



IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH, PRAYAGRAJ

IA (IB) No.79/ALD/2022  
in  
CP (IB) No.107/ALD/2019

*In the matter of*

Power Finance Corporation Limited ... Financial Creditor  
Versus

South-East U.P. Power Transmission Company Limited... Corporate Debtor

*In the matter of*

Shailesh Verma, Resolution Professional of  
South East U.P. Power Transmission Company Limited... Applicant  
Versus

Resurgent Power Ventures PTE Limited ... Proforma respondent

**Order reserved on: 13.04.2022**  
**Order pronounced on: 15.06.2022**

**Coram:**

Shri Rajasekhar V.K. : Member (Judicial)  
Shri Virendra Kumar Gupta : Member (Technical)

**Appearances (through video conference):**

For the Applicant/RP : Mr. Amit Saxena, Sr. Advocate  
Mr. Varad Nath, Advocate  
Mr. Shantanu Chaturvedi, Advocate  
Mr. Manmeet Singh, Advocate  
Ms. Nastassia Khurana, Advocate  
Mr. Manav Sharma, Advocate  
Ms. Mukta Halbe, Advocate

**ORDER**

**Rajasekhar V.K., Member (Judicial)**

**1. Preliminary**

- 1.1. This Court convened through video conferencing.
- 1.2. The present interlocutory application bearing IA (IB) No.79/ALD/2022 was moved on behalf of Mr. Shailesh Verma, Resolution Professional (“RP”) of South East U.P. Power Transmission Company Limited (CIN:



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U40105UP2009-PLC038216), by Mr Amit Saxena, learned Senior Counsel appearing for the RP, under the provisions of sections 30(6) and 31(1) of the Insolvency & Bankruptcy Code, 2016 [hereinafter referred to as “**the Code**” or “**IBC**”] read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”) for approval of the Resolution Plan in respect of South East U.P. Power Transmission Company Limited (“**Corporate Debtor**”).

1.3. The underlying Company Petition (IB) No.107/ALD/2019 filed by Power Finance Corporation Limited (“**PFC**”) under section 7 of the Code for initiation of Corporate Insolvency Resolution Process (“**CIRP**”) of the Corporate Debtor was admitted by this Bench *vide* its order dated 16.07.2020 (“**Admission Order**”). On that date, *i.e.*, 16.07.2020 (“**Insolvency Commencement Date**”) Mr. Rajesh Samson (IBBI Reg No. IBBI/IPA-001/IP-P00240/2017-18/10469) was appointed as the Interim Resolution Professional (“**IRP**”). He was later replaced by the Applicant herein as Resolution Professional on the recommendations of the Committee of Creditors (CoC) *vide* order dated 07.09.2020.

1.4. The 270 day-period of CIRP expired on 12.04.2021. Thereafter, this Tribunal *vide* orders dated 16.03.2021, 03.08.2021 and 08.12.2021, excluded 120 days, 124 days and 90 days respectively. Further, this Adjudicating Authority *vide* order dated 08.03.2022 excluded another 30 days to enable the CoC to consider the Resolution Plan and vote on it. As such, the last date of the CIRP stood extended till 11.04.2022.

**2. Collation of claims by RP**

2.1. On 17.07.2020, the erstwhile IRP issued a public announcement, inviting claimants including financial creditors of the Corporate Debtor to submit their claims by 30.07.2020. Based on verification of claims till 06.08.2020, the CoC of the Corporate Debtor was constituted which comprised of three financial creditors *viz.*, PFC, REC Limited (“**REC**”), Bank of India (“**BoI**”) and Axis



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Bank Limited (“**Axis Bank**”).

**3. Details of Financial Creditors with voting share:**

3.1. The voting share of the individual constituents of the CoC was as follows:

Sr. No.	Financial Creditor	Claim Submitted (in crore rupees)	Claim Admitted (in crore rupees)	Voting Share (%)
1.	PFC	2815,41,22,322	2815,41,22,322	65.55
2.	REC	1159,46,17,342	1159,46,17,342	27.00
3.	BoI	221,64,72,117	221,64,72,117	5.16
4.	Axis Bank	102,19,18,484	98,53,00,000	2.29
<b>Total</b>		<b>4298,71,30,265</b>	<b>4295,05,11,781</b>	<b>100.00</b>

3.2. The RP submits that a total of twenty-four CoC meetings have been held during CIRP period as follows:

Particulars	Date of CoC Meeting
1 <sup>st</sup> CoC Meeting	13.08.2020
2 <sup>nd</sup> CoC Meeting	25.09.2020
3 <sup>rd</sup> CoC Meeting	05.11.2020
4 <sup>th</sup> CoC Meeting	04.12.2020
5 <sup>th</sup> CoC Meeting	04.01.2021
6 <sup>th</sup> CoC Meeting	05.02.2021
7 <sup>th</sup> CoC Meeting	15.02.2021
8 <sup>th</sup> CoC Meeting	30.03.2021
9 <sup>th</sup> CoC Meeting	06.05.2021
10 <sup>th</sup> CoC Meeting	04.06.2021
11 <sup>th</sup> CoC Meeting	05.07.2021
12 <sup>th</sup> CoC Meeting	20.07.2021
13 <sup>th</sup> CoC Meeting	17.08.2021



