

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

IA(IBC)/1506(CHE)/2022 in IBA/724/2019

(filed under Section 60(6) r/w Sec 31 of the Insolvency & Bankruptcy Code, 2016 r/w  
Regulation 39 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations,  
2016)

In the matter of *Peekay Mediequip Limited*  
(Resolution Plan)

Mr. R. Raghavendran  
Resolution Professional of M/s. Peekay Mediequip Limited  
Flat No. 3, Dhruvatara Apartments,  
241, Dr. Rajendraprasad Road, Tatabad,  
Coimbatore – 641 012

Present:

For Applicant : PH Arvind Pandian, *Senior Advocate*  
For Cibi Vishnu, Jerin Asher Sojan, *Advocates*  
For Resolution Professional : B. Dhanraj, *Advocate*

CORAM  
ASHOK KUMAR BHARDWAJ, MEMBER (JUDICIAL)  
SAMEER KAKAR, MEMBER (TECHNICAL)

*Order Pronounced on 02<sup>nd</sup> May 2023*

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

IA(IBC)/1506(CHE)/2022 is an application moved on 03.12.2022 by the  
Resolution Professional of the Corporate Debtor viz., M/s. Peekay Mediequip  
Limited under Section 30(6) r/w Section 31 of the Insolvency & Bankruptcy  
Code, 2016 (hereinafter 'IBC, 2016') read with Regulation 39 of the  
Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for  
Corporate Persons) Regulations, 2016 (hereinafter 'CIRP Regulations, 2016')  
seeking relief as follows;

✓



- a) To pass an order under Section 31 of the IBC, 2016 approving the Resolution Plan submitted by the Resolution Applicant, as approved by the members of the CoC holding 76.60% voting share in the E-Voting session held from 11 AM on 26.11.2022 to 6 PM on 28.11.2022.
- b) And to pass such further or other orders as deemed fit and necessary by the Hon'ble Adjudicating Authority and thus render Justice.

## **2. CORPORATE INSOLVENCY RESOLUTION PROCESS OF PEEKAY MEDIEQUIP LIMITED**

2.1 The Corporate Insolvency Resolution Process in respect of the Corporate Debtor viz., Peekay Mediequip Limited was initiated by this Adjudicating Authority vide its order dated 13.08.2019 based on an Application filed by one Mr. K.R. Sundaresan, in the capacity of a Financial Creditor under Section 7 of IBC, 2016 in IBA/724/2019, and Mr. R. Raghavendran was appointed as the 'Interim Resolution Professional'. The dates and events during the Corporate Insolvency Resolution Process period is as tabulated hereunder,

S.NO.	DATE	EVENTS
1.	16.08.2019	Public Announcement regarding initiation of CIRP in "The Hindu" and "Dinathanthi" (Tanjore Edition) with last of submission of claim as 28.08.2019
2.	05.09.2019	The Committee of Creditors was constituted by the IRP based on the claims received.
3.	12.09.2019	1 <sup>st</sup> CoC Meeting - IRP Mr. R. Raghavendran was confirmed as the RP by the CoC.
4.	01.11.2019	The Physical Possession of the Factory along with its registered office was taken over by the RP as per the direction of this Adjudicating Authority in IA/(IBC)/1029/CHE/2019. Registered Valuers were appointed.



5.	25.11.2019	<i>2<sup>nd</sup> CoC Meeting</i> – List of Creditors was updated based on the claims received up till 20.11.2019.
6.	19.12.2019	<i>3<sup>rd</sup> CoC Meeting</i> – The CoC had approved the conversion of those financial creditors from related parties to non-related party FC's with voting rights.
7.	08.01.2020	<i>4<sup>th</sup> CoC Meeting</i> - The CoC was reconstituted as per the decision taken during the 3 <sup>rd</sup> CoC. Decision as to seek extension of CIRP period for a period of 90 days from 08.02.2020 to 08.05.2020 was made.
8.	24.01.2020	An application in IA/(IBC)/170/(CHE)/2020 seeking 90 days CIRP period extension was filed.
9.	24.01.2020	<i>1<sup>st</sup> Expression of Interest (EoI)</i> was published in one "Indian Express" with last date of submission of Resolution Plan as 21.03.2020.
10.	29.01.2020	<i>5<sup>th</sup> CoC Meeting</i> – RFPR was approved.
11.	12.02.2020	Provisional List of eligible Resolution Applicants were sent to those RA's and the members of the CoC along with Information Memorandum.
12.	18.02.2020	<i>6<sup>th</sup> CoC Meeting</i> – Discussion about the Provisional List of Eligible Resolution Applicants were made. The RP had rejected the EoI submitted by Mr. Shankar & Ors. on the grounds that they were promoters and related parties to the promoter. Further that the CD, herein is not a MSME. Considering the Balance Sheet as on 31.03.2018 and 31.03.2019 which exceeded Rs.10.00 crores. As a result of which they were advised to furnish a Certificate from the Statutory Auditor of the CD to the effect that the CD is a MSME.
13.	19.12.2020	90 days extension of CIRP period was allowed by this Adjudicating Authority in IA/(IBC)/170/(CHE)/2020.
14.	21.02.2020	Final List of eligible Resolution Applicants were sent to those RA's and the members of the CoC along with Information Memorandum.



15.	03.03.2020	One Mr. Shankar & Mrs. Kavitha Shankar had filed two sperate application in IA(IBC)/267/(CHE)/2020 & IA(IBC)/268(CHE)/2020
16.	10.04.2020	7 <sup>th</sup> CoC Meeting – The Resolution Plan submitted by M/s. Saimirra Innopharm Pvt. Ltd. was taken into discussion. The said plan was not accepted by one of the Secured Financial Creditor. However, negotiations were made.
17.	27.04.2020	8 <sup>th</sup> CoC Meeting - Resolution as to issuance of EoI for the 2 <sup>nd</sup> time was passed with a majority of 51.96% by the CoC.
18.	06.05.2020	9 <sup>th</sup> CoC Meeting – Discussion on the Resolution Plan submitted by M/s. Saimirra Innopharm Pvt. Ltd. were made.
19.	21.05.2020	10 <sup>th</sup> CoC Meeting - The revised plan submitted by M/s. Saimirra Innopharm Pvt. Ltd. was discussed. Resolution as to issuance of EoI for the 2 <sup>nd</sup> time was passed with a majority of 82.09% by the CoC. Information Memorandum was modified.
20.	25.05.2020	The revised resolution plan submitted by Saimirra Innopharm and issuance of EoI for the 2 <sup>nd</sup> time was put to vote. As a outcome 51.91% rejected the revised plan and 71.91% resolved to issue EoI for the 2 <sup>nd</sup> time.
21.	01.06.2020	2 <sup>nd</sup> Expression of Interest (EoI) was published in Indian Express, Business Standard, Dinamani with last date of submission of Resolution Plan as 30.06.2020 and later extended to 21.08.2020.
22.	01.09.2020	11 <sup>th</sup> CoC Meeting- A withdrawal letter from one Mr. Martin, Financial Creditor was put to discussion. Discussion of the two Resolution Plan submitted by Saimirra Innopharm & Mr. Shankar were discussed. The plan submitted by Saimirra Innopharm was rejected and the plan submitted Mr. Shankar was asked to be revised.





