



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.45- IA 476 of 2018 ALONG WITH
ITEM No. 46- IA 491 of 2018
ITEM No. 47- IA 22 of 2019
ITEM No. 48- IA 551 of 2019
ITEM No. 49- IA 552 of 2019 in IA 476 of 2018
ITEM No. 50- IA 193 of 2019
ITEM No. 51- IA 194 of 2019
ITEM No. 52- IA 15 of 2020
ITEM No. 53- IA 86 of 2020
IN CP(IB) 14 of 2018

Order under Section 30(6) IBC

IN THE MATTER OF: IA 476 of 2018

Shailen Shah RP of Wind world (India) Ltd

.....Applicant

ALONG WITH

Order under Section 60(5) IBC

IN THE MATTER OF: IA 491 of 2018

India Renewable Energy Development
Agency Ltd (Ireda)

.....Applicant

V/s

Wind World (India) Ltd & Ors

.....Respondent

AND

Order under Section 60(5) IBC

IN THE MATTER OF: IA 22 of 2019

Ajay Mehra

.....Applicant

V/s

Shailen Shah RP of Wind world India Ltd & Anr

.....Respondent

AND

Order under Section 60(5) IBC

IN THE MATTER OF: IA 551 of 2019

Sonu Cargo Movers (India) Pvt Ltd

.....Applicant

V/s

Shailen Shah RP Wind World (India) Ltd

.....Respondent



AND

Order under Section 31 & 60(5) IBC

IN THE MATTER OF: IA 552 of 2019 in IA 476 of 2018

Enercon Gmbh

V/s

Shailen Shah RP For Wind World (India) Ltd

.....Applicant

.....Respondent

AND

Order under Section 60(5) IBC

IN THE MATTER OF: IA 193 of 2019

Yogesh Mehra MD of Wind World (India) Ltd

V/s

Shailen Shah RP for Wind World (India) Ltd & Ors

.....Applicant

.....Respondent

AND

Order under Section 60(5) IBC

IN THE MATTER OF: IA 194 of 2019

KFW Represented by KFW Ipex-Bank

V/s

Wind World (India) Ltd & Ors

.....Applicant

.....Respondent

AND

Order under Section 60(5) IBC

IN THE MATTER OF: IA 15 of 2020

Yogesh Mehra

V/s

Shailen Shah RP For Wind World (India) Ltd

.....Applicant

.....Respondent

AND

Order under Section 60(5) IBC

IN THE MATTER OF: IA 86 of 2020



IA/476(AHM)2018 ALONG WITH IA/491(AHM)2018 AND IA/22(AHM)2019 AND IA/551(AHM)2019 AND IA/552(AHM)2019 AND IA/193(AHM)2019 AND IA/194(AHM)2019 AND IA/15(AHM)2020 AND IA/86(AHM)2020 IN CP(IB) No. 14/NCLT/AHM/2018

Indian Renewable Energy Development Agency Ltd
V/s
Shailen Shah RP for Wind World (India) Ltd & Anr

.....Applicant

.....Respondent

Order delivered on ..24/08/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

IA 476 of 2018, IA 491 of 2018, IA 22 of 2019, IA 551 of 2019, IA 552 of 2019 in IA 476 of 2018, IA 193 of 2019, IA 194 of 2019, IA 15 of 2020, and IA 86 of 2020

All cases are fixed for pronouncement of the order. The common order is pronounced in open court vide separate sheet.

-SD-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

-SD-

**MADAN B. GOSAVI
MEMBER (JUDICIAL)**

Rajeev Kr. Sen-Stenographer
Shweta G. Desai-LRA



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I**

IA/476(AHM)2018

ALONG WITH

IA/491(AHM)2018

AND

IA/22(AHM)2019

AND

IA/551(AHM)2019

AND

IA/552(AHM)2019

AND

IA/193(AHM)2019

AND

IA/194(AHM)2019

AND

IA/15(AHM)2020

AND

IA/86(AHM)2020

IN

CP(IB) No. 14/NCLT/AHM/2018

IA/476(AHM)2018

[An application under section 30(6) of the Insolvency and Bankruptcy Code, 2016]

**Shailen Shah, Resolution Professional for
Wind World (India) Ltd.**



Having its address at:

5th Floor, Lodha Excelus,
Apollo Mills Compound
N.M. Joshi Marg, Mahalaxmi
Mumbai – 400011

Having registration No. IBBI/IPA-001/IP-
P00408/2017-18/10725

....Applicant/Resolution Professional

AND

IA/491(AHM)2018

[An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016]

Indian Renewable Energy Development Agency Ltd.(IREDA)

Having its address at:
3rd Floor, August Kranti Bhawan,
Bhikaiji Cama Place,
New Delhi - 10066

....Applicant

Versus

1. Wind World (India) Ltd.

Through its Resolution Professional

Mr. Shailen Shah

Having its address at:

5th Floor, Lodha Excelus,
Apollo Mills Compound
N.M. Joshi Marg, Mahalaxmi



Mumbai – 400011

2. Committee of Creditors

Through Resolution Professional

Mr. Shailen Shah

Having its address at:

5th Floor, Lodha, Excelus,

Apollo Mills Compound

N.M. Joshi Marg, Mahalaxmi

Mumbai – 400011

3.(A) Suraksha Asset Reconstruction Pvt. Ltd.

Having its address at:

Naman Midtown,

21st Floor, “A” Wing,

Senapati Bapat Marg,

Elphinstone Road,

Mumbai – 400017

(B) Lakshdeep Investment and Finance Pvt. Ltd.

Having its address at:

3, Narayan Building 23, L.N. road,

Dadar (East), Mumbai – 400014

(C) Suraksha Realty Ltd.

Having its address at:

3, Narayan Building 23, L.N. Road

Dadar (East) Mumbai – 400014

4. Alulla Investment Fund Ltd.

Having its address at:

33, Edith Cavel Street, Port Louis

Republic of Mauritius

...Respondents



AND

IA/22(AHM)2019

[An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016]

Ajay Mehra

Suspended Director & Shareholder of Wind World (India) Ltd.

Having its address at:

Plot A-9, Veera Industrial Estate,
Veera Desai Road, Andheri (W),
Mumbai – 400053

....Applicant

Versus

**Shailen Shah, Resolution Professional for
Wind World (India) Ltd.**

Having its address at:

5th Floor, Lodha Excelus,
Apollo Mills Compound
N.M. Joshi Marg, Mahalaxmi
Mumbai – 400011

....Respondent

AND



IA/551(AHM)2019

[An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016]

Sonu Cargo Movers (India) Pvt. Ltd.

Having its address at:

G-1, Ground Floor, Amrut Sidhhi CHS Ltd.

Ravi Industrial Estate, Panchpakhadi

Thane West – 400062, Maharashtra

.....Applicant

Versus

Wind World (India) Ltd.

Through its Resolution Professional

Mr. Shailen Shah

Having its address at:

5th Floor, Lodha Excelus,

Apollo Mills Compound

N.M. Joshi Marg, Mahalaxmi

Mumbai – 400011, Maharashtra

.....Respondent

IA/552(AHM)2019

[An application under sections 31 & 60(5) of the Insolvency and Bankruptcy Code, 2016)

Enercon GmbH

Having its address at:

Prokunst, Dreekamp 5, D26605,

Aurich, Germany.

....Applicant



Versus

Shailen Shah RP of Wind World (India) Ltd.

5th Floor, Lodha Excelus,
Apollo Mills Compound
N.M. Joshi Marg, Mahalaxmi
Mumbai – 400011.