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<b>Particulars</b>	<b>Date of CoC Meeting</b>
14 <sup>th</sup> CoC Meeting	21.09.2021
15 <sup>th</sup> CoC Meeting	06.10.2021
16 <sup>th</sup> CoC Meeting	21.10.2021
17 <sup>th</sup> CoC Meeting	01.11.2021
18 <sup>th</sup> CoC Meeting	29.11.2021
19 <sup>th</sup> CoC Meeting	28.12.2021
20 <sup>th</sup> CoC Meeting	11.01.2022
21 <sup>st</sup> CoC Meeting	24.01.2022
22 <sup>nd</sup> CoC Meeting	31.01.2022
23 <sup>rd</sup> CoC Meeting	04.02.2022
24 <sup>th</sup> CoC Meeting	16.02.2022

**4. Evaluation and voting**

- 4.1. The Applicant submits that invitations for Expressions of Interest (EoIs) in Form-G was issued on 29.09.2020 by way of a public notice (“**Public Notice**”) whereby prospective resolution applicants (**PRAs**) were invited to submit the EoIs for submitting a resolution plan of the Corporate Debtor on or before 15.10.2020. A revised Form G (“**First Revised Form G**”) were published on 14.10.2020 (“**First Corrigendum**”) whereby the last date for submission of expression of interest was extended to 26.10.2020.
- 4.2. The Applicant submits that pursuant to the above, EoIs from eight PRAs were received by the RP. Thereafter, the RP issued the final list of eligible PRAs to the CoC *vide* his email dated 20.11.2020. But due to various restrictions on account of Covid-19 and requests from the PRAs, the date of submission of resolution plan was revised from time to time from 10.12.2020 to 09.01.2021 which was further extended till 15.02.2021 and subsequently extended till 11.03.2021.

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- 4.3. Pursuant to the decision taken in the 7<sup>th</sup> meeting of the CoC held on 15.02.2021, a revised Form G was published on 18.02.2021 (“**Second Revised Form G**”) whereby the last date for submissions of EoI .03.2021 and was revised from time to time till 09.06.2021 (“**Revised RFRP**”), to the PRAs, extending the last date for submission of resolution plans till 05.04.2021. Thereafter, the RP issued the final list of eligible PRAs to the CoC *vide* his email dated 13.03.2021. Once again, due to various such restrictions on account of Covid-19 and requests from the PRAs, the date of submission of resolution plan was revised from time to time from 05.04.2021 to 19.07.2021 (“**Revised Date for Original Resolution Plans**”). By such date, the RP received five resolution plans from the PRAs.
- 4.4. Thereafter, in the 16<sup>th</sup> CoC Meeting held on 21.10.2021, based on request received from Resolution Applicants (RAs), the CoC further extended the timeline for submission of the revised resolution Plan till 28.10.2021. The RP received the revised resolution plans from five RAs, *viz.*, Adani Transmission Limited (“**ATL**”), Power Grid Corporation of India Limited (“**PGCIL**”), Sterlite Grid 30 Limited (“**Sterlite**”), Resurgent Power Ventures Pte. Ltd. (“**Resurgent**”) and REC Power Development and Consultancy Limited (“**RECPDCL**”) by the deadline of 28.10.2021. At the 20<sup>th</sup> CoC Meeting held on 11.01.2022, the CoC decided to seek further revised resolution plans from the RAs latest by 24.01.2022 which was further extended twice at the request of the RAs with the consent of CoC and 04.02.2022 was notified as the final deadline for submission of the further revised resolution plans to the RAs.
- 4.5. During the 24<sup>th</sup> CoC meeting held on 16.02.2022, the RP placed the agenda concerning Regulation 39B, 39C and 39D of CIRP Regulations before the members of CoC. In reference to regulation 39B, it was agreed by the members of CoC that since the estimated value of the liquid assets under regulation 39B(2) is substantially more than the estimated liquidation costs under regulation 39B(1) of the Corporate Debtor, therefore, there is no requirement of a contribution plan under regulation 39B(3). The CoC was



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informed of the average fair market value and liquidation value of the Corporate Debtor, as per the valuation reports, which are as follows:

Average Liquidation Value	Average Fair Value
₹1,496.3 Crore	₹2,030.9 Crore

- 4.6. The CoC deliberated in accordance with section 30(3) of the Code read along with Regulation 39(2) of CIRP Regulations during the 24<sup>th</sup> meeting of the CoC held on 16.02.2022. The feasibility and viability of the resolution plans was discussed at the 24<sup>th</sup> CoC meeting by the CoC. The voting on the complaint resolution plans commenced on 19.02.2022 and concluded at 20:00 hours on 08.03.2022.
- 4.7. The Resolution Plan submitted by the Successful Resolution Applicant was approved by a majority of 100% by members having 100% voting share in the CoC and thereby was approved by the requisite majority as stipulated under the Code.
- 4.8. The application for approval of the resolution plan by this Adjudicating Authority was filed by the RP on 14.03.2021.