23.	05.09.2020	Revised resolution plan was submitted by Mr. Shankar.
24.	07.09.2020	12 <sup>th</sup> CoC Meeting - Discussion on the revised resolution plan submitted by Mr. Shankar. E-voting of the same is fixed on 10.09.2020
25.	10.09.2020	The resolution Plan submitted by Mr. Shankar was approved with 66% vote.
26.	01.10.2020	The Applications in IA(IBC)/267/(CHE)/2020 & IA(IBC)/268(CHE)/2020 were withdrawn.
27.	02.10.2020	Application for Approval of Resolution Plan in IA(IBC)/772(CHE)/2020 was filed.

2.2 The dates and events post filing of the above referred IA(IBC)/772(CHE)/2020 is as tabulated hereunder,

S.No.	DATE	EVENTS
1.	20.10.2022	Directions were issued by this Adjudicating Authority in IA(IBC)/1034(CHE)/2021 which is a reconditioned version of IA(IBC)/772(CHE)/2020 with the Unsuccessful Resolution Applicant as the 2 <sup>nd</sup> Respondent. IA(IBC)/1034(CHE)/2021 was disposed of with directions to revise the plan amount considering the claims in IA(IBC)/818(CHE)/2021, IA(IBC)/819(CHE)/2021 and IA(IBC)/211(CHE)/2022. The IA in IA(IBC)/772(CHE)/2020 & IA(IBC)/1034(CHE)/2021 along with other connected IA's were disposed of with direction in IA(IBC)/1034(CHE)/2021 to file a fresh IA for approval for the revised resolution plan post approval of the CoC.
2.	03.11.2022	13 <sup>th</sup> CoC Meeting – Discussion with the SRA as to revise the resolution plan was made.
3.	15.11.2022	Mr. S Martine, a creditor has intimated vide email that he is withdrawing himself from the CoC.
4.	16.11.2022	14 <sup>th</sup> CoC Meeting - The CoC was reconstituted by dropping Mr. S. Martine and Mr. Shankar was



		advised to revise the plan accordingly as a consequence of withdrawal of Mr. Martine.
5.	22.11.2022	15 <sup>th</sup> CoC Meeting – The revised resolution plan submitted by the SRA was discussed. Few conditions mentioned in the plan relating to personal guarantee and adjustment of claim amount in the event of return of Martine was asked to be removed.
6.	24.11.2022	16 <sup>th</sup> CoC Meeting – Amended Resolution Plan was submitted by the SRA on 23.11.2022. Upon deliberations made, it was recommended by the CoC to put the same for e-voting on between 11:00 am on 26.11.2022 to 06:00 pm on 28.11.2022.
7.	29.11.2022	Scrutinizer Report - The Resolution Plan was approved with 76.60% Vote, 23.15% dissented and 0.26% abstained from voting.
8.	30.11.2022	17 <sup>th</sup> CoC Meeting - The e-voting result by way report was taken on record by the CoC.

### 3. RELATED PARTY

It is submitted by the Learned Senior Counsel for the Applicant, that the Resolution Applicant herein is a Suspended Director of the Corporate Debtor as such he is a related party. It is further submitted that the Corporate Debtor comes under the category of MSME Unit, for which the Udyog Aadhar Certificate (UAM – TN22C0010804) is placed on record as per the new regime. On perusal of the same, it is seen that the said certificate reflects the details of the previous registration in – 330211200235E, further an acknowledgement to that effect showing the earlier registration dated 21.02.2009 issued by the Department of Industries & Commerce, Government of Tamil Nadu is



also annexed. From which it is evident that the Corporate Debtor is a MSME even prior to commencement of Corporate Insolvency Resolution Process and that there is no such bar or ineligibility in terms of Section 29A (c) & (h) of the code. Therefore, the Resolution Applicant herein is eligible to submit this Resolution Plan.

**4. DELIBERATION OF THE COC ON THE FEASIBILITY OF THE PLAN:**

During the 15<sup>th</sup> CoC Meeting held on 22.11.2022 deliberations were made by the members of the CoC on the Resolution Plan submitted by the SRA and was decided to vote the same. Accordingly, the Resolution Plan was approved with 76.60% voting share during the 17<sup>th</sup> CoC Meeting. The table showing the voting result is as hereunder,

Sl.No.	Name of the Financial Creditor	Percentage of Voting Share among the total creditors	Voted in Favour	Voted Against	Abstained from E-voting
1	Rare Asset Reconstruction Ltd (ARC)	48.18%	48.18%	0.00%	0.00%
2	Piramal Capital & Housing Finance Ltd (Formerly DHFL)	23.15%	0.00%	23.15%	0.00%
3	Mr. K. R. Sundaresan	9.97%	9.97%	0.00%	0.00%
4	Garuda Med Equipments	10.22%	10.22%	0.00%	0.00%
5	Healthlum Medtech P Ltd	8.08%	8.08%	0.00%	0.00%
6	Dr.Sathyabama	0.06%	0.06%	0.00%	0.00%
7	Mr.J.Govindarajan	0.03%	0.03%	0.00%	0.00%
8	Mr.R.Sankar	0.06%	0.06%	0.00%	0.00%
9	Dr.C.S.Mani	0.13%	0.00%	0.00%	0.13%
10	Dr.Vimala	0.13%	0.00%	0.00%	0.13%
	<b>TOTAL</b>	<b>100.00%</b>	<b>76.60%</b>	<b>23.15%</b>	<b>0.26%</b>

**5. NATURE OF BUSINESS OF THE CORPORATE DEBTOR**

5.1 The executive summary of the Corporate Debtor is as hereunder,



Company name	PeekayMediequip Ltd. ("PML")
Listing Status	Not Listed
Constitution	Public Ltd. Company
Corporate Identification Number	U33112TN1995PLC032432
Incorporation Date	28 July 1995
Registered Office	131, Sengipatti Village, Trichy-Tanjore Main Road, Thirumalaisamudram Post, Tanjore-613 402. Thanjavur - 613402, Tamil Nadu
Corporate Office / Factory	Same as above
Business operations	Manufacture of hypodermic needles, syringes and intravenous sets (IV Sets).