....Respondent

IA/193(AHM)2019

[An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016]

Yogesh Mehra

Managing Director of Wind World (India) Ltd.

Having its Office at
Wind World Towers,
Plot No. A-9, Veera Industrial Estate
Veera Desai Road, Andheri (West)
Mumbai – 400053.

.....Applicant

Versus

1. Wind World (India) Ltd.

Through its Resolution Professional Mr. Shailen Shah
Having its address at:
5th Floor, Lodha Excelus,
Apollo Mills Compound
N.M. Joshi Marg, Mahalaxmi
Mumbai – 400011



2. Committee of Creditors

Through Resolution Professional

Mr. Shailen Shah

Having its address at:

5th Floor, Lodha

Excelus, Apollo Mills Compound

N.M. Joshi Marg, Mahalaxmi

Mumbai – 400011.

3. (A) Suraksha Asset Reconstruction Pvt. Ltd.

Having its address at:

Naman Midtown, 21st Floor, “A” Wing,

Senapati Bapat Marg, Elphinstone Road,

Mumbai – 400017

(B) Lakshdeep Investment and Finance Pvt. Ltd.

Having its address at:

3, Narayan Building

23, L.N. road, Dadar (East)

Mumbai – 400014

(C) Suraksha Realty Ltd.

Having its address at:

3, Narayan Building 23, L.N. Road

Dadar (East), Mumbai – 400014

4. Sipla Wind Energy Ltd.

Having its address at:

IL&FS Financial Centre C 22

G Block, Bandra-Kurla Complex

Bandra (East), Mumbai – 400051

5. Mahidad Wind Energy Pvt. Ltd.

Having Its Registered Office at



IL&FS Financial Centre C 22
G Block, Bandra-Kurla Complex
Bandra (**East**), **Mumbai – 400051**

6. Jogihali Wind Energy Pvt. Ltd.

Having its address at:

IL&FS Financial Centre C 22
G Block, Bandra-Kurla Complex
Bandra (East), Mumbai – 400051

...Respondents

AND

IA/194(AHM)2019

[An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016]

KFW

Represented by KFW IPEX-Bank GmbH

Having its address at:

Palmengartenstrasse 5-9,
60325, Frankfurt am Main.

....Applicant

Versus

1. Wind World (India) Ltd.

Through its Resolution Professional Mr. Shailen Shah

Having its address at:

5th Floor, Lodha Excelus,
Apollo Mills Compound
N.M. Joshi Marg, Mahalaxmi
Mumbai – 400011



2. Committee of Creditors

Through Resolution Professional

Mr. Shailen Shah

Having its address at:

5th Floor, Lodha

Excelus, Apollo Mills Compound

N.M. Joshi Marg, Mahalaxmi

Mumbai – 400011.

3. Suraksha Consortium

Comprising of:

(a) Suraksha Asset Reconstruction Pvt. Ltd.

Having its address at:

20th Floor, “A” Wing, Naman Midtown,

Senapati Bapat Marg, Elphinstone Road,

Mumbai – 400017.

(b) Lakshdeep Investment and Finance Pvt. Ltd.

Having its address at:

3, Narayan Building

23, L.N. road, Dadar (East)

Mumbai – 400014.

(c) Suraksha Realty Ltd.

Having its address at:

3, Narayan Building 23, L.N. Road

Dadar (East), Mumbai – 400014.

4. Albula Investment Fund Ltd.

Having its office at:

33, Edith Cavell Street, Port Louis,

Republic of Mauritius.

...Respondents



AND

IA/15(AHM)2020

[An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016]

Yogesh Mehra

Managing Director of
Wind World (India) Ltd.
Having its address at:
Wind World towers,
Plot No. A-9, Veera Industrial Estate
Veera Desai Road, Andheri (West)
Mumbai – 400053.

.....Applicant

Versus

1. Wind World (India) Ltd.

Mr. Sailen Shah
Having its office at:
5th Floor, Lodha Excelus,
Apollo Mills Compound
N.M. Joshi Marg, Mahalaxmi
Mumbai – 400011

2. Committee of Creditors

Through its Resolution Professional
Mr. Sailen Shah
Having its office at:
5th Floor, Lodha Excelus,



Apollo Mills Compound
N.M. Joshi Marg, Mahalaxmi
Mumbai – 400011.

.....Respondents

AND

IA/86(AHM)2020

[An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016]

Indian Renewable Energy Development Agency Ltd. (IREDA)

Having its address at:

3rd Floor, August Kranti Bhawan,
Bikaiji Cama Place, New Delhi – 110066.

....Applicant

Versus

1. Mr. Shailen Shah

Resolution Professional of Wind World (India) Ltd.

Having its address at:

5th Floor, Lodha Excelus,
Apollo Mills Compound
N.M. Joshi Marg, Mahalaxmi
Mumbai – 400011

2. Committee of Creditors

Through Resolution Professional

Mr. Shailen Shah

Having its address at:

5th Floor, Lodha Excelus,



Apollo Mills Compound

N.M. Joshi Marg, Mahalaxmi

Mumbai – 400011

3. Suraksha Asset Reconstruction Pvt. Ltd.

(Resolution Applicant)

Having its address at:

Naman Midtown, 20th Floor, A Wing,

Naman Midtown, Senapati Bapat Marg, Prabhadevi,

Mumbai – 400013

4. Lakshdeep Investment and Finance Pvt. Ltd.

Having its address at:

3, Narayan Building 23,

L.N. road, Dadar (East)

Mumbai – 400014

5. Suraksha Realty Ltd.

Having its address at:

3, Narayan Building

23, L.N. Road, Dadar (East)

Mumbai – 400014

6. Shanghvi Finance Pvt. Ltd.

Having its address at:

F-145, Ram Mandir Road

GR. Floor Vile Parle (E)

Mumbai – 400057

7. Mr. Sudhir Vrundavandas Valia

Having its address at:

801, 8th floor, Aalap Building

173, Sir Bhalchandra Road,

Opposite Hindu Colony



Dadar (East)
Mumbai – 400014

.....Respondents

IN THE MATTER OF

CP(IB) No. 14/7/NCLT/AHM/2018

IDBI Bank

....Financial Creditor

Versus

Wind World (India) Ltd.

....Corporate Debtor

**Order reserved on: 20.07.2022
Order pronounced on: 24.08.2022**

Coram: MADAN B. GOSAVI (MEMBER JUDICIAL)

KAUSHALENDRA KUMAR SINGH (MEMBER TECHNICAL)

Appearance:

For the RP : Mr. Navin Pahwa, Ld. Sr. Adv., along with Ms. Helly Parikh, Ld. Adv., Ms. Neha Naik, Ld. Adv.
For the Resolution Applicant : Mr. Sandeep Singhi, Ld. Adv., along with Ms. Poonam Mathur, Ld. Adv., Ms. Anvi Majmudar, Ld. Adv.
For the CoC :Mr. Shalin Mehta, Ld. Sr. Adv., Mr. Nirav Shah, Ld. Adv., Mr. Rushabh H. Shah, Ld. Adv. Ms. Namrata Zaveri, Ld, Adv.,Mr. Ratnesh Shah. Ld, Adv., Mr. Viraj Gami, Ld, Adv.
For the Suspended Management : Mr. Rashesh Sanjanwala, Ld. Sr. Adv., along with Mr. Parth Shah, Ld. Adv. and Mr. Dhruvil G. Merchant, Ld. Adv.
For the other objectors :Mr. Saurabh Soparkar, Ld. Sr. Adv., Mr.



Jaimin R. Dave, Ld. Adv., Mr. Masoom K. Shah,
Ld. Adv.