**5. Details of Resolution Plan/Payment Schedule**

- 5.1. The amount proposed in the Resolution Plan are tabulated below:

Sl. No.	Types of debts	Resolution Amount
1.	CIRP Cost	To be paid in full
2.	Operational Creditors (other than employees & workmen)	NIL
3.	Employees and Workmen claims	NIL
4.	Unsecured Financial Creditors	Provided in Clause 5.3 of Part-II and Appendix 1 of the Resolution

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Sl. No.	Types of debts	Resolution Amount
		Plan
5.	Secured Financial Creditors	<p>As per Clause 5.2.1. (a) of Part II of the Resolution Plan, an amount of Rs. 3251 Crores (less: (a) IRP Cost Deficit Amount; (b) Priority Payment and (c) Workmen and Employee Amount) is proposed to be paid upfront towards the claims of assenting financial creditors. (See Note: 1 and 2)</p> <p>The estimated surplus cash as detailed in Clause 9.3 of Part II of the Resolution Plan) as per the terms of the Resolution Plan.</p> <p>As Clause 9.4 of Part II of the Resolution Plan relates to amounts yet to be accrued which can arise from litigation recoveries, which cannot be calculated at this stage, they have not been accounted for in the calculation.</p> <p>1.This is upfront amount only as per the resolution plan.</p> <p>2.This doesn't include any benefit arising out of litigation recoveries pursuant to Clause 9.4 of Part II of the Resolution Plan.</p>
6.	Other Debts and Dues	NIL
7.	Shareholders	NIL

6. *Compliances with regulations*



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6.1. The Applicant has submitted details of various compliances as envisaged within the Code and the CIRP Regulations, which a Resolution Plan is required to adhere to, which is reproduced hereunder:

**Submission of Resolution Plan in terms of sub-section (2) of section 30 of the Code:**

<i>Clause of s.30(2)</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
(a)	Plan must provide for the payment of Insolvency Resolution Process Cost.	Clause 1.7 of (Summary of Financial Proposal) at Page 6, Clause 4 of Part-II at page 77 and Clause 1 of Part-III at page 105 of the Resolution Plan.
(b)	Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than	
	(i) the amount payable to them in the event of liquidation u/s 53; or	Clause 1.7 of Part-I at Page 6, Clause 6 and 7 of Part-II at page 81 and Clause 2 of Part-III at page 105 of the Resolution Plan.
	(ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of sec.53, whichever is higher; and	Clause 1.7 of Part-I at Page 6, Clause 6 and 7 of Part-II at page 81 and Clause 2 of Part-III at page 105 of the Resolution Plan.  Clause 1.7 of Part-I at page 6, Clause 5.2.5 of Part-II at page 79, Clause 9.2 of Part-II at page 82 and Clause 3 of Part-III at page 105 of the Resolution Plan.

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<i>Clause of s.30(2)</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
	(iii) provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such manner as may be specified by the Board.	
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause 5 of Part-III at page 106 of the Resolution Plan.
(d)	Implementation and Supervision.	Clause 6 of Part I at page 74 and Clause 5.2 of Part III at page 110 and Clause 8 of Part III at page 114 of the Resolution Plan.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Clause 6.3 of Part-III at page 114 of the Resolution Plan.
(f)	Conforms to such other requirements as may be specified by the Board.	Provided in the different parts of the Resolution plan.

Measures required for implementation of the Resolution Plan in terms of Regulation 37 of CIRP Regulations:

<i>Particulars</i>	<i>Relevant Page of the Resolution Plan dealing aforesaid compliance with Regulation</i>
(a) transfer of all or part of the assets of the corporate debtor to one or	The Corporate Debtor is being acquired as a going concern by way of acquisition of shares pursuant to the Resolution Plan, and there is no transfer of assets of the Corporate Debtor, except for transfer of Surplus Cash to the CoC in