5.2 Business of the Corporate Debtor - The Corporate Debtor, a MSME unit was the first in India to manufacture 3 ml syringes and had a wide distribution network throughout India, with concentration in South India. The manufacturing facilities are set up in a 4.5-acre site, with substantial imported machinery in its 69,000 Square feet (Approx.) built up factory, fully air conditioned, at Thirumalaisamudram Village, Thanjavur District. It is located off the Coimbatore-Nagapatnam highway (NH 67), and is 17 km from Thanjavur and about 60 km from Trichy airport. The factory is constructed as per the guidelines of the FDA. Machineries of the highest quality were used for Injection moulding, Printing & Assembling, packing and Sterilization. All the machines are fully automatic with very little manual intervention.

5.3 The solution for revival of the company lies in bringing down the level of debt to a sustainable level, increasing the equity





component to minimise interest burden, restarting the unit by infusion of fresh funds towards essential capex and working capital, which would kick-start the revival of the company.

## 6. SOURCE OF FUND

6.1 On perusal of clause 2.4 of the proposed resolution plan it is seen that the Successful Resolution Applicant, directly or through its supporting Investor/Financier, would, by way of interest-bearing unsecured loan (carrying 8% p.a. interest rate), infuse a sum of Rs. 5 Cr in the 1<sup>st</sup> year (would meet Capex requirement of Rs. 2 Cr and working capital requirement of Rs. 3 Cr,) and a further sum of Rs. 3 Cr in the 2<sup>nd</sup> year to meet the 2<sup>nd</sup> year's working capital requirement.

6.2 One Personal guarantor Mr. Ramanathan C, has given a letter of commitment that he proposes to invest upto Rs. 43 Cr through the Resolution Applicant. He proposes to initially bring Rs. 4 Crore within 30 days from the date of approval of the plan & next tranche of Rs. 4 crore within 90 days from the date of approval by way of sale of a land which is mentioned as item no. 8 in his Net worth Certificate as attached in Pg. no. 294 of the typeset filed along with the application.

6.3 However, to meet the requirements under the plan, the Resolution Applicant along with its supporting Investor/Financier, shall further infuse, within 30 – 90 days from the date of approval of



the plan, a sum of Rs. 9.69 Cr by way of equity infusion, and further by way of unsecured loan for payment to financial creditors, operational creditors/ workmen and employee dues, and also towards working capital, in order to re-start operations of the corporate Debtor.

6.4 The table staging the infusion of funds along with the timeline and source of funds thereof is as extracted hereunder,

Table - 1

**Funds Infusion (external)**

(Rs lakh)

Sl No	Particulars	Amount to be infused	Timeline(w.e.f. date of approval of Resolution Plan by NCLT)					
			30 days	90 days	91 days to 1 yr	2nd Yr	3rd Yr	4th Yr
1	Equity share capital	969.13		969.13				
2	Equity Conversion from Unsecured loan	158.19	158.19					
3	Unsecured loan	1892.90	527.90	220.00	495.00	650.00		
4	Surplus from business	1426.86					713.43	713.43
	<b>TOTAL</b>	<b>4447.08</b>	<b>686.09</b>	<b>1189.13</b>	<b>495.00</b>	<b>650.00</b>	<b>713.43</b>	<b>713.43</b>

Note: Balance fund requirements would be met by surplus from operations of the company.

The above extracted Table-1 brings out the total infusion as proposed in the plan, it is seen that the infusion by way of equity share capital is to the tune of 969.13 Lakh, which is S.no. 1 & 2 put together in table 2. Further, the unsecured loan as mentioned in table 1 is also made out to be brought in by one investor over a period of two years which is also clear from Table -2 attached below,

Table - 2

**Source of funds**

(Rs lakh)

Sl No.	Particulars	Amount to be infused
1	Equity share capital – Mr G. Shankar (Resolution Applicant)	460.90
2	Equity share capital Supporting Investor/Financier	508.22
3	Unsecured loan (Supporting Investor / Financier)- over 2 years	1892.90
	<b>TOTAL</b>	<b>2862.02</b>



6.5 On combined perusal of the timeline for implementation as tabulated at Pg. No. 248 in the Resolution Plan and the Funds Infusion Table (Table – 1 above), it is seen that the SRA proposes to pay Rs. 1,686.45/- Lakh in the 1<sup>st</sup> year and that the external infusion shall be to the tune of Rs. 2,370.22/- Lakh during the 1<sup>st</sup> year. And that for the 2<sup>nd</sup> year the outflow is to the tune of Rs. 907.71/- Lakh while the infusion from day 1 of the approval of the plan until 2<sup>nd</sup> year shall be 3,020.22/- Lakh. Further, The SRA has already submitted a Demand Draft Vide DD No. 503963 dated 21.08.2020 for a sum of Rs. 25 Lakh towards EMD and thereafter, a performance of guarantee to the tune of Rs. 50 Lakh was also given.

6.6 Further, the Successful Resolution Applicant, had entered into an understanding with Supporting Investor (Smithonics Corporation FZE, Sharjah, UAE) for obtaining 2 million USD towards facilitation for payment of liabilities and taking over of the Corporate Debtor. On perusal of the said letter it is seen that the letter says, post satisfactory due diligence, they will take equity investment in the CD.

## 7. DETAILS OF THE SRA

The Resolution Applicant Mr. G. Shankar, is the Ex-Promoter of the Corporate Debtor, who has co-founded the Corporate Debtor during 1995. The SRA has proven results for two decades in the business of



the Corporate Debtor and thus has sufficient years of experience to continue the business of the Corporate Debtor.

## 8. SALIENT FEATURES OF THE RESOLUTION PLAN

8.1 The solution for revival of the company lies in bringing down the level of debt to a sustainable level, coupled with restarting and growing the business by infusion of necessary funds for capex and working capital. Considering the current and projected market scenario, very high demand is expected for the company's medical products. With sound financial funding arrangement, and the induction of suitably qualified and experienced personnel together with efficient management of affairs, the company is expected to generate satisfactory performance.

8.2 The Resolution Applicant, along with supporting investor/financier shall infuse funds in the CD by way of equity within 30 – 90 days of NCLT approval, simultaneously with the down payment to various creditors under the Resolution Plan. The New Board, which would also have a representative from the Investor/financier, would also be constituted simultaneously for speedy pay-out.

8.3 Moreover, since the SRA is the Ex-director of the Corporate Debtor the Company will be in a better position in taking up projects.

