



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – II, CHENNAI**

IA(IBC)/Plan/07/(CHE)/2024

In

CP(IB)/178(CHE)/ 2022

*(filed under Section 30(6) of the Insolvency & Bankruptcy Code, 2016 read with Regulation
39(4) of Insolvency & Bankruptcy Board of India Regulations, 2016)
(In the matter of **EMI Infrastructure Private Limited**)*

RESOLUTION PROFESSIONAL

M/s. EMI INFRASTRUCTURE PRIVATE LIMITED

MATHUR SABHAPATHY VISWANATHAN ... *Applicant/Resolution Professional*

In the matter of

M/s SHRIRAM TRANSPORT

FINANCE COMPANY LIMITED

...Petitioner/Financial Creditor

-Versus-

M/s. EMI INFRASTRUCTURE PRIVATE LIMITED

... Respondent/Corporate Debtor

Order Pronounced on 5th February 2025

CORAM

SHRI JYOTI KUMAR TRIPATHI, MEMBER (J)

SHRI RAVICHANDRAN RAMASAMY, MEMBER (T)

Appearances:

For Applicant : *V Manivannan*

ORDER

1. IA(IBC)/Plan/07/(CHE)/2024 is an application filed on 23.07.2024 by the Resolution Professional of the Corporate Debtor Viz., *M/s. EMI Infrastructure Private Limited* under Section 30(6) of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as ("**the Code**")) read with Regulation 39(4) of the Insolvency &



Bankruptcy Board of India Regulations, 2016 seeking reliefs as follows:

- i) To grant approval to the Resolution plan dated 23.03.2024 which was approved by the Committee of Creditors in the 17th CoC Meeting conducted on 03.04.2024.
- ii) To grant approval to the Reliefs sought by the Successful Resolution Applicant as set out in Paragraph 25 (25.1 and 25.2) of this Application.
- iii) To grant approval for the proceeds explained in paragraphs 18 & 19 to be distributed among the Committee of Creditors.

2. The Corporate Debtor has been engaged in the business of provide quality infrastructure management solutions and support to all type of construction companies to eliminate lack of quality in production and management. The executive summary of the Corporate Debtor is as hereunder,

<i>Name of the Corporate Debtor</i>	<i>EMI Infrastructure Private Limited</i>
<i>CIN</i>	U45208TN2008PTC066054
<i>Date of Incorporation</i>	14.01.2008

**3. CORPORATE INSOLVENCY RESOLUTION PROCESS OF
EMI INFRASTRUCTURE PRIVATE LIMITED**

The Corporate Insolvency Resolution Process in respect of the Corporate Debtor viz., ***EMI Infrastructure Private Limited*** was initiated by this Adjudicating Authority vide its order dated 01.02.2023 based on an application moved by M/s Shriram Transport Finance Company Limited, in the capacity of Financial creditor under Section 7 of the code in CP (IB)178(CHE)/2022, Mr. Mathur Sabhapathy Viswanathan was appointed as the 'Interim



Resolution Professional'. The key dates and events during the Corporate Insolvency Resolution Process period are tabulated as hereunder,

S.NO.	DATE	EVENTS
1.	04.02.2023	Public Announcement regarding initiation of Corporate Insolvency Resolution Process.
2.	27.02.2023	The Committee of Creditors was constituted by the IRP based on the claims received.
3.	27.07.2023	<i>1st CoC Meeting</i> and resolution passed approving the IRP to continue as RP
4.	31.03.2023	<i>2nd Coc Meeting- resolution to issue Form G inviting expression of interest.</i>
5.	06.03.2023	Order appointing Mr. Mathur Sabhapathi Viswanathan as the RP was passed.
6.	12.07.2023	Appointment of Registered Valuers.
7.	31.07.2023	End of 180 days of Corporate Insolvency Resolution Process Period.
8.	03.08.2023	Corporate Insolvency Resolution Process Period was extended for 90 days by order of this Adjudicating Authority.
9.	07.11.2023	CIRP Period was further extended for period of 60 days, expiring on 30.10.2023.
10.	15.07.2024	CIRP period was extended upto 26.07.2024
11.	08.04.2024	A Resolution Plan was approved by the CoC and the same was filed before this Adjudicating Authority for approval.
12.	22.07.2024	Date of Filing of resolution plan with adjudicating authority.
13.	21.06.2024	Form G (Expression of Interest (EoI)) was published.
14.	25.09.2024	Last date of submission of Resolution Plan.
15.	20.07.2023	Performance Security to the tune of Rs 35



