

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

IA(IBC)/1052(CHE)/2022

IN

IBA/386/2020

(Filed under Section 30(6) & 31(1) of the Insolvency and Bankruptcy Code, 2016)

IN THE MATTER OF:

J. KARTHIGA

Resolution Professional of

Capricorn Food Products India Limited

Sri Nivas, No.1, Old No.1052,

41st Street, Korattur,

Chennai – 600 080

... Applicant / Resolution Professional

Along with

IA(IBC)/1501(CHE)/2022

IN

IBA/386/2020

DBS BANK INDIA LIMITED

806, Anna Salai,

Chennai – 600 002

... Applicant

Versus

J. KARTHIGA

Resolution Professional of

Capricorn Food Products India Limited

Sri Nivas, No.1, Old No.1052,

41st Street, Korattur,

Chennai – 600 080

 *... 1st Respondent*

AXIS BANK LIMITED
192, Ground Floor,
Kurumuthu Nilayam,
Anna Salai,
Chennai – 600 002

... 2nd Respondent

LALIT KUMAR DANGI
Resolution Professional of
Gonglu Agro Private Limited
104, MK Bhavan, Shahid Bhagat Road,
Fort, GPO, Mumbai – 400 001

... 3rd Respondent

Order Pronounced on 12th July, 2023

Present:

<i>For Resolution Professional</i>	:	E. Om Prakash, Senior Advocate T. Ravichandran, Advocate
<i>For Successful Resolution Applicant</i>	:	Kunal Kanungo, Advocate
<i>For Respondents</i>	:	Chetan Sagar, Advocate For R2 in IA(IBC)/1501(CHE)/2022 E. Om Prakash, Senior Advocate T. Ravichandran, Advocate For R1 in IA(IBC)/1501(CHE)/2022

CORAM

Justice RAMALINGAM SUDHAKAR, PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)



COMMON ORDER

(Hearing conducted through hybrid mode)

Per:- SAMEER KAKAR, MEMBER (TECHNICAL)

IA(IBC)/1052(CHE)/2022 is an Application filed by the Resolution Professional of the Corporate Debtor viz., **CAPRICORN FOOD PRODUCTS INDIA LIMITED** under Section 30(6) & 31(1) of the Insolvency and Bankruptcy Code, 2016 (in short, 'IBC, 2016') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short, 'CIRP Regulation, 2016') read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking relief as follows:

- (i) *Pass an order approving the resolution plan submitted by the Resolution Applicant consortium lead by Maa Kudargarhi Steel Pvt Ltd & B.M. Foods in respect of the Corporate Debtor under Section 31(1) of the Code and declare that the same is binding on the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan;*
- (ii) *Pass an order directing that pending disposal of the present application by this Tribunal, the Applicant herein shall continue to conduct her role as Resolution Professional of the Corporate Debtor and during such period shall have all powers, duties and protections as available to her as a Resolution Professional under the Code and CIRP Regulations thereunder;*
- (iii) *Pass an order directing the Resolution Applicant to implement the Resolution Plan in the manner set out in the resolution plan;*

- (iv) *Pass an order approving the appointment of Monitoring Agent (MA) and Monitoring Committee (MC) from the date of approval of resolution plan by this Hon'ble Tribunal until the date on which the Resolution Applicant acquires control of the Corporate Debtor i.e. closing date under the Resolution Plan and during such period extend protection to the MC (including extension of the protection of the moratorium against any suit, legal proceedings and investigations or have any ability with respect to anything which is done or intended to be done or omitted in good faith and in compliance with the Code, CIRP Regulations or any other applicable law) to enable it to monitor the Corporate Debtor as a going concern;*
- (v) *Pass an appropriate order in relation to the grant of concessions, reliefs and dispensations sought for by the Resolution Applicant in the resolution plan;*
- (vi) *Pass an order directing all stakeholders to cooperate with the Resolution Applicant, Monitoring Agent to keep the Corporate Debtor a going concern and to implement the Resolution Plan in the manner approved by this Tribunal and*
- (vii) *Pass such other order/orders as it may deem fit and proper in the facts and circumstances of the case and thus render justice.*

**2. CORPORATE INSOLVENCY RESOLUTION PROCESS –
CAPRICORN FOOD PRODUCTS INDIA LIMITED**

2.1. The Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor viz. Capricorn Food Products India Limited was initiated by this Tribunal vide order dated 13.11.2020 passed in IBA/386/2020 filed under Section 9 of IBC, 2016 by Raasa Foods Private Limited and consequently, the

Applicant herein was appointed as the Interim Resolution Professional.

2.2. The Applicant in terms of Section 15 of IBC, 2016 has caused a Public announcement in two newspapers on 17.11.2020 inviting claims in relation to the Corporate Debtor. Based upon the claims submitted by the stakeholders, the Applicant constituted the Committee of Creditors (COC) on 06.12.2020 with eleven CoC members and the following is the list of members of the CoCs with their voting share:

S. No.	NAME OF THE FINANCIAL CREDITOR	VOTING SHARE (%)
1	State Bank of India	27.82
2	DBS Bank India Limited	5.90
3	Doha Bank QPSC	9.99
4	ICICI bank Limited	0.45
5	IDBI Bank Limited	11.30
6	IDFC First Bank Limited	7.94
7	Indian Bank	11.88
8	Kotak Mahindra Bank Limited	15.58
9	RBL Bank Limited	2.16
10	Citi Bank Ltd.,	0.36
11	HDFC Bank Ltd.,	6.62
	Total	100%

2.3. The Resolution Professional conducted a total number of forty-one meetings of the CoC and the details of the same are as follows;

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PARTICULARS	DATE OF MEETING
1 st CoC Meeting	14.12.2020
2 nd CoC Meeting	08.01.2021
3 rd CoC Meeting	18.02.2021
4 th CoC Meeting	23.02.2021
5 th CoC Meeting	19.03.2021
6 th CoC Meeting	07.04.2021
7 th CoC Meeting	09.04.2021
8 th CoC Meeting	15.04.2021
9 th CoC Meeting	17.04.2021
10 th CoC Meeting	21.04.2021
11 th CoC Meeting	28.04.2021
12 th CoC Meeting	04.05.2021
13 th CoC Meeting	17.05.2021
14 th CoC Meeting	28.05.2021
15 th CoC Meeting	28.06.2021
16 th CoC Meeting	16.07.2021
17 th CoC Meeting	17.07.2021
18 th CoC Meeting	02.08.2021
19 th CoC Meeting	13.08.2021
20 th CoC Meeting	24.08.2021
21 st CoC Meeting	13.09.2021
22 nd CoC Meeting	07.10.2021
23 rd CoC Meeting	30.10.2021
24 th CoC Meeting	24.11.2021
25 th CoC Meeting	02.12.2021
26 th CoC Meeting	21.12.2021
27 th CoC Meeting	03.01.2022
28 th CoC Meeting	05.01.2022
29 th CoC Meeting	04.03.2022
30 th CoC Meeting	28.03.2022
31 st CoC Meeting	19.04.2022
32 nd CoC Meeting	09.05.2022
33 rd CoC Meeting	17.05.2022
34 th CoC Meeting	26.05.2022
35 th CoC Meeting	28.07.2022
36 th CoC Meeting	01.08.2022

37 th CoC Meeting	03.08.2022
38 th CoC Meeting	05.08.2022
39 th CoC Meeting	16.08.2022
40 th CoC Meeting	18.08.2022
41 st CoC Meeting	20.08.2022

2.4. In terms of provisions of Section 25(2)(h) of IBC, 2016 read with Regulations 36A(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, invitations in Form – G for Expression of Interest (EoI) for potential Applicants was issued on 28.01.2021, 05.05.2021 and 22.08.2021 for the submission of Resolution Plan for the Corporate Debtor. The last date of receipt of EoI was 12.02.2021, 21.05.2021 and 06.09.2021 which was extended till 26.03.2021, 16.07.2021 and 22.11.2021 respectively.

2.5. In response to the first EoI dated 28.01.2021, seven Resolution Applicants have evinced interest in the Corporate Debtor. Accordingly, Information Memorandum (IM), Evaluation Matrix (EM) and Request for Resolution Plan (RFRP) was issued. Pursuant to Form G dated 28.01.2021, the promoter of the Corporate Debtor along with Suchi Jain and Pavithran Asceptic Fruit Products (Promoter Consortium) had submitted EoI on 10.02.2021. However, the EoI was not considered since the promoter consortium did not provide the EMD at the relevant point of time.