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<b>Particulars</b>	<b>Relevant Page of the Resolution Plan dealing aforesaid compliance with Regulation</b>
more persons;	terms of the Resolution Plan.
(b) sale of all or part of the assets whether subject to any security interest or not;	<p>The Corporate Debtor is acquired by way acquisition of shares pursuant to the Resolution Plan and there is no transfer of assets except to extent of Surplus Cash of the Corporate Debtor being paid to the Committee of Creditors.</p> <p>While there is no sale of the assets by the Resolution Applicant, the Resolution Applicant has reserved its right to streamline/restructure its holding in the Corporate Debtor and/or the operations, assets, liabilities, and/or businesses of the Corporate Debtor or any of their undertakings inter alia, through sale of assets at any date after the Implementation Date. The decisions shall be taken in accordance with the business requirements, changes in economic circumstances, provisions of contractual arrangements the Corporate Debtor is a party to, Applicable Law or pursuant to the Resolution Applicant's business decisions.</p> <p>Refer Clause 7.1 of Part I at page 75 of the Resolution Plan.</p>
(ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger	<p>The Corporate Debtor is acquired by way of acquisition of shares pursuant to the Resolution Plan.</p> <p>While there is no upfront merger, amalgamation or demerger, however, the Resolution Plan provides that the Resolution Applicant reserves the right to streamline/restructure its holding in the Corporate Debtor and/or the operations, assets, liabilities, and/or businesses of the Corporate Debtor or any of their undertakings through merger, arrangements,</p>



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<b>Particulars</b>	<b>Relevant Page of the Resolution Plan dealing aforesaid compliance with Regulation</b>
	<p>reconstructions, restructurings or any other form of reorganisation, renegotiation of existing agreements or arrangements, after the Implementation Date. The decisions shall be taken in accordance with the business requirements, changes in economic circumstances, provisions of contractual arrangements the Corporate Debtor is a party to, Applicable Law or pursuant to the Resolution Applicant's business decisions.</p> <p>Refer Clause 7.1 of Part I at page 75 of the Resolution Plan.</p>
(c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons.	<p>As per the Resolution Plan, the financial creditors shall invoke the pledge of upto 51% shares of the corporate debtor (which is currently created in their favour) and transfer the shares to the Resolution Applicant for the consideration provided in the Resolution Plan. Additionally, the Resolution Applicant shall infuse funds towards subscription of new equity shares of the Corporate Debtor.</p> <p>Refer Clause 1.1 and 1.2 of Schedule 2 at pages 134-135 of the Resolution Plan.</p> <p>It can be noted that pursuant to the implementation of the Resolution Plan (including extinguishment of shares as mentioned in point (ca) below), the Resolution Applicant (and/or its nominees) will own 100 percent of the equity share capital of the Corporate Debtor.</p>
(ca) cancellation or delisting of any shares of the corporate debtor, if	<p>As per the Resolution Plan, the entire issued, subscribed and paid-up equity share capital of the corporate debtor (excluding the new equity shares allotted to the Resolution Applicant) less shares transferred to the Resolution Applicant shall stand</p>



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<b>Particulars</b>	<b>Relevant Page of the Resolution Plan dealing aforesaid compliance with Regulation</b>
applicable;	extinguished in full without payment of any consideration.  Refer Clause 1.4 of Schedule 2 at page 135 of the Resolution Plan.
(d) satisfaction or modification of any security interest;	<p>As per the Resolution Plan, the Transferred Debt along with the underlying security in relation to such Transferred Debt shall stand novated, assigned and transferred to the Resolution Applicant/its Subsidiary Company as the assignee, by virtue of this Resolution Plan and in exchange for the Debt Acquisition Amount. Further, it is provided that the Financial Creditors shall take all necessary measures, including but not limited to release of any Encumbrances in relation to the Transferred Debt, currently created for their benefit, and providing no objection certificates for such release of Encumbrance, to facilitate the novation, assignment and transfer of the Transferred Debt along with the underlying security in relation to such Transferred Debt in favour of the Resolution Applicant/its Subsidiary.</p> <p>Refer Clause 1.7 of Part I at page 6, Clause 5.2 of Part II at page 78 and 1.8 of Schedule 2 at page 137 of the Resolution Plan.</p> <p>As per the Resolution Plan, all relevant Persons including the Financial Creditors shall redeliver and shall cause to be delivered to the Corporate Debtor, all documents (including loan agreements, guarantees, security documents, title deeds, lease deeds, lease agreements, demand promissory notes, records, powers of attorneys, post-dated cheques, other negotiable instruments, encumbered with the Financial Creditors and all other documents) that are in possession of or deposited with such Financial Creditors or any other Person for the benefit of any of the creditors of the</p>