		Lakhs was deposited by the SRA.
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4. DELIBERATION OF THE CoC ON THE FEASIBILITY OF THE PLAN

During the CoC Meeting held on 04.09.2024 deliberations were made by the members of the CoC on the Resolution Plan submitted by the SRA. Accordingly, the Resolution Plan was approved with 67.36% by e voting. The resolution is as hereunder,

"RESOLVED THAT

The Resolution Plan (As amended dated 23.03.2024) submitted by the Resolution Applicant M/s. Ajit Transport company represented by its proprietor Mr.Ajit Singh Harbans Singh Kohli, in respect of the Corporate Debtor, EMI Infrastructure Private Limited is hereby approved and confirmed by this committee U/s.30(4) of the Insolvency and Bankruptcy Code, 2016 (IBC) and the Resolution Professional shall submit the Resolution Plan as approved by the committee of creditors to the Adjudicating Authority for its approval.

5. DETAILS OF THE SUCCESSFUL RESOLUTION APPLICANT

NAME	CATEGORY
Mr. Ajit Singh Harbans Singh Kohli.	Proprietor of M/s Ajit Transport company/Equinox Equipment

It is submitted that Successful resolution applicant is a sole proprietor of M/s Ajith Transport company/ Equinox Equipment's and Infras in the field of large scale construction support services by supplying transit mixers and Tippers for transportation.



It is submitted that the RA has not been declared as “wilful defaulter” as per law. Affidavit is submitted to the effect of section 29A by way of memo filed dated 08.01.2025.

6. SOURCE OF FUND

6.1 In section 5 part 4 of the Plan states about the Source of Funds It is submitted that Resolution Applicant shall apportioned the funds from his own business.

6.2 It is submitted that The Source of Funds for the Resolution Applicant shall be apportioned from his own business income, deposits made towards EMD and Performance Security for the resolution process. And bank balance is maintained by the resolution applicant

6.3 It is submitted that the Resolution Applicant is having sufficient means to make the entire payment of the Resolution Plan amount but however is proposing to raise 40% to 50% of the Resolution Plan amount through credit facilities with his existing bankers.

6.9 Application of Funds,

Sl no	Payment schedule	Payment	Amount (In Lakhs)	Total
1	Deposit released on approval of resolution plan	Fixed Deposit made towards EMD at the time of submission of EOI	15,00,000	15,00,000
2	Within 07 days from the date of Approval of the Resolution Plan by COC. 90 days from approval of the resolution plan by Adjudicating authority.	Performance Guarantee	35,00,000	35,00,000
3	Within 30 days from the date of Approval of the Resolution Plan by adjudicating authority	Payment through own funds.	50,00,000	50,00,000



4	On or before 90 days from the date of Approval of the Resolution Plan by Adjudicating Authority	Payment	1,60,00,000	1,60,00,000
		TOTAL		2,60,00,000.

6.10 Timeline of payment

1	Payment of CIRP cost	E+30 days
2	Payment To Operational creditor in priority over Financial Creditor	E+90 days
3	Payment to secured Financial creditor	E+90 days
4	Payment of Liquidation value to the dissenting creditors.	E+90 days

Note:

- CIRP Costs are estimated and may vary based on actuals
E Date of approval of resolution plan by Adjudicating Authority.

7. SALIENT FEATURES OF THE RESOLUTION PLAN

7.1 The Resolution Applicant has examined the present physical conditions of the vehicles and the estimated costs for making them operational and functional for commercial activities. The resolution plan submitted is based only on the number of vehicles available under the possession of the RP as the CD is not possessed with any other intrinsic or inherent value apart from the said vehicles and the revival of the CD is reliant on the operation of the existing vehicles and infusion of further such capital and taking up new business through the efforts of the Resolution Applicant for the CD.

