

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

IA/1043/CHE/2022 in IBA/839/2020

(Filed under Sec. 30(6) & 31(1) of the Insolvency & Bankruptcy Code, 2016& Regulation 39 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with Rule 11 of NCLT Rules, 2016)

In the matter of Fourpol Electricals Private Limited

Mr. PREMNARAYAN RAMANAD TRIPATHI, Resolution Professional of Fourpol Electricals Private Limited 606-6th Floor, Shivalik Square, Nr.Adani CNC Pump, 132 Feet Ring Road, New Vadaj, Ahmedabad – 380013, Gujarat, India

... Applicant/Resolution Professional

Present:

For Resolution Professional: Sandeep Kumar Ambalavanan, Advocate

CORAM:

JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT SAMEER KAKAR, MEMBER (TECHNICAL)

Order pronounced on 26th July 2023

<u>O R D E R</u>

Per: SAMEER KAKAR, MEMBER (TECHNICAL) (Hearing conducted through VC)

PRAYER:

IA/1043/CHE/2022 is an Application which is moved by the RP

of the Corporate Debtor viz., FOURPOL ELECTRICALS PRIVATE LIMITED

under Section 30(6) of the IBC, 2016 read with Regulation 39 (4) of the

Insolvency and Bankruptcy Board of India (Insolvency Resolution

5/



Process for Corporate Persons) Regulations, 2016 seeking the approval of the Resolution Plan submitted by the successful Resolution Applicant viz., **Mr. Hiren C Shah** as approved by COC in its 7th COC meeting held on 16.08.2022 with a voting share of 100%.

2. <u>CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP) – FOURPOL</u> Electricals Private Limited

- 2.1In an Application filed under Section 7 of IBC, 2016 by a Financial Creditor viz. Srestha Finvest Limited, this Adjudicating Authority vide order dated 04.10.2021 passed in IBA/839/2020 initiated CIRP against the Corporate Debtor viz. Fourpol Electricals Private Limited, by appointing one Mrs. Aneetha Subramaniam as Interim Resolution Professional (IRP). Subsequently, as resolved in the 3rd CoC meeting held on 09.02.2022 and by order dated 25.04.2022 an in IA/353(CHE)/2022, the Applicant herein viz. Mr.Premnarayan Ramanad Tripathi was appointed as the Resolution Professional (RP) of the Corporate Debtor.
- 2.2. It can be further seen from the averments that the Resolution Plan submitted by one Mr.Hiren C Shah was placed before the CoC of the Corporate Debtor and the same was approved by CoC by 100% voting on 16.08.2022.



2.3. It was further averred in the application that the resolution plan was submitted by Mr.Hiren C.Shah (Successful Resolution Applicant) on 12.08.2022 which was approved by the CoC and the same has complied with the following provisions of the IBC,2016 and the regulations made thereunder;

2.4. CIRP Procedure:

- i. Information Memorandum (IM) issued to CoC on 10.06.2022.
- ii. Newspaper Publication of Form G (Invitation of Expression of Interest on 14.06.2022.
- iii. Detailed EOI (Expression of Interest) issued by the RP on 22.06.2022.
- iv. Finalized and issued Provisional list and Final list of Resolution Applicant of Eligible Resolution Applicant on 06.07.2022.
- v. Issued of Request for Resolution Plan (RFRP), Evaluation Matrix and Information Memorandum to Prospective Eligible Resolution Applicant as on 08.07.2022
- 2.5. The RP conducted due diligence based on the material on record and

satisfy that PRAs has complied with:

i. Provision of Section 25(2)(h) of the IBC, 2016

- ii. Applicable provisions of Section 29A of the IBC, 2016
- iii. Other requirements as specified in EOI and IBC, 2016 and regulations made thereunder.
- 2.6. The Resolution Professional has checked, examined the Resolution

Plan submitted by Mr.Hiren C. Shah and found that Resolution Plan is



complying with the requirements as specified under Section 30 of the IBC, 2016.