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	<p>Corporate Debtor forthwith but no later than 30 (thirty) days from the Payment Date. Further, each creditor of the Corporate Debtor shall be deemed to have executed or issued discharge certificates, no-objection certificates and all other documents and take all such actions as may be reasonably required by the Corporate Debtor or the Resolution Applicant for the release of the Encumbrances, security interests and charges contemplated pursuant to the above delivery.</p> <p>Refer clause 12.19 of Part II at page 77 of the Resolution Plan.</p> <p>All such Persons including the Resolution Professional and creditors and members of the Corporate Debtor shall use their best efforts to making all necessary form filings, not later than 5 (five) Business Day of the Implementation Date, with the relevant registrar of companies to record the release of all Encumbrances contemplated to be released under the terms of this Resolution Plan. If required by the Resolution Applicant as the evidence of discharge of Claim and release of Encumbrance, the creditors of the Corporate Debtor shall provide all documentation and/or execute documents and filings evidencing the full and final discharge of their Claims and release of their security interests and Encumbrances, as may be required by the Corporate Debtor and/or the Resolution Applicant.</p> <p>Refer Clause 1.3 of Part IV at page 118 of the Resolution Plan.</p>
(e) curing or waiving of any breach of the	Payment of the aggregate of the Offer Amount and Reconciled Cut Off Date Assets, shall be the full and final discharge of Claims of all Persons under Part II of

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terms of any debt due from the corporate debtor;	<p>this Resolution Plan (<i>Financial Proposal of the Resolution Applicant</i>). Other than Persons receiving settlements under Part II (<i>Financial Proposal of the Resolution Applicant</i>), no other payments or settlements (of any kind) shall be made to any other Person in respect of Claims filed under the CIRP or otherwise and all Claims against the Corporate Debtor along with any related legal proceedings shall stand fully and finally settled, discharged, abated and extinguished (except the Transferred Debt) in perpetuity on and with effect from Payment Date.</p> <p>Refer clause 12 of Part II at page 88 of the Resolution Plan.</p> <p>Upon the approval of this Resolution Plan by the Adjudicating Authority under section 31 of the Code, all pending proceedings relating to the winding-up of the Corporate Debtor shall stand irrevocably and unconditionally abated in perpetuity, and all violation or breach of any agreement or contract or provisions of Applicable Law (including the Applicable Law related to Taxes) by the Corporate Debtor shall stand condoned or waived, and such agreements shall be treated as if no violation or breach has ever been committed.</p> <p>Refer Clause 12.3 of Part II at Page 87 of the Resolution Plan.</p>
(f) reduction in the amount payable to the creditors;	<p>The Resolution Plan contemplates extinguishment of debt after payment of the aggregate of the Offer Amount and Reconciled Cut Off Date Assets under Part II of this Resolution Plan (<i>Financial Proposal of the Resolution Applicant</i>).</p> <p>Refer clause 12 of Part II at page 88 of the Resolution</p>



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	<p>Plan.</p> <p>Furthermore, the balance debt payable by the Corporate Debtor towards the Financial Creditor claims <i>i.e.</i>, Financial Creditor claims less: (i) Upfront Cash Recovery; (ii) Reconciled Cut Off Date Assets; and (iii) Priority Payment (“<b>Transferred Debt</b>”) shall be assigned along with all underlying securities (excluding third party securities, save and except pledge over shares of the Corporate Debtor), to the Resolution Applicant/its Subsidiary Company for a consideration of INR 1,00,000 (“<b>Debt Acquisition Amount</b>”) on the Payment Date;</p> <p>Refer Clause 1.7 at page 6, Clause 5.2.1(b) of Part II at page 78, Clause 1.8 of Schedule 2, at page 137 of the Resolution Plan.</p>
(g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	<p>The balance debt payable by the Corporate Debtor towards the Financial Creditor Claims <i>i.e.</i> Financial Creditor Claims less: (i) Upfront Cash Recovery; (ii) Reconciled Cut Off Date Assets; and (iii) Priority Payment (“<b>Transferred Debt</b>”) shall be assigned along with all underlying securities (excluding third party securities, save and except pledge over shares of the Corporate Debtor), to the Resolution Applicant/its Subsidiary Company for a consideration of ₹1,00,000 (“<b>Debt Acquisition Amount</b>”) on the Payment Date;</p> <p>Refer Clause 1.7 at page 6, Clause 5.2.1(b) of Part II at page 78, Clause 1.8 of Schedule 2, at page 137 of the Resolution Plan.</p>
(h) amendment of the constitutional documents of the corporate debtor;	<p>As per the Resolution Plan, the Resolution Applicant shall infuse an aggregate amount towards subscription to new equity shares of the Corporate Debtor. The authorized share capital of the Corporate Debtor shall stand increased to such an amount as may be required by the Resolution Applicant to accommodate the</p>