7.2 Since to the nature of the assets of the CD being movable and being scattered across various locations, the Resolution Applicant will be making all expenses to bring the same back to running condition and full utility. The the existing assets as set out are being taken over upon payment of the entire resolution plan amount, the period for implementation of the resolution plan itself shall be 90 days.

7.3 In section 5 of the resolution plan two scenario was set out for payment schedule and plan amount in the event of 5 Chassis vehicles if identified and brought into possession Rs 2,60,00,000/- (scenario 1) and if 5 chassis vehicles are not identified Rs 2,20,00,000/- (scenario 2) vide order dated 08.01.2025 we had sought the for applicant to file an affidavit that which senario would be applicable for consideration of the plan vide memo dated



17.01.2025 it was submitted vide confirmation letter dated 09.01.2025 that scenario 1 would be applicable.

8. PAY-OUT TO STAKEHOLDERS AS PROPOSED IN THE PLAN

Sl.No	Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provide Under Plan
1	Financial Creditors			
	Indostar Capital Finance Ltd	7,14,44,333	7,14,44,333	45,00,698
	Shriram Finance Limited	7,87,78,328	7,66,95,954	48,32,599
	DCB Bank Limited	2,62,65,700	2,56,77,116	16,16,589
	HDB Financial services Limited	1,06,13,869	1,06,13,869	6,66,664
	Sundaram Finance Limited	4,72,57,560	4,72,57,560	29,75,668
	The Federal Bank Ltd	3,46,35,017.9	3,46,35,018	21,83,110
	Cholamandalam Investment and Finance	1,00,65,263	1,00,65,263	6,35,191
	Mahindra & Mahindra Financial services Ltd	2,16,12,894	2,16,12,894	13,61,940
	IDFC First Bank Limited	1,66,44,948	1,15,38,459	1,54,057
	YES Bank assigned to J.C Flowers ARC	1,26,42,006	1,15,31,750	1,54,057
	Equitas Small Finance Bank	1,00,23,072	1,00,23,072	1,34,041
	SREI Equipment Finance Limited	1,12,80,349	1,12,80,349	1,50,417
	TATA Motors Finance Services Limited	7,99,42,226	7,99,42,226	10,67,479
	TATA Capital Finance Services Limited	1,05,82,119	1,04,72,104	1,40,107
	Kotak Mahindra	2,13,99,151.7	2,13,99,152	2,85,672



	Bank Ltd			
	Total	46,31,86,836. 72	45,41,89,11 9	2,08,58,288
3	Operational Creditor			
	Sri Sendhur Tyres	5,71,248	5,46,248	30,000
	LNB Filling Station	7,69,734	7,69,734	40,000
	Sleek Speciality Lubricants	2,97,919	2,97,919	15,000
	EXELFIN Advisors Private Limited	52,160	41,560	3000
	Iv & Associates	3,90,880	3,90,880	20,000
	G.S.Uma w/o Late Mr Venkatraman Company secretary	7,44,000	7,44,000	40,000
	Employees state Insurance Corporation	11,15,499	0	0
	Total	39,41,440	27,90,341	1,48,000
4	Other debts and dues	NIL	NIL	NIL
	CIRP Cost			49,93,712/-

9. IMPLEMENTATION & MONITORING COMMITTEE (IMC)

9.1 It is submitted that the monitoring committee shall consist of the 1) Resolution Professional (*Chairman of the Committee*) 2) One representative from the Financial creditor 3) Resolution Applicant.

9.2 The IMC shall continue till all payments under the Resolution plan are made.

9.3 The Monitoring Committee shall monitor and supervise the implementation of the plan and shall be required and entitle to do acts, deeds which are necessary in order to implement and give effect to Resolution Plan.

9.4 Monitoring committee shall coordinate with stakeholders and ensure implementation of Plan.



9.5 The Monitoring Committee shall further be responsible for the distribution of the proceeds received from the Resolution Applicant under the Plan. For the said purpose, the Chairman of the Monitoring Committee shall be paid a fee of Rs.2,00,000/- (Rupees Two lakhs Only) plus applicable GST per month along with out-of-pocket expenses on actuals from the date of approval of the Resolution Plan to till the period Monitoring Committee dissolves.

