

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

IA (IBC)/1275(CHE)/2021 in IBA/407/2020

(Filed under Sec. 30(6) & 31 of the Insolvency & Bankruptcy Code, 2016)

IN THE MATTER OF:

S. Kangayan,
Resolution Professional of
M/s. WeewinnTex Processorr (India) Private Limited
Plot No.18, 3rd& 4th Cross Corner, Ayyappa Nagar,
Kamarajapuram, Sembakkam,
Tambaram East, Chennai - 600073

... Applicant

Present:

For RP :E.K.Kumaresan, Advocate
G. Prabhu, Advocate
B. SarathBabu, Advocate
J. Manivannan, Advocate

CORAM :

R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

Order Pronounced on 30th May 2022

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

IA(IBC)/1275(CHE)/2021 is an Application which is moved by the Resolution Professional of the Corporate Debtor viz., **M/s. Weewinn Tex Processorr (India) Private Limited** under Section 30(6) & 31 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, 'Regulation') seeking the approval of the Resolution Plan submitted by the successful Resolution Applicant viz., **M/s Colours Company**, a Partnership Firm.

2. In an Application filed under Section 9 of IBC, 2016 by aOperational Creditor viz. P. Saravana Kumar, this Adjudicating Authority vide order dated 22.03.2021 passed in IBA/407/2020 initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor viz. M/s. WeewinnTexProcessorr (India) Private Limited, and appointed the Applicant Mr. S.Kangayan as the Interim Resolution Professional (IRP). Thereafter, the IRP has caused public announcement on 06.04.2021 and based on the claims received from the stakeholders, the IRP constituted the Committee of Creditors (CoC) and filed the Certificate of Constitution of CoC with this Adjudicating Authority on 27.04.2021. It is averred in the application that the 1stCoC meeting was convened on 05.05.2021 wherein the CoC reappointedthe Applicant as the Resolution Professional (RP) of the Corporate Debtor.

3. It is averred in the application that the CoC was reconstituted based on claims received and the Applicant filed a certificate for



reconstitution of CoC on 25.08.2021. The reconstituted CoC is as under:

S.No.	Name of the Creditor	Classification	Amount Admitted in Rs.	Voting share
1	ICICI Bank	Financial Creditor	2,21,65,431.00	73.39%
2	Small Business FinCredit Pvt. Ltd.	Financial Creditor	42,03,268.48	13.92%
3	HDFC Bank	Financial Creditor	17,77,875.85	5.88%
4	Capital Float	Financial Creditor	10,60,216.00	3.51%
5	Kotak Mahindra Bank	Financial Creditor	9,97,470.95	3.30%
6	Sri Vidya Dyes & Chemicals	Operational Creditor (>10% in total debt)	1,12,46,525.00	0.00%
	Total of Financial Creditors		3,02,04,262.28	100.00%

4. It is seen from the averments made in the Application that the Applicant has appointed four IBBI Registered valuers for valuation of the Plant & Machinery and land & Building. The Fair value and Liquidation value of each category of asset is as under:

Category of Asset	Fair Value	Liquidation Value
Land & Building	Rs. 7.73 cr	Rs. 3.51 cr
Plant and Machinery	Rs. 2.30 cr	Rs. 2.27 cr

5. It is averred in the application that RP has prepared the Request for Resolution Plan, Information Memorandum and same were approved by the CoC on 18.06.2021. Based on the approval granted by the CoC, the Applicant has issued Form – G on 18.06.2021 in "New Indian Express" English and "Dinamani" Tamil, and in

pursuance of the same, the Applicant received interest from five prospective Resolution Applicants and final list of eligible prospective resolution applicant was circulated on 27.07.2021.

6. The Learned Counsel for the Applicant submitted that, one prospective Resolution Applicant viz. M/s. Colours Company has shown interest and has filed the Resolution Plan dated 14.08.2021 with the Applicant before the last date for submission of the Resolution Plan i.e., 16.08.2021. It is stated in the application that a meeting between CoC and the RA held on 31.08.2021 for finalisation of the commercial offer. Subsequent to the said meeting, the Resolution Applicant had submitted the revised and improved resolution plan in the 9th CoC meeting held on 03.09.2021. It is stated in the application that the said resolution plan was in compliance with the Code, the Applicant forwarded the Resolution Plan to the CoC for their approval. Thereafter, the resolution plan got approved with a voting share of 96.70% through voting results as on 07.09.2021, and thereafter the Successful Resolution Applicant was declared.

7. The Applicant has also filed Form – H in accordance with the IBBI (Corporate Insolvency Resolution Process for Corporate Persons) Regulations, 2016 along with this Application.