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	<p>issuance of New Equity Shares to the Resolution Applicant, and the capital clause of the memorandum of association of the Corporate Debtor shall stand accordingly amended.</p> <p>Refer Clause 1.1 of Schedule 2 at page 134 of the Resolution Plan.</p>
<p>(i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;</p>	<p>The Resolution Applicant shall infuse an aggregate amount towards subscription to new equity shares of the Corporate Debtor.</p> <p>Refer Clause 1.1.1 of Schedule 2 at page 134 of the Resolution Plan.</p> <p>The Resolution Applicant shall infuse funds (as may be required) towards the Offer Amount in one or more tranches into the Corporate Debtor by way of equity, debt or convertible securities or subordinate convertible loans or any other appropriate means and as per terms as deemed fit by the Resolution Applicant in order to undertake the transactions contemplated in this Resolution Plan, including payment of any IRP Cost Deficit Amount, and thereafter, the Workmen and Employee Amount, Priority Payment, and then the Upfront Cash Recovery. The Resolution Applicant may after implementation of steps set out in the Schedule 2 (Implementation Provisions and Acquisition Structure) of the Resolution Plan, further infuse necessary funds by way of new equity shares, convertible securities or subordinate loans and/or securities to meet the other requirements of the Corporate Debtor, including for implementation of Group II and meeting other working capital</p>



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<b>Particulars</b>	<b>Relevant Page of the Resolution Plan dealing aforesaid compliance with Regulation</b>
	requirements.  Refer Clause 1.5 of Schedule 2 at page 136 of the Resolution Plan.
(j) change in portfolio of goods or services produced or rendered by the corporate debtor;	NA
(k) change in technology used by the corporate debtor; and	NA
(l) obtaining necessary approvals from the Central and State Governments and other authorities.	Annexure 22 at page numbers 427-440 of the IA 79/2022 for approval of resolution plan which provides for various concessions/ reliefs /dispensations sought by the Resolution Applicant.  Further, Annexure 22 at page numbers 369-536 of the IA 79/2022 for approval of resolution plan which provides for various clearances sought by the Resolution Applicant.  (Clause 5 of Part I of the Resolution Plan at page numbers 73-74, Appendix VI of the Resolution Plan at page numbers 151-160)

Mandatory contents of Resolution Plan in terms of regulation 38 of CIRP Regulations:

<b>Ref. to relevant Reg.</b>	<b>Requirement</b>	<b>How dealt with in the Plan</b>



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<b><i>Ref. to relevant Reg.</i></b>	<b><i>Requirement</i></b>	<b><i>How dealt with in the Plan</i></b>
38(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	Clause 1.7 of Part-I at page 6, Clause 6 & 7 of Part-II at page 81 and Clause 2 of Part-III at page 105 of the Resolution Plan.
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor.	Clause 6 of Part-III at page 114 of the Resolution 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.	Clause 9 of Part-III at page 114 of the Resolution Plan.
38(2)	A resolution plan shall provide:	
	(a) the term of the plan and its implementation schedule;	Clause 4 of Part-III at page 105 and Clause 4 of Schedule 2 provides for an indicative timeline for implementation of the Resolution Plan at page 140 of the Resolution Plan.
	(b) the management and control of the business of the corporate debtor during its term; and	Clause 5 of Part-III at page 106 of the Resolution Plan.
	(c) adequate means for supervising its implementation.	Clause 6 of Part I at page 74 and Clause 5.2 of Part III at



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<b><i>Ref. to relevant Reg.</i></b>	<b><i>Requirement</i></b>	<b><i>How dealt with in the Plan</i></b>
		page 110 and Clause 8 of Part III at page 114 of the Resolution Plan.
38(3)	<i>A resolution plan shall demonstrate that –</i>	
	(a) it addresses the cause of default;	Clause 3.5 and 3.6 of Part-I at page 47 and Clause 10.1.1 of Part-III at page 115 of the Resolution Plan.
	(b) it is feasible and viable;	Clause 10.1.2 of Part-III at page no. 115 of the Resolution Plan.
	(c) it has provisions for its effective implementation;	Clause 8 of Part-III at page 114, Clause 10.1.3 of Part-III at page 115 and Schedule 2 at page no. 134 of the Resolution Plan.
	(d) it has provisions for approvals required and the timeline for the same; and	Clause 5 of Part-I at page 73 and Clause 6.4, 6.5 & 6.6 of Part-I at page 75 of the Resolution Plan.
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Clause 1 & 2 of Part-I at page 14 & 44 and Clause 10.1.5 of Part-III at page 115 of the Resolution Plan.

6.2. The Applicant submits that the Successful Resolution Applicant has submitted an affidavit of eligibility under Section 29A of the Code at the time of submission of the Expression of Interest (“EOI”), *vide* Affidavit dated 19.07.2021.

6.3. The Applicant has filed a compliance certificate in prescribed form, *i.e.*, Form



‘H’ in compliance with regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which has been annexed as **Annexure A-23** at **pages 537 to 553** of the Application.

