



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

ITEM No.303
IA/3(AHM)2024
in CP 139 of 2021

Order under Section 30 (6) of IBC 2016 for submission and approval of the resolution Plan.

IN THE MATTER OF:

Sunil Kumar Agrawal
Resolution Professional of
Yogiraj Spinning Limited

.....Applicant

V/s
Yogiraj Spinning Limited

.....Respondent

Order delivered on: 29.04.2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-sd-
SHAMMI KHAN
MEMBER (JUDICIAL)



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

IA/3(AHM)2024 in CP 139 of 2021

*(An application under Section 30 (6) of IBC, 2016 for
submission and approval of the resolution Plan)*

In the matter of ***Yogiraj Spinning Limited***

Sunil Kumar Agrawal

Resolution Professional of
Yogiraj Spinning Limited
B 1221, Sun West Bank,
Nr. Shiv Cinema,
Ashram Road,
Ahmedabad-380009.

.....Applicant/Resolution Professional

VERSUS

Yogiraj Spinning Limited

14 – AC, Shopping Centre,
New Sardar Marketting Yard,
Gondal,
Gujarat.

.....Respondent/Corporate Debtor

Order pronounced on 29.04.2024

CORAM:

**SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)**

APPEARANCE:

For the Applicant/RP : Mr. Nipun Singhvi, Adv Adv a.w.
: Mr. Mayur Jugtawat, Adv.



For the Respondent :
For the CoC/SBI : Ms. M.A. Gogia, Adv a.w.
: Mr. Navin Pahwa, Sr. Adv.
For State Tex Sept. : Mr. Priyam Rawal Adv.
For SRA : Mr. Vishal Raval Adv. a.w. Consultant
RP in person : Mr. S.K Agarwal,

ORDER

[Per Bench]

1. The IA(Plan)3/2024 is an application filed U/s 30(6) of the IBC, 2016 by the Applicant / RP of Yogiraj Spinning Limited for approval of Resolution plan with following prayers:

a) This Hon'ble Adjudicating Authority may be pleased to approve the Resolution Plan under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 submitted by Mr. Kiran Mehta, Ms. Trupti Mehta, Mr. Darshan Mehta. Ms. Shivani Mehta and M/s Shri Siddhivinayak Cotspin Pvt. Ltd., the successful Resolution Applicant and be further pleased to order and declare that such an approved Resolution Plan is binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, the State Government, the Local Authority and other authorities, the guarantors and all other stakeholders involved in the Resolution Plan;

b) Any other order that the Hon'ble NCLT may deem fit in the facts and circumstances of the present case.



2. It is stated that CIRP commenced in the matter vide order dated 13.12.2022 on an application filed under Section 7 of IBC, 2016 in CP(IB) No.139 of 2021. The applicant herein was appointed as IRP.
3. IRP made public announcement on 22.12.2022 and post collation of claims, CoC was formed. The 1st meeting of the CoC was held on 19.01.2023, whereat, the CoC confirmed the appointment of the IRP as RP.
4. The CoC comprised of only one Financial Creditor being State Bank of India.
5. The 2nd meeting of the CoC was held on 09.02.2023 whereat the RP apprised the CoC that he is unable to take the possession of plant due to non-cooperation by suspended management. The draft Form-G was approved by CoC, two valuers were appointed.
6. Form-G was published by the RP on 12.02.2023.
7. The 3rd meeting of the CoC was held on 27.02.2023 whereat, the CoC resolved to appoint the transaction auditor and also approved the RFRP and Evaluation Matrix.



8. The 4th meeting of the CoC was held on 05.04.2023, the CoC resolved to extend the time period for submitting the resolution plan to 20.04.2023.
9. 5th meeting of the CoC was held on 26.04.2023, the CoC resolved that the time for submission of plan shall be extended till the time possession of the plant was given to RP.
10. 6th meeting of the CoC was held on 03.06.2023 whereat, CoC resolved and passed resolution seeking exclusion of certain period.
11. 7th meeting of the CoC was held on 30.06.2023, the CoC resolved to republish the Form – G.
12. Meanwhile, upon an application filed by RP being IA/724/2023, this Tribunal granted exclusion of 174 days from CIRP period vide order dated 25.07.2023.
13. Form – G was republished on 28.07.2023 with last date of receipt of expression of interest as 12.08.2023.



14. This Tribunal on application under Section 19 directed the suspended management to allow in RP and have also asked suspended management to make every effort to handover the factory premises to the RP.
15. Against the said order, the suspended management preferred an appeal before Hon'ble NCLAT, where the order of this Tribunal was upheld. Order of Hon'ble NCLAT was impugned in Civil Appeal No. 4397 of 2023 before the Hon'ble Supreme Court which was dismissed.
16. 10th meeting of the CoC was held on 21.09.2023, the RA and their repetitive to present their plans which was shared with CoC, the CoC asked the RA to modify the plan. The RA thereafter revised the plan and 11th meeting of the CoC was held on 04.10.2023, the RA increased the plan amount by Rs. 10 Lakhs and reduced the time period for payment from 12 months to 6 months.
17. RP confirmed the revised plan meets the requirement as prescribed under Section 30 (2) of IBC and regulation 38 of CIRP Regulation. RP has also confirmed 29A eligibility of RA and presented the plan to CoC for approval.



18. 12th meeting of the CoC was held on 18.10.2023, whereat the resolution under various regulations were passed which are appended below:

Relevant Regulation	Discussion		
Regulation 39B Meeting liquidation cost	Estimated Liquidation Cost		
	First 6 Months	Next 6 Months	Total-12 Month
	20,11,840	18,21,840	38,33,680
Regulation 39BA. Assessment of Compromise or arrangement.	COC member rejected for exploring from their side any Compromise or arrangement unless they receive from any eligible stakeholder		
Regulation 39C of CIRP-	CoC decided their preference for selling the company on		
Assessment of sale as a going concern	going concern basis first and upon failure of same to proceed further with other modes of sale.		
Regulation 39D Fee of the liquidator	SBI suggested to consider the fees of Liquidator at 40% of the prescribed table in IBBI Liquidation Regulation 4 in case assets are disposed within first 6 months of LCD and 50% of the prescribed Fees as per table thereafter.		