10. MANAGEMENT OF THE CORPORATE DEBTOR

10.1 *The Resolution Applicant shall control the management of the corporate debtor, The Resolution Applicant will be in charge of key administrative functions, securing orders, Finance etc.*

10.2 *Since there is no existing workforce of the CD, the Resolution Applicant to appoint suitable staff members and supervisors for executing the business plan projected for the CD. The Resolution Applicant to have staff for both technical and commercial operations who are experienced in their line of activities.*

10.3 *The existing Statutory Auditor of the Company will be reviewed and if necessary, a new Auditor nominated by the Resolution Applicant shall be appointed as the Statutory Auditor of the Company.*

10.4 *The existing contracts across product and service arrangements including maintenance, lease etc. shall be renegotiated and fresh contracts entered into by the Resolution Applicant as may be required.*

10.5 *As only the existing assets as set out are being taken over upon payment of the entire resolution plan amount, the period for implementation of the resolution plan shall be 90 days.*



10.6 Business plan as submitted in the Plan

SECTION -14 BUSINESS PLAN

The Resolution Applicant wish to present their Business Plan for revival of the Corporate Debtor as under:

(In Rupees)

Particulars	April' 22 to Jan' 23	October' 23 to March' 24
I. Revenue from Operations	1,90,50,016	18,00,000
II. Other Income	28,304	-
III. Total Revenue	1,90,78,320	18,00,000
IV. Expenses:		
Direct Expenses	10,34,263	-
Employees Benefit Expense	3,20,000	3,00,000
Finance Cost	7,81,05,346	10,00,000
Depreciation and Amortization Expense	1,59,06,214	5,00,000
Other Expenses	7,61,927	3,00,000
Total Expenses	9,61,27,750	21,00,000
V. Profit/ Loss before exceptional and extraordinary items and tax (III-IV)	(7,70,49,430)	(3,00,000)
VI. Exceptional Items	7,80,564	-
VII. Profit before extraordinary items and tax (V-VI)	(7,62,68,866)	(3,00,000)
VIII. Extraordinary Items	-	-
IX. Profit/ Loss before Tax (VII-VIII)	(7,62,68,866)	(3,00,000)
X. Tax Expense		
(1) Current Tax	-	-
(2) Deferred tax		
XI. Profit (Loss) from the period from continuing operations	(7,62,68,866)	(3,00,000)
XII. Profit/(Loss) from discontinuing operations	--	-
XIII. Tax Expense of discontinuing operations	-	-
XIV. Profit/(Loss) from Discontinuing Operations	-	-
XV. Profit/(Loss) for the period (XI + XIV)	(7,62,68,866)	(3,00,000)
XVI. Earning per equity Share		
(1) Basic	(6.36)	-
(2) Diluted		

11. MANDATORY COMPLIANCE UNDER IBC & REGULATIONS

From the averments made in the application as well as on perusal of Revised Form H, as filed by the Resolution Professional in relation to the procedural aspects, the same seems to have been duly complied with for which the Resolution Professional has issued a certificate and it is not necessary for this Authority to go into the same. However, this Authority is duty bound to examine the Resolution Plan within the contours of Section 30 (2) of the IBC, 2016.

A Comparison vis-à-vis with the Mandatory compliance under the IBC and the Compliance made under the Resolution Plan.



MANDATORY COMPLIANCE UNDER IBC,2016	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	In page 7 of Compliance memo dated 07.01.2025
<u>S.30(2)(a)</u> - Payment of Insolvency and Resolution cost in the manner specified by the Board	In section 5 1.1 of the Resolution Plan provides for the payment of CIRP costs in priority.
<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.	Section 5 point 2 of the Resolution Plan provides for the discharge of Operational Creditor claims.
<u>S. 30(2)(c)</u> – Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Section 7 of the Resolution Plan provides for Management and control of the operations of the Corporate Debtor.
<u>S.30(2)(d)</u> – Implementation and Supervision of the Resolution Plan.	Section 6. of the Plan provides for implementation & supervision of the plan.
<u>S. 30(2)(e)</u> – The plan does not contravene any of the provisions of the law for the time being in force.	Section 11 of the plan expresses that the plan does not contravene any provisions of the law for the time being in force.
<u>S.30(4)</u> - Committee of Creditors approve the Resolution Plan by not less than 66% of the voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by the Board	In page 245 Annexure 16 of the Application by e voting from 04.04.2024 to 08.04.2024