3. DETAILS OF THE SUCCESSFUL RESOLUTION APPLICANT (SRA)

3.1. It is submitted in para 6 of the application that the publication of Invitation of Expression of Interest (EOI) from Prospective Resolution Applicants was effected on 14.06.2022. The date initially scheduled for submission of the Resolution Plan was 13.08.2022 and 2 (two) Resolution Applicants were expressed their interest to submit the Resolution Plan for Insolvency Resolution Process of the Corporate Debtor. However, only 1 (one) Resolution Applicant viz. Mr.Hiren C Shah submitted the Resolution Plan to the RP on 12.08.2022 and 2nd Resolution Applicant expressed his inability to submit the Resolution Plan due to health issue. The details of the Successful Resolution Applicant namely Mr.Hiren C Shah is as follows:

S.No.	NAME OF THE SUCCESSFUL RESOLUTION APPLICANT	ADDRESS OF THE RESOLUTION APPLICANT	CATEGORY
1	Hiren C Shah	North Town Estates No.47,	Individual
		Stephenson Road, Flat No-	
		1104, Tower 5, Perambur,	
		Perambur Barracks,	
		Chennai – 600 012, Tamil	
		Nadu, India	

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4. DELIBERATIONS OF COC ON FEASIBILITY OF THE RESOLUTION PLAN

4.1 It can be seen from the 7th CoC Meeting held on 16.08.2022 the Committee after detailed discussions has approved the Resolution Plan by passing the following resolution and the copy of the 7th CoC Meeting minutes is placed as "Annexure-1 of the application typeset and the same is extracted hereunder:

> "RESOLVED THAT in terms of Section 30 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (CIRP Regulations), COC be and is hereby evaluate and approves the Resolution Plan submitted by Mr. Hiren Shah after considering its feasibility and viability.

> **RESOLVED FURTHER THAT** in terms of the CIRP Regulations and as per the RFRP, upon submission of Performance Security by Mr. Hiren Shah, successful Resolution Applicant, Rs. 50,000/- paid as the Resolution Plan Bid Bond (RPBB) shall be returned to the successful Resolution Applicant.

> **RESOLVED FURTHER THAT** Mr. Premnarayan Ramanand Tripathi, Resolution Professional, be and is hereby authorized to refund RPBB of Rs. 50,000/- deposited by the Mr. Parasmal Bafna who expressed his inability to submit the Resolution Plan in due course of time."



5.

- It is pertinent to point out the order of the Tribunal dated 28.11.2022 wherein it was recorded that the Applicant/RP was directed to file better affidavit clearly bringing out pending applications under Section 43 to 66. The RP was further directed to file updated position regarding the various compliances and provide summary not exceeding two pages with dates and events.
- 6. The Applicant/RP complied the order of the Tribunal dated 28.11.2022 filed the said affidavit dated 08.12.2022 wherein it was stated in para 4 that the RP had filed an application with the instructions of CoC under Section 43 and 44 of the IBC, 2016 against one Mr. Akshay Nahar for recovery of Rs.11,00,000/- (Rupees Eleven Lakhs) in IA/685/2022 and the same is pending for adjudication. While the said application was pending, the Resolution Plan submitted by one Mr. Hiren C. Shah (Resolution Applicant) was approved by the COC and the said Resolution Plan has been filed before this Tribunal for its approval by way of present application.
- 7. Further, it is pertinent to note that in the said Resolution Plan submitted for approval, the Resolution Applicant has provided that if the above said amount of 11,00,000/- (Rupees Eleven Lakhs) is to be recovered on basis of the order of this Tribunal in the above said IA/685/2022, treating

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it to be a Preferential Transaction, the Resolution Applicant will not have any right over any amount received as outcome of the said IA/685/2022. The said undertaking of the Resolution Applicant as approved by the CoC can be morefully understood from clause 2.2.7 of the Resolution Plan.