19. 13th meeting of the CoC was held on 24.11.2023. In the said meeting, it was the contention of the SBI being sole Financial Creditor that being exclusive Financial Creditor holding sole charge over the Corporate Debtor asset the distribution of the realized amount should be prioritized to claim of SBI.
20. The other claimant, Gujarat State Tax (VAT) requested the RP to consider the Hon'ble Supreme Court judgment in the matter of Rainbow Papers and consider their claim as secured creditor and to distribute the amounts accordingly.
21. RP informed that CIRP period is expiring on 02.12.2023, CoC thereafter asked RP to seek an extension of 45 days in the CIRP period of the Corporate Debtor pursuant to which the RP filed IA 1364 of 2023, which was allowed vide order dated 01.12.2023.
22. 14th CoC meeting was held on 05.01.2024, the RP had earlier sought approval of resolution plan through postal ballot on 29.12.2023 however, the 14th CoC meeting was



held to discuss upon the aspect of distribution under resolution plan and vote upon the same.

23. That during the course of meeting, the issue with respect to VAT department being secured financial creditor in accordance with judgment delivered in Sanjay Kumar Agarwal v State Tax Officer (1) (Review Petition (CIVIL) No. 1620 of 2023 in Civil Appeal No. 1661 of 2020) was raised. To which State Bank of India stated that they are having sole charge over the Corporate Debtor's assets and hence sole financial creditor in the company. To support their commercial wisdom, SBI referred to the judgments passed by Hon'ble Supreme Court in the matter of Essar Steel Vs Satish Kumar Gupta and Resurgent Arc Pvt. Ltd. Vs. Amit Metallic Limited.
24. That RP had conveyed that he is duty bound to see compliance of the IBC, its rules, regulations and prevailing law. RP has to see the compliance of Section 30(2) (e) of the Code wherein the plan has to be compliant, RP is required to put the compliance report before COC and in his opinion the VAT department have been held to be secured Creditor



and therefore they should rank under Section 53 (b) (ii) with secured financial creditor. However, it is ultimately the commercial wisdom of COC and therefore the plan has to be voted upon. Copy of minutes of 14th CoC Meeting dated 05.01.2024 is attached hereto and marked as Annexure-T.

25. Indicative timelines for implementation of the Resolution Plan:-

The Resolution Plan would be effective from the date of Approval of Resolution Plan by Adjudicating Authority under section 31 of IBC, 2016 (i.e. Effective Date). The Resolution Plan will be concluded on the 180 days from the Effective Date. The scheme period is 180 days during which full and final settlement of all the agreed liabilities would be made for Rs. 1,111.00 Lakhs only and Rs. 1,000.00 lakhs shall be infused for revival of the company. However, RA will resume production from date of approval of plan/ Effective Date.

Table No. 28

INDICATIVE ACTIVITY SCHEDULE		
Sr. No.	Activity	Timeline
PHASE I		
1.	Date of receipt of Certified copy of NCLT / NCLAT / SC order approving the Resolution Plan and / or RP is in a position to give possession, custody and control over the unit and assets of the Corporate Debtor without any hindrance from any third-party occupants/free from any encumbrance, whichever is later ('Effective date')	E
2.	Notice on the Company's Website	E+14 days
3.	Intimation to the CoC, IBBI, MCA, Tax authorities and various other statutory authorities (as applicable)	



INDICATIVE ACTIVITY SCHEDULE		
Sr. No.	Activity	Timeline
4.	Intimation to all creditors, existing shareholders and other stakeholders of the Company	
5.	Other approvals and filings required under the plan	E+60 days
	- RBI (if any)	
	- Income-tax Act	
	- Filing of various documents with MCA	
	- Other Authorities	
PHASE II - SETTLEMENT OF CREDITORS		
6.	Payment of CIRP Costs as approved by CoC, if any	E + 90 days
7.	Payment to Financial Creditors	
	-Company to pay Rs. 110 Lakhs as an upfront payment to Financial Creditors in full and final settlement after adjusting of CIRP Cost, if there is any difference in estimated CIRP Cost and actual CIRP Cost	E+90 days
	-Company to pay Rs. 911 Lakhs a balance payment to Financial Creditors in full and final settlement after adjusting of CIRP Cost, if there is any difference in estimated CIRP Cost and actual CIRP Cost	E+180 days
8.	Payment to Statutory dues	
	-Company to pay Rs. 9.15 Lakhs as an upfront payment to State Tax Authorities (GVAT/GST) as Operation Creditors in full settlement	E + 90 days
	-Company to pay Rs. 0.85 Lakhs as an upfront payment to CGST authorities as Operation Creditors in full settlement	E + 90 days
PHASE III - IMPLEMENTATION OF PROPOSED PLAN		
9.	Cancellation / Reduction of existing equity of Erstwhile shareholders and issue of new shares	E + 90 days
10.	Infusion of Funds and subscription of equity shares by Resolution Applicant	E + 90 days and E + 180 days
11.	Infusion of Funds for repairs	E+15 days





INDICATIVE ACTIVITY SCHEDULE		
Sr. No.	Activity	Timeline
12.	Infusion of funds through Unsecured Loans – Working Capital, Repairs & Maintenance	E + 90 days to E+ 180 days
13.	Change in Memorandum and Articles of Association and other documentation if required under the proposed plan.	E + 60 days
14.	Management of Company:	E + 90 days
	- The erstwhile Board of Directors and KMPs of the CD shall be retired	E+90 days
	- Appointment of key managerial personnel, if required	E+90 days
	- Resolution Applicant shall appoint statutory and internal auditors of their choice, subject to applicable regulations.	E+90 days

- a) The above timeline is based on the assumption that all the relevant and necessary approvals will be obtained in timely manner, however, any delay in obtaining the same, may affect the assumed timeline mentioned above.
- b) Due to any reasons whatsoever, if the NCLT in its discretion does not approve the Plan, post the approval of the CoC, then the EMD amount of Rs. 100.00 lakhs should be returned along with the Performance Guarantee to RA within 7 days from the date of Order.
- c) In case of any objection/appeal is filed, against the approved Resolution Plan by NCLT, with NCLAT/ or any other court, due to which the approved Resolution plan is stayed / injunction/ interim stay or challenged, the Effective Date will be, the date of final approval by the Highest Authority i.e. receipt of non-appealable Order.