**MANDATORY CONTENTS OF THE RESOLUTION PLAN IN TERMS OF
REGULATION 38 OF CIRP REGULATIONS.**

	MANDATORY COMPLIANCE UNDER CIRP REGULATION	COMPLIANCE UNDER RESOLUTION PLAN
38(1)	The amount due to the Operational Creditor under Resolution Plan shall be given priority in payment over Financial Creditor.	Section 5 of the Plan
38(1A)	A Resolution Plan shall include statements as to how it has dealt with the interest of all stakeholders, including Financial Creditors and Operational Creditors of the Corporate Debtor.	Section 5 of the Plan
38(1B)	A Resolution Plan shall include a statement giving details if the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.	Section 12 of the Plan
38(2)	a) term of the plan and its implementation schedule	Section 13 of the Plan
	b) management and control of the business of the Corporate Debtor during its term;	Section 7 , section 14 of the Plan
	c) adequate means for supervising its implementation	Section 6 of the Plan
38(3)	a) it address the cause of default;	Section 3 of the Plan
	b) it is feasible and viable	Section 10 of the plan
	c) it has provisions for effective implementation	Section 8 of the Plan
	d) it has provisions for approval required and the timeline for the same; and	Section 13 of the plan
	e) the resolution applicant has the capability to implement the Resolution Plan.	Section 4 of the Plan



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

12.1 In so far as the approval of the Resolution Plan is concerned, this Authority is not sitting in appeal against the decision of the Committee of Creditors and this Authority is duty bound to follow the Judgment of the Hon'ble Supreme Court in the matter of **K. Sashidhar –Vs– Indian Overseas Bank** (2019) 12 SCC 150, decided on 05.02.2019 wherein in para 19 and 62 it is held as under;

“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.”



12.2 Further the Hon'ble Supreme Court in the matter of **K. Sashidhar v. Indian Overseas Bank and Ors.** (2019) 12 SCC 150 decided on 05.02.2019 has lucidly delineated the scope and interference of the Adjudicating Authority in the process of approval of the Resolution Plan and held as under;

“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)

12.3 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** decided on 15.11.2019 at para 42 has held as under;

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).

12.4 Also the Hon’ble 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** decided on 15.11.2019 after referring to the decision in **K. Sashidhar (supra)** has held as under;

“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 maximizing 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)

12.5 The Hon'ble Supreme Court in its recent decision in **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. –Vs- NBCC (India) Ltd. & Ors** in Civil Appeal no. 3395 of 2020 decided 24.03.2021 has held as under;

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.

12.6 The Hon'ble Supreme Court in its recent decision in **Paschimanchal Vidyut Vitran Nigam Ltd. Verus Raman Ispat Private Limited & Ors.** In Civil Appeal no. 7976 of 2029 decided 17.07.2023 has held as under;

49. *Rainbow Papers (Supra)* did not notice the 'waterfall mechanism' under Section 53 – the provision had not been adverted to or extracted in the Judgement. Furthermore, *Rainbow Papers (Supra)* was in the context of a resolution process and not during liquidation. Section 53, as held earlier, enacts the waterfall mechanism providing for the hierarchy or priority of claims of various classes of creditors. The careful design of Section 53, locates amounts payable to secured creditors and workmen at the second place, after the costs & expenses of the liquidator payable during the liquidation proceedings. However, the dues payable to the government are placed much below those of secured creditors and even unsecured creditors. This design was either not brought to the notice of the Court in *Rainbow Papers (supra)* or was missed altogether. In any event, the Judgment has not taken note of the provisions of the IBC which treat the dues payable to secured creditors at a higher footing than dues payable to central or state Government.

(emphasis supplied)

12.7 Thus, from the catena of judgments rendered by the Hon'ble Supreme Court on the scope of approval of the Resolution Plan, it is crystal 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.