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## 9. PAY-OUT TO STAKEHOLDERS AS PROPOSER IN THE PLAN

9.1 The SRA has proposed to pay the sum as tabulated against the admitted amount by virtue of the plan proposed, the table as tabulated in Form -H is as extracted hereunder,

7. The amounts provided for the stakeholders under the Resolution Plan are as under:

**PLAN BY Mr. SHANKAR. G**

(Amount - Rs. in lakhs)

Sl. No.	Category of Stakeholder*	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
1	Secured Financial Creditors-Rare Asset	3827.08	3,827.08	1,767.23	46.18%
2	Unsecured Financial Creditors – Unsecured Not Related	2119.77	2,115.86		
	Less: FC withdrawn Voluntarily from CIRP	1,291.28	1,291.28		
	Unsecured Financial Creditors (NET) – Unsecured Not Related	828.49	824.58	364.27	43.97%
3	Unsecured Financial Creditors-Institution Garud & Health	1453.18	1,453.18	641.97	44.18%
4	Unsecured Financial Creditor – Institution DHFL	2041.46	1,839.21	812.49	39.80%
5	Unsecured Financial creditor- Related Parties	1140.44	1,050.19	0	0%
6	Operational Creditor – Non-Statutory (7 OC & Delvin)	1210.51	886.14	336.73	27.82%
7	Operational Creditor – workmen and employees	814.19	157.60	110.43	13.56%
8	Form B - Statutory Dues				
9	PF Dues, pension, gratuity	112.85	112.85	112.85	100.00%

For PEEKAY MEDIEQUIP LIMITED

## 9.2 PAYMENT TERMS AS ELUCIDATED IN THE RESOLUTION PLAN

The Resolution Applicant by way of the present resolution plan intends to pay the creditors of all categories (barring related parties) in the following payment terms,

### 9.2.1 PAYMENT TERMS FOR SECURED FINANCIAL CREDITORS:

#### 2.2.1 Secured Financial Creditors

(Rs lakh)

Sl. No.	Nature of Financial Debt	Amt. Admitted	Settlement amount (%)	Settlement amount (Rs lakh)	Payment terms (w.e.f. date of NCLT approval)
1.	Secured Loans (Not related party) – Rare Asset Reconstruction Ltd.	3827.08	46.18%*	1767.23	<ul style="list-style-type: none"> <li>Down Payment 15% of settlement amount within 90 days of NCLT approval (comprising 7.5% within 30 days and 7.5% within 90 days);</li> <li>Balance payable in 15 equal quarterly installments each of 5.667% of the settlement amount, commencing 6th month from the date of NCLT approval;</li> <li>Total payment period: 4 years</li> <li>Interest payable at 6% p.a. on reducing balance of the settlement amount, first interest falling due at end of 1 year from NCLT approval, and quarterly thereafter.</li> </ul>

The financial creditors, who do not vote in favour of the Scheme, will be provided an amount which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor, in priority to payment to assenting financial creditors (i.e. dissenting financial creditors will be paid the amount due to them based on liquidation of the company) within 2 years of NCLT approval (as against 3 years payment schedule for unsecured financial creditors and 4 years payment schedule for secured financial creditors).



## 9.2.2 PAYMENT TERMS FOR UNSECURED FINANCIAL CREDITORS:

### 2.2.2 Unsecured Financial Creditors (Unrelated Parties to Corporate Debtor – Non Institutional)

(Rs lakh)

Sl. No.	Nature of Financial Debt	Amt. Admitted	Settlement amount (%)	Settlement amount (Rs lakh)	Payment terms (w.e.f. date of NCLT approval)
1.	Unsecured Loans (Not related parties)	2277.76*	39.18%* (cash) + 5% (Equity)	1006.24*	<ul style="list-style-type: none"> <li>Crystallized settlement amount is 44.18% of admitted amount. Of this 5% converted into NEW equity and balance 33% remains as loan.</li> <li>Down Payment 15% of loan portion of settlement amount (comprising 7.5% payable within 30 days and 7.5% within 90 days) and entire equity portion also converted into new equity within 90 days of NCLT approval;</li> <li>Balance loan portion payable in 15 equal quarterly installments each of 5.667% of the settlement amount, commencing 6th month from the date of NCLT approval;</li> <li>Total payment period: 4 years</li> <li>Interest payable at 5% p.a. on reducing balance of the settlement amount, first interest falling due at end of 1 year from NCLT approval, and quarterly thereafter.</li> </ul>

\* Since Mr. S. Martin withdrawn himself as Financial Creditor and expressed his desire to pursue his dues from SBI and intimated to the RP and the CoC about the above decision by email first on 19.08.2020 and reiterated by the second Email on 15.11.2022, the admitted claim of Mr. S. Martin is reduced in the total claim. As decided in the 14th meeting of the CoC., the settlement proposed to Mr. S. Martin, is redistributed to the other Financial Creditors (both Secured and Unsecured) thereby increasing the settlement percentage from 38% to 44.18% to unsecured Financial Creditors and from 40% to 46.18% to secured financial creditors.

List of the above parties is as under:

Unsecured Financial Creditors - Unrelated Parties (Non-Institutional)	Admitted claims (Rs lakh)
J.Govindarajan	2.40
K.R.Sundaresan	792.18
Garuda Med equipment's	811.58
HelthiumMeditech P Ltd	641.60
Dr.C.S.Mani	10.00
Dr.Vimala	10.00
R.Shankar	5.00
Dr.Sathayabama	5.00
<b>TOTAL</b>	<b>2277.76</b>

### 2.2.3 Unsecured Financial Creditors (Unrelated Parties to Corporate Debtor – Institutional)

(Rs lakh)

Sl. No.	Nature of Financial Debt	Amt. Admitted	Settlement amount (%)	Settlement amount (Rs lakh)	Payment terms (w.e.f. date of NCLT approval)
1.	Unsecured Loans (Not related parties) – (Presently Piramal Capital & Housing Finance Ltd – Formerly known as DHFL)	1839.21	44.18%*	812.49	<ul style="list-style-type: none"> <li>Down Payment 15% of settlement amount within 90 days of NCLT approval (comprising 7.5% within 30 days and 7.5% within 90 days);</li> <li>Balance payable in 15 equal quarterly installments each of 5.667% of the settlement amount, commencing 6th month from the date of NCLT approval;</li> <li>Total payment period: 4 years</li> <li>Interest payable at 6% p.a. on reducing balance of the settlement amount, first interest falling due at end of 1 year from NCLT approval, and quarterly thereafter.</li> </ul>



## 9.2.3 PAYMENT TERMS FOR UNSECURED FINANCIAL CREDITORS (RELATED PARTY):

### 2.2.4 Unsecured Financial Creditors (Related Parties to Corporate Debtor)

(Rs lakh)

Sl. No.	Nature of Financial Debt	Amt. Admitted	Settlement amount (%)	Settlement amount (Rs lakh)	Payment terms (w.e.f. date of NCLT approval)
1.	Unsecured Financial Creditors (Related Parties to Corporate Debtor)	1050.19	0%	Nil	Nil amount is allocated to these parties and all their claims as on the Insolvency Commencement date are extinguished.