8. VALUATION ARRIVED BY THE RP FOR THE CORPORATE DEBTOR:

8.1. It is submitted by the RP in para 5 of the better affidavit filed that the valuations arrived at by the RP for the Corporate Debtor is as follows;

S.No	VALUATION	AMOUNT
1	Fair value	Rs. 6,11,497/-
2	Liquidation Value	Rs.5,71,205/-

- 9. The present Resolution Plan submitted by the Resolution Applicant is for a value of **Rs.11,00,000/- (Rupees Elven Lakhs Only)**.
- 10. Further, it can be seen in para 8 of the Application that the Successful Resolution Applicant namely, Mr. Hiren C Shah has furnished the Performance Security as required under Regulation 36B(4A) of the IBBI (IRP for Corporate Persons Regulations), 2016, to the tune of Rs. 60,000/- (Rupees Sixty Thousand only) and the same is enclosed at *Annexure-5* of the Application Typeset.



- 11. 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 and the same is placed as *Annexure-6* to the Application typeset. It is also seen from Form H that the RP has filed Applications under Section 43 of IBC, 2016, and the same is pending adjudication before this Tribunal.
- 12. In so far as the fate of Section 43 of IBC Application is concerned, Resolution Professional had filed an affidavit vide S.R.No.860 dated 22.02.2023 by placing reliance Division Bench of the Hon'ble High Court of Delhi in the matter of Tata Steels BSL Limited -Vs-Venus Recruiters Private Limited & Ors.; 2023/DHC/000257 while dealing with the continuation of PUFE transaction Applications after the completion of CIRP, has held as follows;

"89. Conclusion

a)

b) CIRP and avoidance applications, are, by their very nature, a separate set of proceedings wherein, the former, being objective in nature, is time bound whereas the latter requires a proper discovery of suspect transactions that are to be avoided by the Adjudicating Authority. The scheme of the IBC reinforces this difference. Accordingly, adjudication of an avoidance application is independent of the resolution of the corporate debtor and can survive CIRP





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

13. SALIENT FEATURES OF THE RESOLUTION PLAN

13.1. The Salient features of the Resolution Plan approved by the Committee

of Creditors as follows:

- a) The total plan outlay is 11,00,000/- (Rupees Eleven Lakh only)
- b) The CIRP Costs shall be paid/adjusted from the credit balance of the Corporate Debtor and any shortfall in CIRP Cost upto the date of NCLT order approving the Resolution Plan shall be adjusted with the fund proposed to distribute to the financial creditor.
- c) There are no workmen and employees due pending.



- d) The total admitted amount of Unsecured Financial Creditors is Rs.40,54,410/-, it is proposed that out of the said claim amount of Rs.40,54,410/ a sum of Rs. 5,83,500/- will be paid within 30 days of approval of Resolution Plan.
- e) The total admitted amount of due to Operational Creditor- Government dues is Rs. 1,16,700/- of which Rs. 16,500/- is proposed to be settled within 30 days of approval of the Resolution Plan.
- f) The dues admitted for Other creditors is Rs. 36,04,091/- of which the whole amount is proposed not to be settled.
- g) The Resolution Professional has filed an Application under Section 43, 44 of IBC before NCLT, Chennai Bench against Other Creditors for recovery of Preferential Transactions amounting to Rs. 11,00,000/-.
- h) No Equity and equity rights to Financial Creditor of the Corporate Debtor is proposed as part of this Resolution Plan.
- i) The Board of Directors of the Corporate Debtors will stand dissolved and they shall have been deemed to be resigned within 30 days from NCLT approval and shall be replaced with following new directors of the Corporate Debtor and shall be replaced by Hiren C. Shah and Mr. Rohit D Bafna as the new Directors.
- j) Perusal of the Resolution Plan suggests that the requirements as laid down in Sec. 30(2) IBC 2016 and Regulation 38 of IBBI (IRP for CP) Regulations 2016 have been duly provided for in the Resolution Plan by the Resolution Applicant. The COC of Corporate Debtor shall be dissolved against the Order of Hon'ble National Company Law Tribunal. As the entire Plan amount is to be paid in a single tranche within 30 days from the date of approval of the Resolution plan by the NCLT, there is no requirement to constitute a monitoring agency.
- k) The Authorized Representative of CoC along with reconstituted Board of Directors of the Corporate Debtor will manage day to day affairs of Corporate Debtor till the term of the Resolution Plan.