For others

:Mr. Anuj K. Trivedi, Ld. Adv.

ORDER

1. The main interim application (IA/476(AHM)2018) under section 30(6) of the Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) is filed by Mr. Shailen Shah-the Resolution Professional of the Corporate Debtor-M/s. Wind World (India) Limited for approval of the resolution plan of M/s. Suraksha Consortium consisting of (i) Suraksha Asset Reconstruction Private Limited (in short “SARL”), (ii) Suraksha Realty Limited, and (iii) Lakshdeep Investment and Finance Private Limited.

2. Number of stakeholders of the corporate debtor filed all other applications opposing the approval of the resolution plan on various grounds. The nature of objections in short is as follows:

I. IA/491(AHM)2018 has been filed by India Renewable Energy Development Agency Ltd., (in short “IREDA”). It is one of the financial creditors of the corporate debtor having 3.82% of the voting shares. It alleges that the RP has categorized it as the financial creditor in group B and has given a far lesser amount proportionate to its debt by paying more to other financial creditors by putting them into the A category. According to IREDA, the RP did not take care of the interests of stakeholders in an equitable manner. The resolution plan also contravenes the provisions of Regulation 38(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short “IBBI (CIRP) Regulations, 2016”). Hence, the resolution plan is liable to be rejected.



II. IA/22(AHM)2019 has been filed by the suspended management of the corporate debtor along with IA/193(AHM)2019. In IA/22(AHM)2019, the ground to reject the resolution plan is raised as the RP did not give a copy of the resolution plan to the suspended management. It also contends that other resolution applicant- M/s. Albula Investment Fund Ltd., has provided more amount towards the payment of debts than what has been offered by the successful resolution applicant. However, it is submitted at the Bar by learned counsel for the suspended management that the copy of the resolution plan was given later on and it has raised its objection against the resolution plan by IA/193(AHM)2019. It is contended that the resolution applicant is an asset construction company, it cannot submit any resolution plan. Nothing is paid to the operational creditors of the corporate debtor. The resolution plan as submitted by the resolution applicant is in form of the assignment of debt rather than the resolution of the corporate debtor. Some other grounds for rejection are also raised therein.

III. IA/551(AHM)2019 is filed by M/s. Sonu Cargo Movers (India) Pvt. Ltd., –one of the operational creditors of the corporate debtor, by pointing out the fact that the total debt payable by the corporate debtor is about Rs. 5,918 Cr. The admitted claim of the operational creditors is Rs. 1,292 Cr. i.e., 21% of the total debt payable by the corporate debtor. In such a situation, the RP was obliged to follow the mandate of section 24(3) of the IBC, 2016 by inviting the operational creditors or their representatives to attend the meeting of the Committee of Creditors (“CoC”). The RP did not follow this mandate. Hence, the entire CIRP is vitiated. It is also alleged that the financial creditors are placed in three groups A, B, and C indiscriminately. Nothing is paid to the operational creditor. Hence,



the resolution plan is in contravention of provisions of Regulation 38 (3) of the IBBI (CIRP) Regulations, 2016.

IV. IA/552(AHM)2019 is filed by Enercon GmbH-one of the largest operational creditors of the corporate debtor. It contends that apart from the fact that it is one of the operational creditors of the corporate debtor, it holds 56% shares of the corporate debtor. The share purchase agreement is now in arbitral dispute i.e., still pending before the Hon'ble Bombay High Court and now at the Hon'ble Supreme Court. It alleges that its claim of more than Rs. 700 Cr., has not been considered by the RP. It is contended that the applicant had provided the corporate debtor certain confidential turbine technology. The corporate debtor failed and neglected to pay the applicant royalty charges for use of that technology. As per the agreement in between them, the corporate debtor has to return the technology (design) to the applicant. However, in the resolution plan that technology is sought to be transferred in favour of the resolution applicant without consent of this applicant. The applicant has also raised some other grounds.

V. IA/193(AHM)2019 is filed by Mr. Yogesh Mehra- the Managing Director of the corporate debtor challenging the resolution plan. He raised the ground that the copy of the resolution plan was not supplied to him. He has alone 11.56% shares in the corporate debtor. He is also one of the personal guarantors of the corporate debtor. He raised the question about the validity of the 6th, 7th, 11th, and 12th meetings of the CoC in which the resolution plan of the successful resolution applicant and the resolution plan submitted by another bidder M/s. Albula Investment Fund Ltd., was discussed by the CoC. According to him, the resolution plan of the successful resolution applicant was approved by only 61.41% votes by the CoC



which is less than the requisite percentage under the law. He also raised the point that IL&FS Group Companies ought not to have been included in the CoC as Enforcement Directorate has initiated money laundering case against IL&FS Financial Services and its group companies under the Prevention of Money Laundering Act, 2002 (PMLA) which is mentioned in IA 15(AHM)2020.

VI. In IA/194(AHM)2019, the resolution plan was objected on the same ground as has been raised by Mr. Yogesh Mehra. It states that IL&FS Group Companies cannot be the financial creditor of the corporate debtor. It ought not to have been included as the CoC member. Moreover, the resolution plan is not in compliance with Regulation 38 of the IBBI (CIRP) Regulations, 2016.

VII. IA/15(AHM)2020 is filed by again Mr. Yogesh Mehra bringing on record certain material to show that the resolution plan is not feasible and viable; and that the resolution applicant-M/s. Suraksha Consortium, was ineligible under section 29A of the IBC, 2016 to submit the resolution plan.

VIII. IA/86(AHM)2020 is filed by Indian Renewal Energy Development Agency Limited (in short "IREDA") pointing out that the resolution applicant-M/s. Suraksha Consortium is ineligible under section 29A of the IBC, 2016 to submit the resolution plan. It is also alleged that IL&FS Group Companies cannot be a CoC member and the resolution plan is not feasible and viable.

3. We have noted the fact that the resolution plan of M/s. Suraksha Consortium was approved by the CoC on 17.11.2018. But we are considering the application for approval or rejection of the resolution plan now i.e., almost after three years and eight months. There is an inordinate delay in considering this application. To



understand as to why there is so much delay in considering this application, we need to take note of some dates and events.

These are as follows:

I. On 19.11.2018, the RP filed IA/476(AHM)2018 for approval of the resolution plan. On 01.12.2018 the suspended management filed an application seeking a copy of the resolution plan. It was allowed. In between, 01.12.2018 to April 2019 various financial creditors, operational creditors and suspended management of the corporate debtor filed a number of applications opposing the resolution plan. On 09.04.2019 one of the operational creditors of the corporate debtor M/s. Sonu Cargo Movers (I) Pvt. Ltd., filed Special Civil Application No. 7151 of 2019 before the Hon'ble Gujarat High Court challenging the very constitution of the NCLT Bench at Ahmedabad contending that it is contrary to the provisions of section 419(3) of the Companies Act, 2013. On 06.05.2019, the Hon'ble Gujarat High Court dismissed that application. On 28.05.2019 same M/s. Sonu Cargo Movers (I) Pvt. Ltd., filed SLP in the Hon'ble Supreme Court challenging order of the Hon'ble Gujarat High Court. On 20.06.2019 the Hon'ble Supreme Court disposed of that SLP. On 08.08.2019 this Adjudicating Authority directed the RP to provide a copy of the resolution plan to the suspended management and also to the operational creditor who has more than 10% shares in total debt. On 13.08.2019 M/s. Sonu Cargo Movers (I) Pvt. Ltd., again filed the writ petition in the Hon'ble Supreme Court challenging vires of some provisions of the Insolvency and Bankruptcy Code. In between 06.09.2019 to 13.11.2019 number of interim applications came to be filed in this proceeding. On 15.11.2019 the Hon'ble Supreme Court disposed of that writ



petition permitting said M/s. Sonu Cargo Movers (I) Pvt. Ltd., to raise all points before the NCLT. Meantime, some of the provisions of the IBC, 2016 were amended by the Government of India.