List of the above parties is as under:

Unsecured Financial Creditors (Related Parties)	Admitted claim (Rs lakh)
Kavitha Shankar	783.56
G Shankar	12.63
DrRadha Krishnan	17.29
Dr G Rajarajeswari	192.64
A T Ganapathi	44.08
<b>Total</b>	<b>1,050.19</b>

## 9.2.4 PAYMENT TERMS FOR OPERATIONAL CREDITORS:

### 2.2.5 Operational Creditors (Statutory-Category 1 - PF, Pension, Gratuity, ESIC)

(Rs lakh)

Sl. No.	Party	Amt. Admitted	Settlement amount (%)	Settlement amount (Rs lakh)	Payment terms (w.e.f. date of NCLT approval)
1.	EPF Commissioner, Thanjavur	112.85	100%	112.85	<ul style="list-style-type: none"> <li>Being PF liability, 100% of settlement amount being paid;</li> <li>Down Payment 50% of settlement amount within 90 days of NCLT approval (comprising 7.5% within 30 days and 42.5% within 90 days);</li> <li>Balance 50% payable at the end of 1 year from the date of NCLT approval.</li> <li>Nil interest during settlement period.</li> </ul>

### 2.2.6 Operational Creditors (Statutory-Category 2 - Residual)

@As per the original Resolution plan amount admitted was Rs 33.65 Lakhs of which 38% amounting to Rs 12.79 lakhs was the settlement amount arrived at. As per the order of NCLT held on 20.10.2022 the Resolution applicant has accepted the additional claim of Rs 5.50 Lakhs. The Revised settlement amount is given below

(Rs lakh)

Sl. No.	Party	Amt. Admitted	Settlement amount (%)	Settlement amount (Rs lakh)	Payment terms (w.e.f. date of NCLT approval)
1.	Assistant Commissioner (ST), Thanjavur - II: VAT & CST Payable	39.15@	38%	14.88@	<ul style="list-style-type: none"> <li>Down Payment 15% of settlement amount within 90 days of NCLT approval (comprising 7.5% within 30 days and 7.5% within 90 days);</li> <li>Balance payable in 11equal quarterly instalments each of 7.727% of the settlement amount, commencing 6th month from the date of NCLT approval;</li> <li>Total payment period: 3 years</li> <li>Interest payable at 5% p.a. on reducing balance of the settlement amount, first interest falling due at end of 1 year from NCLT approval, and quarterly thereafter.</li> </ul>
2.	Asst. Commissioner of Customs, EPCG EODC, Chennai: DGFT dues	219.04	38%	83.23	-do-
	<b>TOTAL</b>	<b>258.19</b>		<b>98.11</b>	

2.2.7 Operational Creditors (other than Statutory)

(Rs lakh)

Sl. No.	Party	Amt. Admitted	Settlement amount (%)	Settlement amount (Rs lakh)	Payment terms (w.e.f. date of NCLT approval)
1.	Operational Creditors (other than Statutory)	25.11	33% (cash) + 5% (Equity)	9.54	<ul style="list-style-type: none"> <li>Crystallised settlement amount is 38% of admitted amount. Of this 5% converted into NEW equity and balance 33% remains as loan.</li> <li>Down Payment 15% of loan</li> </ul>

					<p>portion of settlement amount (comprising 7.5% payable within 30 days and 7.5% within 90 days) and entire equity portion also converted into new equity within 90 days of NCLT approval;</p> <ul style="list-style-type: none"> <li>Balance loan portion payable in 11 equal quarterly instalments each of 7.727% of the settlement amount, commencing 6th month from the date of NCLT approval;</li> <li>Total payment period: 3 years</li> <li>Interest payable at 5% p.a. on reducing balance of the settlement amount, first interest falling due at end of 1 year from NCLT approval, and quarterly thereafter.</li> </ul>
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List of the above parties is as under:

OCs (Non-Statutory)	Amount Admitted (Rs Lakh)
Prakash Parcel Service Limited	5.49
Shree Annapoorna Traders K.Vadivelan Prop.	11.33
Sri Vedha Enterprises	0.87
G.V Industrial Heaters	0.21
M Anwar Shariff	1.27
Aishwarya Agencies	0.95
Carcass Beauty Products	5.00
<b>Total</b>	<b>25.11</b>

2.2.8 Operational Creditors (other than Statutory -Under Litigation-)

@As per the original Resolution plan amount admitted was Rs 814.11 Lakhs of which 38% amounting to Rs 309.36 lakhs was the settlement amount arrived at. As per the order of NCLT held on 20.10.2022 the Resolution applicant has accepted the additional claim of Rs 46.72 Lakhs towards interest for the balance period. The Revised settlement amount is given below

Sl. No.	Party	Amt. Likely to get admitted	Settlement amount (%)	Settlement amount (Rs lakh)	Payment terms (w.e.f. date of NCLT approval)
1.	Delvin Formulations Pvt. Ltd.	369.55@	33% (cash) + 5% (Equity)	140.43@	<ul style="list-style-type: none"> <li>Crystallised settlement amount is 38% of admitted amount. Of this 5% converted into NEW equity and balance 33% remains as loan.</li> <li>Down Payment 15% of loan portion of settlement amount (comprising 7.5% payable within 30 days and 7.5% within 90 days) and entire equity portion also converted into new equity within 90 days of NCLT approval;</li> <li>Balance loan portion payable in 11 equal quarterly instalments each of 7.727% of the settlement amount, commencing 6th month from the date of NCLT approval;</li> <li>Total payment period: 3 years</li> <li>Interest payable at 5% p.a. on reducing balance of the settlement amount, first interest falling due at end of 1 year from NCLT approval, and quarterly thereafter.</li> </ul>
2.	Delvin Surgicals Pvt Ltd.	491.48@	33% (cash) + 5% (Equity)	186.76@	-do-
	<b>Total</b>	<b>861.03@</b>		<b>327.19@</b>	



## 9.2.5 PAYMENT TERMS FOR WORKMEN/EMPLOYEE DUES:

### 2.2.9 Workmen / Employee dues

(Rs lakh)

Sl. No.	Workmen / Employee @	Amt. Admitted	Settlement amount (%)	Settlement amount (Rs lakh)	Payment terms (w.e.f. date of NCLT approval)
1.	5 persons – Direct claim	23.86	100%	23.86	<ul style="list-style-type: none"> <li>• 25% within 90 days of NCLT approval (comprising 7.5% payable within 30 days and 17.5% within 90 days)</li> <li>• Balance 75% within 1 year</li> </ul>

					of NCLT approval
					• Nil interest payable during settlement period.
2.	130 persons – Salary – Group claim	41.34	100%	41.34	-do-
3.	130 persons – Gratuity – Group claim	45.23	100%	45.23	-do-
	<b>TOTAL</b>	<b>110.43</b>		<b>110.43</b>	

@ Detailed list given in Information Memorandum

# Comprises Resolution Applicant, related parties and others, as under:

Name	Whether Resolution Applicant / Related party	Amount Admitted (Rs lakh)
G Shankar	Resolution Applicant	-
Kavitha Shankar	Related party	-
V SenthilMurugan	Not related	2.18
J Govindarajan	Not related	6.59
B Shivaguru	Not related	15.09
<b>Total Amount</b>		<b>23.86</b>

## 10. MANAGEMENT OF THE CORPORATE DEBTOR

The term of the Plan is 4 years, during which all payments would be made to the creditors as proposed in the Scheme.