13.2. FINANCIAL PROPOSAL FOR RESOLUTION PLAN

13.2.1. The Resolution Applicant proposes to offer Rs. 6,00,000/- (Rupees Six

Lakhs) excluding CIRP Cost of 5,00,000/- (Rupees Five Lakhs) which to



be adjusted from Credit Balance of Bank Account of the Corporate Debtor as mentioned hereunder:

Table –I – Financial Prop	osal with Bid Value
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TIME LIMIT FOR PAYMENT OF BID VALUE	AMOUNT (IN RUPEES)	IN%
Within 30 days from date of	6,00,000/-	100
NCLT Approval		

13.2.2. Further it was proposed in the Resolution that the Bid Value shall be appropriated among the creditors of the Corporate Debtor strictly in the manner as mentioned in Table-II below:

S.No	PARTICULARS	TOTAL ADMITTED AMOUNT	AMOUNT PROPOSED FOR PAYMENT	TERMS OF PAYMENT FROM DATE OF APPROVAL OF RESOLUTION PLAN BY NCLT	
1	CIRP Cost* (Note -1)	5,00,000/-	5,00,000/-	To be adjusted/paid from the Credit Balance of Bank Account of the Corporate Debtor	
2	Workmen and Employees	-	_	-	
3	Unsecured Financial Creditors	40,54,410/-	5,83,500	RA will pay entire amount within 30 days from the date of approval of Resolution Plan by the Hon'ble NCLT	
4	Operational Creditors	-	-	-	

Table -II - Appropriation of the Bid Value Distribution among Creditors



5	Operational	1,61,707/-	16,500/-	RA will pay
	Creditor			entire amount
	Government dues			within 30 days
				from the date of
				approval of
				Resolution Plan
				by the Hon'ble
				NCLT
6	Creditors other	36,04,391/-**	-	-
	than above			
	Total	83,20,508/-	11,00,000	

Note-1: *Rs. 5 Lakhs is estimated CIRP cost upto date of approval of Resolution plan by NCLT and the same is to be adjusted/paid from Credit Balance of Bank Account of the Corporate Debtor. Any shortfall in CIRP cost up to date of NCLT order approving Resolution Plan as approved by COC shall be adjusted with the fund proposed to distribute to financial creditor

Note-2: **As per IM, the Company has filed an Application under Section 11, 43, 44 of IBC before NCLT, Chennai Bench against Creditors as referred at Sr. No. 6 of Table 11 for recovery of Preferential Transactions amounting to Rs. 11,00,000/-

14. MANAGEMENT AND CONTROL OF BUSINESS OF THE CORPORATE DEBTOR

14.1. It can be seen from Section 2.2.2 of the Resolution plan placed at Annexure-4 of the application typeset that, the proposed directors for the Corporate Debtor would be Mr. Hiren Shah and Rohit D Bafna pursuant to the approval of the Resolution Plan by this Adjudicating Authority.

15. DETAILS ON TERM OF THE PLAN, ITS IMPLEMENTATION AND SUPERVISION

AND MANAGEMENT OF AFFAIRS AFTER APPROVAL OF RESOLUTION PLAN:

The Resolution Plan also provides for –

a) Term of Resolution Plan in Clause 2.1 of Chapter 2 at page no. 7 of the

Resolution Plan





b) Implementation, supervision of the Resolution Plan and Management and control of the Corporate Debtor in Clause 2.2 of Chapter 2 at page no.8 of the Resolution Plan.

16. MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS

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*- \hat{a} -*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
 <u>S. 30(1)</u> - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016 <u>S. 30(2)(a)</u> -Payment of Insolvency and Resolution cost in the manner specified by the Board in priority to the payment of other debts of the Corporate Debtor 	Section 7.3 of the Resolution Plan states that the prospective Resolution Applicant has already 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 and filed an affidavit with respect to the same which is attached at Annexure V of the Resolution Plan. Section 1.2 of the Resolution Plan provides for the payment of Insolvency resolution process cost as approved by the CoC in priority to the payment of other debts
<u>S. 30(2)(b) r/w Regulation 38(1)(a)</u> - Payment of debts of Operational Creditors shall be given priority in payment over Financial Creditors in such manner which shall not be less than-	Section 1.11.of the Resolution Plan provides that Resolution Applicant represents that the Resolution Plan provides for payment to creditors in the manner compliant with such section 30(2)(b) r.w. Regulation 38(1)(a).
(i) the amount to be paid to such creditors in the event of a liquidation	As per Information Memorandum, there is only one claim received from Operational