26. **Cancellation of existing Equity Shares and allotment of New Shares:**

The paid-up equity share capital of YSL as per information memorandum is Rs. 18,00,00,000/- (Indian Rupees Eighteen Crores Only) i.e. 1,80,00,000 shares of Rs. 10/- each. On approval of Resolution Plan by NCLT, the existing equity shares of YSL shall stand



cancelled/ extinguished / Derecognized {As per CIRP Regulation 37(a) of CIRP Regulations}. The existing equity shareholders shall be deemed to be cancelled. The authorized equity share capital of Rs. 18,00,00,000/- shall continue to be the same on approval of Resolution Plan by NCLT. Regulation 37(i) of CIRP Regulations, provides for inclusion in any Resolution Plan as follows -

"Issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose."

With cancellation 1,80,00,000 shares, new shares of Rs. 7,00,00,000 (Rupees Seven Crores only) shall be issued at face value of Rs. 10 each through fresh issue of 70,00,000 equity shares within 90 - 180 days from the Effective Date to the Resolution Applicant and others. After the cancellation of shares of the erstwhile shareholders including promoters of YSL to the extent stated above, shares YSL shall be issued in the name of RA in the following proportion pursuant to Company law, 2013 and any other applicable laws. The fresh



issue of 70,00,000 equity shares carrying face value of Rs. 10 each shall be issued in the name of Mr. Kiran Mehta with his family, Friends & Relatives (upto 99%) along with Shri Siddhivinayak Cotspin Pvt Ltd (1%). From the Effective date, Kiran Mehta with Family will be deemed as a promoter shareholder of the company YSL.

27. The Composition of Board of Directors and Key Managerial Personnel would be as follows:

Sr. No.	PAN No.	Name	Designation
1.	AFSPM6085N	Kiran Jaswantrai Mehta	Director
2.	FAGPM0225J	Darshan Mehta	Director
3.	CYUPM5801K	Shivani Mehta	Director

The RP has filed revised Form-H vide inward Diary No.D1147 dated 09.02.2024. As per Form-H:-

- i. The list of Financial Creditors of the Corporate Debtor being members of the CoC and distribution of voting share among them is as under:-



<i>SL No.</i>	<i>Name of Creditor</i>	<i>Voting Share (%)</i>	<i>Voting for Resolution Plan (Voted for/ Dissented/ Abstained)</i>
1.	State Bank of India	100	100%

ii. The amount provided for the Stakeholders under the Resolution Plan:-

(Amount in Rs. Lakhs)

Sr No.	Category of Stakeholders	Amount claimed	Amount admitted	Amount provided under the Plan	Amount provided to amount claimed (%)
1	Secured Financial Creditor1	5094.49	5094.49	1021	20.04%
2	Unsecured Financial Creditor	-	-	-	-
3	Other Debts and Dues	6988.59	5988.59	10.00-	0.28%
	Total	12083.08	12083.08	1031	20.32

iii. The interests of existing shareholders have been altered by the Resolution Applicant as under:-



SL No .	Category of Shareholder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting share (%) held before the CIRP	Voting Share (%) held after the CIRP
1	Equity	1,80,00,000	NIL	100%	NIL
2	Preference	NIL	NIL	NIL	NIL

iv. The Compliance of the Resolution Plan is as under:-

9. The compliance of the Resolution Plan is as under:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance)Yes / No(
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Resolution Applicant complies with the minimum eligibility criteria as approved by the CoC	Yes



		considering the complexity and scale of operation of business of the CD.	
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Based on reports provided by professional M/s Mittal Ashok and Company dated 11.10.2023, Resolution Applicant is eligible as per section 29A	Yes
Section 30)1(	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Yes, Resolution Applicant has submitted an affidavit that it is eligible to submit the Resolution Plan.	Yes
Section 30)2 (	Whether the Resolution Plan- (a) Provides for the payment of insolvency resolution process costs? (b) Provides for the payment to the operational creditors? (c) Provides for the payment to the financial creditors who did not vote in favour of the resolution plan? (d) Provides for the management of the affairs of the corporate debtor? (e) Provides for the implementation and supervision of the resolution plan? (f) Contravenes any of the provisions of the law for the time being in force?)	Page No.47 Page No. 49 NA Page No. 43 Page No.44 The Resolution Applicant has prepared Resolution Plan taking into consideration of compliance of all applicable laws.	Yes
Section 30)4(	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	According to CoC, the Resolution Plan submitted by Resolution Applicant is feasible and based on the said consideration it has approved the Plan. It is approved by CoC by 100% voting share of the total Financial Creditors and 100% of those voted for the	Yes Yes