### 10.1 Board of Directors and Management team:

10.1.1 The erstwhile directors (Mr G. Shankar and Mrs Kavitha Shankar), who are eligible Resolution Applicants in view of MSME categorisation of the CD, would also be directors after approval of the Resolution Plan, along with a director from the Investor/ Financier, as also one director from the Secured financial creditor, besides Independent Directors). On full payment of all creditors under the



plan, the secured financial creditor would withdraw their nominee from the board.

10.1.2 The Resolution Applicant, Mr G. Shankar would be the Managing Director, who would be supported by a CEO (to be appointed) and senior management personnel, many of whom were in the employment of the CD earlier, besides suitable supporting staff. The Resolution Applicant, Mr G. Shankar, will be involved full time in the business of the CD.

10.1.3 The Resolution Applicant / Management Team will ensure that the resolution plan shall be implemented in accordance with the compliance of all applicable laws and regulations governing the terms and conditions of this resolution plan and shall not contravene any of the provisions of the law for the time being in force.

## 11. IMPLEMENTATION & MONITORING COMMITTEE (IMC)

11.1 Implementation & Monitoring Committee shall be constituted to monitor the implementation of the Resolution Plan.

The members shall comprise -

1. Mr. Raghavendran, Resolution Professional
2. A Representative of the Secured Financial Creditor (Rare ARC)
3. Mr. Shankar Ganapathy - Representing Resolution Applicant
4. A Representative of Unsecured Financial Creditors

11.2 The IMC shall continue at least till all payments under the Resolution plan, excluding those to financial creditors i.e.3 years, are



fully paid off, and will continue thereafter only if desired by the Secured Financial Creditor. However, the members of the IMC may change while ensuring at least one independent Member; the change to be decided by majority voting.

11.3 The Implementation and Monitoring Committee shall be constituted within 30 days from the approval of resolution plan by NCLT. Pending formation of this Committee, it is proposed that existing Resolution Professional will continue to run / manage the company, as per the practice during the CIRP period. The Implementation and Monitoring Committee and the new Board shall be responsible for operating the Corporate Debtor as a going concern.

## 12. MANDATORY COMPLIANCES UNDER IBC & REGULATIONS

From the averments made in the application as well as on perusal of 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

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under the IBC and the Compliance made under the Resolution Plan is as hereunder,

MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS	COMPLIANCE UNDER RESOLUTION PLAN
<u>S.30(2)(a)</u> - Payment of Insolvency and Resolution cost in the manner specified by the Board	Clause 2.1 & 3 of the Resolution Plan along with undertaking at Pg. 270.
<u>S.30(2)(b)</u> - Payment of debts of Operational Creditors in such manner as may be specified by the Board, which shall not be less than the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under Sec. 53	Clause 2.1 of the Resolution Plan at Pg. 229,230 & 241.
<u>S.30(2)(f)</u> - Conforms to such other requirements as may be specified by the Board.	Clause 2.1 of the Resolution Plan at Pg. 231.
<u>Reg.38(1)</u> -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 2.1 of the Resolution Plan at Pg. 233. Operational creditors are proposed to be paid their crystallised amount(s) within 3 years of approval of the Resolution Plan by NCLT, as against 4 years payment schedule for Financial Creditors.
<u>Reg.38(1A)</u> -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 2.1 of the Resolution Plan at Pg. 233 & 234  Clause 7 of the Resolution Plan between pg. 255 to 259.
<u>S. 30(2)(c)</u> -Management of the affairs of the Corporate Debtor after approval of the Resolution Plan	Clause 5.1 and 5.2.3.6 of the Resolution Plan.
<u>S.30(2)(d)</u> -Implementation & Supervision of the Resolution Plan and  <u>Reg. 38(2)</u> – 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	Clause 2.1 & 4.1 of the Resolution Plan  Clause 2.2.1 – 2.2.9, Clause 4.3 & 7 of the Resolution Plan  Clause 2.1 & 4 of the Resolution Plan  Clause 4.2 of the Resolution Plan



required and the timeline for the same; and  e) the Resolution applicant has the capability to implement the Resolution Plan.	Clause 2.1 & 8 of the Resolution Plan   Clause 6 of the Resolution Plan
<u>Reg.38(3)</u> -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	Clause 2.1 & 5.1 of the Resolution Plan  Clause 5 of the Resolution Plan  Clause 4.2 of the Resolution Plan  Clause 2.1 & 8 of the Resolution Plan  Clause 6 of the Resolution Plan
<u>S. 30(2)(e)</u> -Does not contravene any of the provisions of the law for the time being in force	Clause 2.1 of the Resolution Plan
<u>S. 30(4)</u> -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	The CoC, in its 17 <sup>th</sup> meeting has approved the Resolution Plan with 76.60% vote.

**13. JUDICIAL PRONOUNCEMENTS OF THE HON'BLE SUPREME COURT IN RELATION TO APPROVAL OF A RESOLUTION PLAN**

13.1 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.”

13.2 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 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)*.

13.3 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 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)

13.4 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)



13.5 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.*

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 maximization 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 maximization 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 maximization of the value of assets or not. The generalised submissions and objections made in relation to this aspect of value maximisation do not, by themselves, make out a case of interference in the decision taken by the Committee of Creditors in its commercial wisdom

78. To put in a nutshell, the Adjudicating Authority has limited jurisdiction in the matter of approval of a resolution plan, which is well defined and circumscribed by Sections 30(2) and 31 of the Code read with the parameters delineated by this Court in the decisions above referred. The jurisdiction of the Appellate Authority is also circumscribed by the limited grounds of appeal provided in Section 61 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by the CoC. Within its limited jurisdiction, if the Adjudicating Authority or the Appellate Authority, as the case may be, would find any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by Code and exposted by this Court.