II. On 03.12.2019 this Adjudicating Authority passed the order in IA/476(AHM)2018 directing the CoC to revisit the resolution plan in view of the decision of the Hon'ble Supreme Court in the case of CoC of Essar Steel Ltd. versus Satish Kumar Gupta. On 23.12.2019, the 14th CoC meeting was held. The suspended management of the corporate debtor raised objections that the resolution applicant-M/s. Suraksha Consortium is not eligible to submit the resolution plan under section 29A of the IBC, 2016 but the CoC approved the plan by 93.63% votes. On 04.01.2020, Mr. Yogesh Mehra-MD of the corporate debtor filed IA/15(AHM)2020-the application challenging the approval of the resolution plan. From March 2020 till 06.07.2020, there could not be an effective hearing of the matters due to the pandemic and lockdown. On 31.07.2020 M/s. Sonu Cargo Movers (India) Pvt. Ltd., filed a Civil Application before the Hon'ble Gujarat High Court requesting therein to direct this Adjudicating Authority to have the physical hearing of this proceeding. On 01.08.2020 the Hon'ble High Court dismissed that application.

4. Since there was an inordinate delay in approving the resolution plan, the resolution applicant had filed IA/439(AHM)2020 on 03.08.2020 for seeking permission to withdraw the resolution plan on the ground that due to inordinate delay, the financial dynamics, as far as power sectors have been changed substantially. The resolution plan now remains not feasible and viable. It cannot implement the resolution plan etc. On 08.09.2020 this Adjudicating Authority passed the order



permitting the resolution applicant to withdraw the resolution plan. On 12.09.2020, the order permitting withdrawal of the resolution plan was challenged before the Hon'ble NCLAT. However, on 13.09.2021 the Hon'ble Supreme Court passed a judgment in the case of Ebix Singapore Pvt. Ltd., versus CoC of Educomp Solutions Limited and Another in (Civil Appeal No. 3224 of 2020) holding that there is no provision in the Insolvency and Bankruptcy Code to permit the resolution applicant to withdraw the resolution plan after it was being approved by the CoC. On 20.09.2021 the Hon'ble NCLAT in view of the above Supreme Court's judgment set aside the order of this Adjudicating Authority permitting the withdrawal of the resolution plan and directed this Adjudicating Authority to decide the application for approval of the resolution plan on merit.

5. On 25.10.2021 this Adjudicating Authority took up the matter for hearing. However, all parties including the objectors filed some applications permitting to bring on record certain facts by way of additional affidavits. After completing the pleadings, we extensively heard learned senior counsel Mr. Navin Pahwa for the RP, learned senior counsel Mr. Saurabh Soparkar for the one for the objectors, learned senior counsel Mr. Rashesh Sanjanwala appearing for some of the objectors and suspended management, learned counsel Mr. Jaimin R. Dave, learned counsel Mr. Masoom K. Shah also appearing for the other objectors. We heard the learned senior counsel Mr. Shalin Mehta for the CoC. We also allowed learned counsel Mr. Sandeep Singhi to make the submissions on behalf of the successful resolution applicant.

6. At the outset, we note that the scope of our inquiry restricts us to examine the plan under section 30(2) of the IBC, 2016 r.w. Regulation 38 of the IBBI (CIRP) Regulations, 2016. It is not in dispute



that there is an inordinate delay caused in considering this application. The reasons for the delay are numerous. One of the operational creditors filed three proceedings in the Hon'ble Gujrat High Court which the Hon'ble Gujarat High Court dismissed instantly. The appeals were filed in the Hon'ble Supreme Court and they were also disposed of immediately. Some orders of this Adjudicating Authority were challenged before the Hon'ble NCLAT, those appeals were also disposed of. Then, the resolution applicant filed an application for withdrawal of the resolution plan. This Adjudicating Authority permitted the withdrawal but ultimately that order is set aside by Hon'ble NCLAT in view of Hon'ble Apex Court Judgment in the case of Ebix Singapore Pvt. Ltd., versus CoC of Educomp Solutions Limited and Another. While allowing the appeal bearing no. 814 of 2020, the Hon'ble NCLAT directed us to consider the resolution plan. It has been held in para 27 in the following words:

“...27. For such reasons and conclusion, the Hon'ble Supreme Court has laid down law as above and in the Appeal before Hon'ble Supreme Court the Appeal of Ebix and Seroco came to be dismissed. The above judgment clearly applies to the facts of the present matter. It is quite clear that the SRA could not have been allowed to withdraw the Resolution Plan after it had been approved by the CoC. The Adjudicating Authority had no jurisdiction to rely on residuary powers of Section 60(5)(c) to entertain the application of SRA. The grounds raised by SRA of delay also are clearly untenable. As observed by the Hon'ble Supreme Court in Para 168 of the judgment the Resolution Applicant is deemed to be aware of the IBC and its mechanisms. The Resolution Applicant, after obtaining the financial information of the Corporate Debtor through the informational utilities and perusing the IM, is assumed to have analysed the risks in the business of the Corporate Debtor and submitted a considered proposal. After the plan has been approved, the SRA could not be heard making the complaints regarding incomplete information (which here is even otherwise not



established) to withdraw from the Resolution Plan. The grievance appears to be made just to raise a petit ground...”

7. Learned counsel Mr. Sandeep Singhi appearing for the resolution applicant submitted that there is a loss of business of the corporate debtor during the last four years. The cash flow is reduced considerably. Number of operation and maintenance contracts are cancelled by various State Governments. He also pointed out that some of the skilled workers/employees in the power generation and distribution sectors have left the job pending this application for adjudication. According to Mr. Sandeep Singhi, now, the resolution applicant cannot effectively resolve the insolvency of the corporate debtor. He submitted that the Hon'ble Apex Court made it clear that the mechanism of the IBC, 2016 cannot be used for recovery of the debt of various creditors of the corporate debtor. The main object of the Insolvency and Bankruptcy Code is to resolve the insolvency of the corporate debtor. According to him, that object cannot be achieved in this case because it is now beyond the reach of the resolution applicant to make the corporate debtor to stand on its leg. He also pointed out that the corporate debtor's unit at Daman is now closed down permanently due to labour disputes (unrest). When the resolution applicant submitted the resolution plan that unit was running. It is his submission that this Adjudicating Authority has to take note of these facts because as per proviso to section 31 of the IBC, 2016, it is the duty of this Adjudicating Authority to satisfy itself whether there is a provision in the resolution plan for its effective implementation. According to him, in this case, the resolution plan now cannot be implemented effectively. This Adjudicating Authority has to consider this fact.



8. Learned senior counsel Mr. Navin Pahwa for the RP, learned senior counsel Mr. Shalin Mehta for the CoC controverted the above arguments of the learned counsel for the resolution applicant. Learned senior counsel Mr. Navin Pahwa took us through the facts and figures provided by the RP to show that the corporate debtor still earning profits. According to him, its overall working capacity is improved. Both learned senior counsels submitted that since the resolution plan is approved with a requisite majority by the CoC, this Adjudicating Authority, now, cannot go into the details of financial implications for holding that the resolution plan is not implementable. According to both of them, this resolution plan can be implemented effectively.