of the Corporate Debtor under section	Creditors i.e. Government dues and the same
53; or	shall be paid as per
(ii) the amount that would have been	Table-II (Appropriation of Bid Value) of Para
paid to such creditors, if the amount to	No. 1.2 of this Resolution Plan.
be distributed under the Resolution	
Plan had been distributed in	Further as per estimate of Resolution
accordance with the order of priority	Applicant, the liquidation value is not even
in sub- section (1) of section 53,	sufficient to make payment of
	Financial Creditor in full and therefore the
whichever is higher	liquidation value accruing to Government
	and Operational Creditors
	(except employee and workmen), if any,
	would be NIL. However, the RA
	proposes to offer Rs.16,500 (Rupees Sixteen
	Thousand Five Hundred) to the Government
	of Tamil Nadu represented
	by, The Assistant Commissioner (ST).
	Vepery Assessment Circle, Chennai.
<u>S. 30(2)(c)</u> -Management of the affairs	Section 2.2.3 of the Resolution Plan provides
of the Corporate Debtor after approval	that during the implementation of the
of the Resolution Plan during the	Resolution Plan, the Authorized
implementation of the Resolution Plan	Representative of CoC along with Board of Directors of the Corporate Debtor shall
	manage the affairs of the Corporate Debtor
<u>S. 30(2)(d) r.w. Reg. 38(2)</u> -	Section 2.2.3 of the Resolution Plan provides
Implementation and Supervision of	that Authorized Representative of CoC along
the Resolution Plan	with Board of Directors of Corporate Debtor
the Resolution Flatt	shall be responsible for implementation and
	supervision of the Resolution Plan
<u>S. 30(2)(e)</u> -Does not contravene any	Section 1.20 of the Resolution Plan provides
of the provisions of the law for the	that the Resolution Applicant proposed the
time being in force	plan after considering all applicable laws and
	the same is not in contravention of the
	Provisions of the law for the time being force.
<u>Reg. 38(1A)</u> -A statement as to how	Section 1.15 of the Resolution Plan provides
the Plan has dealt with the interests of	that the Resolution Applicant represents that
all stakeholders, including financial	the Resolution Plan provides for payment to
creditors and operational creditors, of	creditors in the manner compliant with
the Corporate Debtor	Regulation 38(1)
<u>Reg. 38(1B)-</u> A Resolution Plan shall	Section 1.19 of the Resolution Plan provides
include a statement giving details if	that neither Resolution Applicant nor any of
the Resolution Applicant or any of its	its related parties have been involved in the
related parties has failed to implement	CIRP.
or contributed to the failure of	
implementation of any other	
Resolution Plan approved by the	
Adjudicating Authority at any time in	×
the past	
	₩/
in IBA/839/2020	



Reg. 38(3) -Resolution Plan shall	Section 5.1 & 5.2 of the Resolution Plan	
demonstrate:	provides for the details as required under the	
a) it address the cause of defaultb) it is feasible and viable	Regulation.	
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		
Reg.37(a)- Transfer of all or part of the	Resolution Plan does not specifically provide	
assets of the Corporate Debtor to one	for transfer of assets of the Corporate Debtor.	
or more persons Reg.37(b)- Sale of all or part of the	Resolution Applicant does not provide for	
assets whether subject to any security		
interest or not	sale of assets whether subject to the security	
	interest or not.	
Reg.37(ba)- Restructuring of the	Resolution Plan does not provide for	
Corporate Debtor, by way of merger, amalgamation and demerger	Restructuring of the Corporate Debtor in any	
0	manner.	
Reg.37(c)- The substantial acquisition	Article 3 Sr.5 of the Table provides that	
of shares of the Corporate Debtor, or the cancel or consolidation of the	Resolution Plan does not contain transfer of	
corporate debtor with one or more	existing shares of the Corporate Debtor.	
persons	Existing issued shares shall be cancelled and	
	new shares will be issued to new shareholders	
	i.e. to the Resolution Applicants	
Reg.37(ca)-Cancellation or delisting of	Article 3 Sr.No.5 of the Table provides that All	
any shares of the Corporate Debtor, if	shares issued by Corporate Debtor either in	
applicable	physical or dematerialized form till date in	
	possession/ control/ pledge of shareholder/	
	nominee or with anybody else in whatever	
	form shall stand cancelled in totality.	
	The shares of the Corporate Debtor are not	
	listed on any Stock exchange.	
	instea on any stock exchange.	
Reg-37(d)-Satisfaction or modification	Section 1.14 of the Resolution Plan provides	
of any security interest	-	
	that there are no Secured Creditors.	