13. RELIEF & CONCESSIONS:

The Resolution Applicant has sought for various waivers and Concessions in Section 15 of the Resolution Plan, which are as follows,

SL. No.	RELIEF / CONCESSIONS SOUGHT FROM FINANCIAL CREDITORS	ORDERS THEREON
1.	The approval of the Adjudicating Authority and the CoC shall constitute adequate approval and cancellation of the existing share capital and accordingly, no approval/consent shall be necessary from any other Person / Governmental Authority in relation to either of these actions under any agreement, the constitutional documents or under any Applicable Law. It is also clarified that the Resolution Applicant shall not be required to deal with the dissenting / abstaining Financial Creditors in any manner other than as provided under the Code.	Granted subject to the provisions of companies act IBC other applicable laws.
2.	All convertible instruments issued by the Corporate Debtor either to the promoters, shareholders, or any third party shall stand cancelled pursuant to approval of this Resolution Plan by the Adjudicating Authority and no separate sanction / approval / consent shall be necessary forum any other Person / Governmental Authority in relation to either of these actions under any agreement, the constitutional documents or under any Applicable Law.	Granted subject to the provisions of companies act IBC other applicable laws
3.	Approval of this plan shall be deemed approval for waiver from filing of statutory returns (including but not limited to any	Granted subject to the



	filings for registrar of Companies, Direct & Indirect tax authorities, plant related annual filings, etc), for a period prior to Effective Date. Certified copy of the order approving Resolution Plan shall be a direction on such statutory authorities to allow WCMIL to do compliance(s) with effect from and after the date of approval of Resolution Plan by the Adjudicating Authority.	provisions of companies act IBC other applicable laws
4.	Approval of this plan shall be deemed approval for removal of Directors from the record of the Company as appearing on the MCA portal/ website/ income tax web site/ Any Indirect tax website. Certified copy of the order approving Resolution Plan shall be a direction on such statutory authorities to do the needful.	Granted subject to the provisions of companies act IBC other applicable laws
5.	In case of capital reduction, the requirement of adding "and reduced" in the name of the Corporate Debtor to be dispensed with on account of reduction of share capital of the Corporate Debtor.	Granted subject to the provisions of companies act IBC other applicable laws
6.	The approval of this Plan by the Adjudicating Authority shall be deemed to have waived all the procedural requirements in terms of Section 66, Section 42 and Section 62(1)(c) of the Company Act, 2013 Act, and the NCLT (Procedure for Reduction of Share Capital) Rules, 2016 for reduction of share capital and issuance of equity shares to the Resolution Applicant and/or the Financial Creditors	Not Granted will be adjudicated by the adjudicating authority
7.	Waiver of any fee payable to any statutory regulatory body towards any past dues or towards fee dues pursuant to any of the steps as contemplated in the Resolution Plan including but not limited to any fee payable to Registrar of Companies (RoC), etc.	Appropriate authorities to consider keeping in view the object of IBC, 2016
8.	Waiver of any pending Liabilities, past penalty or any offence linked with the Vehicles/Transit Mixers/Batching Plant/Any other Assets belonging to the CD or against the CD of any nature before any Law Enforcement	Appropriate authorities to consider keeping in



	Authorities including Police, Investigation Authorities, Courts, Tribunals, Transport Ministry/Authorities., Etc.,	view the object of IBC, 2016
9.	<p>Licenses and approvals held by the Company, which expire prior to Completion Date or within a period of 6 (six) months thereafter, shall be renewed / extended by the relevant Governmental Authorities, and the Company shall be permitted to continue its business and assets in the manner operated prior to submission of this plan until the renewal/extension of such licenses and approvals. The relevant Governmental Authorities will be provided a reasonable period of time after Completion Date in order for the Resolution Applicant to:</p> <p>A. Assess the status of licenses and approvals required by the Company and to procure that the Company applies for the same;</p> <p>B. Regularize any non-compliances under the Applicable Law (including nonregistration, inadequate/non-stamping of documents as required under Applicable Law) existing prior to the Closing Date</p>	Appropriate authorities to consider keeping in view the object of IBC, 2016
10.	Extension of validity of Road Tax, Insurance and permits obtained in the name of the Corporate Debtor with respect to its assets for 6 months post approval of the Resolution Plan by the Adjudicating Authority. Further, grant of Waiver of Penalties by RTO/Min of Transport/Highways till the date of sanction of RP.	Appropriate authorities to consider keeping in view the object of IBC, 2016
11.	That the trade receivables of the CD shall be taken over by the Resolution Applicant on "as is" basis when the management and control of the business of the Company is taken over under the Resolution Plan.	Granted subject to the provisions of companies act IBC other applicable laws
12.	The relevant Governmental / Statutory / Regulatory Authorities shall not initiate any investigations, actions or proceeding in relation to any non-compliances with	