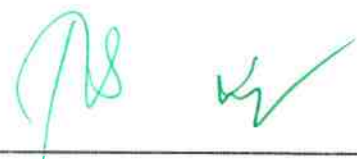
8. **CAPITAL STRUCTURE OF THE CORPORATE DEBTOR**

a. **Existing Capital Structure of the Corporate Debtor**

Authorised Share Capital	
7,50,000 Equity Shares of Rs. 10/- each	75,00,000
Issued, Paid-up share Capital	
4,52,000 Equity Shares of Rs.10/- each	45,20,000

b. **Proposed Capital Structure of the Corporate Debtor**

- a. It is stated in the Resolution Plan that immediately upon payment of upfront payment as proposed, the Resolution Applicant or its partners shall infuse Rs.1,00,000/- (Rupees One Lakh only) towards subscription of 10,000 Equity Shares of face value of Rs.10/- per share within 90 days of from the Approval Date.
- b. Further, immediately after the cancellation of existing paid up share capital , the Resolution Applicant or its partners shall infuse Rs. 49,00,000 towards subscription of 4,90,000 equity shares of Rs.10/- each.
- c. Following are proposed to be shareholders of the Corporate Debtor post acquisition by the Resolution Applicant.



Name of the Shareholder	No. of Shares	Shareholding(%)
Mr. Yuvaraj G	2,50,000	50%
Mr. HarishKumar S	1,25,000	25%
Mr. Harshavardhan S	1,25,000	25%
Total	5,00,000	

9. **PROPOSED MANAGEMENT/ BOARD OF DIRECTORS OF THE CORPORATE DEBTOR POST TAKEOVER BY THE RESOLUTION APPLICANT**

- a. On or immediately after the Approval date, the Resolution Applicant shall nominate names of atleast two (2) individuals who shall act as the directors on the Board of Directors of the Corporate Debtor and the Monitoring Committee shall pass necessary resolutions appointing such nominees as the Directors of the Corporate Debtor ("Reconstituted BoD").
- b. The Registrar of Companies shall remove the names of the existing directors of the Corporate Debtor on presentation of this order of the Adjudicating Authority approving the Resolution Plan.

10. **FINANCIAL STRENGTH OF THE RESOLUTION APPLICANT**

I. Financial Information of the Resolution Applicant

Financial Year	Turnover	Gross Profit	Net Profit*
19 - 20	79,80,951	13,40,829	4,42,708
20 - 21	4,81,84,846	95,17,275	24,74,012

*Net profit is before salary and interest to partners

II. Net-worth of the three partners of the Resolution Applicant is under:

Name of Partner	Net-Worth as on	Net- worth (in Rs. Lakh)
G Yuvaraj	30 th June 2021	1738.00
S Hariishkumar	31 st March 2021	331.03
S Harshavardhan	31 st March 2021	121.44
Total		2190.47

III. The Letter of willingness from M/s KarurVysya Bank Limited to fund the acquisition of the Corporate Debtor as envisaged in the resolution plan for an amount upto Rs.5,00,00,000/-(Rupees Five Crores Only) is placed at page 121 of the application.

11. **SALIENT FEATURES OF THE RESOLUTION PLAN**

I. The Corporate Debtor has two units.

- a) Unit-1: Corporate Debtor has been operating unit-1 leased factory premises owned by JKK Textile Processing Mills Private Limited.

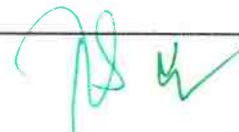
b) Unit-2:The Corporate Debtor entered into Memorandum of Lease deed with State Industries Promotion Corporation of Tamil Nadu Limited ("SIPCOT") dated 06.09.2006 to set up Unit 2 in SIPCOT, Perundurai.

It is stated in the Resolution Plan that the Resolution Professional had issued a public Announcement dated 04.08.2021 for inviting bids for the sale of unencumbered assets of the Corporate Debtor in Unit-1 during the CIRP period as per Regulation 29 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Accordingly, the assets located at Unit-1 which were specifically defined under the Information Memorandum are not part of the Resolution Plan. The Resolution Plan is submitted for acquisition of Corporate Debtor as a going concern except for the assets located at Unit-1.

II. The Resolution Plan has provided an outlay of Rs.3,14,59,781/-(Rupees Three Crore Fourteen Lakh Fifty Nine Thosuang Seven Hundred Eighty One Only) towards settlement of dues to operational and financial creditors and has estimated a further working capital of Rs.2,50,00,000/-(Rupees Two Crore Fifty Lakh Only) to

complete the project including initial equity infusion of Rs.50,00,000/- (Rupees Fifty Lakh Only) to start the project.