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

**14. RELIEF & CONCESSIONS:**

The Resolution Applicant has sought for various waivers and Concessions in Clause 9 of the Resolution Plan, which are as follows,

SL. No.	RELIEF / CONCESSIONS SOUGHT FOR	ORDERS THEREON
1.	The Approval of the Scheme by NCLT shall be treated as an order to provide the requisite electrical power connection by the TANGEDCO to the CD to restart the operations (in case the power connections have been disconnected)	<b>Appropriate authorities to consider keeping in view the object of IBC, 2016</b>
2.	Permission to Modify/construct/furnish/expand the construction in the properties under the Corporate Debtor, subject to compliance of applicable guidelines.	<b>Granted, Subject to fresh induction of funds over &amp; above the approved resolution plan.</b>
3.	The RA/ CD shall retain the right for selling, transferring, merging, demerging, restructuring or encumbering, in any manner, any asset of the Corporate Debtor or any of its direct and indirect subsidiaries or affiliates, subject to approval of secured financial creditors, where necessary, with –	<b>Granted, subject to the provisions of IBC, 2016 and other Applicable laws</b>

✓



	<p>i. Waiver of transfer fees, if any, payable; and</p> <p>ii. from the requirement of availing a prior consent/approval, if any, from any governmental or regulatory authorities,</p> <p>with respect to lease hold/ mortgaged properties if approval of this Scheme is tantamount to a change in ownership of the Company.</p>	<b>Not Granted</b>
4.	GST and Stamp duty on the sale of properties, to be waived	<b>Not Granted</b>
5.	Outstanding dues, if any, with the DISTCOM of the Corporate debtor to be waived (save as except as provided under the Scheme).	<b>Not Granted</b>
6.	To be provided by the water authorities to sustain the operations of the CD	<b>Appropriate authorities to consider keeping in view the object of IBC, 2016</b>
7.	To issue Consent to Operate by the pollution authorities to sustain the operations of the CD within 30 days of receipt of application from the Corporate Debtor.	<b>Appropriate authorities to consider keeping in view the object of IBC, 2016</b>
8.	In case of non-maintenance of requisite records by the Corporate Debtor, which has resulted in lapsing/ineligibility of the said benefits, under the new GST regime, benefits to be available on retrospective basis / reinstated, without fees / penalties.	<b>Appropriate authorities to consider keeping in view the object of IBC, 2016</b>
9.	<p>a) Central / State Government Departments / Local Bodies to Renew / Issue Fresh licenses/ permissions / approvals on application of the same within 30 days of the Application.</p> <p>b) Temporary License shall be granted / provided to operate the Business / Factory Operations within 7 days of application for the Interim Period if required.</p> <p>The above approvals to be granted notwithstanding existence of any condition -</p> <p>i. restricting change in control of the Company or change in shareholding pattern or similar conditions; or</p> <p>ii. restraining any action envisaged under the Scheme; or</p> <p>iii. requiring permission or no objection of the respective authorities or grantors of the Licenses / approvals for any of the aforesaid,</p>	<b>Appropriate authorities to consider keeping in view the object of IBC, 2016</b>



	and the said conditions shall be waived.	
10.	<p>a) Six (6) months grace period (from the date of NCLT approval) to be provided to the Corporate Debtor to comply with the provisions of the various Acts / Regulations, to enable Corporate Debtor to ascertain the status of various compliances and take necessary steps to regularize the same.</p> <p>b) During grace period, no additional charges/ fees etc to be charged including on account of Interest, Penal Interest, Penalty, Interest on Penalty, any kind of Late Fee or Damages.</p>	<b>Granted, subject to the provisions of IBC, 2016 and other Applicable laws</b>
11.	Any onerous contract made by the Corporate Debtor subsisting before the approval of the Scheme shall be duly extinguished and be ineffective.	<b>Not Granted</b>
12.	As on the insolvency commencement date, all outstanding negotiable instruments, issued by Corporate Debtor or any other person on behalf of Corporate Debtor shall stand terminated and no liability shall arise on the same.	<b>Granted, subject to the provisions of IBC, 2016 and other Applicable laws</b>
13.	All creditors of the Corporate Debtor to withdraw all legal proceedings commenced against the Corporate Debtor in relation to claims, including without limitation all criminal proceedings, proceedings under section 138 of the Negotiable Instruments Act, 1881 and proceedings under SARFAESI and RDDBFI, within 60 (sixty) days of the approval date and not undertake or omit to take any action which precipitates the proceedings against the Corporate Debtor.	<b>Granted, subject 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. However, no immunity is granted for criminal liabilities. If any.</b>
14.	All the power of attorneys provided to any person by the Corporate Debtor stands revoked with effect from the date of NCLT approval.	<b>Granted</b>
15.	Approval of Scheme by NCLT will be treated as waiver of the requirements of the Valuation of Pricing of Shares by Registered Valuer to be computed for Issuance of Equity Shares through Preferential Allotment / Warrants / Preference Shares / Convertible Debentures to RA as well as Investors for a period of 36 Months. The request for such waiver is due to the fact that current valuation of the Company on the basis of Book Value or Net Assets	<b>Granted, in terms of the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra and Sons v.</b>



	Value Basis Realizable Valuation of Assets adjusted to Current Liabilities or Discounted Cash Flow of the Business will be “Negative”, whereas the RA is paying revised Face Value considering the Future Potential of the Business.	<b>Edelweiss Asset Reconstruction Company Limited.</b> 2021 SCC Online SC 313
16.	Approval of the Scheme will be treated as Waiver Approval by NCLT for any past liabilities, penalties and any form of payment by way of Late Fees, Damages etc which occurred or become due because of any non-compliances related to the below stated Acts from Commencement of Insolvency Process till 6 months from the Date of the NCLT Approval of Proposed Scheme as it will provide Resolution Applicant, the time period to review the current compliance status of the Corporate Debtor under these Acts, Rules and regulations in terms of Compliances and action to be taken in this regard. The stated list is inclusive but not exhaustive of – <ul style="list-style-type: none"> <li>• The Companies Act, 1956 (the Act) and the Rules made there under;</li> <li>• The Companies Act, 2013 (the Act) and the Rules made there under; <ul style="list-style-type: none"> <li>• Foreign Exchange Management Act, 1999 and the Rules and Regulations made there under to the extent of Overseas Direct Investment (if any);</li> </ul> </li> </ul>	<b>Granted, in terms of the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</b> 2021 SCC Online SC 313
17.	Approval of the Scheme will be treated as Waiver Approval from past Liabilities, Payments of Fees and all Dues including any Penalties as well as any form of payment by way of Interest, Late Fees, Damages etc, related to all Government Authorities with regard to non-compliances of various Statutes to be adhered related to Consent, Fees, Certification etc. by the Corporate Debtor prior to the Effective Date which is inclusive but not exhaustive of – <ul style="list-style-type: none"> <li>• Factories Act, 1948</li> <li>• Industrial Disputes Act, 1947</li> <li>• Payment of Wages Act, 1936</li> <li>• The Minimum Wages Act, 1948</li> <li>• The Employees State Insurance Act, 1948</li> <li>• The Employees Provident Fund and Miscellaneous Provisions Act, 1952</li> <li>• The Bonus Act, 1965</li> </ul>	<b>Granted, in terms of the judgment of the Hon'ble Supreme Court in Ghanashyam</b>