		Resolution Plan.	
Section 31)1(	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?		Yes
Regulation 38)1(	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?]	Yes, the resolution plan includes priority to the Operational Creditors in Page No. 49	No
Regulation 38)1A (	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Yes, the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders. Please refer of Resolution Plan Page No.55	Yes
Regulation 38)1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]	The Resolution Applicant has confirmed that it by itself nor any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. Since the answer to the above is in negative this is not applicable.	No
Regulation 38)2 (	Whether the Resolution Plan provides:)a (the term of the plan and its implementation schedule?)b(for the management and control of the business of the corporate debtor during its term?)c (adequate means for supervising its implementation?	Page No. 57 Page No. 57 Page No. 57	Yes
38)3(	Whether the resolution plan demonstrates 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?)e (the resolution applicant has the capability to implement the resolution plan?	Page No. 58 Page No. 58 Page No. 57 Page No. 59 Page No. 59	Yes
39)2(	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Yes, RP has filed 3 Interlocutory Applications under Section 45 and 66 of the Code before the	Yes

		Hon'ble Adjudicating Authority	
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation	Resolution Applicant has given a Performance Guarantee/Security of RS. 2.00 Crore	Yes



VOTING ON THE RESOLUTION PLAN

28. That pursuant to discussion on the resolution plan, plan submitted by Mr. Kiran Mehta, Ms. Trupti Mehta, Mr. Darshan Mehta, Ms. Shivani Mehta and M/s Shri Siddhivinayak Cotspin Pvt. Ltd. was approved by SBI being sole CoC member having 100% voting rights vide postal ballot dated 06.01.2024.
29. Pursuant to the approval of the resolution plan by the CoC, the RP has issued letter of intent on the successful resolution applicant on 09.01.2024 pursuant to which the RA has paid a sum of Rs. 2 Crores towards performance guarantee.
30. Revised Form – H was filed by RP under diary No. 1147 dated 09.02.2024. It is seen that the RP during the process has received claim form of two persons, which are mentioned as below:

Sr. No	Name of FC	Amount claimed (INR)
1	SBI, Ahmedabad	50,94,48,981.27
2	State Tax Officer-3, Unit 94, Gondal	63,95,75,246.00



31. A compliance affidavit was filed vide inward diary No. 5324. A perusal of the Form – H reveals that the fair value of the Corporate Debtor is Rs.15.56 Crores and the liquidation value is Rs.10.87 Crores.
32. The successful resolution applicant has given an offer of Rs. 10.31 Crores which is slightly lesser than the liquidation value of the Corporate Debtor. The said amount as per the plan is payable to the Financial Creditor and sum of Rs. 10 Lakhs is payable to the VAT department.
33. As regards the source of funds, this Tribunal vide order dated 09.02.2024 and 12.02.2024 directed the RP to provide the immediate sources of fund of the resolution applicants, in compliance to the same an additional affidavit along with sources of fund of the resolution applicant was filed by the RP on 04.03.2024 along with the reply, the relevant portion of Source of fund is reproduced as under:

<i>S. No.</i>	<i>Resolution Applicant</i>	<i>Share in the Plan</i>	<i>Net worth as per by chartered accountant (Rs.)</i>
<i>1.</i>	<i>Kiran Mehta</i>	<i>51 %</i>	<i>38,81,69,831</i>
<i>2.</i>	<i>Trupti Mehta</i>	<i>30 %</i>	<i>3,82,64,680</i>



3.	<i>Shivani Mehta</i>	9 %	68,55,457
4.	<i>Darshan Mehta</i>	9 %	51,53,587
5.	<i>Shree Siddhivinayak Cotspin Private Limited</i>	1 %	<i>Please Refer page 41 of Resolution Plan</i>

34. The Resolution Professional filed an additional affidavit along with sources of fund of the resolution applicant was filed by the RP on 04.03.2024 along with the reply, the resolution applicant has given one letter of Shree Siddhivinayak Cotspin Private Limited. The said Siddhivinayak Cotspin Private Limited has written as under:

“In event of any shortfall in payment as per resolution plan payment timeline due to financial institutions/banks delays or any contingency results in delay of granting the term loan of Rs. 9.00 Crs. and / or working capital facilities of Rs. 5.00 Crs., Shree Siddhivinayak Cotspin Pvt. Ltd. Undertakes to provide the same.”

35. Further, to the above, it is stated by the Resolution Applicants that a sum of Rs. 8.67 Crores is available in liquid form with the four Resolution Applicants.

Monitoring Committee:

36. The monitoring committee as stated under Section 5 of the plan shall consist of Secured Financial Creditor, Resolution



Applicant along with their consultants and will be chaired by the Resolution Professional for the effective implementation of the Resolution Plan and shall function from the Effective Date till the full payment offered in this resolution plan to the FC/ Effective Implementation of the plan.

TREATMENT OF AVOIDANCE TRANSACTIONS APPLICATIONS

37. That RA has proposed that any proceeds from avoidance transaction application, shall be distributed in accordance with section 53 of the code and the proceedings shall be pursued by beneficiary of the proceeds. RA will have no role or responsibilities or outgo as regard to above PUFEE applications. (Page 61 of Resolution Plan)
38. This applicant was listed before this Bench on 22.01.2024, and notice was issued to the Income Tax Department as well as to State Tax Department. In response to which Income Tax Department has filed report vide diary No. R-95 dated 04.03.2024 indicating that the demand of Rs. 1,50,000/- is outstanding against the Corporate Debtor for the year 2017-



18 and they have stated that “As outstanding demands are due and assessment proceedings are pending, departmental NOC cannot be granted for the above referred NCLT matter.”

39. Reply was filed by the State Tax Department through an affidavit dated 09.02.2024. It is stated that Form B was filed with the RP which was dated 02.01.2023 for a sum of Rs. 63,95,75,246/- which was admitted by the IRP/RP. To this reply, the State Tax Department is placing reliance upon the judgment of State Tax Officer vs. Rainbow Papers in Civil Appeal No. 1661 of 2020 along with decision of its review petition and placing reliance on the same is claiming to be a Secured Creditor and demands its share as per the resolution plan.