- III. The Resolution Applicant proposes to pay a sum of Rs.2,39,95,517/- to the Secured Financial Creditors, which is 91% of the admitted claim amount, and the entire sum will be paid within a period of 3 months after the approval of the Resolution Plan by this Adjudicating Authority.
- IV. The Resolution Applicant proposes to pay a sum of Rs.26,08,183/- to the Unsecured Financial Creditors namely which is 68% of the admitted claim amount, and the entire sum will be paid within a period of 3 months after the approval of the Resolution Plan by this Adjudicating Authority.
- V. The Resolution Applicant proposes to pay a sum of Rs.48,56,081/- which is 10% of the admitted claim, to the Operational Creditors other than workmen, employees and government dues ,within a period of 3 months after the approval of the Resolution Plan by this Adjudicating Authority.



VI. The RP has provided an estimate of Rs. 27,10,000/- for CIRP costs. It is stated that unencumbered assets of the Corporate Debtor have been put for sale with the requisite approval of the CoC and any realisation from the said sale shall be adjusted towards unpaid CIRP costs. In case, the realisation from the sale of unencumbered assets is not sufficient to cover the unpaid CIRP cost in full, the Resolution Applicant undertakes to pay the remaining CIRP cost and such amount shall accordingly be reduced from amount proposed to financial creditors.

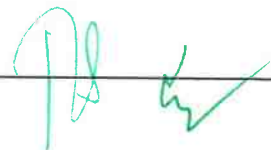
VII. The Resolution Plan amount is to be distributed as under;

S. No	CREDITOR OF SUB-CLASS OF CREDITORS	AMOUNT ADMITTED IN CIRP	ALLOCATION OF AMOUNT UNDER THE RESOLUTION PLAN	% OF REALIZATION
1	Unpaid CIRP Costs	NA	NIL	-
2	Secured Financial Creditors	2,63,68,699.48	2,39,95,517.00	91%
3	Unsecured Financial Creditor	38,35,562.76	26,08,183.00	68%
4	Operational Creditor other than workmen, employees and government dues	4,85,60,813.50	48,56,081.00	10%
5	Other Creditors	77,29,791.24	0.00	-
6	Statutory Dues	NIL	NIL	-
7	Workmen and Employee Dues	NIL	NIL	-
8	Payment to shareholders	NIL	NIL	-
	Total	8,64,94,866.98	3,14,59,781.00	36.37%

12. Timeline proposed in the Resolution Plan for the proposed payout:


S. No	Activity	Indicative Timeline
1	Presentation of Resolution Plan to the COC	To be completed prior to NCLT approval of the resolution plan.
2	Approval of Resolution Plan by COC	
3	Application to the NCLT for approval of the Resolution Plan	
4	Proposal Performance Guarantee of INR 25,00,000/- (Rupees Twenty Five Lakh only) to be provided by RA as per RFRP	Prior to issuance of LoI by the RP
5	Approval of Resolution plan by NCLT (Date of receipt of certified copy from the NCLT)	T
7	Issue of Implementation Notice	T + 5
8	Intimation to all Financial Creditors and Operational Creditors, existing shareholders, and other stakeholders by way of letters and / or public notice by Resolution Professional and Resolution Applicant	T + 7
9	Formation and appointment of the Monitoring Committee	T + 7
11	Payment towards Liquid CIRP Cost	T+80
12	Payment towards Operational Creditors	T+80
13	Payment towards Financial Creditors	T+90

13. From the averments made in the Application as well as in Form-H as filed by the Resolution Professional in relation to the procedural aspects, the same seems to have been duly complied with for which the Resolution Professional has issued a Certificate and it is not necessary for this Authority to go into the same. However, this Authority is duty bound to examine the Resolution Plan within the contours of Section 30(2) of the IBC, 2016. A comparison *vis-à-vis* with the Mandatory compliance under the IBC and the Compliance made under the Resolution Plan is captured hereunder;



MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS	COMPLIANCE UNDER RESOLUTION PLAN
S. 30(1) - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	Resolution Applicant has submitted the Affidavit under Section 29A of IBC, 2016 to the Resolution Professional and that the Resolution Applicant is not disqualified in terms of Section 29A of IBC, 2016. Copy of affidavit is placed as 'Annexure -5' at page 46 to the application
S. 30(2)(a) - Payment of Insolvency and Resolution cost in the manner specified by the Board	Clause 14.3of the Resolution Plan provides payment of the CIRP costs in priority. The CIRP Cost is arrived at ₹27.10 Lakh, to be paid within a period of 3 months from the date of approval of the Plan by this Tribunal.
S. 30(2)(b) - Payment of debts of Operational Creditors in such manner as may be specified by the Board, which shall not be less that the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under Sec. 53	The Resolution Plan states that the amount available to Operational Creditors in the event of liquidation is NIL, under the resolution plan the Operational Creditor has been proposed to pay 10% of their admitted claim amount. The same would be paid within a period of 3 months from the date of approval of the Plan by this Tribunal.
Reg. 38(1) - Resolution Plan identifies specific source of funds that will be used to pay the (a) Insolvency Resolution Process cost? (b)Liquidation value due to Operational Creditors? (c) Liquidation value due to dissenting financial creditors	Clause 27 of the Resolution Plan deals with the Source of Fund from the Bankers, Promoter/Directors Net worth. Further, the Liquidation value to the Operational Creditor is NIL however as per Clause 18.3, the Operational Creditor has been proposed to pay 10% of their admitted claim amount. The same would be paid within a period of 3 months from the date of approval of the Plan by this Tribunal.
Reg. 38(1A) - Resolution Plan shall include a statement as to how it has dealt with the interest of all the stakeholders, including financial creditors and operational creditors of the Corporate Debtor	Clause 15.4 enumerates how the interest of all the stakeholders including operational and financial creditors has been dealt with under the Resolution Plan.

<p>S. 30(2)(c) - Management of the affairs of the Corporate Debtor after approval of the Resolution Plan</p>	<p>Clause 30 of the Resolution Plan deals with the Management of the affairs of the Corporate Debtor and it states that the Company will be transferred as a "going concern" to the Resolution Application post implementation of the Resolution Plan.</p>
<p>S. 30(2)(d) - Implementation and Supervision of the Resolution Plan and Reg. 38(2) - Resolution Plan shall provide: a) term of plan and its implementation schedule b) management and control of the business of the Corporate Debtor during its term; c) it has provisions for effective implementation d) it has provisions for approval required and the timeline for the same; and e) the Resolution applicant has the capability to implement the Resolution Plan.</p>	<p>Clause 30 to 33 of the Resolution Plan deals with the Implementation and supervision of the Resolution Plan and it provides that the Monitoring Committee shall comprise of (i) One representative appointed by the Resolution Applicant (ii) One authorized representative appointed by the CoC(iii)Monitoring Agent who will chair meeting. It is proposed in the plan to retain Mr. S.Kangayan, RP as the monitoring agent.</p>
<p>Reg. 38(3) - Resolution Plan shall demonstrate: a) it address the cause of default b) it is feasible and viable c) it has provisions for effective implementation d) it has provisions for approval required and the timeline for the same e) the resolution applicant has the capability to implement the resolution plan</p>	<p>Clause 28 of the Resolution Plan address the cause of default and Clause 49 and the sub-clauses therein of the Resolution Plan deals with the operational Viability of the project by the Resolution Applicant.</p>
<p>S. 30(2)(e) - Does not contravene any of the provisions of the law for the time being in force</p>	<p>The Resolution Professional in Form H has confirmed that the Resolution Plan is not in contravention with the provisions of any Applicable Law.</p>

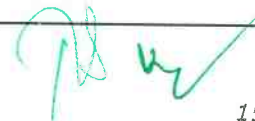


<p>S. 30(4) - Committee of Creditors approve the Resolution Plan by not less than 66% of voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by the Board</p>	<p>The CoC, in its 9th meeting has approved the Resolution Plan in the following voting pattern;</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>S.No</th> <th>Name of Creditor</th> <th>Assent (%)</th> <th>Dissent (%)</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>ICICI Bank</td> <td>73.39</td> <td>-</td> </tr> <tr> <td>2</td> <td>Small Business FinCredit Pvt. Ltd</td> <td>13.92%</td> <td>-</td> </tr> <tr> <td>3</td> <td>HDFC Bank</td> <td>5.88%</td> <td>-</td> </tr> <tr> <td>4</td> <td>Kotak Mahindra Bank</td> <td>-</td> <td>3.30%</td> </tr> <tr> <td>5</td> <td>Cap Float Financial Services Pvt. Ltd</td> <td>3.51%</td> <td>-</td> </tr> </tbody> </table>	S.No	Name of Creditor	Assent (%)	Dissent (%)	1.	ICICI Bank	73.39	-	2	Small Business FinCredit Pvt. Ltd	13.92%	-	3	HDFC Bank	5.88%	-	4	Kotak Mahindra Bank	-	3.30%	5	Cap Float Financial Services Pvt. Ltd	3.51%	-
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14. The Resolution Applicant has sought for certain Relief/ concessions / waivers from this Adjudicating Authority so as to implement the Resolution Plan. These are ordered as follows:

SL. No.	RELIEF / CONCESSIONS SOUGHT FOR	ORDERS THEREON
	RELIEFS SOUGHT UNDER COMPANIES ACT, 2013	
a	Until the Approval Date, the Corporate Debtor and its shareholders would not be required to compulsorily hold general meetings in the manner and at such frequencies as required under the Companies Act, 2013	Granted, subject to the provisions of Companies Act, 2013
b	Upon the approval of this resolution plan, the C.P No.19/2018 pending before the Hon'ble NCLT, Chennai, filed by the ex-director Mr. M.Mani under the provisions of section 241-243 of the Companies Act,2013 for oppression and mismanagement against the Corporate Debtor shall be dismissed as infructuous.	Granted, subject to the provisions of Companies Act, 2013
c	Since reduction of capital is an integral part of this resolution plan and will be made effective pursuant to order of the NCLT sanctioning the Resolution Plan in terms of section 31 of the Code, the provisions of section 66 of the Companies Act 2013 shall not be applicable unless NCLT holds otherwise. The order of the NCLT sanctioning the Resolution Plan shall be deemed to be an order under section 66 of the Companies Act 2013.	Granted, subject to the provisions of Companies Act, 2013

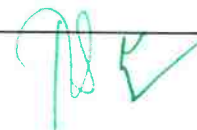
d	All the Governmental Authorities to waive the non-compliances of the Corporate Debtor prior to approval date, including but not limited to the non-compliances under the provisions of Companies Act, 2013, FEMA 1999, Income Tax Act 1961 and all proceedings pending before judicial/quasi-judicial/administrative authorities to be withdrawn.	This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016
RELIEFS SOUGHT FOR UNDER THE IBC, 2016		
e	All liabilities and guarantees extended by Corporate Debtor whether monetary or non-monetary, statutory, crystallized or not crystallized, claimed or not claimed, admitted or not admitted, disputed or undisputed, confirmed or contingent or due or overdue or future due, decrees obtained for satisfaction of debt and all such obligations of the CD shall stand extinguished and discharged in full without any recourse to it or to the Resolution Applicant upon payment of the Resolution Plan Amount into the account earmarked by the Resolution Professional.	Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i> <i>2021 SCC Online SC 313</i>
f	All or any inquiries, investigations, notices, causes of action, suits, claims, disputes, arbitration and such other proceedings including those pending before any judicial, quasi-judicial, administrative, tax, arbitral or any regulatory body or local authority, including and not limited to those, pertaining to GST, VAT, Sales Tax, Central Excise & Customs and Income Tax, initiated by or against the Corporate Debtor shall stand terminated or abated without any liability whatsoever to Corporate Debtor or to the Resolution Applicant.	
g	All or any disputes, assessments, determinations or proceedings against the CD by or before any judicial, quasi-judicial, administrative, tax, arbitral tribunal or any regulatory body or local authority, pending or that may be commenced under any law including direct or indirect tax laws such as Income Tax Act, 1962 or under GST, Excise, Sales Tax or value Added Tax laws, pertaining to the period prior to the Resolution Plan approval/Effective date, upon its continuation or conclusion, irrespective of the amount so decreed or awarded or determined or assessed as payable by the CD, by whatever	Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i> <i>2021 SCC Online SC 313</i>



	<p>name called including award, decree, claim, damages, compensation, tax, penalty, interest, surcharge, cess etc, shall be settled fully and finally by the Resolution Applicant payment to the claimant in terms of this Resolution Plan as approved, as none of the claimants/statutory authorities have crystallized the same or filed any claim with the Resolution Professional either as an ascertained or as a contingent liability and neither has the Resolution Professional made such a determination or made a mention in the IM. Only liabilities and debt of Corporate Debtor which have been admitted as claims by the Resolution Professional and disclosed through the IM or which have been expressly provided for under the approved Resolution Plan alone shall be paid in accordance with and under the approved Resolution Plan. All other claims, liabilities or debt whether crystalized or not, contingent or final, filed or not filed, admitted or not admitted by the Resolution Professional, disputed or undisputed or otherwise, including those pertaining to statutory dues and penalties shall be deemed as having been fully discharged in accordance with the provisions of the Code and in the light of the Hon'ble Supreme Court's Judgement in Re Essar Steel India Ltd (CoC of Essar Steel India Ltd Vs Satish Kumar Gupta &Ors- C.A 8766-67 of 2019) dated. Nov 15, 2019 - paragraphs 66-67 on pages 111-113 of the said Orders and the CD and or the Resolution Applicant shall not be liable for the same pursuant to the approval of the Resolution Plan.</p>	
h	<p>The CD must be allowed to carry forward and set-off of depreciation and losses and claims such other deductions and benefits under applicable provisions of the Income Tax Act, 1961 notwithstanding the change in the shareholding pattern of the CD company, consequent to the approval of the Resolution Plan.</p> <p>The CBDT to consider providing relief to the Corporate Debtor from all past litigations (including all proceedings and appeals) pending at different levels and provide waiver and extinguishment interest on all Tax dues (including those arising out of assessment claims) including and penalty on such litigations.</p>	<p>This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016</p>