9. At this stage, we make it clear that this Adjudicating Authority has initially permitted the resolution applicant to withdraw the resolution plan on the ground that due to the delay in approving this resolution plan, there is a loss of revenue. The resolution plan does not remain to be viable. Now, the order of this Adjudicating Authority permitting the withdrawal of the resolution plan is set aside. The Hon'ble Supreme Court in the case of Ebix Singapore Pvt. Ltd., versus CoC of Educomp Solutions Limited and Another (in Civil Appeal No. 3224 of 2020), and thereafter the Hon'ble NCLAT in the case of CoC of Wind World (India) Ltd. Vs. Suraksha Asset Reconstruction Company and other (Company Appeal (AT) (Insolvency) No. 841/2020) held that there is no provision in IBC, 2016 to permit withdrawal of the resolution plan approved by the CoC and pending the approval of the Adjudicating Authority. The Hon'ble NCLAT held in clear terms that ***“the Resolution Applicant, after obtaining the financial information of the Corporate Debtor through the informational utilities and persuading the IM, is assumed to have analysed the risks in the business of the Corporate Debtor and submitted a***



considered proposal. After the plan has been approved, the SRA could not be heard making the complaints regarding incomplete information (which here is even otherwise not established) to withdraw from the Resolution Plan. The grievance appears to be made just to raise a petit ground”.

10. In view of the above, we cannot now enter into the controversy whether the business of the corporate debtor still going on well or whether there is a loss of revenue due to delay, etc. As noted above, we restrict ourselves to examine the resolution plan in view of provisions of sections 29A, 30(2), and 31 of the IBC, 2016 r.w. Regulation, 38 of the IBBI(CIRP) Regulations, 2016.

11. To start with, we examined the resolution plan in view of provisions of section 30(2) of the IBC, 2016. It states that:-

30. Submission of resolution plan. –

(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) confirms to such other requirements as may be specified by the Board.

1[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.]

12. Section 30(2)(a) of the IBC, 2016 requires that the resolution plan should contain provisions for payment of CIRP costs in priority. We reproduce hereunder the financial outlay showing the treatment given by the resolution applicant to all stakeholders. It is as follows:

“...20.Summary Statement showing treatment of all stakeholders including financial creditors and operational creditors of the Corporate Debtor

Sr. No.	Stakeholders	Claims Admitted (In Rs.)	Amounts payable under this	Treatment
----------------	---------------------	---------------------------------	-----------------------------------	------------------



		Cr.)	Resolution Plan (In Rs. Cr.)	
1.	<i>Financial Creditor(s)</i>	4,538.01	936.11	<i>a. Upfront Payment: Rs. 500.00 Crore b. Issue of 8% Coupon NCDs of face value of Rs. 290 crore redeemable at Rs. 426.11 Crore along with interest at the end of 5 years. c. Equity stake of 24% paid up equity share capital having face value of Rs. 10.00 cr with buyback @ 12% IRR within 5 years from the date of issue</i>
2.	<i>CIRP Costs</i>	33.67	33.67	<i>The CIRP costs shall be paid on or before any payment made to any other creditor</i>
3.	<i>Workmen & Employee Dues admitted by IRP</i>	87.57	87.57	<i>a. Upfront Payment: Rs. 18.08 Cr b. Balance Rs. 69.49 Crore be paid in 1 year from the Transfer Date out of the cash flows of the Corporate Debtor at its own discretion subject to performance and co-operation of workers and employees and also based on the manpower requirement of the Company with respect to such workers and employees by the Corporate Debtor. The decision taken by the Resolution Applicant in this regard shall be final.</i>
4.	<i>Operational</i>	1,292.75	Nil	<i>No payment shall be made</i>



	<i>Creditors (Excl. PF)</i>			<i>towards the claim of the said operational creditors except to the extent payment due to them in the event Corporate Debtor goes into liquidation.</i>
5.	<i>Existing Equity shareholders</i>	7.20	Nil	<i>Existing Equity share capital to be fully written down.</i>
6.	<i>Additional Funds towards Working Capital for improving operations</i>	-	200.00	<i>Infusion by way of CCDs: Rs. 100 Cr. Infusion by way of revolving working capital facility: Rs. 100 Cr.</i>
	<i>Total</i>		1,257.35	

The Resolution Plan process payment of Rs. 1257.35 crore in the interest of all the stakeholders as mentioned above.

It shows that sum of Rs. 33.67 Crores is kept aside to incur the CIRP costs. We hold that provisions of section 30(2)(a) of the IBC, 2016 are complied with.

13. Number of operational creditors filed objections against the approval of the resolution plan on the ground that there is no provision made in the resolution plan for the payment of the debt of the operational creditors. Learned senior counsel Mr. Navin Pahwa for the RP submitted if we consider the liquidation value of the corporate debtor i.e., INR 441.10 Cr. (in average) then the calculation will show that the operational creditors of the corporate debtor will not get any amount as per waterfall mechanism provided under section 53 of the IBC, 2016 in case the corporate debtor goes in liquidation.

14. We have seen the financial outlay proposed by the resolution applicant. The resolution applicant has proposed to pay the total sum



of Rs. 1257.53 Cr. Out of that amount sum of Rs. 33.67 Cr. is kept aside to incur the CIRP costs. Rs. 936.11 Cr. is provided for payment of the debt of the financial creditors. A sum of Rs. 87.57 Cr. is kept aside for payment of dues of the workmen and employees. Obviously, there remains nothing for the payment of the debt of the operational creditors in spite of the fact that the resolution applicant has proposed to invest almost three times more than the liquidation value of the corporate debtor. In view of the above, we hold that the resolution plan cannot be rejected for non-payment of dues of the operational creditor. The objections of the operational creditor against the plan on the above grounds stand rejected.

15. IA/22(AHM)2019 is filed by the suspended management of the corporate debtor. It contends that other resolution applicant- M/s. Albula Investment Fund Ltd., has provided more amount towards the payment of debts than what has been offered by the successful resolution applicant. The ground to reject the resolution plan is also raised as the RP did not give a copy of the resolution plan to the suspended management. We hold that the resolution plan is approved by the CoC with the requisite majority under section 30(4) of the IBC, 2016 in their commercial wisdom. Hence, the resolution plan cannot be rejected on the ground that the unsuccessful resolution applicant was to pay more amount, etc. At the same time, we have to see whether in the resolution plan equal treatment is given to dissenting financial creditors in payment of their debt as per section 30(2)(b) of the IBC, 2016.

16. In the resolution plan, the resolution applicant proposed to pay a sum of Rs. 936.11 Cr., to all financial creditors but did not give a break up as to what amount to be paid to which financial creditor.



Learned senior counsel Mr. Navin Pahwa for the RP submitted that the Resolution Plan Implementation Committee will pay all financial creditors their due amount as per section 53 of the IBC, 2016. Hence, the details of distribution are not given in the resolution plan. However, it is difficult for us to accept the submission of learned senior counsel. Regulation 38 of the IBBI (CIRP) Regulations, 2016 states the mandatory contents of the resolution plan. It is as follows:

38. Mandatory contents of the resolution plan-

[(1)The amount payable under a resolution plan –

(a)to the operational creditors shall be paid in priority over financial creditors; and

(b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.]

[(1A)A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.]

[(IB) A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.]

(2) A resolution plan shall provide-

(a) the term of the plan and its implementation schedule;

(b) the management and control of the business of the corporate debtor during its term; and

(c) adequate means for supervising its implementation.

[(3) A resolution plan shall demonstrate that –

(a) it addresses the cause of default;

(b) it is feasible and viable;

(c) it has provisions for its effective implementation;



(d) it has provisions for approvals required and the timeline for the same; and

(e) the resolution applicant has the capability to implement the resolution plan.]