40. State Tax Department has filed objection by way of additional affidavit vide inward diary No. R-66 dated 16.02.2024 which is affirmed by one Pravin K. Dethariya, the State Tax Officer -3, Unit-94, Gondal. It is stated that the State Tax Officer vide communication dated 11.08.2020 informed Talati Mantri, Village Moviya, Taluka Gondal regarding entry of encumbrance of the property of the



Corporate Debtor against its government arrears of assessment of sales tax /VAT for the year 2014/15 of Rs. 12,63,48,604/- + interest. The communication categorically provides to inform the said State Tax Officer regarding entry of creation of encumbrance on the Corporate Debtor's property against the aforesaid government arrears. A Copy of communication dated 11.08.2020 is annexed as Annexure-A to the reply.

41. It is further averred that the decision to create encumbrance on the property of Corporate Debtor came to be decided on 29.09.2020 and the entry came to be effected on 08.10.2020. Form No. 6 is attached as Annexure-B.
42. It is stated that Village Form No. 7, encumbrance of the office of the Assistance Commissioner of the State Tax has been expressly acknowledged. Such copy is attached as Annexure-C.
43. Affidavit in rejoinder was filed on behalf of State Tax Department under diary no. D-2678 DATED 28.03.2024.



44. Additional affidavit has been filed by SBI on 15.04.2024 under diary No. D-3217.
45. The extensive pleadings and citations have been given by both the sides. Whereas, heavy reliance placed by the State Tax Department on the judgment of Rainbow Papers by Hon'ble Supreme Court (Civil Appeal No. 1661 of 2020) and plea has been taken that State Tax Department be treated as secured creditor.
46. CoC in turn has drawn attention to the provisions of GVAT Act, GST Act, 2017 and provisions of Constitution.
47. Learned Counsels from both the sides have put forward very strongly their pleas for and against any distribution to be made to the State Tax Department under the Plan.
48. We have heard the resolution professional, the SRA, learned Counsel for CoC and learned Counsel for State Tax Department, we have also gone through the various pleadings as placed before us.



49. All the parties have agreed and have consented during course of hearing that the Resolution Plan may be approved pending issue of distribution of the amount. The issue regarding treatment of State Tax Department and the present resolution plan, in our view, may consume some more time and few more hearings. Corporate Debtor cannot be allowed to suffer the CIRP solely because distribution has not been decided. Hence, we are of the view, let plan be approved and distribution be kept in abeyance till the rival contentions of the State tax department and CoC are finally heard and disposed of by this bench.
50. Accordingly, we direct the RP to receive the amount of Rs. 21.11 Cr. and post payment of the CIRP costs, keep the balance amount with Bank of Baroda, Bhadra Branch, Ahmedabad in the shape of term deposit. The said bank is hereby directed not to part with the money till order in writing by this Tribunal.
51. In respect of the plan value being lower than liquidation value, we rely upon the judgment of the Hon'ble Supreme Court in the case of Maharashtra Seamless Limited Vs.



Padmanabhan Venkatesh & Ors. (Civil Appeal No. 4242 of 2019).

52. At page 222 onwards are relief and Concessions which continue upto page 238.

Relief and Concession

Sr. No.	Particulars	Waivers / Reliefs / Directions sought	Orders thereon
1	Waiver of the dues of the Financial Creditor	<p>i. The RA would like to revive the company with complete peace and certainty. Therefore, any other statutory dues, taxes, penalties, penal interest, demands, etc. other than that which is proposed to be paid by RA in this plan, is deemed to be fully waived off and may be assured to the resolution applicant that no such claim from any person or authority shall disturb the process of revival of CD.</p> <p>ii. The RA seeks waiver of any amount, interests and other charges due to the Financial Creditors, claimed or not claimed, admitted or rejected for the period prior to CIRP commencement date, other than what has been provided for in the Resolution Plan.</p>	Granted in terms of Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstructi on Company Limited (Civil Appeal No. 8129 of 2019)



		<p>iii. The Resolution Applicant shall pay an amount of Rs. 1021.00 Lakhs in a span of 90 to 180 days from Effective Date, as full and final settlement amount towards all the dues of the Financial Creditors after adjusting of CIRP Cost, if there is any difference in estimated CIRP Cost and actual CIRP Cost.</p> <p>iv. The FCs will hand over the Original Title Documents of immovable and movable properties and all other assets to the Resolution Applicant on payment of the final payment scheme.</p> <p>v. The Financial Creditors shall issue No-Due Certificate on the date of receipt of final payment scheme and to file satisfaction of charge with MCA.</p>	
2	Waiver of amount due to Statutory Authorities over and above what is proposed in the plan	<p>i. The RA would like to revive the company with complete peace and certainty. Therefore, any other statutory dues, taxes, penalties, penal interest, demands, etc. other than that which is proposed to be paid by RA in this plan, is deemed to be fully waived off and may be assured to the resolution applicant that no such claim from any person or authority shall disturb the process of</p>	Granted in terms of Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstructi on Company Limited (Civil Appeal No. 8129 of 2019)



		<p>revival of CD. All appeals/litigations/investigation/enquiries to be absolved on payment as per the provisions this Resolution Plan.</p> <p>ii. RA seeks absolute waiver of the defaults made to the authorities over and above what is proposed to be paid in the resolution plan.</p>	
3	Waiver of the dues of the other Sundry Operational Creditor and other current liabilities	<p>i. The Resolution Professional has not received any claims from other Sundry Operational Creditor and it is to be noted that the Resolution Professional has not provide latest Financials (past 4-5 years) which could indicate other current liabilities. Therefore, no amount has been allotted in the pay-out plan.</p> <p>ii. The RA shall have a liberty to decide on such contracts with such parties. Irrespective to such decision, any past liability prior to effective date under such contract shall be waived in its entirety.</p>	Granted in terms of Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstructi on Company Limited (Civil Appeal No. 8129 of 2019)
4	Waiver of any/all liability incurred and accrued before CIRP commencement date on	<p>i. As per the information provided by RP and IM, it was informed that there are no employees and workmen employed by the CD at the present time. Further, the Resolution Professional has not received any claims</p>	Granted in terms of Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset



	account of services rendered by Workmen & Employees:	from the Employees and Workmen. Therefore, no amount has been allotted in the pay-out plan.	Reconstructi on Company Limited (Civil Appeal No. 8129 of 2019)
5	Waiver of all the Contingent Liabilities arising out of any Acts or Actions of the Company done before the Approval of the Resolution Plan by the NCLT:	<p>i. Any contingent liability disputed or otherwise, reflected in the balance sheet or not, submitted by/to the RP or not, shall be extinguished/waived and there shall be no liability arising out of such contingent liabilities over and above what is proposed in this plan at any time in the future. All such contingent liabilities shall be deemed to be settled on the approval of the Resolution Plan by the AA.</p> <p>ii. It is to be noted that the RA has already provided the pay-out of Rs. 10.00 Lakhs to the State Tax (VAT & GST) therefore, the RA seeks absolute waiver of the defaults made to the authorities over and above what is proposed to be paid in the resolution plan.</p> <p>iii. An amount of Rs. 15.00 Lakhs have been set aside for any contingent liabilities which may arise/crystallise after the Effective Date that relates to the period prior to CIRP commencement date whether it is mentioned or not in this plan. Each such liabilities shall be paid</p>	Granted in terms of Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstructi on Company Limited (Civil Appeal No. 8129 of 2019)



		<p>maximum of Rs. 10,000 per claim or the liability amount, whichever is lower. Such amount will be paid along with issue of full and final settlement letter and the claimant shall provide a 'No Dues' letter for the entire amount including delayed payment, interest and penalty and withdraw all litigation.</p> <p>v. Any claim by an Operational Creditor and statutory dues after the approval of the Resolution Plan by CoC shall not be honoured/entertained or taken cognizance of the same and it shall be deemed to be settled/NIL/ waived off totally. The RA has made a provision of Rs. 15.00 Lakhs from this contingency fund for settling of various litigations specified in Table 9-Section 2 of this Resolution Plan.</p> <p>vi. Any pending liabilities/ inquiries/ investigations/ suits/legal/ civil/ criminal/ assessment/claims/ disputes/ litigations/ arbitral award, etc. shall be deemed to be settled on the approval of the Resolution Plan.</p> <p>vi. All cases, disputes, proceedings pending or instituted against the Company and/or its assets shall stand withdrawn and</p>	
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		<p>are deemed to be withdrawn upon approval of the Resolution Plan and the respective stakeholders shall co-operate and do all such acts and deeds necessary to comply with the same.</p> <p>v. Any Amount over and above what is proposed as pay-out in this plan shall be waived off in entirety and the litigation shall be disposed-off completely/quashed.</p>	
6	<p>Waivers for any / all liabilities arising due to non-compliance under Companies Act 1956 and the Companies Act 2013/Gujarat Municipalities Act, 1963/RBI/Labour laws / Electricity Act / Air (Prevention and Control of Pollution) Act, 1981/Import Export Code / Factory Act, 1948/ Central Excise / Central Sale Act / Taxation laws/</p>	<p>i. RA/CD shall not be held liable for non-filing of annual returns for any financial year and any other non-compliance of the Corporate Debtor prior to initiation of CIRP and during CIRP. Any pending filing of the financials and other documents and any fees thereon, if any as per the Companies Act, 1956 and the Companies Act, 2013 with the Registrar of Companies for the period till Effective Date shall be treated as waived off. Interest, penalties and penal actions (if any) for non-compliances shall stand abated and no repercussions on the RA/CD.</p> <p>ii. All the penalties, notice fee, Education Cess, charges, fees, municipal tax, arrears, etc. arising out of</p>	<p>Granted in terms of Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstructi on Company Limited (Civil Appeal No. 8129 of 2019)</p>



GST/Employee s' Provident Fund Organisation / Value Added Tax Act / Customs Act, 1962/etc.:	<p>non-compliance or non-payment of taxes in respect to Property Tax on immovable assets of the CD, thereunder, if any, of Gujarat Municipalities Act, 1963/Gujarat Panchayat Act, 1993, Regulations, Rules, Circulars, Notifications, etc. for the period till Effective Date shall be treated as waived off/extinguished.</p> <p>iii. All the penalties, charges, fees, etc. arising out of non-compliance of requirements, if any, of RBI's Regulations, Rules, Circulars, Notifications, etc. for the period till effective date shall be treated as waived off/extinguished.</p> <p>iv. All the penalties, charges, fees, etc. arising out of non-compliance of the requirements of any of FEMA & FERA Regulations, Rules, Circulars, Notifications, etc. for the period till effective date shall be treated as waived off/extinguished.</p> <p>V. All the interest, penalties, charges, fees, etc. in any form arising out of non-compliance of the requirements of any of the Labour laws like Employee State Insurance Act, 1948, Provident Fund Act, Payment of Bonus Act, Contract Labour Act, 1973,</p>	
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		<p>Industrial Disputes Act, 1947, Minimum Wages Act, Equal Remuneration Act, 1776, Factories Act, 1948, Gratuity Act, 1972, etc. for the period till the effective date shall be treated as waived off/extinguished and all/any pending litigation in case of above labour laws shall stand abated.</p> <p>vi. All the penalties, charges, fees, etc. arising out of non-compliance of the requirements of any of Air (Prevention and Control of Pollution) Act, 1981 Air (Prevention and Control of Pollution) Act, 1981, Rules, Circulars, Notifications, etc or by Gujarat Pollution Control Board for the period till effective date shall be treated as waived off/extinguished,</p> <p>vii. All the penalties, charges, fees, etc, arising out of non-compliance of the requirements of any of Import Export Code Regulations, Rules, Circulars, Notifications, etc. for the period till effective date shall be treated as waived off/extinguished.</p> <p>viii. All the penalties, charges, fees, etc. arising out of non-compliance of the requirements of any of Factory Act, 1948 Regulations, Rules, Circulars, Notifications, etc.</p>	
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		<p>for the period till effective date shall be treated as waived off/extinguished.</p> <p>ix. All the penalties, charges, fees, etc. arising out of non-compliance of the requirements of any of Central Excise Regulations, Rules, Circulars, Notifications, etc. for the period till effective date shall be treated as waived off/extinguished.</p> <p>x. All the penalties, charges, fees, etc. arising out of non-compliance of the requirements of any of Central Sale Act, Regulations, Rules, Circulars, Notifications, etc. for the period till effective date shall be treated as waived off/extinguished.</p> <p>xi. All the interest, penalties, charges, fees, etc. in any form arising out of non-compliance of the requirements of any of the Taxation laws like Income Tax Act, 1961, GST, Finance Acts, Securities Transaction Tax, Credit Information Companies (Regulation) Act, 2005, Micro, Small and Medium Enterprises Development Act, 2006, Medium Enterprises Development Act, 2006 etc. for the period till effective date shall be treated as waived off/extinguished and</p>	
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		<p>all/any pending litigation in case of above labour laws shall stand abated. Nothing other than what is provided in resolution plan would be paid/payable.</p> <p>xii. All the penalties, charges, fees, etc. arising out of non-compliance of the requirements of any of Employees' Provident Fund Organisation Regulations, Rules, Circulars, Notifications, etc, for the period till effective date shall be treated as waived off/extinguished.</p> <p>xiii. All the penalties, charges, fees, etc. arising out of non-compliance of the requirements of any of Customs Act, 1962, Regulations, Rules, Circulars, Notifications, etc. for the period till effective date shall be treated as waived off/extinguished.</p>	
7	Waiver of obligation	The RA seeks waiver from any obligations, penalties, demand, fees or any liability due to non-compliance of any conditions ensued prior to the commencement of CIRP date. Nothing other than provided in Resolution Plan would be paid/payable by RA/CD.	Granted in terms of Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstructi on Company Limited (Civil Appeal No. 8129 of 2019)