	Nevertheless, existing securities, if any,
	provided by the Corporate Debtor/ third party
	and taken by Secured shall be considered
	infructuous and the said security shall stand
	released/ transferred automatically.
Reg-37(e)- Curing or waiving of any	Section 5.6 of the Resolution Plan provides for
breach of the terms of any debt due from the Corporate Debtor	payment to the Creditor as per amount agreed
	in the Resolution Plan and upon such
	payment, all claims of creditors shall stand
	extinguished.
Reg-37(f)- Reduction in the amount	Creditors will be paid as per table given in
payable to creditors	para 1.2 of the Resolution Plan
Reg-37(g)- Extension of a maturity	The Creditors will be paid within 30 (Thirty)
date or a change in interest rate or	days from date of approval of the Resolution
other terms of a debt due from the Corporate Debtor	Plan as per Table II of para 1.2.
Reg-37(h)- Amendment of the	Resolution Plan does not provide for
constitutional documents of the	Amendment of the constitutional documents
Corporate Debtor	of the Corporate Debtor
Reg-37(i)-Issuance of securities of the	Resolution Plan does not envisage issue of
Corporate Debtor, for cash, property,	new securities except to the new shareholders
securities, or in exchange for claims or interests, or other appropriate	of the Resolution Applicant and their
purpose;	relatives.
<u>Reg-37(j)-</u> Change in portfolio of	Resolution Applicant is not proposing to
goods or services produced or	change the existing business of the Corporate
rendered by the Corporate Debtor	Debtor
<u>Reg-37(k)-</u> Change in technology used	Resolution Plan does not specifically provide
by the Corporate Debtor	Change in technology used by the Corporate
	Debtor
Rog 27(1) Obtaining account	
<u>Reg-37(I)-</u> Obtaining necessary approvals from the Central and State	Resolution Applicant, if required, will take
Governments and other authorities	necessary approval from the Central /State or
	any other authority for carrying out new
	business activities.

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S. 30(4) -Committee of Creditors	The C	oC, in its 07th meet	ing has app	proved the
approve the Resolution Plan by not	Resolu	ution Plan in th	e followir	ng voting
less than 66% of voting share of	patter	n;		
Financial Creditors, after considering				
its feasibility, viability and such other	S.No	Name of	Assent	Dissent
requirement as specified by the Board		Creditor	(%)	(%)
	1.	Srestha Finvest	100%	-
		Limited		
		TOTAL	100%	-

17. <u>Relief / Concessions</u>

The Resolution Applicant in Part – 5 of the Resolution Plan has sought

for a total of 5 Relief and concessions from this Adjudicating Authority

so as to implement the Resolution Plan. These are ordered as follows;

SL. NO.	RELIEF / CONCESSIONS SOUGHT FOR	ORDERS THEREON
1.	All Government Authorities to waive the non- compliance, if any of the Corporate Debtor prior to the Effective Date without levying any fee, penalty or additional duty. The Resolution Applicant requests for an additional period of 12 months starting from the day following the Effective Date to regularise such non- compliance and breach. The Resolution Applicant shall not be required to pay any additional fee/ penalty etc. for regularizing such non-compliance and breach.	Ordered in terms of Section 31(4) of IBC, 2016
2.	Upon approval of the Resolution Plan by NCLT, all the government departments to continue all the registrations such as Electricity, which are necessary municipal approvals, trade licenses, import/ export license, and all other certifications and approvals ns may be required so as to ensure proper operations and going concern of the Corporate Debtor without payment of any additional duty, fees, penalty or any other charges by whatever name called.	Granted subject to the provisions of IBC and other applicable law