	<p>Applicable Law by the CD during the period prior to the Completion Date. Neither shall the Resolution Applicant, nor the CD, nor their respective directors, officers and employee appointed on and as of the Completion Date be liable for any violations, liabilities, penalties or fines with respect to or pursuant to the Company not having in place requisite licenses and approvals required to undertake its business as per Applicable Law, or any non-compliances of Applicable Law by the Company. Further, the relevant Governmental Authorities will provide a reasonable period of time after the Completion Date, for the Resolution Applicant to assess the status of any non- compliances under the Applicable Law (including with respect to applicable Transport laws, directions or orders by the Ministry of Transport and Highways, permits clearances and transport related clearances) and to procure that the Company regularizes such non- compliances under the Applicable Law existing prior to the Completion</p>	<p>Appropriate authorities to consider keeping in view the object of IBC, 2016</p>
13.	<p>Withdrawal of litigations initiated by the Financial Creditors against Corporate Debtor, issue no-dues certificate(s) in favour of Corporate Debtor and release their respective charges on the securities in full and complete satisfaction of all debts owed to the Financial Creditors by Corporate Debtor, including all guarantees which may have been provided to the Financial Creditors, for credit facilities availed by Corporate Debtor.</p>	<p>Granted subject to the provisions of companies act IBC other applicable laws.</p>
14.	<p>Any and all dues to, liabilities or obligations payable to, claims, counter- claims, demands, actions or penalties, made or imposed by or any arrears, dividend or obligations owed or payable to (including but not limited to all interests, damages, losses, expenses and third party claims), and any right, title, interest enjoyed by, any actual or potential other stakeholders of the Corporate Debtor including any group companies whether under law or otherwise, whether or not claimed, whether or not filed, whether or not crystallised, whether or not accrued, whether</p>	<p>Granted subject to the provisions of companies act IBC other applicable laws</p>



	<p>or not admitted, whether or not notional, whether or not known, whether due or contingent, whether or not disputed, present or future, whether or not being adjudicated in any proceedings, whether or not decreed, whether or not reflected in the financial statements of the Corporate Debtor, or whether or not reflected in any record, document, statement, statutory or otherwise, arising prior to or after the Effective Date, but pertaining to period prior to the Effective Date, and / or arising in connection with Assignment or acquisition of shares of the company by the investors or conversion of the Conversion Debt into Equity or restructuring of the Assigned Debt or in any other manner as a result of or in connection with this Plan, shall be deemed to have been irrecoverably waived and permanently extinguished and written off in full with effect from the Effective Date. To give effect to such waiver and extinguishment, any contract, agreement, deed or document, whether oral or written, expressed or implied, statutory or otherwise, pursuant to which any such dues, liabilities, obligations, claims, counterclaims, demands, actions, penalties, right, title or interest in claimed (other than as specifically mentioned herein) shall stand modified with effect from the Effective Date without any further act, deed and approval of the Resolution Plan by Adjudicating Authority shall be deemed to be sufficient notice which may be required to be given to any person for such matters and no further notice shall be required to be given.</p>	
15.	<p>Extinguishment and waiver of all dues to the Existing Promoters/Suspended Directors of the CD by the Corporate Debtor including but not limited to any Financial Debt owed to them.</p>	<p>Granted as per the plan and is subject to provisions of IBC and Companies act</p>
16.	<p>An order approving the Resolution Plan shall be a deemed order upon Financial Creditors to</p>	<p>Granted subject to the</p>