2.6. The second EoI elicited nine interest from the prospective Resolution Applicants and the 3rd EoI which was issued on 22.08.2021 elicited interest from ten prospective Resolution Applicants. The Applicant conducted due diligence and after satisfying herself with respect to the compliance under the provision of IBC, 2016 and the CIRP Regulations, submitted the final list of prospective Resolution Applicants (PRAs) before the CoC on 15.09.2021 and the Request for Resolution Plan was accordingly issued on 14.09.2021. A snapshot of the Form – G which was published is set out in the table below:-

Sl. No	Date of Form G	Publication details	Last date for submission of EOI	Last date for Submission of Resolution Plan	No. of Expressions received
1	28.01.2021	Financial Express, Dinamani (Tamil) and Enadu (Telugu)	12.02.2021	26.03.2021	7
2	05.05.2021	Financial Express, Dinamani (Tamil) and Enadu (Telugu)	21.05.2021	01.07.2021 Extended till 16.07.2021 at the request of Resolution Applicants	9
3	21.08.2021 Published on 22.08.2021	Financial Express, Dinamani (Tamil) and Enadu (Telugu)	06.09.2021	16.10.2021 Extended till 15.11.2021 and once again was extended till 22.11.2021 at the request of Resolution Applicants	10

2.7. The promoters Rahoul Jain and Suchi Jain again submitted the EoI and the same was rejected by the RP vide email dated 13.07.2021. Aggrieved by the same, they moved IA(IBC)/771(CHE)/2021 before this Tribunal and this Tribunal vide its order dated 17.12.2021 has passed the following orders;

"13. We have gone through the contentions and rival contentions of both the parties, it is admitted that MSME Certification was obtained behind the back of the RP and the person who applied for the said registration was never authorised either of board of directors or by the RP. Nowhere in the response, the RP has questioned the basic criteria based on which an enterprise can be registered as an MSME unit and whether the Company is eligible to be registered as MSME Unit at all.

14. Admittedly it is not in dispute that the CIRP in relation to the Corporate Debtor was ordered by this Tribunal vide order dated 13.11.2020 and the Applicant through its employees have obtained the MSME Certificate on 02.12.2020 i.e. much after initiation of the CIRP by this Adjudicating Authority. Once the CIRP has been ordered, the Board of Corporate Debtor stands suspended and the entire management of the Corporate Debtor vest with the RP and hence the act of the Employee acting under the instructions of the suspended Board is viewed seriously by this Tribunal and such practise is required to be deprecated. However, it is required to be noted that the eligibility of the Corporate Debtor under Section 29A of IBC, 2016 is required to be determined at the time of submission of the Resolution Plan and in the present case it is the case of the Applicant that at the date of submission of the Resolution Plan, they were MSME and as such the ineligibility clause under Section 29A(c) and (h) of IBC, 2016 would not apply to them.

15. Thus, taking into consideration the facts and circumstances of the present case, in the fitness of things, this Tribunal feels that the act of an Employee of the Corporate Debtor should not adversely affect the Resolution Process of the Corporate

Debtor and in such a circumstances, we direct the RP to ratify the action taken by the person who has applied for the registration under the MSME Act. Further, the RP is also permitted to take appropriate action against the Employee who has obtained the MSME Certificate behind the back of the RP.

*16. With the above said directions, IA/771/2021 and IA/970/2021 stands **disposed off**."*

2.8. Thereafter, the promoters Rahoul Jain and Suchi Jain submitted their EoI on 04.01.2022 and the same was accepted by the RP based upon the order passed by this Tribunal. The promoters also sought 30 days time to submit their Resolution Plan in view of the orders of this Tribunal.

2.9. The Revised final list of prospective Resolution Applicants (PRAs) after the inclusion of the promoters name based on the order passed by this Tribunal dated 17.12.2021 was submitted before the CoC through E mail dated 06.01.2022 and the same was deliberated by the CoC at its 29th meeting which was held on 04.03.2022. The last date for submission of resolution plan as per the RFRP dated 14.09.2021 was 16.10.2021 which was extended by the CoC till 31.01.2021. Once against the timeline for submission of Resolution Plan was extended by the CoC at its 23rd Meeting held on 30.10.2021 upto 15.11.2021. The time period for submission was again extended till 22.11.2021 by the CoC which was resolved at its 24th meeting held on 24.11.2021.



2.10. The Resolution Plan submitted by one Mantra Industries was approved by the Committee of Creditors and the Resolution Professional had filed IA(IBC)/661(CHE)/2022 before this Tribunal seeking approval of the Resolution Plan. The ex - promoter of the Corporate Debtor moved IA(IBC)/649(CHE)/2022 challenging the approval of the Resolution Plan *inter- alia* on the grounds that the Resolution Plan has not passed muster of 66% as contemplated under the provisions of IBC, 2016. This Tribunal vide its order dated 22.07.2022 and had passed certain consequential directions, which are as follows;

"30. Thus, the action of the RP in removing the 'abstained' vote from the total number of voting share would run contrary to the what has been laid down by the Hon'ble Supreme Court in K. Sashidhar (supra).

31. The act of the RP while calculating the voting pattern, has lead to the following consequences;

- (i) By removing 'Abstained' vote from the total number of votes from the denominator, the voting share of the other Financial Creditors have been increased indirectly.*
- (ii) If the vote results are being declared as such, then the Resolution Plan would not have passed the muster of 66% in and by which by a thin margin of 2.47% over and above 66% the Resolution Plan has been approved.*
- (iii) By removing the 'Abstained' vote from the total number of voting share, the vote of 'HDFC Bank' has been indirectly construed as they have voted in favour of the 'Resolution Plan'.*



32. All these would show that the RP was not right in ignoring the voting share of 6.62% who has abstained from voting, from the total voting share in and by which the Resolution Plan also should fail, since it failed to garner the requisite vote share of 66% from the financial creditors. In this connection, it is required to be noted that the RP has filed his Form – H in the Resolution Plan Application i.e. IA(IBC)/661(CHE)/2022 and has certified that the Resolution Plan does not contravene the provisions of IBC, 2016 or any other provisions of law for the time being in force. Hence, we are of the view that the RP was not right in placing the Resolution Plan which has not garnered the voting share of 66% of the Financial Creditors for approval before this Adjudicating Authority in and by which the RP has violated the provisions of IBC, 2016.

33. Thus, from the dispositive reasoning stated supra, we come to an irresistible conclusion that the Resolution Plan submitted by the RP before the CoC did not garner the requisite vote share of 66% of the Financial Creditors as mandated under Section 30(4) of IBC, 2016 and accordingly IA(IBC)/661(CHE)/2022 filed by the RP stands **dismissed**, with a leave to file a fresh Application, at an appropriate time, when circumstances warrants.

34. In so far as IA(IBC)/649(CHE)/2022 is concerned as regards prayer (i) is concerned, we pass the following directions;

- a. The RP is directed to convene one or more CoC meeting and the first meeting shall be within a period of 5 days from the date of this order.
- b. In the interest of justice, we hereby grant the opportunity to all the three prospective Resolution Applicant's to upwardly revise their Resolution Plan amount and submit the same before the CoC.
- c. The prospective Resolution Applicants viz. (i) M/s. Mantra Industries in consortium with Balaji Machine works; (ii) M/s. Maa Kudargarhi in consortium with BM Foods; and (iii) Mr. Rahoul Jain & Ms. Shuchi Jain; and

the CoC members are free to negotiate the terms and commercials in respect of the Resolution Plan.

- d. The personal assets of the guarantors of the Corporate Debtor are required to be dealt with in accordance with the provisions of IBC, 2016 by all the parties.*
- e. The RP is directed to fix a common closing date and time to the prospective Resolution Applicant in respect of the last date for the submission of the Resolution Plan and strictly no Resolution Plan from the prospective Resolution Applicant shall be received by the RP after the closing date and time.*
- f. Thereafter, the RP is directed to place the compliant Resolution Plan(s), so received before the CoC and e-voting may be conducted. The RP is directed to calculate the voting share strictly in accordance with the observations made by this Tribunal in the paragraphs supra and also in the light of the Judgment of the Hon'ble Supreme Court in the matter of **K. Sashidhar** (supra).*
- g. All these are required to be done by the RP within a period of 30 days from the date of this order.*
- h. Taking into consideration the Judgment of the Hon'ble Supreme Court in the matter of **Committee of Creditors of Essar Steel India Limited -Vs- Satish Kumar Gupta and Others**; (2020) 8 SCC 531, the CIRP period in respect of the Corporate Debtor is extended for a period of 30 days from the date of this order.*
- i. The RP is directed to place this order before the CoC for its strict compliance in respect of the timelines.*
- j. The Registry of this Tribunal is directed to forward a copy of this order to IBBI for its information and records.*

35. In relation to prayer (ii) is concerned, in view of the directions passed above we are not inclined to grant the said relief to the Applicant.

In respect of prayer (iii) is concerned, it was brought to the notice of this Tribunal by the Learned Counsel for the RP that substantial compliance has been made and the same was also confirmed by the Learned Counsel for the Applicant and hence nothing survives in the said prayer. In respect of prayer (iv) is concerned, since the Applicant is also one of the prospective Resolution Applicant, sharing of the valuation report with the Applicant cannot be granted by this Tribunal and accordingly the said prayer stands declined.

36. *With the above said directions, this Application stands disposed of. "*

2.11. Pursuant to the directions issued by this Tribunal, the RP called for the meeting of the CoC and the prospective Resolution Applicants were requested to submit their revised Resolution Plan.