i	Upon approval of this resolution plan, the amount of Rs. 5,38,690/- paid under protest to Commissioner of Income Tax, Circle 2 , Erode with respect to Complaint No: TBAASTSI 143(3)/2018-19/1014493602(1) shall be refunded to the Corporate Debtor	This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016
j	All Claims arising out of inquiries, investigations, notices, causes of action, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings against, the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future and the proceedings under Section 138 of the Negotiable Instruments Act, 1881 and the Tax related Claims or liabilities in relation to any period prior to the Approval Date or on account of acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan, shall be settled at NIL value.	Granted, subject to the provisions of IBC, 2016 and other Applicable laws.
k	On and from the Approval Date, all the guarantors/ third party security providers who have provided/ issued any guarantees/ security (on their assets) for and on behalf and in order to guarantee/secure the debt of the Corporate Debtor (including but not limited to the Identified Excluded Collateral), shall not be entitled to exercise any subrogation rights in respect of such guarantees/ security, on account of any invocation/ enforcement by the Financial Creditors of the Corporate Debtor of such guarantee security in any circumstance.	Granted, subject to the provisions of IBC, 2016 and other Applicable laws
l	The respective authorities to consider providing relief from applicability of and payment of Taxes including under the provisions of the Goods and Services Taxes Act, 2017 which may arise as a result of implementation of the Plan either on the Resolution Applicant or the Corporate Debtor or any other Person who is likely to be impacted due to implementation of the Plan.	This is for the CBIC and other appropriate authorities to consider keeping in view the object of IBC, 2016
m	Licenses and approvals held by the Company towards the Corporate Debtor, which effective date expire prior to the Closing Date or within a period of 12 (Twelve) months from Approval Date shall be renewed / extended by the relevant Authorities, and the Resolution Applicant shall be permitted to continue to operate the business and assets of Corporate	This is for the concerned Governmental authorities to consider, keeping in view the objects of IBC, 2016 and a fresh start of the Corporate Debtor.

	<p>Debtor in the manner operated prior to or after the Insolvency Commencement Date.</p> <p>The relevant Authorities will provide a period of 6 months from the NCLT approval date in order for the Resolution Applicants to assess the status of licenses and approvals required by the Corporate Debtor and to ensure that the Corporate Debtor applies for the same and for renewing and regularizing any non-compliance under the Applicable Law existing prior to the Approval Date.</p> <p>The Resolution Applicant shall be entitled to unconditional continuance of all the approvals, sanctions, licenses and permits which have been obtained by the Corporate.</p>	
n	<p>All Governmental Authorities to grant any relief, concession or dispensation as may be required for implementation of the transactions contemplated under the Plan in accordance with its terms and conditions.</p> <p>All the litigations, proceedings, inquiries, investigations, etc. pending before quasi-judicial/ Governmental Authorities (including RBI) shall be disposed of and all any courts liabilities or obligations in relation thereto, whether or not set out in the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor or the List of Creditors, will be deemed to have been written off in full against a NIL Value.</p>	<p>This is for the concerned Governmental authorities to consider, keeping in view the objects of IBC, 2016 and a fresh start of the Corporate Debtor.</p>
o	<p>Upon the approval of this resolution plan, the Resolution Applicant / Corporate Debtor shall be entitled to the rights, benefits, privileges, duties, liabilities, obligations and interest whatsoever, arising from or pertaining to the Memorandum of Lease Deed dated June 14, 2007 executed between the SIPCOT and the Corporate Debtor, represented by the then managing director, without seeking any further approval or without any consent from SIPCOT and without any need to enter into modified Memorandum of Lease Deed or otherwise. Further, the Resolution Applicant not the Corporate Debtor shall be liable to pay any additional fees or payment or transfer fees or commission or any other charges, to</p>	<p>This is for the concerned Governmental authorities to consider, keeping in view the objects of IBC, 2016 and a fresh start of the Corporate Debtor.</p>