17. Sub regulations 1(a) and 1(b) of the above make it clear that the resolution plan must contain an assertive statement as to how it has dealt with the interests of all stakeholders including financial creditors (assenting as well as dissenting) and the operational creditors of the corporate debtor. It is the mandate of law (section 30(2)(b) of the IBC, 2016) that dissenting financial creditors shall be paid the due amount as per section 53(1)(a) of the IBC, 2016 in priority and it has to be mentioned in the plan itself. This resolution plan does not provide anywhere as to what amount is to be paid to the dissenting financial creditors that too in priority. Learned senior counsel Mr. Pahwa for the RP submitted that the Resolution Plan Implementation Committee will look into. But we hold that the Resolution Plan Implementation Committee is responsible for the implementation of the terms of the resolution plan but those terms have to be clearly spelt out in the resolution plan itself as per Regulation 38 of the IBBI (CIRP) Regulations, 2016 as mentioned above. We hold that this plan does not comply with provisions of section 30(2)(b) of the IBC, 2016 as regards to the terms of payment of dissenting financial creditors by not giving details as required under Regulation 38 of the IBBI (CIRP) Regulations, 2016, and hence, this plan is in breach of section 30(2)(b) and (f) of the IBC, 2016.

18. IA/24(AHM)2019 was filed by another dissenting financial creditor i.e., Edelweiss Asset Reconstruction Company Limited objecting to the approval of the resolution plan on the same ground. In that application, the RP filed the affidavit giving the distribution table.



We disposed of that application vide order dated 10.06.2022. However, the point “whether such distribution chart should or should not be as part of the resolution plan” was not raised in that proceeding. Anyway, as per Regulation 38 of the IBBI (CIRP) Regulations, 2016, equal treatment given to all stakeholders has to be displayed in the plan itself. According to us this mandate of law is lacking as far as this plan is concerned. We hold that the resolution plan does not contain mandatory requirements as per Regulation 38 of the IBBI (CIRP) Regulations, 2016 as regards to the payment to dissenting financial creditors.

19. Section 30(2)(c) and 30(2)(d) of the IBC, 2016 require that the resolution plan must contain the mechanism for looking after the management and affairs of the corporate debtor after approval of the resolution plan and also provide the mechanism for implementation and supervision of the resolution plan. In para 13 of the resolution plan, it is mentioned that the CoC, one representative of the resolution applicant, and one independent person appointed by the resolution applicant shall manage the affairs of the corporate debtor. The same committee is given the task of effective implementation of the resolution plan. With this, we note that provisions of sections 30(2)(c) and (d) of the IBC, 2016 are complied with.

20. There are some other objections raised against the approval of the resolution plan by various stakeholders mainly on four grounds. They are (i) the resolution applicant is a related party of the corporate debtor. Hence, it was not eligible to submit the resolution plan under section 29A of the IBC, 2016, (ii) IL&FS Group Companies, being investigated under PMLA ought not to have been a member of the CoC. They should not have been allowed to vote on the plan thereby the



entire CIRP gets vitiated, (iii) one member of the consortium of the resolution applicant-M/s. Suraksha Asset Reconstruction Pvt. Ltd., being an asset reconstruction company cannot be a resolution applicant in view of section 2(b) r.w. section 10 of the SARFAESI Act, 2002 (iv) Enercon GmbH has leased the corporate debtor its technology relating to the windmill. That technology was transferred in favour of the resolution applicant without consent of Enercon GmbH despite the fact that there is a serious dispute pending between the Enercon GmbH and the corporate debtor. We considered these objections hereafter.

21. In IA/15(AHM)2020 and IA/86(AHM)2020, it is alleged that M/s. Suraksha Consortium is not eligible to submit the resolution plan under section 29A of the IBC, 2016. We heard learned senior counsel Mr. Rashesh Sanjanwala for the applicant, Learned senior counsel Mr. Navin Pahwa for the RP. Learned senior counsel Mr. Rashesh Sanjanwala brought to our notice the fact that one Mr. Sudhir Walia is the key managerial person of one of the members of M/s. Suraksha Consortium (in short "SRA") and that he was also the director of the company named M/s. Suzlon Energy Limited (in short "Suzlon") whose account was declared as NPA. In this context, it was stated that on 13.02.2015, said Suzlon executed a shareholding agreement with the group of individuals consisting of Mr. Sudhir Walia and other families. Said Walia family is one of the investors of Suzlon. Mr. Sudhir Walia was appointed as a Director of Suzlon. Suzlon's loan account was declared to be NPA by the S.B. I., in 2018. M/s. Suraksha Consortium submitted the resolution plan for the corporate debtor in 2018 itself. As per the shareholding agreement, executed in between Sudhir Walia and other families, they are major investors in Suzlon. They were allowed to participate in the policy decisions of Suzlon. Learned senior counsel Mr. Rashesh Sanjanwala submitted that section 29A of the IBC, 2016



states that a person shall not be eligible to submit the resolution plan if such person, or any other person acting jointly or in concert with such person-(j) is a connected person not eligible under clause (a) to (i) of the IBC, 2016. Learned senior counsel submitted that Mr. Sudhir Walia is a connected person with Suzlon. Its account was declared N.P.A prior to 2018. Mr. Sudhir Walia is the key managerial person of one of the members of M/s. Suraksha Consortium whose resolution plan has been approved by the CoC. Hence, in view of section 29A(j) of the IBC, 2016, M/s. Suraksha Consortium is not eligible to submit the resolution plan.

22. Learned senior counsel Mr. Navin Pahwa for the RP submitted that whether any person is connected with or acting in concert with the corporate debtor whose account declared to be N.P.A., one year prior to submission of the resolution plan, is not ineligible to submit the resolution plan. The test is to be applied with is whether such a person is in control of the affairs of the person connected with the corporate debtor. In this case, there is no material on record to show that the Walia family, and more particularly, Mr. Sudhir Walia was in control of day to day affairs of Suzlon. They cannot be said to be ineligible to submit the resolution plan for the corporate debtor.

23. It is also not in dispute that Mr. Sudhir Walia and others are key managerial persons of M/s. Suraksha Consortium-the resolution applicant herein. It is also not in dispute that in 2015, Suzlon executed a shareholding agreement with Mr. Walia and other families they being the investors of Suzlon. The real question is “whether said Mr. Sudhir Walia and others were in the position to control the affairs of Suzlon whose account is declared NPA?” To get the answer to this question, we have carefully gone through the shareholding agreement



(dated 13.02.2015). Investors Groups are holding 18.62% shares of Suzlon. The question before us is “whether the investor group was in control of Suzlon or not?”. The word “control” is defined in section 2(27) of the Companies Act, 2013. It states that:-

“....2. In this Act, unless the context otherwise requires,-

(27) “control’ shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner”.

The above definition is wide enough but it ultimately conveys the meaning that the person must be able to have an influence over the policy decision of target company directly or indirectly. In the shareholding agreement (“SHA”), there is a provision to appoint one Director from the Investors Group. Para 3.3 of the agreement states that Tanti family/Promoters group shall exercise/control over the target company i.e., Suzlon. It is no one’s say that the Tanti family is also in control of the affairs of the M/s. Suraksha Consortium –the resolution applicant. No doubt, Mr. Sudhir Walia—one of the key managerial persons of the Suraksha Consortium is also one of the investors in the target company i.e., Suzlon. But he had never been offered such a position to control the affairs of Suzlon. Only because he is one of the investors of Suzlon along with the Tanti family does not make him a person acting together or person in control of affairs of Suzlon. If we to accept the above submissions of learned senior counsel Mr. Rashesh Sanjanwala that Mr. Walia, being one of the investors of Suzlon, was in control of the affairs of that company without there being satisfactory evidence thereto and hence is ineligible to submit the resolution plan



then we will be reading provisions of section 29A of the IBC, 2016 to a far extent. We cannot do such creative reading of the provisions of law.

