees upon termination or provide any payment in lieu of notice period. The aforesaid steps relating to	While layoffs as part of scaling down is permitted, it shall be the duty of the RA and the corporate debtors to ensure that the terms of such laid-off employees are respected and honoured in terms of payments and notices. We do not think that complying with the terms of the contract shall cause a huge dent in the resources of the RA or of the corporate debtors.

Clause	Dispensation	Orders thereon
	employees of the Company are necessary for implementation of the Resolution Plan and meeting its objective which is to maximise the payments to the identified creditors of the Corporate Debtor and minimising the cost of running the Company at a scaled down basis post Effective Date.	
9.1.30.	All the approvals or actions required to be undertaken under any Applicable Law for implementation of the Resolution Plan, including AL Fibre and IE Transaction or Spectrum Transaction or sale of any other Asset including approval of creditors will be waived or deemed to be taken upon approval of the Resolution Plan by the Adjudicating Authority.	Granted, considering that the DoT was represented in all meetings of the CoC from the 3rd meeting onwards, and that the Resolution Plan was also considered in their presence and no objection has been raised thereon.
9.1.31.	Allowing transfer of Right to Use Spectrum to any of the Proposed Spectrum Buyers free of any Encumbrance including any Encumbrance from DoT.	Granted, considering that the DoT was represented in all meetings of the CoC from the 3rd meeting onwards, and that the Resolution Plan was also considered in their presence and no objection has been raised thereon.
9.1.32.	Waiver of Tax on account of writing back/reduction of any debt pursuant to the Resolution Plan.	Granted.

Clause	Dispensation	Orders thereon
9.1.33.	DoT shall approve the implementation of the Resolution Plan, including the Spectrum Transaction and AL Fibre and Business Transaction, if such an approval is required.	Granted, considering that the DoT was represented in all meetings of the CoC from the 3rd meeting onwards, and that the Resolution Plan was also considered in their presence and no objection has been raised thereon.
9.1.34.	No consent from any of the contracting parties or Governmental Authority will be required for implementing the Resolution Plan including AL Fibre and IE Business Transaction with such consent being deemed to be in place post NCLT approval.	Granted. However, the RA shall make formal applications to the concerned regulatory or statutory authorities for renewal of such business permits, and such authority shall grant approval keeping in mind the objectives of the IBC, which is to enable resolution of the corporate debtors in a time-bound manner for maximisation of value of assets of such corporate debtors. Such authorities shall also bear in mind that the RA is acquiring the corporate debtors on a "going concern" basis.
9.1.35.	Considering that ZOCDs are being issued as part of the resolution plan under the Code and to pay the Financial Creditors in the manner as set out	Granted. However, the RA shall make formal applications to the concerned regulatory or statutory authorities for

Clause	Dispensation	Orders thereon
	in the Resolution Plan, provide exemption to the Corporate Debtor, Resolution Applicant and the Financial Creditors from compliance with the provisions of the Act or RBI regulations applicable to ZOCDs.	renewal of such business permits, and such authority shall grant approval keeping in mind the objectives of the IBC, which is to enable resolution of the corporate debtors in a time-bound manner for maximisation of value of assets of such corporate debtors. Such authorities shall also bear in mind that the RA is acquiring the corporate debtors on a "going concern" basis.
9.1.36.	All the concessions and reliefs including extinguishment of liabilities as sought by Resolution Applicant in the Clause 6 (*Treatment of Various Stakeholders*) and Clause 5 (*Implementation Schedule, Supervision of Implementation and Term*).	Granted.
9.1.37.	This Clause 9 and the provisions of Clause 6 (*Treatment of Various Stakeholders*) and Clause 5 (*Implementation Schedule, Supervision of Implementation and Term*) will be read in harmony with each other and without prejudice to each other.	Granted.

6.7.2. The existing members of the suspended Board of Directors of each of the corporate applicants shall be deemed to have resigned from their directorships effective from today.

6.7.3. The Resolution Plans placed on record in respect of all the three corporate applicants, *viz.,* (1) Aircel Limited; (2) Dishnet Wireless Limited; and (3) Aircel Cellular Limited, is hereby approved with the modifications mentioned in para 6.7.1 *supra*. The same shall be binding on the respective corporate applicant, its members, creditors, guarantors, employees and other stakeholders, as also the Resolution Applicants.

6.7.4. The order of moratorium which has come into effect from 12.03.2018 *(in the case of Aircel Limited)* and 19.03.2018 *(in the case of Dishnet Wireless Limited and Aircel Cellular Limited)* by virtue of the orders of admission passed on those dates by this Adjudicating Authority under section 14 of the IBC shall cease to have effect from the date of passing of this Order.

6.7.5. The Resolution Professional shall forward all records relating to the conduct of the CIRP and the Resolution Plans to the IBBI as mandated by the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

6.7.6. A copy of this order be filed with the Registrar of Companies, Maharashtra, Mumbai.

6.7.7. Ordered accordingly. File be consigned to the record.

Sd/-
Ravikumar Duraisamy
Member (Technical)

Sd/-
Rajasekhar VK
Member (Judicial)