8	Waiver from liability that arose due to non-compliance of conditions to grant of subsidy	The Resolution Applicant seeks explicit waiver of any liability due to non-compliance of any condition prior to commencement of CIRP date so as to avail all the subsidy.	Granted in terms of Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstructi on Company Limited (Civil Appeal No. 8129 of 2019)
9	Waiver for unknown liabilities/off balance sheet transactions:	The Resolution Applicant/Corporate Debtor shall not be liable to pay any hidden / unknown ilabilities/off balance sheet transactions surfacing at any future date after approval of Resolution Plan by AA. Nothing other than provided in resolution plan would be paid/payable by RA/CD.	Granted in terms of Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstructi on Company Limited (Civil Appeal No. 8129 of 2019)
10	Waiver from payments to Creditors submitting claims after approval of the Resolution Plan by the Committee of Creditors:	The Code and the CIRP Regulations entitle all creditors of a corporate debtor to submit their claims to the Resolution Professional on or prior to the date on which the resolution plan gets approved by the CoC. As a result, in the event any Creditor of the Company does not submit its claims to the Resolution	Granted in terms of Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstructi on Company Limited (Civil Appeal No. 8129 of



		Professional prior to the date of approval of the Resolution Plan by CoC, then in such case, the said Creditor will not be entitled to receive any payments under the Proposed Plan. No legal action can be lodged against the said claim against RA/CD and their claim shall be deemed to have been waived off without any further action on the part of RA.	2019)
11	To grant waiver as per the executive summary elaborated in Section 2-Table 14-Executive Summary of this Plan The amount provided under this plan and stated therein shall be the full and final settlement amount.	In terms of EOI Documents, resolution applicant has already made the payment of Rs. 100 Lakhs as earnest money deposit on two dates i.e., Rs. 25 Lakhs on 24.02.2023 and Rs. 75 Lakhs on 04.04.2023.	EOI and performance Guarantee to be adjusted in down payment
12	Waivers of Income-Tax, MVAT, CDBT and MAT liability arising on plan implementation	Waiver of any Income-tax and Minimum Alternate Tax (MAT) liability or consequences (including interest, fine, penalty, etc) on the Company, Resolution Applicant and its shareholders on account of	To approach concerned authorities who may consider the same keeping in view object



		<p>various steps as proposed in the Resolution Plan, including but not limited to liabilities if any under Section 28, Section 43, Section 56, Section 79, Section 115JB and of the Income-tax Act, 1961, including, without limitation:</p> <p>A. waiver of any Tax or MAT liability to the resolution applicant on account of purchase of Equity share of the company in accordance with section 6-A of the plan;</p> <p>B. waiver of MAT and income tax implication arising due to hiving off of surplus/ obsolete assets or selling for raising money to make Balance Payment;</p> <p>C. waiver of MAT and income tax implication arising due to write back/write off of liabilities in the books of accounts of the Company without any impact on brought forward tax and book loss/depreciation, pursuant to this Resolution Plan.</p>	of IBC, 2016
Section 10 – Prayers & Practice			
1	Direction to secured creditor	To direct the Secured Creditors, statutory authority and its departments to release the property including Bank Accounts attached, if any.	Granted
2	Direction to financial	To direct the Financial Creditors to issue No-Due	Granted



	creditor	Certificate in favour of CD and release the security interest or Encumbrances in any of the assets not limited to movable, immovable, tangible, intangible, mortgaged or pledged.	
3	Direction to financial creditor	To direct the Financial Creditors to classify the CD's bank accounts as standard account.	Granted
4	Direction to statutory authorities	To direct the statutory authorities to recall all notices or summons proposing to Initiate any proceedings against the Corporate Debtor/RA in relation to the period to the date of the order of the Tribunal and pending on that day. The said notices or summons shall stand abated/Infructuous and not be proceeded against.	Granted
5	Direction to Electricity Department	To direct Electricity Department to waive any pre-CIRP dues and continue/maintain the Secured Deposit of Rs. 24.80 Lakhs, if any pending dues within CIRP period shall be treated as a CIRP Cost.	Granted
6	Direction to CBDT	To direct Central Board of Direct Taxation ("CBDT") to allow the RA to file its previous Income Tax Returns under the Income Tax Act, 1961 (which have not been filed till the	To approach concerned authorities who may consider the same keeping in