24. From the evidence on record, we hold that the resolution applicant was eligible to submit the resolution. It is not disqualified under section 29A of the IBC, 2016. We reject this objection.

25. The IDBI Bank is another financial creditor of the corporate debtor challenged the resolution plan on the ground that IL&FS group companies ought not to be the member of the CoC. The same objection is raised by Mr. Yogesh Mehra-the Managing Director of the corporate debtor. According to him, the RP committed a grave error by the inclusion of IL&FS Group Companies as a member of the CoC and by allotting them voting percentage. According to both IDBI Bank and Mr. Yogesh Mehra, due to this, the entire CIRP gets vitiated. Hence, the resolution plan approved by the CoC, having one unauthorized member as a part of the CoC, is required to be rejected to maintain the purity of the process.

26. We took note of the fact that the resolution plan has been approved by 93.63% votes. The IL&FS Group Companies were having total 8.73% voting share. If that voting share is deducted, for sake of argument, then we have to hold that plan is approved by more than 82% votes by the CoC. It is more than the voting percentage required for approval of the resolution plan under section 30(4) of the IBC, 2016.

27. It is not in dispute that IL&FS Group companies are- (i) Silpa Wind Energy Limited, having 4.29 votes in the CoC, (ii) Mahidad Wind Energy Private Limited, having 3.77% votes in CoC, and (iii) Jogihali Wind Energy Private Limited, having 0.67% votes. It is also not in dispute that IL&FS Group Companies had advanced some money to the corporate debtor by way of consideration and against certain work



projects of wind power. The objector's contention is that the amount lent was the operational debt, it cannot be treated to be the financial debt. Moreover, it is also alleged that IL&FS Group Companies being investigated by ED under PMLA ought not to be there in the CoC.

28. The MoU dated 27.07.2010 and subsequent WRAP agreement in between IL&FS Group Companies and the corporate debtor dated 25.03.2015 show that IL&FS Group Companies advanced money to the corporate debtor because the corporate debtor agreed to design, develop, construct, commission, operate, and maintain all projects of IL&FS Group Companies. Following that the WRAP agreement was entered into. We have every doubt in our mind “whether only because of subsequent execution of the WRAP agreement, the nature of debt from operational to financial would get converted”? But we leave the controversy here only for the simple reason that if at all we do not count the voting percentage of the Group Companies, still the fact remains in the record that the resolution plan was approved by more voting percentage than the threshold as stated under section 30(4) of the IBC, 2016. It takes us to consider another controversy that Enforcement Directorate has initiated money laundering case against IL&FS Financial Services and its group companies under the Prevention of Money Laundering Act, 2002. The Hon’ble Appellate Tribunal, the matter of Asset Reconstruction Company Limited (ARCIL) Vs. Mr. Koteswara Rao Karuchola and Ors. (Company Appeal (AT) (Insolvency) No. 633 of 2018, has held that a financial creditor cannot be allowed to be a member of CoC, if a money laundering case has been initiated against such a creditor. Admittedly, the IL&FS Group Companies in the instant case are group companies of IL&FS Finance, against whom money laundering cases have been initiated by the Enforcement



Directorate. This clarifies that the IL&FS Group Companies must not be allowed to be a part of the CoC.

29. There are extensive arguments made by all learned counsels for the objectors on the point that one of the members of M/s. Suraksha Consortium—the resolution applicant, i.e., Suraksha Asset Reconstruction Company Limited, being an asset reconstruction company cannot submit the resolution plan in contravention of section 2(b) r.w. section 10 of the SARFAESI Act, 2002. To buttress this argument, on this particular point, learned senior counsels relied on the order dated 01.09.2021 passed by the Adjudicating Authority at Hyderabad in IA No. 281 of 2019 in CP No. IB/219/7/HDB/2017 wherein it was held that Asset Reconstruction Company cannot submit the resolution plan without the approval of R.B.I.

30. It is not in dispute that M/s. Suraksha Asset Reconstruction Company is an asset reconstruction company and it is the main contributory of funds in M/s. Suraksha Consortium—the resolution applicant. Section 2(b) of the SARFAESI Act, 2002 defines that “asset reconstruction” means acquisition by any [asset reconstruction company] of any right or interest of any bank or financial institution in any financial assistance for the purpose of realisation of such financial assistance”.

Section 10(2) of this Act prohibits the asset reconstruction company to do any other business without the approval of the R.B.I. This point was considered by the Adjudicating Authority at Hyderabad in the above-referred application in IA No. 281 of 2019 in CP(IB) No. 219 of 2017. In that case, the successful resolution applicant had challenged the eligibility of the resolution applicant therein to submit the resolution plan on the same ground. It is held by the Adjudicating



Authority that Assets Reconstruction Companies cannot do any other business without prior approval of RBI.

In order to know whether this plan is essentially the plan submitted by ARC, we have gone through the resolution plan submitted for our approval. Para 5 of this plan speaks about the infusion of funds. Part B states that:-

Infusion of Funds and issuance of other instruments

<i>Sr. No.</i>	<i>Infusion of Funds</i>	<i>Amount (In Rs. Crore)</i>
1.	<i>Infusion of funds through SPV in the Corporate Debtor by way of subscription of equity share capital of the Corporate Debtor</i>	31.67
2.	<i>Infusion of funds by way of debt in the Corporate Debtor by the Resolution Applicants and/or their connected persons and/or any other entity related to the Resolution Applicants</i>	20.08
3.	<i>Infusion of funds, by way of debt in the Corporate Debtor, by the Resolution Applicants, in the event there is a shortfall in the cash flows of the Corporate Debtor for payment of the amounts as mentioned in Clause 8(ii) hereunder written</i>	69.49
4.	<i>Fresh infusion of funds for improving operations as mentioned in Clause 11 of the Resolution Plan</i>	200.00
5.	<i>Upfront Cash Payment (i.e. on or before the Transfer Date). a) Rs. 400 crore by infusion of funds by way of debt in the Corporate Debtor by the Resolution Applicants and/or their connected persons and/or any other entity related to the Resolution Applicants and/or any other entity</i>	500.00



	<p>based on guarantee to be provided, if any, by any of the Resolution Applicants or their related entities.</p> <p>b) Rs. 100 Crore by Suraksha ARC/Resolution Applicant/their associated entites towards acquisition of the debt of all the Financial Creditors subject to the provisions of the Applicable Laws.*# The funds for this purpose shall be infused by way of debt/equity by promoters of Resolution Applicants and/or any other entity based on guarantee to be provided, if any, by any of the Resolution Applicants or their related entities.</p>									
6.	<p>Issue of 8% Secured Non-Convertible Debentures (“NCDs”) of Rs. 290 Crore subject to the provisions of the applicable laws, redeemable at the end of 5th year from the date of issue of such NCDs by the Corporate Debtor.</p> <table border="1"> <thead> <tr> <th>Instrument</th> <th>Fee Value</th> <th>Term</th> <th>Coupon</th> </tr> </thead> <tbody> <tr> <td>NCDs</td> <td>Rs. 290 Cr</td> <td>5 years</td> <td>8% p.a.</td> </tr> </tbody> </table> <p>The Resolution Applicants or any other investor identified by the Resolution Applicants shall purchase the said instrument at the face value along with 8% p.a. interest from the date of issuance till the date of purchase, within six months from the Transfer Date.</p> <p><u>The purchase of NCDs shall be secured by way of corporate guarantee of one of Resolution Applicants viz. Lakshdeep Investments and Finance Private Limited, having strong credibility and net-worth at least five times the face value of the NCDs.</u></p>	Instrument	Fee Value	Term	Coupon	NCDs	Rs. 290 Cr	5 years	8% p.a.	426.11
Instrument	Fee Value	Term	Coupon							
NCDs	Rs. 290 Cr	5 years	8% p.a.							
7.	<p>Equity stake of 24% of the paid up equity share capital post capital reduction of</p>	10.00								