2.12. The Mantra Industries Limited had replied to the e-mail of the Resolution Professional on the last date, requesting for further time to submit the revised resolution plan. In terms of the directions of this Tribunal to fix a common closing date and time to prospective resolution Applicants in respect of the last date for submission of resolution plan the Resolution Professional did not consider the request and the said Mantra Industries Limited was informed accordingly. The promoter Shri Rahoul Jain had also sought several clarification and ultimately the Resolution

Professional received revised resolution plan **only** from the Consortium of Maa Kudargarhi Steel Pvt Ltd & BM Foods.

2.13. The Resolution Professional, on being satisfied herself that the said Resolution Plan is in conformity with the provisions of the Code and the Regulations, placed it before the CoC.

2.14. The Resolution Professional called for the 39th meeting of the CoC on 16.08.2022 to discuss further on the Resolution Plan submitted by the potential Resolution Applicant pursuant to the directions of NCLT order 22.07.2022 and the Resolution Professional informed that the last date for submission of Resolution Plan would be 25.08.2022.

2.15. In the said meeting, it was resolved by the CoC to file an appropriate application seeking exclusion / extension for continuing the CIR process for a further period of 30 days. Pursuant to the same, the RP filed an Application IA(IBC)/911(CHE)/2022 seeking exclusion of 26 days from 25.08.2022. The said Application was allowed by this Tribunal vide order dated 25.08.2022.

2.16. The resolution plan was deliberated in the 40th meeting of the CoC with regard to the feasibility and viability and ultimately the same was put for e- voting in the 41st CoC Meeting held on 20.08.2022. Since the time for completion of the CIR Process was 25.08.2022, the voting lines were kept open initially till 25.08.2022. Pursuant to the orders of this Tribunal in IA(IBC)/911(CHE)/2022, excluding 26 days from 25.08.2022, the voting lines were extended and kept open till 13.09.2022 and the CoC **approved** the resolution plan submitted by **Consortium of Maa Kudargarhi Steel Pvt Ltd & BM Foods** by a majority of **87.48%**

2.17. The Summary of the claims admitted by the RP for the various classes of creditors is given below;

S. No.	PARTICULARS OF CLAIMANT	CLAIM FILED (Rs.)	AMOUNT ADMITTED (Rs)
1	Secured Financial Creditor	193,26,36,107	193,26,36,107
	Unsecured Financial Creditor except Related party	Nil	Nil
3	Operational Creditors (Workmen and Employees)	50,14,292	47,50,241
4	Operational Creditors (including Statutory Dues)	31,10,42,948	28,67,83,368
	TOTAL	224,86,93,347	222,41,69,716

2.18. The Summary of the Resolution Plan submitted is as under:

S. No.	STAKEHOLDER	AMOUNT PAYABLE	SOURCE OF FUNDS
1	CIRP Cost (if required) (within T + 30 days)	In full	Infusion by RA through owned funds
2	Workmen and Employees (Within T +30 days)	Rs.0.20 Crore	Infusion by RA through owned funds
3	Operational Creditors, excluding employees and workmen along with Statutory Dues (Within T + 30 days)	Rs.0.05 Crores	Infusion by RA through owned funds
4	Secured Financial Creditors ** (Within T +30 days)	Rs.69.14 Crores	Infusion by RA through owned funds
4	Loan Assignment payment to Secured Financial Creditors (Within T +30 days)	Rs.10 Crores	Payment by Assignee against assignment of debt
	TOTAL RESOLUTION AMOUNT **	Rs.79.39 Crores	
6	Working Capital	Rs.97.61 Crores	Infusion facilitated by RA through loan funds
7	Capital Expenditure	Rs.3.00 Crore	Infusion by RA through loan funds
	TOTAL PLAN AMOUNT	Rs.180 Crore	

**** The payment is over and above the Surplus Cash (estimated to be in excess of Rs.25 Crore)**

3. ABOUT THE CORPORATE DEBTOR

- Capricorn Food Products India Limited was incorporated on 08.10.1997 is the fourth largest supplier of Mango Pulps

and Concentrates with an overall market share of approx. 5% and India's second largest manufacturer with approx. 13% volume share (2016).

- Capricorn Food Products India Limited is an export-oriented food processing company. It manufactures Tropical Fruit Pulp / Purees and Concentrates, Bulk Frozen, IQF Fruits & Vegetables and Fruit Juices as per customer requirements.
- The Authorized Capital is Rs.40,00,00,000/- (Rupees Forty Crore Only) comprised of 4,00,00,000 equity shares of Rs.10/- each.
- The Issued, Subscribed and Paid – up Capital is Rs.29,72,00,000/- (Rupees Twenty-Nine Crore Seventy-Two Lakhs only) comprising of 2,97,20,000 equity shares of Rs.10/- each.

➤ The Management of the Corporate Debtor is as follows;

DIRECTORS/SIGNATORY DETAILS			
DIN/PAN	Name	Begin date	End date
0000004046	RAHOUL JAIN	08/10/1998	-
0000013870	SHUCHI JAIN	08/10/1998	-
0000580494	PENNA MOHAMED BASHEER AHAMED	05/09/2017	

➤ The subsidiaries and Group Companies of the Corporate Debtor are as follows;

SL. NO.	NAME	RELATION
1	Fresco Juices Private Limited	Wholly Owned Subsidiary
2	Gonglu Agro Private Limited	Wholly Owned Subsidiary

4. SOURCE OF FUND

As per the Resolution Plan, the Resolution Applicant proposes to infuse the entire Resolution Amount of Rs.79.39 Crores through own funds. In support of the same, the Net worth Certificate of the Resolution Applicant certified by a Chartered Accountant is placed at page No.236 and 237 of the Application and the same is captured hereunder;

AGRAWAL BAFNA & ASSOCIATES
Chartered Accountants



Near Water Tank, Opp. Tilak School
Shikshak Nagar, Durg (C.G.), 491001
Mo. No. 7389900576

Net worth Certificate

This is to certify that Networth of M/s Maa Kudargarhi Steels Private Limited, having its registered office at Near Ring Road No.2, Opposite Bajrang Alloys, Village Sarora Raipur-493221 (C.G.) as under:

Networth as on: 31.03.2021

Particulars	Amount (In Rs.)
Paid up Capital	2,26,06,910.00
Add: Reserve & Surplus	84,92,15,290.09
Total Net worth	87,18,22,200.09

This is to certify that the above mentioned information is true to the best of my knowledge and belief, according to the books and documents produced before me for verification.

For, Agrawal Bafna & Associates
Chartered Accountant
Firm Regn. No. 027234C

CA Jay Bafna
(Partner)
M. No.: 433647
UDIN: 22433647AHUTRO5476
Date: - 26.04.2022
Place: - Raipur



J. MATHIGA, B.A., M.L.
Registered Insolvency Professional
Regn.No: BHWTA-62IMP-79075/2017-2007/1204

(Handwritten signature)



Net worth Certificate

On the basis of books of accounts & relevant records produced before me and explanations/ clarifications given by the personnel of firm this is to certify that Net worth of M/s BM Foods, having its factory at Bhattikala, Ambikapur, Surguja (C.G.) is Rs. 11,17,81,280.16 as on 31.03.2021.

For, Agrawal Bafna & Associates
Chartered Accountant
Firm Regn. No. 027234C

CA Jay Bafna
(Partner)

M. No.: 433647

UDIN: 22433647AHUTVW4842

Date: - 26.04.2022

Place: - Raipur



For
J. KARTHIKA, B.A., M.L.
Registered Insolvency Professional
Regn. No: 184VPA-0488P-290751/2017-2019/1234

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5. **DETAILS OF MONITORING AND IMPLEMENTATION OF RESOLUTION PLAN**

STEP 1: NCLT APPROVAL DATE ACTIONS:

Upon receipt of the approval of the Resolution Plan by the Hon'ble NCLT, the following actions shall have been deemed to have taken without any further action ordered by any person:

- (i) The appointment of the monitoring committee shall come into force consisting of **2 (two) members** from the Committee of Creditors which have the largest share in the Admitted Financial Debt and the **Resolution Professional**-Mrs. J. Karthiga.
- (ii) The existing board of directors of the Company shall stand dissolved and the existing directors shall be deemed to have resigned without any further step/action.
- (iii) The existing board shall be replaced by the Monitoring Committee. It is clarified that this structure has been proposed by the Resolution Applicant to ensure that the various corporate actions which required to be taken by the Company, for the implementation of the Resolution Plan (such as passing of board resolutions for capital reduction, issuance of shares) can be completed, so that the payment proposed to be made within 30 days under this Resolution Plan to the creditors can be completed in such a timeframe. The Monitoring Committee shall be bound to undertake the actions required including but not limited to, passing necessary resolutions,



authorizing persons to sign loan agreement, making filings and applications, and other necessary and corollary actions required for the implementation of this Resolution Plan.