	take on record the change of management of the Corporate Debtor by virtue of this Resolution Plan.	
p	Upon approval of the Resolution Plan by NCLT, no further or prior approval of any member shareholder / creditor/claimant or any other counterparty shall be additionally required to be obtained for taking over the control over the assets and affairs of the Corporate Debtor, pursuant to the terms of this Plan and such parties in relation to Corporate Debtor shall be deemed to have waived all objections / liabilities of the Corporate Debtor arising out of the initiation of CIRP proceedings involving the Corporate Debtor, appointment of the Resolution Professional and in respect of the implementation of this Plan.	Granted, subject to the provisions of IBC, 2016 and other Applicable laws
q	All benefits and incentives, if any, including but not limited to, benefits and incentives under all such incentive schemes, subsidy schemes and policies that the Corporate Debtor was entitled to, shall continue to remain vested with the Corporate Debtor even after the date of approval of Resolution Plan by NCLT.	This is for the concerned Governmental authorities to consider, keeping in view the objects of IBC, 2016 and a fresh start of the Corporate Debtor.
r	All agreements arrangements between the Corporate Debtor and the persons currently classified as promoter or promoter group (including the Existing Promoter Group), persons acting in concert with promoters, holding companies, subsidiary companies, associate companies, group companies and/ or their respective affiliates/ associates, except the business contracts agreements if any which are specifically required by the Resolution Applicant, shall stand terminated, beyond what has been recognised and addressed elsewhere in this Resolution Plan However, it is clarified that claims, if any against such Related Parties (and all Liabilities of such Related Parties towards the Corporate Debtor) shall remain outstanding, due and payable in accordance with their terms directly by such Related Parties and the Resolution Applicant has no liability towards the same.	Granted, subject to the provisions of IBC, 2016 and other Applicable laws
s	The Resolution Applicant seeks a time period of 12 (Twelve) months from NCLT approval Date to ensure compliances in relation to the non-compliance of Applicable Laws by the Corporate Debtor, if any, pertaining to any	Granted, subject to the provisions of IBC, 2016 and other Applicable laws



	period up to NCLT Approval Date. Further, the relevant Governmental Authorities shall not initiate any investigations, actions or proceedings against the Resolution Applicant or the new management (upon acquisition of the Corporate Debtor) including the incoming directors, in relation to any non-compliance with Applicable Laws by the Company pertaining to any period up to date of approval of Resolution Plan by NCLT.	
t	The Resolution Applicant assumes that, in compliance of its duties under Regulation 35A of the CIRP Regulations, the Resolution Professional had determined whether the Company has been subjected to any transactions covered under sections 43, 45, 50 or 66 of the IBC or not and will apply applied to the Adjudicating Authority for seeking appropriate relief Accordingly, though the Resolution Applicant reserve its right to institute any investigation pertaining to any transaction(s) carried out by the ex-management of the Company or to file appropriate applications before the court tribunal of competent jurisdiction, the Resolution Applicant and its officers, directors, employees shall never be liable responsible for any such transactions carried out by the ex-management of the Company. And in the event, any application filed by the Resolution Professional under Section 43 to 51 or 66 of the IBC. Continues even after NCLT Approval Date, the Resolution Professional in consultation with the Committee of Creditors, shall decide whether or not to contest such litigation (including the cost associated with such litigation) and any benefit arising out of such litigation shall be distributed among the creditors of the Company.	From the Form H filed by the RP it is observed that no avoidance application has been filed and accordingly the relief sought is not granted.
u	The Registrar of Companies, Coimbatore, shall take on record the resignation of existing Board of Directors of the Corporate Debtor and appointment of the Reconstituted Board of Director, on an online or offline application made by Resolution Professional in accordance. with the General Circular No. 08/2020 dated March 06, 2020, issued by Ministry of Corporate Affairs.	Granted, subject to the provisions of IBC, 2016 and other Applicable laws
v	The Resolution Applicants shall be permitted to continue using the current Goods and Services Tax (GST) registration number, or any other new registration (including but not	Granted, subject to the provisions of IBC, 2016 and other Applicable laws