- 6.4. The RP has issued the Letter of Intent to the Successful Resolution Applicant on 08.03.2022 and as required under regulation 39(4), the Successful Resolution Applicant has also submitted a Performance Bank Guarantee dated 11.03.2022 for US \$22,500,000.00 (US Dollars twenty-two million five hundred thousand only) in accordance with the provisions of the revised RFRP. The Letter of Intent is annexed as **Annexure A-19** at **pages 349-354** of the Application. The Performance Bank Guarantee is annexed as **Annexure A-20** at **pages 355-362** of the Application.

**Details of Resolution Plan/Payment Schedule**

- 6.5. The Applicant submits the relevant information about the amount claimed, amount admitted, and the amount proposed to be paid by the Successful Resolution Applicant, *i.e.*, Resurgent Power Ventures Pte. Limited, under the said Resolution Plan is tabulated as under:

(Amounts in rupees crores)

Sl. No.	Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan	Amount Provided to the Amount Claimed (%)
1.	SECURED FINANCIAL CREDITORS	4196.52	4196.52	Provided under Clause 1.7(3) (Summary of the Financial Proposal), Clause 5.2 of Part-II and Clauses 9.3 and 9.4 of Part-II of the Resolution Plan.  The Amounts under the	91.28% (approx.)



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				<p>Resolution Plan are as follows:</p> <p>As per Clause 5.2.1. (a) of Part II of the Resolution Plan, an amount of Rs. 3251 Crores (less: (a) IRP Cost Deficit Amount; (b) Priority Payment and (c) Workmen and Employee Amount) is proposed to be paid upfront towards the claims of assenting financial creditors. (See Note: 1 and 2)</p> <p>The estimated surplus cash as detailed in Clause 9.3 of Part II of the Resolution Plan) as per the terms of the Resolution Plan.</p> <p>As Clause 9.4 of Part II of the Resolution Plan relates to amounts yet to be accrued which can arise from litigation recoveries, which cannot be calculated at this stage, they have not been accounted for in the calculation.</p> <p>1.This is upfront amount only as per the resolution plan</p> <p>2.This doesn't include any benefit arising out of litigation recoveries pursuant to Clause 9.4 of Part II of the</p>	
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				Resolution Plan.		
6.6.	2. T h e “	Unsecured Financial Creditors	102.19	98.53	Provided under Clause 5.3 of Part-II and Appendix 1 which states that the claim of the unsecured financial creditor (Axis Bank) has been admitted as a contingent debt since this claim has not been crystalized	NA
	A <sup>3</sup> . p p r o v a l i D a t e <sup>4</sup> . ”	Operational Creditors				
		Related parties of the Corporate Debtor	1279.95	36.24	NIL	NIL
		Government	68.56	68.56	NIL	NIL
		Workmen & Employees	NIL	NIL	NIL	NIL
		Others	322.54	6.38	NIL	NIL
		Other debts and dues	NIL	NIL	NIL	NIL
		<b>TOTAL</b>	5969.76	4406.23	3830.99	64.17%

of the Resolution Plan will be as the date of approval of this Resolution Plan by this Bench.

**7. Details on Management/Implementation and Reliefs as per the Resolution Plan – Salient Features**

7.1. The Resolution Plan also provides for:-

- a. Management and control of the affairs of the Corporate Debtor in Clause 5 of Part-III at page 106 of the Resolution Plan.
- b. Term of the Resolution Plan in Clause 4 of Part-III at page 105 and

—Sd—



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Clause 4 of Schedule I provides for 8an indicative timeline for implementation of the Resolution Plan at page 140 of the Resolution Plan.

- c. Implementation and Supervision of the Resolution Plan in Clause 6 of Part I at page 74 and Clause 5.2 of Part III at page 110 and Clause 8 of Part III at page 114 of the Resolution Plan.

**8. Waivers, Reliefs and Exemptions**

8.1. The Resolution Applicant claimed various reliefs, waivers and concessions in the resolution plan. However, in our view, we cannot grant all such reliefs and concessions for the effective implementation of the Resolution Plan. As per the scheme of IBC read with the regulations made thereunder, and keeping the judicially settled position in view, we grant the reliefs, waiver and claims made by the Resolution Applicant in the following manner and only to this extent: -

- a. After the payment of the dues to the creditors, as per the resolution plan, all the liabilities of the said stakeholders shall stand permanently extinguished after the approval of the resolution plan. We further hold that other claims including Government/Statutory Authority, whether lodged during CIRP or not, shall stand extinguished after the approval of the resolution plan. We further hold that contingent/unconfirmed dues shall also stand extinguished.
- b. In view of the judgment of *Ghanashyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd*,<sup>1</sup> where the Hon'ble Supreme Court held in para 95(i) that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan. Therefore, all claims except provided in the plan shall stand permanently extinguished.
- c. On the effective date and with effect from the appointed date, all encumbrances on the assets of the Corporate Debtor prior to the plan stand permanently extinguished on completion of procedural formalities as provided in Companies Act, 2013;

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<sup>1</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.