- (iv) During this period an independent O&M contractor (nominated by the Monitoring Committee) shall be responsible for the operation and maintenance of the Company's facilities.
- (v) Further, subject to applicable law, the monitoring committee shall ensure that the Company shall not incur any liabilities after the NCLT Approval date and until the Effective Date, other than in the ordinary course of business.
- (vi) Once this Resolution Plan is approved by the COC the Resolution Applicant shall (prior to the NCLT Approval Date) agree on the fees, costs and expenses which may be incurred by the Resolution Professional, Monitoring Committee and the O&M Contractor, in discharging their duties after the Effective Date (the Interim Management Cost). The Interim Management Cost shall be funded on a monthly basis from cash flows of the Company. In the event such cash flows are insufficient, the Interim Management Costs shall be borne by the Resolution Applicant.
- (vii) Monitoring Committee will arrange meetings on a time-to-time basis with notice in advance to understand the stage of implementation of the Resolution Plan and further course of action with respect to the Resolution Plan.

STEP 2: ACTIONS FROM NCLT APPROVAL DATE TILL EFFECTIVE DATE

- (i) After the NCLT Approval Date, the SPV shall provide the SPV Loan, to the Company. The Company may (with approval of the Monitoring Committee, which shall be granted) enter into a loan-agreement/relevant agreements with the SPV for such disbursements on the terms and conditions stated by the SPV and such loan/debentures shall carry an interest as per applicable law along with an option to convert such loan into equity shares of the Company at any time.
- (ii) Within a period of 30 days of the NCLT Approval Date, payments shall be made to the stakeholders in the following manner and order:
 - a. Payment towards outstanding CIRP costs (if any)
 - b. Payments to Operational Creditors in accordance with Clause 8.
- (iii) The assignee and the Secured Financial Creditors shall mutually agree on the form of Assignment Agreement.

STEP 3: PAYMENTS TO BE MADE TO CREDITORS AND ASSIGNMENT OF ASSIGNED DEBT

- (i) Upon finalization of the form of the Assignment Agreement, the Resolution Applicant shall fix a date for implementation of the Resolution Plan, which date shall be within 30 Days from the NCLT Approval Date (unless

extended with the consent of the Secured Financial Creditors).

- (ii) The Resolution Professional shall deliver to the monitoring committee a certified and audited statement, setting out the amount of Surplus Cash as of the NCLT Approval Date.
- (iii) Within 30 days, payments shall be made to the stakeholders in the following manner and order:
 - a. Payment of Surplus Cash to the Secured Financial Creditors.
 - b. Payment of CD FC Settlement Amount to the Secured Financial Creditors.
 - c. Payment of Loan Assignment Payment to the Secured Financial Creditors by the Assignee as a consideration for assignment of Assigned Debt along with Assigned Rights

Pursuant to the approval of the Resolution Plan on the NCLT Approval Date, the Assigned Debt along with Assigned Rights will be assigned [by way of operation of this Resolution Plan) by the Secured Financial Creditors to the Assignee in lieu of consideration which shall be the Loan Assignment Payment. The Loan Assignment Payment made by the Resolution Applicant or any other person nominated by the RA as the Assignee shall be deemed to have been made by the Resolution Applicant itself.

- (iv) The Secured Financial Creditors shall execute an Assignment Agreement in favour of the Assignee in the

form agreed between to the Resolution Applicant and the Secured Financial Creditors against the receipt of the Loan Assignment Payment if required by the Resolution Applicant/ the Assignee, the Secured Financial Creditors shall take such steps as may be reasonably required to give effect to the above assignment.

On the NCLT Approval Date, consent of the Company shall be deemed to be given to such assignment of debt, irrespective of the terms of such assignment. The Assigned Debt shall stand transferred to the Assignee and the Loan Assignment Payment shall be released to the Secured Financial Creditor. On the NCLT Approval Date, any breaches and/or any enforcement actions that have been initiated by the Secured Financial Creditors prior to the NCLT Approval Date and are currently pending against the Company, shall be revoked and withdrawn and consent of the Secured Financial Creditors shall be deemed to have been given for such withdrawal and revocation.

- (v) Simultaneously with release of the Loan Assignment Payment from the Assignee, signed charge modification forms shall be provided by the Secured Financial Creditors and the security trustees/ security agents/ Secured Financial Creditors of the Company shall undertake such steps as may be required by the Resolution Applicant/Assignee (as may be applicable) without any further payment, to ensure the modification of charge mortgage/encumbrance/pledge as per the directions of the Resolution Professional/the Resolution Applicant/ Assignee (as may be applicable). No transfer of shares by a shareholder of the Company is to be permitted between release of the pledge and the capital reduction.

(vi) To facilitate the implementation of the Resolution Plan on the Effective Date, the Secured Financial Creditors (and/or their security trustee, as relevant) shall provide the following to the Assignee ("Deposit Documents"):

- a. 2 originals of Assignment Agreement, duly executed by the Secured Financial Creditors,
- b. charge modification forms, duly executed by the secured Financial Creditors for modification of the Existing Security Interest excluding Non-Assigned Rights:
- c. all title documents, title deeds, share pledge documents share certificates, share transfer forms that were deposited with them by the Corporate Debtor or its shareholders in connection with Security Interest as defined in the Assigned Rights or in respect of shares of the Corporate Debtor, and
- d. a no-dues certificate in favour of the Company, duly executed by the Secured Financial Creditors in the form acceptable to Resolution Applicant

STEP 4: CONVERSION OF SPV LOAN TO EQUITY SHARES OF THE COMPANY, CAPITAL REDUCTION

(I) CONVERSION OF SPV LOAN INTO EQUITY SHARES OF THE COMPANY:

The Company shall issue and allot to the SPV equity shares in the Company, of the face value of INR 10 each (credited as fully paid-up) at par, by way of conversion of part or full of the SPV Loan. No further approval or consent shall be

necessary from any other person/ governmental authority and no shareholders resolution shall be required in relation to the aforesaid action under any agreement, the existing constitution documents of the Company or under any applicable law and the approval of the NCLT (pursuant to Section 31 of the IBC) to the Resolution Plan shall constitute approval of the issuance of equity shares of the Company to the SPV by way of conversion of the part of the SPV Loan

(II) CAPITAL REDUCTION:

As an integral part of the Resolution Plan and simultaneously with the issue of shares by the Company by conversion of part of the SPV Loan, as stated above, the existing paid equity share capital of the Company each held by previous shareholders of the Company shall be entirely cancelled and extinguished (Capital Reduction), without any payment to such shareholders. There shall be no requirement to add "and reduced in the name of the Company.

The Capital Reduction shall not require any payment by the Company, the Resolution Applicant the Shareholder or the SPV to any existing shareholders of the Company.

The Capital Reduction shall not require the consents of any of the creditors of the Company or approval of any of the shareholders of the Company, or any other person having security interest over such shares and the approval of the NCLT (pursuant to section 31 of the code) to the Resolution Plan shall constitute approval of the reduction of share

capital and shall be binding on the company and its stakeholders (including its creditors and shareholders).

(iii) REORGANIZATION OF THE SHARE CAPITAL:

The authorized share capital of the company as required may be increased and the stamp duties and registration charges shall be payable by the Company from the cash flows and any shortage will be met by the Resolution Applicant/SPV.

Accordingly, the capital clause of the Memorandum of the Articles of the Company shall and without any further act, deed, instrument, resolution or writing be replaced as required.

(iv) RECONSTITUTION OF BOARD, CHANGE OF NAME AND OTHER MATTERS;

Pursuance to the issuance of equity shares and Capital Reduction, the Board of the Directors shall be appointed as per the directions of the Resolution Applicant

Upon the issuance of equity shares against conversion of part of the SPV Loan and Capital Reduction, the name of the Company may be changed to such other name as determined by the Resolution Applicant, at its discretion post the Effective Date.

The entire equity share capital shall be held by the SPV and its nominees.

It is clarified that issuance of equity shares and/or compulsory convertible debentures by the Company upon conversion of part of SPV Loan, and capital reduction will be approved and implemented pursuant to the provision of IBC specifically, Regulation 37 of the CIRP Regulations read with Section 31 of the IBC, and will not be undertaken under the provisions of CA 2013, and the provisions of this Resolution Plan shall be deemed to be in accordance with and constitute compliance with any and all provisions of the law that would have otherwise applied to a similar restructuring or reduction of capital under CA 2013 and/or under rules/circulars/regulations/press notes/clarifications issued thereunder. Therefore, no separate shareholders resolution shall be required for the aforesaid actions/issuances.