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3.	All Government Authority to grant all relief, concession or dispensation as may be required for the implementation of the Resolution Plan in accordance with the terms and conditions.	Resolution Applicant is directed to move application before the appropriate forum, accordingly
4.	Upon approval of the Resolution Plan all pending matters/litigation filed against the Corporate Debtor by any of the Authority/ Parties including litigation pending from Sales Tax, VAT/GST Department shall stand disposed-off and Corporate Debtor and/or Resolution Applicants shall not liable to make any payment including any penalty, damages cost or otherwise.	Granted in terms of the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited. 2021 SCC Online SC 313
5.	Upon approval of the Resolution Plan by NCLT. The Income Tax Department shall be deemed to have waived the Corporate Debtor from following:	
	 levy or payment of income tax on waiver of principal and interest by Banks/Institutions approval of the Resolution Plan by NCLT; 	
	ii. treating any transaction contemplated in this Resolution Plan as being void or non-compliant with any provisions of the Income Tax Act, 1961;	Resolution Applicant is directed to move before appropriate authorities taking in to provisions of IBC, 2016
	iii. applicability of Section 281 of the Income Tax Act, 1961 including obtaining no objection certificate from income tax authorities in respect of all the pending proceedings and dues (including interest and penalty) of the Corporate Debtor arising for periods up to the Effective Date (including such proceeding and due for periods prior to the Effective Date that may crystallize subsequent to the Effective Date) and	
	 all Tax Liabilities (including interest and penalty) and Tax proceeding arising in respect of periods up to the Effective Date, including such Liabilities/proceedings that may crystallize subsequent to the Effective Date in respect of on- going or potential Income Tax litigations at all levels. 	



18. JUDICIAL PRONOUNCEMENTS OF THE HON'BLE SUPREME COURT

18.1 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."





18.2. 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 2019at 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).

18.3. 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

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the I&B Code. <u>The subjective satisfaction of the financial creditors at the</u> <u>time of voting is bound to be a mixed baggage of variety of factors. To</u> <u>wit, the feasibility and viability of the proposed resolution plan and</u> <u>including their perceptions about the general capability of the resolution</u> <u>applicant to translate the projected plan into a reality. The resolution</u> <u>applicant may have given projections backed by normative data but still</u> <u>in the opinion of the dissenting financial creditors, it would not be free</u> <u>from being speculative. These aspects are completely within the domain</u> <u>of the financial creditors who are called upon to vote on the resolution</u> <u>plan under Section 30(4) of the I&B Code.</u>

58. <u>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.</u> 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)

18.4 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)

18.5. 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.

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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.

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 resubmission after satisfying the parameters delineated by Code and exposited by this Court.

19. Thus, from the catena of judgments rendered by the Hon'ble 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.

CONCLUSION:

20. 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

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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,

- 21. 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.
- 22. In case of non-compliance with this order or withdrawal of the Resolution Plan by the Successful Resolution Applicant, the CoC shall forfeit the Performance Security furnished by the Resolution Applicant in the form of Performance Bank Guarantees.
- 23. Subject to the observations made in this Order, the Resolution Plan in question is hereby **APPROVED** by this Adjudicating Authority. The Resolution Plan shall form part of this Order. The Resolution Plan is





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

- 24. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters. The Resolution Professional is further directed to hand over all records, premises/factories/documents to the Resolution Applicant to finalize the further line of action required for starting the operation of the Corporate Debtor under the control of the Resolution Applicant.
- 25. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
- 26. Liberty is hereby granted for moving any Application if required in connection with the implementation of this Resolution Plan.
- 27. A copy of this Order is to be submitted to the Office of the Registrar of Companies, Chennai.

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- The Resolution Professional shall stand discharged from his duties with 28. effect from the date of this Order.
- IA(IBC)/1043/CHE/2022 shall stand disposed of accordingly. 29.
- The Registry is directed to send e-mail copies of the order forthwith to 30. all the parties and their Learned Counsel for information and for taking necessary steps. File be consigned to the record.



PRESIDENT