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- d. For reliefs and concessions sought from the Government/Statutory Authorities, we direct the Resolution Applicant to approach the concerned Authorities who shall decide the issues.
  - e. As regard to the relief prayed under various provisions of Income Tax Act, 1961, the corporate debtor/resolution applicant may approach the Income Tax Authorities who shall take a decision on relief and concessions sought by the Resolution Applicant in accordance with the provisions of Income Tax Act, 1961.
  - f. We further grant exemption from the provision as regard to Section 281 of the Income Tax Act, 1961, so that the transfer of assets, if any, which is to be done, in terms of provisions of the Resolution plan may be effective.
  - g. The Resolution Applicant shall entitle to review, revise or terminate any appointments/agreements entered into by or on behalf of the Corporate Debtor in accordance with the terms and conditions of such agreements, Memoranda of Undertaking and contracts;
  - h. The RP shall complete the accounting entries to give effect to the resolution plan in the Books of Account as per the applicable Accounting Standards and provisions of the Companies Act, 2013.
  - i. The management of the Corporate Debtor shall be handed over to the Board of Directors as may be nominated by the Resolution Applicant for proper running operations of the business of the corporate debtor, after full payment of the resolution amount has been received by the Resolution Professional.
  - j. The Board of Directors of the Corporate Debtor shall be reconstituted and procedural compliance shall be done to give effect to such reconstitution;
  - k. The Resolution Applicant shall, pursuant to the resolution plan approved under Section 31(1) of the Code, obtain necessary approvals required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under section 31 or within such period as provided for in such law, whichever is later, as the case may be;



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- l. All the approvals of shareholders/members of the Corporate Debtor shall be deemed to have been obtained and the provisions made in the resolution plan as regard to the restructuring of capital shall be binding on them. This order shall be treated as evidence of compliances of all formalities as may be required in this regard under the provisions of the Companies Act, 2013.
  - m. For changing of name and address of the Corporate Debtor the consent of the member/shareholders is deemed to have been obtained and the resolution applicant shall approach the concerned authorities under provisions of the Companies Act, 2013 for complying with the procedural aspects.
  - n. On the effective date and with effect from the appointed date, the entire existing share capital of the Corporate Debtor shall stand extinguished without any payment (including any cancelled value of the said equity shares or preference shares) to shareholders of the Corporate Debtor holding such existing share capital. The Resolution Applicant would be entitled to issue new equity share capital in accordance with the provisions of Companies Act, 2013 read with the rules and regulations made thereunder.

**9. Findings**

- 9.1. On hearing the submissions made by the Ld. Senior Counsel for the Resolution Professional and perusing the record, we find that the Resolution Plan has been approved by the CoC unanimously *i.e.*, 100% of the members voting in favour of the Resolution Plan. As per the CoC, the Plan meets the requirement of being a viable and feasible revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Bench.
- 9.2. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



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9.3. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.

9.4. In case of non-compliance of this order or withdrawal of Resolution Plan within the stipulated time, in addition to other consequences which follow under law, the CoC shall forfeit the EMD amount already paid by the Resolution Applicant.

**10. Orders**

10.1. Subject to the observations made in this Order, the Resolution Plan in question is hereby **approved. The Resolution Plan shall form part of this Order.**

10.2. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect.

10.3. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.

10.4. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.

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

10.6. Liberty is hereby granted for moving any application if required in connection with implementation of this Resolution Plan.

10.7. A copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies, Uttar Pradesh, Kanpur.

10.8. The Resolution Professional shall stand discharged from his duties with effect



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from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approves Resolution Plan.

- 10.9. The Resolution Professional is further directed to hand over all records, premises/ factories documents available with it to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records and premises through the Resolution Professional to finalise the further line of action required for starting of operations of the Corporate Debtor.
- 10.10. IA (IB) No.79/ALD/2022 and the main Company Petition, *i.e.*, CP (IB) No. 107/ALD/2019 shall stand disposed of accordingly.
- 10.11. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 10.12. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
- 10.13. File be consigned to the record.

**Virendra Kumar Gupta**  
Member (Technical)

**Rajasekhar**  
V K

**Rajasekhar V.K.**  
Member (Judicial)

Digitally signed by Rajasekhar V K  
DN: c=IN, o=Personal, title=0602,  
pseudoym=09245124c9d865d2365d8f5507594e4  
5a6491c9e489a8d670ac70a665cc, postalCode=600018,  
st=Telangana,  
serialNumber=05120ae967978df4f18a3ac75e859d0  
50036c928059105c6ed6a8c7396, cn=Rajasekhar V K  
Date: 2022.06.15 15:18:31 +05'30'  
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