It is further clarified that a company is not ordinarily permitted to carry forward its unabsorbed business losses in case of a change in the shareholding or such company in excess of 51% (fifty-one percent) as per Section 79 of the income-tax Act 1961. However, this restriction does not apply if such change in shareholding takes place pursuant to a resolution plan approved under the IBC, provided that the jurisdictional Principal Commissioner of Income-tax or the jurisdictional Commissioner of Income-tax (as appropriate), is afforded reasonable opportunity to express his views in this regard. Accordingly, the Resolution Professional shall, or cause the Company to serve a notice to jurisdictional principal commissioner of Income-tax or the jurisdictional commissioner of Income-tax (as appropriate) immediately after this Resolution Plan is submitted to the NCLT for its approval, and the Company should be permitted to carry forward its unabsorbed

business losses notwithstanding a change in the shareholding of the Company pursuant to this Resolution Plan. For the avoidance of doubt, it is clarified that the Resolution Plan is not conditional upon grant of carrying forward of the unabsorbed business losses in case of a change in the shareholding of such company in excess of 51% (fifty-one percent) as per Section 79 of the Income-tax Act, 1961.

The Resolution Professional/management and officers of the company shall allow the possession of premises/offices of the company, all passwords, bank account details, cheque books, statutory registers, minute books, financial and tax records, all communication with vendors, customers, government and regulatory authorities and all other documents pertaining to the company and its business, information technology systems(including all software's and hardware's) access to ERP system etc. to the Resolution Applicant on the Effective Date.

(V) CHARTER DOCUMENTS:

On the Effective Date, the Memorandum of Association and the Articles of Association of the Company shall automatically, without any further act or deed be substituted and replaced with the form of memorandum of association and articles of association (the "New Charter Documents") as provided by the Resolution Applicant. Nothing in the Memorandum of Association and the Articles of Association of the Company shall affect the implementation of the Resolution Plan or any actions to be taken pursuant thereto, till the Effective Date

On and from the Effective Date, the Resolution Applicant shall have the right to appoint suitably qualified and experienced persons as the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer and other key personnel in the functions of sales & marketing finance, human resources and operations, as well as in the post of "Key Managerial Personnel of the company.

6. PERFORMANCE BANK GUARANTEE

As per the terms and conditions of RFRP, the successful Resolution Applicant is required to submit a Performance Bank Guarantee for 20% of the Resolution Plan amount within 7 days from the date of approval by the CoC. Accordingly, it was submitted that the EMD amount of Rs.5,00,00,000/- (Rupees Five Crore only) is already paid by the successful Resolution Applicant and they have also submitted the Performance Bank Guarantee for a sum of Rs.10,87,80,000/- (Rupees Ten Crores Eighty-Seven lakhs Eighty Thousand Only) by Punjab National Bank dated 20.09.2022 and the same is appended as Annexure – A18 to the typed set filed along with the Application.

7. IA(IBC)/1501(CHE)/2022 – OBJECTION TO THE RESOLUTION PLAN

7.1 IA(IBC)/1501(CHE)/2022 is an Application filed by DBS Bank Limited under section 60(5) of IBC, 2016 seeking relief as follows;

a. That this Hon'ble Tribunal may be pleased to direct the Respondent to exclude the Nashik Land from being dealt with in any manner from the Resolution Plan.

b. Pass such other order or orders as this Hon'ble Tribunal may deem fit.

7.2. It is seen that one of subsidiary of the Corporate Debtor viz. Gonglu Agro Private Limited (GAPL) is also under going Corporate Insolvency Resolution Process. The factory unit of GAPL is situated at Nashik District, Maharashtra. In the said area, the factory unit of GAPL is situated on an area admeasuring 23.19 acres of land belonging to GAPL and some portion of the said factory is constructed on the area belonging to the Corporate Debtor. The demarcation of the total land being 38.18 acres owned by GAPL and the Corporate Debtor is provided as below;

Gonglu Agro Private Ltd.:

Gatta No.	Hectares	Acres
207	1.15	2.84
211	4.94 (4.56 + 0.38) (0.38 Land Portion is in the form of Pot Kharaba)	12.20
213	3.30	8.15
Total	9.39	23.19

Capricorn Food Products India Ltd.:

Gatta No.	Hectares	Acres
211	1.80	4.44
213	4.27 (3.71+0.56) (0.56 Land Portion is in the form of Pot Kharaba)	10.55
Total	6.07	14.99

7.3. Out of the area of land admeasuring 38.18 acres, an area admeasuring 14.99 acres belong to the Corporate Debtor on which some portion of the factory premises of GAPL is situated and is in its possession. The said factory structure of GAPL was built on

the common land on the basis of the mutual understanding of holding and subsidiary company. Further, certain structures forming a part of the factory of GAPL are built on the land of Corporate Debtor which cannot be separately demarcated.

7.4. It was submitted that the valuation of the entire land in the name of the Corporate Debtor has been done by the RP which would ultimately amount to categorization of the said portion of the land as an asset of the Corporate Debtor and it would defeat the sale of GAPL as a going concern, since the unit / structure / building along with plant and machinery built on the said land belongs to GAPL. If the said portion of land belonging to the Corporate Debtor over which the factory of GAPL is situated is taken over by the RP of the Corporate Debtor, then the entire Resolution Process of GAPL shall be affected with meagre chance of successful Resolution as the factory premises is the primary asset of GAPL from where the business is operated and no resolution Applicant may be interest in submitting a Resolution Plan or buying the Company, once the factory of GAPL built on the land of the Corporate Debtor is tampered in any form or manner.

7.5. In respect of the aforesaid issue, the successful Resolution Applicant of the Corporate Debtor has filed an Affidavit dated 08.05.2023 which is as follows

"2. I say and submit that during the pendency of the captioned Application, certain Financial Creditor of subsidiary

of the Corporate Debtor I.e. Gonglu Agro Private Limited, had preferred Applications bearing no.IA/1501(CHE)/2022 stating that the approval of the Resolution Plan submitted by the SRA in the case of the Corporate Debtor would impact the smooth functioning of Corporate Insolvency Resolution Process of Gonglu Agro Private Limited. The alleged objection is with respect to certain parts of lands belonging to the Corporate Debtor which are being utilized by Gonglu Agro Private Limited for its business purposes. Therefore, approval of the said Resolution Plan would hinder the resolution of Gonglu Agro Private Limited and defeat the purpose of achieving the maximization of value of its assets.

3. I humbly say and submit that the said allegations raised by the Financial Creditors are denied, however, in view of the delay and for the sake of prompt approval of the Resolution Plan, the SRA undertakes the following:

- That the SRA shall relinquish its rights under the Resolution Plan in respect of the lands as described below:

Jaitapur Village, Chandvad Taluk, Nasik District

A dry land to an extent of 15 acres located in the premises of Gonglu Agro Pvt. Ltd. [Gat No. 211 (part), 213 (part)]

Gat No.	Hectares	Acres
211	1.80	4.44
213	4.27 (3.71+0.56) (0.56 Land Portion is in the form of Pot Kharaba)	10.55
Total	6.07	14.99

7.6. Thus, the SRA has **relinquished their rights under the Resolution Plan in respect of the land to the extent of 14.99 acres standing in the name of the Corporate Debtor and located in the premises of GAPL.**

7.7. Upon perusal of the valuation Report of the Corporate Debtor, it is seen that for the land to the extent of 14.99 acres situated as Nashik District, the valuation arrived at is Rs.68,76,660/- (Rupees Sixty-Eight Lakhs Seventy-Six thousand six hundred and sixty only). The Successful Resolution Applicant has filed another Affidavit dated 15.06.2023 wherein it has been stated as follows;

“iii. I submit that on the hearing held on 10.05.2023, the counsel appeared for the successful resolution applicant stated that the successful resolution Applicant will pay the entire plan amount as envisaged in 1A/1052/2022 without deducting anything towards 'Nasik Land'. After recording the undertaking given by the counsel for the successful Resolution Applicant this Hon'ble Tribunal was pleased to reserve orders in the application on 10.05.2023. A copy of the order dated 10.05.2023 is submitted herewith as **Annexure - 2.**

iv. I submit that this Hon'ble Tribunal on 13.06.2023 has directed the Applicant to file an Affidavit in this regard. The successful resolution applicant has sent an email confirmation on 14.06.2023 that they will pay the entire resolution plan amount as envisaged in 1A/1052/2022 without deducting any amount towards the value of 'Nasik land'. A copy of the said email is submitted herewith as **Annexure-3.**”



- 7.8. The land belonging to the Corporate Debtor to an extent of 14.99 acres, situated at Nashik District and located inside the premises of GAPL, is as under;

Jaitapur Village, Chandvad Taluk, Nasik District

A dry land to an extent of 15 acres located in the premises of Gonglu Agro Pvt. Ltd. [Gat No. 211 (part), 213 (part)]

Gat No.	Hectares	Acres
211	1.80	4.44
213	4.27 (3.71+0.56) (0.56 Land Portion is in the form of Pot Kharaba)	10.55
Total	6.07	14.99

- 7.9. Thus, the aforesaid land premises to an extent of 14.99 acres shall NOT form part of this Resolution Plan. However, the Successful Resolution Applicant shall pay the entire Resolution Plan amount of Rs.79.39 Crores as stated by them in the Affidavit dated 15.06.2023, without making any deductions and without recourse to any further proceeding.

- 7.10. With the above said directions **IA(IBC)/1501(CHE)/2022** stands disposed of.