	cancel all pledge/ lien/ other encumbrances upon the issued share capital of the Company to enable corporate action as envisaged in the Resolution Plan.	provisions of companies act IBC other applicable laws
17.	Relinquishment of all / any promise to pay towards any obligation including corporate guarantee, pledge on any shares, mortgage or charge on any specific asset, etc. issued by Corporate Debtor in favour of or on behalf of any of its subsidiaries, associates, group companies or any third party.	Granted subject to the provisions of companies act IBC other applicable laws
18.	Permitting waiver of all liabilities and taxes arising out of implementation of the transactions contemplated in the Resolution Plan and instructing the relevant authorities concerned accordingly.	Appropriate authorities to consider keeping in view the object of IBC, 2016
19.	All litigations, prosecutions, legal proceedings, suits, claims (including claims for damages), notices, show-cause notices, demand notices, actions, arbitration or administrative, judicial, quasi-judicial, regulatory, government or any enforcement agencies, pending or threatened against the company or whose outcome adversely effects the Company (including but not limited to the proceedings set out in the Process Memorandum) arising prior to or after the Effective Date ("Proceedings"), shall be deemed to have been withdrawn or dismissed and will be deemed to have been barred with effect from the Effective Date. Pursuant to the order of the Adjudicating Authority approving this Plan, all liabilities, obligations, demands, actions or penalties made or imposed in relation to any proceedings, whether or not claimed, whether or not filed, whether or not assessed, whether or not crystalized, whether or not accrued, whether or not admitted, whether or not notional, whether or not known, whether due or contingent, whether or not disputed, present or future, whether or not	Appropriate authorities to consider keeping in view the object of IBC, 2016



	being adjudicated in any proceedings, whether or not decreed, whether or not reflected in any record, document, statement, statutory or otherwise, arising prior to or after the Effective Date, but pertaining to a period prior to the Effective Date shall be deemed to have been irrecoverably waived and permanently extinguished and written off in full and settled at Nil value with effect from the Effective Date by virtue of the order of the Adjudicating Authority approving this plan.	
20.	On the date of approval of the Resolution Plan by the Adjudicating Authority, all claims which are not a part of the resolution plan shall stand extinguished and no person, government body, etc., will be entitled to initiate or continue any proceedings in respect to a claim which is not part of the resolution plan	Granted subject to the provisions of companies act IBC other applicable laws
21.	The approval of the Adjudicating Authority and the CoC shall constitute adequate approval for issuance of New Equity Shares in accordance with Section 42 and Section 62(1)(c) of the Companies Act and other Applicable Law and accordingly, no approval or consent shall be necessary from any other Person/Government Authority in relation to either of these actions under agreement, the constitution documents of the Company or under any applicable Law.	Appropriate authorities to consider keeping in view the object of IBC, 2016 and Companies act.
22.	Directions from Adjudicating Authority allowing Corporate Debtor to use the brought forward losses for set off against income in subsequent years and unabsorbed depreciation, whether assessed or not, for the purpose of the Income Tax Act, 1961.	Appropriate authorities to consider keeping in view the object of IBC, 2016
23.	That the concerned Regional Transport or District Transport Office or Regional Transport Authority and Ministry of Transport (as found suitable) shall be made Respondent to the application to be filed for approval of the Resolution Plan by the Adjudicating Authority.	Not Granted



14. 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 hereunder,

1.	<i>Fair Value</i>	Rs. 2,47,49,901/-
2.	<i>Liquidation Value</i>	Rs. 2,14,06,556/-
3.	<i>Plan Value</i>	Rs. 2,60,00,000/-

15. On perusal of Revised form H submitted it is seen that Fraudulent transactions under section 66 is pending Therefore RP is directed to file a memo with regard to who will be pursuing the section 66 application on approval of Resolution Plan.

16. It is seen that the resolution plan has been approved with 67% 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 made 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 satisfied that the Resolution Plan is in accordance with Section 30 & 31 of the IBC and also in compliance with regulations 38 & 39 of the IBBI (CIRP) Regulations, 2016.

17. In the light of the aforesaid, it is hereby ordered that the 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 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 its 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 granted for moving any Application if required in connection with the implementation of this Resolution Plan.



23. A copy of this Order be submitted to the Office of the concerned Registrar of Companies.
24. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.
25. **IA(IBC)/Plan/07/CHE/2024** stands **disposed of** accordingly.
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.
27. File be consigned to the record room.

-SD-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-SD-

JYOTI KUMAR TRIPATI
MEMBER (JUDICIAL)

Rannika/LRA