	<i>the Corporate Debtor, as mentioned in Clause 7 of Part II of the Resolution Plan</i>	
	<i>Total</i>	1,257.35

*** In the event Applicable laws do not permit assignment of debt by any Financial Creditor in favour of Suraksha ARC, in such an event such Financial Creditors shall assign the outstanding debt payable by Corporate Debtor to such Financial Creditors, in favour of any of the Resolution Applicants other than Suraksha ARC, as may be required by the Resolution Applicants or the Resolution Applicants may at their discretion, provide for settlement of the outstanding dues or part thereof of such Financial Creditors as aforesaid by funds infused by Resolution Applicants in the Corporate Debtor in form of debt.**

The Resolution Applicants and the Financial Creditors shall execute Definitive Agreements as is required for implementation of the Resolution Plan on or before the Transfer Date simultaneously with payments to the Financial Creditors

Application of Funds

<i>Sr. No.</i>	<i>Application of Funds³</i>	<i>In Rs. Crore</i>
1.	<i>Insolvency Resolution Process Costs</i>	33.67
2.	<i>Upfront Payments</i>	500.00
3.	<i>Issue of NCDs as per the terms and conditions mentioned in table appearing herein above.</i>	426.11
4.	<i>Issue of equity shares as per the terms and conditions mentioned in table appearing herein above</i>	10.00
5.	<i>Payment of Worker's and Employees' dues, Provident Fund as mentioned in Clause 8 hereinbelow.</i>	18.08
6.	<i>Payments by the Resolution Applicants, in the event there is a shortfall in the cash flows of the Corporate Debtor for payment of the amounts as mentioned in Clause 8(ii) hereunder written.</i>	69.49
7.	<i>Operational Creditors (other than mentioned in Sr. No. 5 and Sr. No. 6 above)</i>	-
8.	<i>Infusion of funds for improving operations, as mentioned in Clause 11 hereinbelow.</i>	200.00
	<i>Total</i>	1257.35



31. It shows that Suraksha Asset Reconstruction Company would be paying debts of all financial creditors of the corporate debtor. The total plan value is 1257.35 Cr. Out of that the amount payable to the financial creditor is 936.11 Cr. i.e., almost 75% of the total plan value. It shows that this resolution plan is the plan essentially submitted by Suraksha Asset Reconstruction Company.

32. Section 10(2) of the SARFAESI Act, 2002, as noted above, does not permit the asset reconstruction company to do any other business than the business defined under section 2(b) of the SARFAESI Act, 2002 without prior approval of the R.B.I. We cannot comprehend the fact that by any imagination how Suraksha ARC, being the ARC can revive the business of the corporate debtor i.e., generation and the distribution of wind energy or for that matter to operate and maintain the turbines. It cannot do any such business without prior approval of the R.B.I. Hence, we hold that this resolution plan is not in conformity with the provisions of section 30(2)(e) of the IBC, 2016 as it is in contravention of section 10(2) of the SARFAESI Act, 2002.

33. One of the operational creditors of the corporate debtor Enercon GmbH raised the objection against the approval of the resolution plan on the ground that on 12.01.1994 they entered into and executed the Technology Know How Agreement (“TKH agreement”). By that agreement they allowed the corporate debtor to use turbine technology on the payment of royalty. Since the dispute arose in between them, it was referred to Arbitral Tribunal at Singapore. The Arbitral Tribunal at Singapore passed the award in September 2016 directing the corporate debtor to return that technology to Enercon GmbH. That award is upheld by the Hon'ble Bombay High Court and



the matter is pending before the Hon'ble Supreme Court. The Arbitral Tribunal passed the award in September 2016 prior to the admission of the corporate debtor in CIRP. Enercon GmbH also raised the objection that the corporate debtor is liable to pay a sum of € 5,52,00,000/- plus interest thereon. Since the matter is subjudiced, we do not wish to enter into the controversy whether that amount is correctly claimed or not. We are only on the point “whether the confidential technology assigned to the corporate debtor by Enercon GmbH can be transferred to the resolution applicant without consent of Enercon GmbH”? It is not in dispute that the corporate debtor is directed to return the technology that too in September 2016 prior to admission of the corporate debtor in CIRP. Hence, on the date of commencement of the CIRP of the corporate debtor the technology was not the assets of the corporate debtor within the meaning of section 18(f) of the IBC, 2016. The confidential technology admittedly was not owned by the corporate debtor. We have gone through the process document prepared by the RP on basis of which Form-G was published inviting the resolution plan from prospective resolution applicants. That process document is completely silent on this particular disputed aspect i.e., the use of technology by the proposed resolution applicant. We have also gone through the resolution plan approved by the CoC. In the plan this point has not been addressed too by the resolution applicant anywhere. In fact, in the resolution plan, there is a clause (xxiii). It states that **“the Resolution Plan contains certain prayers/directions/reliefs/concessions, sought from the Adjudicating Authority and other regulatory, statutory or administrative authority. If such prayers/directions/relies/concessions are not granted then without prejudice to the monetary terms contained in the**



Resolution Plan (including amounts proposed to be paid and treatment accorded to various stakeholders), the Resolution Applicant shall have the liberty to revise the structure contained in the Resolution Plan to implement the same”.

The above condition of the approved resolution plan gives liberty to the resolution applicant to revise this plan if it appears difficult for implementation. We cannot accept such a conditional plan. In fact, the Hon'ble Supreme Court in the case Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited & Anr had made it clear that “the residual powers of the Adjudicating Authority under the IBC cannot be exercised to create procedural remedies which have substantive outcomes on the process of insolvency. The framework, as it stands, only enables withdrawals from the CIRP process by following the procedure detailed in Section 12A of the IBC and Regulation 30A of the CIRP Regulations and in the situations recognized in those provisions. Enabling withdrawals or modifications of the Resolution Plan at the behest of the successful Resolution Applicant, once it has been submitted to the Adjudicating Authority after due compliance with the procedural requirements and timelines, would create another tier of negotiations which will be wholly unregulated by the statute”.

34. In short, considering the entire material on record and upon examining the resolution plan under section 31 of the IBC, 2016, we hold that this resolution plan cannot be approved as it is in contravention of various provisions of law for the time being in force as noted above. The resolution plan is not in conformity with Regulation 38 of the IBBI (CIRP) Regulations, 2016 relating to mandatory contents therein. It is also in breach of section 30(2)(f) of the IBC, 2016 r.w.



Regulation 38 of the IBBI (CIRP) Regulations, 2016. Such a resolution plan cannot be approved. Hence, we pass the following orders:

ORDER

- I. The resolution plan of the resolution applicant-M/s. Suraksha Consortium stands rejected.
- II. All other applications in objection stand disposed of.
- III. Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

-SD-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

-SD-

**MADAN B. GOSAVI
MEMBER (JUDICIAL)**

Rajeev Kr. Sen - Stenographer
Shweta G. Desai - LRA