8. **TABULATION OF VARIOUS COMPLIANCES REQUIRED UNDER THE PROVISIONS OF IBC, 2016**

The Applicant has submitted the details of various compliances as envisaged within the provisions of IBC, 2016 and CIRP Regulations, which requires a Resolution Plan to adhere to, which is reproduced hereunder:

CLAUSE OF S.30(2)	REQUIREMENT	HOW DEALT WITH IN THE PLAN
(a)	Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	Clause 8.1 at Page 178 of the Application.
(b)	Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53; or Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall be not less than amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher and (iii) provides for 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.	Clause 8.3 and 8.4 at Pages 184 and 185 of the Application Clause 1.1.2 at Page 213 of the Application

(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause 10 at Pages 200 and 201 of the Application.
(d)	Implementation and Supervision.	Clause 10 at Page 200 and 201 of the Application.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Clause 1.1.8 and 2.6 at Page 215 of the Application
(f)	Conforms to such other requirements as may be specified by the Board.	Appropriate declaration to be obtained from the Resolution Applicant

9. MEASURES REQUIRED FOR IMPLEMENTATION OF THE RESOLUTION PLAN IN TERMS OF REGULATION 37 OF CIRP REGULATIONS

PARTICULARS	RELEVANT PAGE OF THE RESOLUTION PLAN DEALING AFORESAID COMPLIANCE WITH REGULATION
<i>A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximisation of value of its assets, including but not limited to the following: -</i>	
(a) transfer of all or part of the assets of the corporate debtor to one or more persons;	Not Applicable
(b) sale of all or part of the assets whether subject to any security interest or not;	Not Applicable
(c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	Not Applicable

(d) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	Clause 10.2.4.4 at Page 205 of the Application
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	Not Applicable
(f) satisfaction or modification of any security interest;	Clause 10.2.3.5 at Page 204 of the Application
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Not Applicable
(h) reduction in the amount payable to the creditors;	Clause 8 at Page 177 of the Application
(i) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	Not Applicable
(j) amendment of the constitutional documents of the corporate debtor;	Clause 10.2.4.5 at Page 206 of the Application
(k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Not Applicable
(l) change in portfolio of goods or services produced or rendered by the corporate debtor;	Not Applicable



(m) change in technology used by the corporate debtor; and	Not Applicable
(n) obtaining necessary approvals from the Central and State Governments and other authorities.	Clause 5.1.3 at page 170 and Clause 8.5.4 at page 190 of the Application

10. MANDATORY CONTENTS OF THE RESOLUTION PLAN IN TERMS OF REGULATION 38 OF THE CIRP REGULATIONS:-

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Resolution Plan</i>
38(1)	The amount due to the Operational Creditors under a Resolution Plan shall be given priority in payment over Financial Creditor.	Clause 1.1.1 at Page 213 and Clause 9.5.4 at Page 199 of the Application
38(1A)	A Resolution Plan shall include a statements as to how it has dealt with the interest of all stakeholders, including Financial Creditors and Operational Creditors of the Corporate Debtor	Clause 1.1.3 at page 213 of the Application
38(1B)	A Resolution Plan shall include a statement giving details if the resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.	Clause 1.1.4 at page 214 of the Application
38(2)	A Resolution Plan shall provide (a) the term of the plan and its implementation schedule	Clause 1.1.5 at Page 214 of the Application
	(b) the management and control of the business of the Corporate Debtor during its terms; and	Clause 1.1.6 at Page 214 of the Application
	(c) adequate means for supervising its implementation	Clause 1.1.7 at Page 215 of the Application

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Resolution Plan</i>
38(3)	A Resolution Plan shall demonstrate that (a) It addressed the cause of default;	Clause 1.1.9 at Page 215 of the Application
	(b) It is feasible and viable;	Clause 1.1.9 at Page 215 of the Application
	(c) it has provisions for its effective implementation;	Clause 1.1.9 at Page 215 of the Application
	(d) it has provisions for approvals required and the timeline for the same; and	Clause 1.1.9 at Page 215 of the Application
	(e) the Resolution Applicant has the capability to implement the Resolution Plan	Clause 1.1.9 at Page 215 of the Application

11. The Applicant has submitted the certificate of proof of eligibility under section 29A of the Code of successful Resolution Applicant, which is appended as Annexure A -17 at Page Nos. 248 to 255 of the typed set filed along with the Application.

12. The relevant information with regard to the amount claimed, amount admitted and the amount proposed to be paid by the Resolution Applicant, *i.e.*, Consortium of MAA Kudargarhi Steel Private Limited and BM Foods under the said Resolution Plan which is tabulated as under:

Sl. No	Category of Creditor	Amount of Claim	Claim Admitted	Amount provided in the Plan	% of claim Admitted
		(Rs. in Crores)			
1.	Insolvency Resolution Process Cost	Actual			100%
2	Operational Creditors (including Statutory Liabilities)	31.10	28.67	0.05	0.17%
3	Operational Creditors Workmen/Employees	0.50	0.47	0.20	42.10%
5.	Financial Creditors	193.26	193.26	79.14	40.95%
	Capex (within 6 months)	---	---	---	---
	Working Capital (within 6 months)	---	---	---	---
	Total	224.86	222.40	79.39	

13. RELINQUISHMENT/WAIVER OF LIABILITIES AND APPROVALS

SL. No	RELIEF AND/OR CONCESSIONS AND APPROVAL SOUGHT BY RESOLUTION APPLICANT (CLAUSE 10 OF RESOLUTION PLAN)	ORDERS THEREON
1	Any stamp duty liabilities or tax liability which arises after the NCLT Approval Date, pursuant to the transactions contemplated under this Resolution Plan shall be exempted or waived off.	Not granted
2	Hon'ble NCLT be pleased to give or issue necessary directions and/or instructions to all relevant Governmental Authorities to provide all the licenses to the restructured Corporate Debtor to run the plant(s) smoothly and successfully transfer the existing License if any in the name of the Resolution Applicant, if required, in the future	This is for the appropriate authorities to consider keeping in view of the clean slate principle
3	Hon'ble NCLT be pleased to give or issue necessary directions and/or instructions to Income Tax department to carry forward business loss, short term capital loss,	This is for the CBDT and other appropriate authorities to

SL. NO	RELIEF AND/OR CONCESSIONS AND APPROVAL SOUGHT BY RESOLUTION APPLICANT (CLAUSE 10 OF RESOLUTION PLAN)	ORDERS THEREON
	Unabsorbed Depreciation of the Restructured Corporate Debtor.	consider keeping in view the object of IBC, 2016
4	Hon'ble NCLT be pleased to give or issue necessary directions and/or instructions to all relevant Governmental Authorities including the ROC that the Restructured Corporate Debtor, its directors and its key managerial personnel, officers and employees appointed after the NCLT Approval Date not be held liable in respect of all statutory/regulatory non-compliances having occurred prior to the NCLT Approval Date, including with respect to various provisions of Applicable Laws including but not limited to the Companies Act. 1956 and/or Companies Act, 2013 and/or the Taxation Laws and also of non-preparation and no approval of financial statements for any of the financial years prior to the Effective Date. To allow amendment in the Memorandum of Association and Articles of Association without approaching the Central Government and grant exemption to the Restructured Corporate Debtor for holding Annual General Meeting of the members and other formalities. To provide for / to be complied with the terms and conditions stipulated in this scheme without calling the General Meeting of shareholders the Corporate Debtor;	Granted, in terms of Section 32A of IBC, 2016
5	Hon'ble NCLT be pleased to give or issue necessary directions, instructions to all relevant Governmental Authorities to waive off all penalties, charges, fees, etc. arising out of any non-compliances having occurred prior to the Effective Date with respect to various provisions of the Applicable Laws including but not limited to the property laws, labour laws i.e the Employee State Insurance Act, the Provident Fund Act, the Industrial Disputes Act the Payment of Bonus Act, the Contract Labour Act, the Minimum Wages Act, the	Granted subject to the provision of IBC, 2016

SL. No	RELIEF AND/OR CONCESSIONS AND APPROVAL SOUGHT BY RESOLUTION APPLICANT (CLAUSE 10 OF RESOLUTION PLAN)	ORDERS THEREON
	Equal Remuneration Act, the Factories Act, the Gratuity Act, etc. and to withdraw all/any pending Proceedings in case of such labour laws or property laws against the Restructured Corporate Debtor for any period prior to the Effective Date:	
6	Hon'ble NCLT be pleased to give or issue necessary directions, instructions to the effect that all proceedings, inquiries, investigations, orders, show causes, notices, suits litigation etc. in respect of the Restructured Corporate Debtor, whether civil or criminal pending before any authority, court, Tribunal or other forum prior to the Effective date shall stand abated, withdrawn, settled and/or extinguished and the restructured Corporate Debtor shall have no liability in respect of such proceedings inquiries investigations, orders, show causes, notices, suits litigation etc relating to the period prior to the NCLT Approval Date. However, all proceedings, inquiries, investigations orders, show causes, notices, suits, litigation etc. initiated by the Corporate Debtor in respect of claiming any amount shall remain outstanding, and the restructured Corporate Debtor shall be entitled to pursue the same for recovery of such amounts claimed;	Granted
7	Hon'ble NCLT be pleased to give or issue necessary directions, instructions to confirm that, on and from the NCLT Approval Date, all accounts of the Restructured Corporate Debtor shall stand regularized and their asset classification shall be "standard" for the purposes of all Applicable Laws and to issue necessary directions to the respective Credit Rating Agencies or any other agency for the time being to regularize and classify account as standard one;	Granted
8	Upon the approval of the plan by the NCLT under section 31 of the IBC, all violation or breach of any agreement(s) of the CD shall stand condoned or waived,	Granted