*h*



	<ul style="list-style-type: none"> <li>• The Payment of Gratuity Act, 1972</li> <li>• Legal Metrology Act, 2009</li> <li>• Negotiable Instruments Act, 1881</li> <li>• Environment (Protection) Act, 1986</li> <li>• Water (Prevention and Control of Pollution) Act, 1981</li> <li>• Air (Prevention and Control of Pollution) Act, 1974</li> <li>• Hazardous Waste (Management and handling) Rules, 1989</li> <li>• State Fire Safety Act</li> <li>• The MSME Act</li> <li>• Electricity Act, 2003</li> <li>• Trademarks Act, 1999</li> </ul> <p>The Waiver also includes any dues relating to Interest, Penal Interest, Penalty, Interest on Penalty, any kind of Late Fee as well as Damages.</p>	<p><b>Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</b> 2021 SCC Online SC 313</p>
18.	Approval of the Scheme will be treated as Waiver by NCLT for any liability (includes Tax, MAT, interest, fine, penalty etc) on Corporate Debtor/ RA on account of various actions proposed in the Approved Resolution Plan including but not limited to liabilities, if any, under Sec 56, Sec 43, Sec 28, Sec 115JB and Section 79 of the Income Tax Act, 1961, and also to not lead to lapse of brought forward losses of the Corporate Debtor.	<p><b>This is for the CBDT &amp; the other appropriate authorities to consider keeping in view the object of IBC, 2016</b></p>
19.	The CBDT shall grant exemption/waiver from treating any transaction contemplated in this plan as being void or non-compliant with any provisions of the Income-tax Act, 1961.	<p><b>Appropriate authorities to consider keeping in view the object of IBC, 2016</b></p>
20.	Approval of the Scheme will be treated as Approval by NCLT that claims of government authorities, in relation of all taxes etc. for period pertaining prior to the insolvency commencement date and till the date of NCLT orders, shall stand extinguished and ineffective, except to the extent provided for under the Scheme.	<p><b>Appropriate authorities to consider keeping in view the object of IBC, 2016</b></p>
21.	Approval of the Scheme will be treated as immunity from all inquiries, investigations, notices, causes of action, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings against, the Company or the	<p><b>Not Granted, as SRA</b></p>



	affairs of the Company, pending or threatened, present or future, in relation to any period prior to the acquisition of control by the Resolution Applicant over the Company as contemplated in the Scheme.	<b>was a Promoter of the Corporate Debtor.</b>
22.	<p>Approval of this Scheme will imply that all proceedings against the Company by any operational or other creditor in any court of law / forum / panel of arbitrators or any other adjudicating authority in India or elsewhere shall be deemed to be addressed as per the Terms of the Scheme, including the waivers / sacrifices/ settlement(s) mentioned in the Scheme. No fresh / further proceedings can be commenced against the Company for any cause of action occurring after the Insolvency Commencement date, on or before the date of approval of the Scheme.</p> <p>However, any regular costs incurred after the Insolvency Commencement date which have not been paid, will be repaid as per usual commercial practice, and such liability will not be treated as extinguished.</p>	<b>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</b>
23.	Approval of the Scheme will be treated as Specific Order and Approval by NCLT that any contract subsisting with respect to Workmen contractual labour before the approval of the Scheme shall be duly extinguished and be ineffective.	<b>Granted, subject to the provisions of IBC, 2016 and other Applicable laws</b>
24.	<p>It is to be noted that Post approval of the Scheme by the NCLT, the RA/ Management / New Shareholders by virtue of the Approved Scheme will have no obligation or any liability towards the earlier promoters, except as provided under the Scheme.</p> <p>It is to be noted that the recourse against the Personal or Corporate Guarantees shall be free from any subrogation rights of the Guarantors. This arrangement in relation to the Personal or Corporate Guarantees relies that it shall in no way or manner permit the Guarantors to claim any right of subrogation, indemnity, security, recompense or any Claim of whatsoever nature (whether under contract, equity or Applicable Law) against the Corporate Debtor or the RA, and all such rights and obligations stand irrevocably and unconditionally extinguished in perpetuity.</p>	<b>Granted, subject to the provisions of IBC, 2016 and other Applicable laws</b>
25.	Upon payment to statutory authorities as	



	proposed under the plan, no further amounts will become due and payable by the CD after the plan is approved by NCLT. These Authorities will be required to drop all proceedings against the company upon approval of the plan by NCLT.	<b>Granted, subject to the provisions of IBC, 2016 and other Applicable laws</b>
26.	Corporate Debtor shall not be required to obtain any further approvals from the respective authorities and shareholders for compliance to provisions under Companies Act and SEBI Regulations as also RBI guidelines, if applicable, in respect of any action including reduction of Existing Equity Share Capital, Issue of Fresh Equity Share Capital and / or for consolidation of face value of reduced share capital (if required) under the Scheme.	<b>Granted, subject to the provisions of IBC, 2016 and other Applicable laws</b>
27.	Existing pre-qualifications of the Corporate Debtor to continue to be valid.	<b>Granted, subject to the provisions of IBC, 2016 and other Applicable laws</b>
28.	The Corporate Debtor shall be removed from any negative list/ black list with any authority	<b>Relief is vague. Not Granted.</b>

15. The Applicant has filed Form -H in accordance with the IBBI (CIRP Regulations, 2016) along with this Application and the same is placed along with the application. Further, it is observed from Form-H that the amount proposed in the plan is much higher than the Liquidation Value of the Corporate Debtor. The fair value and the Liquidation Value as mentioned in Form-H is as mentioned hereunder,

1.	<i>Fair Value</i>	Rs. 16,79,87,000/-
2.	<i>Liquidation Value</i>	Rs. 11,97,46,000/-

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 application under Section 66 of the Code.



16. Heard the submissions made by the Ld. Sr. Counsel for the Applicant and perused the documents on record. It is seen that the resolution plan has been approved with 76.60% voting share. As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Authority. On perusal of the documents on record, we are also satisfied that the Resolution Plan is in accordance with Section 30 & 31 of the IBC and also compliance with regulations 38 & 39 of the IBBI (CIRP) Regulations, 2016.

17. It is hereby ordered that payment to the members of the Monitoring Committee shall be made by the Corporate Debtor on such terms and conditions agreed between the parties for the entire period of implementation as mentioned in this resolution plan.

18. In case of non-compliance/non-implementation/ failure during implementation of this order or withdrawal of the Resolution Plan by the Successful Resolution Applicant, the RP shall forfeit the EMD/Performance Guarantee or any further amount paid as per the terms of the resolution plan without any recourse to this Authority.

19. Subject to the observations made in this Order, the Resolution Plan is hereby **APPROVED** by this Adjudicating Authority. The Resolution Plan shall form part of this Order. The Resolution Plan is binding on the

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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.

20. 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. 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.

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

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

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

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

25. **IA(IBC)/1506/CHE/2022** shall stand **disposed of** accordingly.

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

— Sb —

**SAMEER KAKAR**  
MEMBER (TECHNICAL)

— Sc —

**ASHOK KUMAR BHARDWAJ**  
MEMBER (JUDICIAL)

*Mohanapriya*

*Order pronounced under Rule 151 of NCLT Rules 2016, by Sameer Kakar Member (Technical) on behalf of the Bench comprising of Ashok Kumar Bhardwaj, Member (Judicial) and Sameer Kakar, Member (Technical).*