		Resolution Plan is approved by the Adjudicating Authority) and other returns which have not been filed (till the Resolution Plan is approved by the Adjudicating Authority) without being subject to any tax or interest or penalty or penal liability, if any, under any Applicable Law, including in respect of tax deducted/collected at source returns, as may be applicable notwithstanding that the statutory period for such filing may have expired and such returns, once filed, shall be considered as having been filed within the permitted due date and such filings shall be deemed to be final and accepted by the tax authorities and shall not be liable for any assessment or re-assessment by any other tax authorities;	view object of IBC, 2016
7	Issuance of New GST Registration	This Hon'ble Tribunal to allow issuance of new GST Registration to the RA as per Circulation dated 21.03.2020, if the RP has not acquired new GST Registration as the same has been requested by the RA.	To approach concerned authorities who may consider the same keeping in view object of IBC, 2016
8	Direction to statutory authorities	To explicitly direct the statutory authority that no re-assessment proceedings shall be initiated whatsoever	Granted



		against the Corporate Debtor in relation to the period prior to the Effective Date.	
9	Direction per-say pending litigations	To give directions that all Litigation and pending suits including but not limited to civil, criminal, penal, investigations, inquiry, arbitral proceedings etc. if any pending against corporate debtor before any courts/authorities all over India/World shall stand withdrawn/abated as far as RA is concerned. Further all the assets/properties of the CD will be unencumbered.	Granted
10	Directions to RoC	To direct the ROC to change status under CIRP of Yogiraj Spinning Ltd from "Under Corporate Insolvency Process" to "No".	Granted
11	Appointment of Director	To allow appointment of additional Director for the purpose of complying with the compliances of the ROC;	Granted
12	Capital Reduction	To NCLT to approve the capital reduction as contemplated under this Resolution Plan, of the equity shares of the Corporate Debtor, without requiring compliance with the provisions of Section 66(1) and (2) of the Companies Act, 2013, no further approval of shareholders or creditors of the Corporate Debtor or any third party shall be required	Granted



		for implementing Capital Reduction process as envisaged in this Resolution Plan.	
13	Direction to statutory authorities	The statutory authorities to be directed to allow the RA to file any returns / forms relating to period prior to the effective date in case compliance is not made in the past without any late filing fees, penalty, interest or any other dues. Further, after the above compliance, the CD's account may be treated as regular and it may be allowed to take all benefits available under these statutes.	Granted

53. The Implementation and Monitoring Committee shall supervise the implementation of the Resolution Plan with the help of the newly constituted board till the implementation of the proposed transaction under the Resolution Plan i.e., payment of the committed amount to the Secured Financial Creditors/Operational Creditors. The Committee shall include a total of 3 members comprising Secured financial Creditor, Resolution applicant and will be chaired by the resolution professional for the effective implementation of the resolution plan.



54. **ANALYSIS AND FINDINGS OF THIS TRIBUNAL**

- 1) It is seen from Form – H that the Liquidation Value of the Corporate Debtor is arrived at Rs. 10.87Cr. and the corresponding Fair Value is arrived at Rs.15.56 Cr. The Resolution Plan is for **INR 21.11 Cr.**
- 2) Further, it is seen from Form – H that presently application under Sections 66 of IBC, 2016 is pending on the file of this Tribunal. During the hearing a question was raised to the counsel for SBI that as who is going to pursue the PUFEE application post approval of the plan to which the counsel after seeking instructions from SBI replied that the SBI will pursuing this application.
- 3) 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 Judgment of Hon'ble 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.”

- 4) 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)

- 5) The Supreme Court in its 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.

- 6) 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.

- 7) 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 100% voting share. As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Bench. 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.

- 8) 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.
- 9) As far as the effective date mentioned in the Table No. 28 of the plan shall be the date of pronouncement of this order and the same shall be considered as effective date while implementing the Resolution Plan.
- 10) As far as the clause c mentioned in the Table No. 28 of the plan:

“In case of any objection/ appeal is filed, against the approved resolution plan by this Tribunal with NCLAT or any other Court, due to which the approved plan is stayed/ injunction/ interim stay or challenged, the effective date will be, the date of final approval by the Highest Authority i.e. receipt of non- appealable order.”



The Above mentioned para is not approved by this Tribunal.

- 11) Any CIRP Cost over and above estimated CIRP cost of Rs. 65 Lakh to be paid by the SRA over and above the plan value of Rs. 21.11 Crs.
- 12) The Resolution Plan in question is hereby **approved** by this Adjudicating Authority, subject to the observations made in this order. The Resolution Plan shall form part of this Order. The Resolution Plan is binding on the Corporate Debtor and other stakeholders.
- 13) The Resolution Applicant is directed to make payment of the entire Resolution Plan amount within the time period stipulated under the Resolution Plan, failing which the entire amount paid by the Resolution Applicant (*including the Performance Bank Guarantee*) as on the said date would stand automatically forfeited, without any recourse to this Tribunal.



- 14) Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
- 15) Liberty is hereby granted for moving any application if required in connection with the implementation of this Resolution Plan.
- 16) A copy of this Order is to be submitted to the concerned Office of the Registrar of Companies.
- 17) Accordingly, Resolution Plan presented through IA 03 of 2024 stands approved. List IA 03 of 2024 for hearing regarding distribution of Plan amount amongst the Creditors of the CD on 04.06.2024
- 18) The Monitoring Committee is directed to file a status report after 180 days from the approval of the Resolution Plan.
- 19) 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-
SHAMMI KHAN
MEMBER (JUDICIAL)

SP, MD