SL. NO	RELIEF AND/OR CONCESSIONS AND APPROVAL SOUGHT BY RESOLUTION APPLICANT (CLAUSE 10 OF RESOLUTION PLAN)	ORDERS THEREON
	and such agreements shall be treated as if no violation or breach has ever been committed.	
9	On the NCLT Approval Date, the guarantors that have provided guarantees for and on behalf of Corporate Debtor and in order to secure the Debt availed by the Corporate Debtor, shall not be entitled to exercise any subordinate rights in respect of such guarantees.	Granted
10	On the NCLT Approval Date, all the outstanding negotiable instruments issued by the Corporate Debtor or by any Person acting on behalf of the Corporate Debtor including demand promissory notes, post-dated cheques and letter of credit, shall stand terminated and the restructured Corporate Debtor 's liability under such instruments shall stand extinguished.	Granted
11	On the NCLT Approval Date, the rights of any person (whether exercisable now or in the future and whether contingent or not) to call for the allotment, issue, sale, or transfer of shares or loan capital of the Corporate Debtor, whether on a change of control, or otherwise, shall stand unconditionally and irrevocably extinguished	Granted, subject to the provision of Companies Act, 2013
12	On the NCLT Approval Date, the right of any person or company claiming to be the owner of any land/plant and machinery at factories owned by Capricorn Food Products India limited and on any of the assets of the Corporate Debtor which as per information provided by the RP is in the name of the Corporate Debtor, shall stand unconditionally and irrevocable extinguished,	Granted
13	That upon the approval of the plan by the NCLT under section 31 of the IBC, all pending proceedings relating to the following departments against the CD shall stand irrevocably and unconditionally abated in perpetuity and all violation or breach of any agreement of the Corporate Debtor shall stand condoned or waived and	Granted, subject to the provisions of Section 32A of IBC, 2016

SL. NO	RELIEF AND/OR CONCESSIONS AND APPROVAL SOUGHT BY RESOLUTION APPLICANT (CLAUSE 10 OF RESOLUTION PLAN)	ORDERS THEREON
	<p>such agreements shall be treated as if no violation or breach has ever been committed:</p> <ul style="list-style-type: none"> ➤ Central Bureau of Investigation (CB1) cases if any against the corporate debtor ➤ Enforcement Directorate (0) cases if any against the corporate debtor ➤ Recovery suit cases under Debt Recovery Tribunal (DRT) if any against the corporate debtor ➤ Employee State Insurance Corporation (ESI) suits if any against the corporate debtor ➤ Vigilance & Enforcement Department (Govt. of Tamil Nadu/ Andhra Pradesh/ Maharashtra) cases if any against the corporate debtor ➤ Pollution department cases if any against the corporate debtor ➤ Labour department cases if any against the corporate debtor ➤ Case for non-fulfilling of export obligation/EPCG/DEPB license by Directorate of Revenue Intelligence against the corporate debtor ➤ Other Civil, criminal cases and local body taxes if any against the corporate debtor 	
14	Hon'ble NCLT be pleased to give or issue necessary directions, instructions to the all- relevant government authorities to provide reliefs from any non-compliance by Corporate Debtor, if any, in respect to provisions of Foreign Exchange Management Act, 1999 and Foreign Exchange Regulation Act.	Granted, subject to the clean slate principle enshrined under the provisions of IBC, 2016
15	To give the exemption to the restructured Corporate Debtor for a period of 1 years from electricity duty from the effective date.	Not granted

SL. NO	RELIEF AND/OR CONCESSIONS AND APPROVAL SOUGHT BY RESOLUTION APPLICANT (CLAUSE 10 OF RESOLUTION PLAN)	ORDERS THEREON
16	To waive minimum demand charges on electricity Restructured Corporate Debtor for a period of 1 years from the effective date.	Not granted
17	To extinguish all the past municipal taxes on the land on which the plant(s) of the Corporate Debtor is built that may be pending/ outstanding as of the date of approval of this Resolution Plan by the Hon'ble NCLT:	Granted, dues extinguished only until the NCLT Approval Date
18	To give exemption of tax liability charged by the local authority for Advertisement/ Hoarding purposes.	Not granted
19	To extinguish any dues pending with Land Revenues in relation to the land on which the plant(s) of the Corporate Debtor are situated	Granted, dues extinguished only until the NCLT Approval Date.
20	To provide all the essentials approvals and licences such as Fire NOC, Police Approvals for running the plant smoothly and efficiently.	This is for the appropriate authorities to consider keeping in view the object of IBC, 2016
21	Apart from the relief and concessions mentioned above. Government of Tamil Nadu, Andhra Pradesh and Maharashtra may also consider providing from time to time such relief and concession of admissible to sick units for expeditious revival of the unit	This is for the appropriate authorities to consider
22	Approval for resolution plan by NCLT will treated as waiver of the requirements of the valuation of pricing of shares by registered valuer to be computed for issuance of equity shares through preferential allotment applicant as well as any other financial Investors for a period of 30 days. Request for such waiver is due to the fact that current valuation of the company basis book value on net asset value basis realizable valuation of assets adjust to the current liabilities discounted cash	Granted

SL. NO	RELIEF AND/OR CONCESSIONS AND APPROVAL SOUGHT BY RESOLUTION APPLICANT (CLAUSE 10 OF RESOLUTION PLAN)	ORDERS THEREON
	flow of the business will be negative, whereas the applicant is paying premium over face value considering the future potential of the business	
23	Approval of the resolution plan by NCLT will be treated as approval under section 281 of the Income Tax Act 1961 by the selling shareholders and provision of taking over predecessors' tax liability under section 170 of the Income Tax Act 1961 and specific order for treating such transactions as void under section 281 of the Income Tax Act 1961 for any claims in respect of tax or any other sum payable by the selling shareholders.	This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016

14. PAYMENT OF DUES OF THE STATUTORY AUTHORITIES

14.1. In so far as the dues of the Statutory authorities are concerned, it is seen that the RP has admitted the claim of the 'Statutory Authorities' to the tune of Rs.28,08,58,186/-. As against the said admitted claim amount, the Resolution Applicant intends to pay a total consideration of Rs.5 Lakhs to the Statutory Authorities in discharge of their claims. A statement showing the details of the claims received from the statutory authorities and the claim admitted along with break – up is extracted hereunder;

SL. No.	STATUTORY AUTHORITIES	AMOUNT CLAIMED (Rs.)	AMOUNT ADMITTED (Rs.)
1	Sales Tax – Govt. of TN	1,91,10,893	10,95,164
2	Commercial Tax Officer	24,96,61,309	24,96,61,309
3	ESIC	3,06,583	3,06,583

4	EPFO	8,22,94,567	18,84,875
5	Asst. Commissioner, GST Tirupati	2,81,62,355	2,79,10,255
	Total	37,95,35,707	28,08,58,186

14.2. From the above table, it could be seen that the RP has admitted the claims of the Statutory authorities to the tune of Rs.28.08 Crores. As per the terms of the Resolution Plan, the Resolution Applicant has proposed to pay a lump sum of Rs.5 Lakhs to the 'Statutory Authorities'.

14.3. At this juncture, it is significant to refer to the Judgment of the Hon'ble NCLAT in the matter of **Jet Aircraft Maintenance Engineers Welfare Association -Vs- Ashish Chhawchharia Resolution Professional of Jet Airways (India) Ltd. and Others;** 2022 SCC OnLine NCLAT 418 wherein it has been held that non-payment of the dues of the Employees Provident Fund Organization in full would amount to breach of the provision of Section 30(2)(e) of IBC, 2016. Further, by relying upon the Judgment of the Hon'ble Supreme Court in the matter of **Maharashtra State Cooperative Bank Limited -Vs- Assistant Provident Fund Commissioner;** (2009) 10 SCC 123, it has been held by the Hon'ble NCLAT that any amount due from the employer appearing in sub-section (2) of Section 11 also covers the amount determined under Sections 7A, 7Q, 14B and 15(2) and there cannot be any quarrel to the preposition as laid down by the Hon'ble Supreme Court in the above case. Also, by placing

reliance upon Section 36(4)(a)(iii) of IBC, 2016 it was held that Provident Fund dues are not subject to distribution under Section 53(1) of IBC, 2016.