	limited to ESI, PF, Importer porter Code (IEC), TAN, Professional Tax) as may be required, in place of the existing GST registration, or any other existing registrations or existing licenses, as the case may be.	
w	At the time of renewal or fresh application for licenses and approvals, the said Authorities including government authorities will not charge any fee, cost, interest, penalty fine or any other amount of like nature pertaining to the period up to date of approval Resolution Plan by NCLT and such amounts due, if any, shall be deemed to have been extinguished and settled as per the terms of this Resolution Plan and the Resolution Applicants shall not be liable to pay any such amounts, other than as provided in this Plan at the time of revival, renewal or fresh application for licenses and approvals.	Granted, subject to the provisions of IBC, 2016 and other Applicable laws
x	All Governmental Authorities shall grant any such relief, concession or dispensation as may be legally permissible for implementation of the transactions contemplated under the plan in accordance with its terms and conditions including any stamp duty payable in respect any documents executed in relation to such transactions.	Granted, subject to the provisions of IBC, 2016 and other Applicable laws
y	To pass an order confirming that this Resolution Plan for the Corporate Debtor has dealt with the interests of all the stakeholders in the Corporate Debtor, including the Financial Creditors (whether secured or unsecured, assenting or dissenting), Operational Creditors, Other Creditors and all other stakeholders in accordance with the Code.	No orders from this Tribunal is required to be passed in this regard.
z	This income tax authorities in respect of all the pending proceedings and dues (including interest and penalty) of the Company arising for periods up to the Insolvency Commencement Date (including such proceedings and dues for periods prior to the Insolvency Commencement Date that have or may crystallize subsequent to the Insolvency Commencement Date/ Approval Date/Closing Date), and have been addressed, specifically or in general terms, in the proposals of this Plan.	Granted, subject to the provisions of IBC, 2016 and other Applicable laws
aa	Transactions contemplated in this Plan shall	Granted, subject to the

	not be treated as void or non-compliant with any provisions of the Income Tax Act, 1961; and all Tax Liabilities (including interest and penalty) and Tax proceedings arising in respect of periods up to the Insolvency Commencement Date, including such liabilities proceedings for periods up to the Insolvency Commencement Date that may crystallize subsequent to the Insolvency Commencement Date / Approval Date in respect of on-going or potential Income Tax litigations at all levels, whether claimed or not by the CBDT/DOR before the Resolution Professional except to the extent agreed to be settled under this resolution plan shall not devolve on the RA.	provisions of IBC, 2016 and other Applicable laws
	All creditors (including the Financial Creditors) of the Company shall withdraw all legal proceedings commenced against the property of the Corporate Debtor in relation to Claims including proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Recovery of Debt and Bankruptcy Act. 1993	Granted, subject to the provisions of IBC, 2016 and other Applicable laws
ab	All protection as envisaged in Section 32A of the Code shall be available to them for the purpose of this Resolution Plan and such immunity will include protection from any liability of a Company for an offence committed prior to the commencement of the corporate insolvency resolution process and the RA shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority.	Granted, subject to the provisions of IBC, 2016 and other Applicable laws

15. It is seen from Form – H, that the RP has not filed any avoidance transactions under Section 43, 45 and 50 and fraudulent trading / wrongful trading applications under Section 66 of IBC, 2016.


16. In so far as the approval of the Resolution Plan is concerned, this Authority is not sitting on an appeal against the decision of the Committee of Creditors and this Authority is duty bound to follow 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."

17. 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).

18. 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)

19. 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)

20. 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;

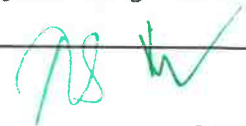
76. The expositions aforesaid make it clear that the decision as to whether corporate debtor should continue as a going concern or should be liquidated is essentially a business decision; and in the scheme of IBC, this decision has been left to the Committee of Creditors, comprising of the financial 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 adjudicate 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 expounded by this Court.

21. 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.

22. The Resolution Applicant has sought for various Reliefs, Concessions in Part VI of the Resolution Plan. However, by taking into

consideration the Judgments of the Hon'ble NCLAT and more particularly the decision of the Hon'ble Supreme Court of India in the matter of **Embassy Property Developments Pvt. Ltd. -Vs- State of Karnataka &Ors.**(2020) 13 SCC 308, we direct the Resolution Applicant to file necessary application before the necessary forum / authority in order to avail the necessary Relief and Concessions, if it is in accordance with law.

23. Thus the Resolution Plan is hereby **approved** and is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect and the "Moratorium" imposed under section 14 of IBC, 2016 shall not have any effect henceforth. 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. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance. Liberty is hereby granted for moving any Miscellaneous Application, if required, in connection with implementation of this Resolution Plan. That in respect of stepping by the New Promoters/Resolution Applicant into the shoes of the erstwhile Company and taking over the business, the provisions of Companies Act,2013 shall be applicable and because of this reason a

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

24. The Resolution Professional is further directed to handover all records, premises / documents to Resolution Applicant to finalise the further line of action required for starting of the operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access to all the records premises / documents through Resolution Professional to finalise the further line of action required for starting of the operation.

25. Accordingly, the Application stands **allowed**.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
R. SUCHARITHA
MEMBER (JUDICIAL)

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