- 14.4. In so far as the present case is concerned, it is seen that the EPFO has claimed a sum of Rs.8.22 Crores, and the RP has admitted the claim of the EPFO to the tune of Rs.18.84 Lakhs. As per the Resolution Plan, the Resolution Applicant proposes to pay only a sum of Rs.5 Lakhs to the entire Statutory Authorities. If the dues of the EPFO are not paid in full it goes against the dictum laid by the Hon'ble NCLAT in the matter of **Jet Aircraft Maintenance Engineers Welfare Association** (*supra*) and as such it is in violation of Section 30(2)(e) of IBC, 2016.
- 14.5. Further, it is also seen that the EPFO department has also filed an IA as against the rejection of the claim and the same is also pending adjudication before this Tribunal.
- 14.6. Hence, under the said circumstances, since the EPFO has claimed a sum of Rs.8.22 Crore and the RP has admitted the claim of EPFO to the tune of Rs.18.84 Lakhs, in terms of the dictum laid down by the Hon'ble NCLAT in the matter of **Jet Aircraft Maintenance Engineers Welfare Association** (*supra*), the RP is directed to pay the dues of the EPFO to the tune of Rs.18.84 Lakhs. Further, we also direct the RP to earmark a sum of **Rs.8.04 Crore** (Rs.8.22 Crore

– Rs.18.84 Lakhs) the **disputed amount** in a separate Escrow Account maintained in **IDFC First Bank, Thuraipakkam Branch, Chennai – 600 097** till such time final orders are being passed in the IA filed by EPFO. The remaining amount of Rs.71.35 Crore shall be distributed to the stakeholders of the Corporate Debtor in accordance with Section 53 of IBC, 2016.

15. ANALYSIS AND FINDINGS OF THIS TRIBUNAL

15.1. It is seen from Form – H that the Liquidation value of the Corporate Debtor is arrived at Rs.99.30 Crore and the Fair value is arrived at Rs.134.68 Crore. The Resolution Applicant proposes to infuse a sum of Rs. 180 Crore into the Corporate Debtor (*including the working capital amount of Rs.97.61 Crores and capital expenditure of 3 Crores*). It is also seen from Form – H that the RP has filed Applications under Section 45 and 66 of IBC, 2016, and the same is pending adjudication before this Tribunal.

15.2. In so far as the fate of these Applications are concerned, it is significant to refer to the Division Bench of the Hon'ble High Court of Delhi in the matter of **Tata Steels BSL Limited -Vs- Venus Recruiters Private Limited & Ors;** 2023/DHC/000257 while dealing with the continuation of PUF transaction Applications after the completion of CIRP, in which it has been held as follows;

"89. Conclusion

- a)
- b) CIRP and avoidance applications, are, by their very nature, a separate set of proceedings wherein, the former, being objective in nature, is time bound whereas the latter requires a proper discovery of suspect transactions that are to be avoided by the Adjudicating Authority. The scheme of the IBC reinforces this difference. Accordingly, adjudication of an avoidance application is independent of the resolution of the corporate debtor and can survive CIRP
- c) The endeavour of the IBC and its rules and regulations is to ensure that all processes within the insolvency framework are time efficient. While the law mandates a resolution plan to necessarily provide for the treatment of avoidance applications if the same are pending at the time of submission of resolution plans, it cannot be accepted that avoidance applications will be rendered infructuous in situations wherein the resolution plan could not have accounted for avoidance applications due to exigencies that delayed initiation of action in respect of avoidable transactions beyond the submission of a resolution plan before the adjudicating authority. This is because such an interpretation will render the provisions pertaining to suspect transactions otiose and let the beneficiaries of such transactions walk away, scot-free. Money borrowed from creditors is essentially public money and the same cannot be appropriated by private parties by way of suspect arrangements. Therefore, in cases such as the present one, wherein such transactions could not be accounted, the Adjudicating Authority will continue to hear the application. Such benefit cannot be given in cases where the RP had already applied for prosecution of avoidance applications and the applicant ought to have been cognizant of pending avoidance applications but did not account for the same in its resolution plan.
- d)
- e)
- f)"



15.3. Thus, in the present case, since the CoC has assigned their debt to the SPV for a sum of Rs.10 Crores, the PUF transactions applications which is pending before this Tribunal can be prosecuted by the SPV and the proceeds of the same, if any, would accrue to benefit of the SPV.

15.4. In so far as the approval of the Resolution Plan is concerned, this Authority is convinced on the decision of the Committee of Creditors, following the much-celebrated Judgment of the Supreme Court in the matter of **K. Sashidhar – Vs– Indian Overseas Bank (2019) 12 SCC 150**, wherein in para 19 and 62 it is held as follows;

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

62.In the present case, however, we are concerned with the provisions of I&B Code dealing with the resolution process. The dispensation provided in the I&B Code is entirely different. In terms of Section 30 of the I&B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC and they express their opinion on the proposed resolution plan in the form of votes, as per their voting share. In the meeting of the CoC, the proposed resolution plan is placed for discussion and after full interaction in the presence of all concerned and the Resolution Professional, the constituents of the CoC finally proceed to exercise their

option (business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, non-recording of reasons would not per-se vitiate the collective decision of the financial creditors. The legislature has not envisaged challenge to the “commercial/business decision” of the financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count.”

15.5. Further, the Hon’ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steels –Vs– Satish Kumar Gupta & Ors. in Civil Appeal No. 8766 – 67 of 2019** at para 42 has held as follows;

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

15.6. Further the Supreme Court in the matter of **K. Sashidhar v. Indian Overseas Bank and Ors. (2019) 12 SCC 150** has lucidly delineated the scope and interference of the Adjudicating Authority in the process of approval of the Resolution Plan and held as follows;

“55. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite per cent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference

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

58. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with Section 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters "other than" enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B

Code and not to act as a court of equity or exercise plenary powers.”

(emphasis supplied)

15.7. Also, the Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Ors.** (2020) 8 SCC 531 after referring to the decision in *K. Sashidhar (supra)* has held as follows;

“73. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or sub-class of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal.”

(emphasis supplied)

15.8. The Supreme Court in its recent decision in **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Ltd. & Ors.** in *Civil Appeal no. 3395 of 2020* dated 24.03.2021 has held as follows;

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

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

77.1. Such limitations on judicial review have been duly underscored by this Court in the decisions above-referred, where it has been laid down in explicit terms that the powers of the Adjudicating Authority dealing with the resolution plan do not extend to examine the correctness or otherwise of the commercial wisdom exercised by the CoC. The limited judicial review available to Adjudicating Authority lies within the four corners of Section 30(2) of the Code, which would essentially be to examine that the resolution plan does not contravene any of the provisions of law for the time being in force, it conforms to such other

requirements as may be specified by the Board, and it provides for: (a) payment of insolvency resolution process costs in priority; (b) payment of debts of operational creditors; (c) payment of debts of dissenting financial creditors; (d) for management of affairs of corporate debtor after approval of the resolution plan; and (e) implementation and supervision of the resolution plan.

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

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

78. To put in a nutshell, the Adjudicating Authority has limited jurisdiction in the matter of approval of a resolution plan, which is well defined and circumscribed by Sections 30(2) and 31 of the Code read with the parameters delineated by this Court in the

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

15.9. Thus, from the catena of judgments rendered by the Supreme Court on the scope of approval of the Resolution Plan, it is amply made clear that only limited judicial review is available for the Adjudicating Authority under Section 30(2) and Section 31 of IBC, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the Committee of Creditors.

15.10. On hearing the submissions made by the Ld. Counsel for the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with 87.48% voting share. As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Adjudicating Authority. On perusal of the documents on

record, we are also satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016,

15.11. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.

15.12. In case of non-compliance with this order or withdrawal of the Resolution Plan by the Successful Resolution Applicant, or the Resolution Applicant fails to pay the Resolution Plan amount within a period of 30 days from the date of this order, the Monitoring Committee, the RP or the CoC, as the case may be, shall forfeit the entire amount received as on the said date (including the Performance Bank Guarantee amount), without any recourse to this Tribunal.

15.13. Subject to the observations made in this order, the Resolution Plan is hereby **Approved** by this Adjudicating Authority. The Resolution Plan shall form part of this Order. The Resolution Plan is binding on the Corporate Debtor and other

stakeholders involved so that the revival of the Debtor Company shall come into force with immediate effect. The Moratorium imposed under section 14 shall cease to have effect from the date of this Order.

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

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

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

15.17. A copy of this Order is to be submitted to the Office of the Registrar of Companies, Chennai.

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

15.19. The Regional Director (Southern Region), Ministry of Corporate Affairs is hereby directed to look into the possibility of allotting a new CIN number to the successful Resolution Applicant in order to create a fresh start, easing all its practical difficulties.

15.20. IA(IBC)/1052(CHE)/2022 shall stand **disposed of** accordingly.

16. The *Registry* is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsel for information and for taking necessary steps. Files be consigned to the record.

— sd —

SAMEER KAKAR
MEMBER (TECHNICAL)

— sd —

Justice RAMALINGAM SUDHAKAR
PRESIDENT

Raymond