



**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI - BENCH-II**

**IA (I.B.C) (Plan) No. 64/MB/2024**

**in**

**CP (IB) No. 01/MB-II/2023**

*[Under Sections 30(6) and 31 of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]*

**MR. ROHIT RAMESH MEHRA**

**[Registration No. IBBI/IPA-001/IP-P00799/2017-18/11374]**

**RESOLUTION PROFESSIONAL OF**

**RELIANCE INFRASTRUCTURE CONSULTING**

**AND ENGINEERS PRIVATE LIMITED**

Tower A, 3403, Oberoi Woods

Oberoi Garden City, Goregaon East

Mumbai, Maharashtra-400063.

**...Applicant**

IN THE MATTER OF:

**AXIS TRUSTEE SERVICES LIMITED**

**...Financial Creditor**

V/s

**RELIANCE INFRASTRUCTURE CONSULTING**

**AND ENGINEERS PRIVATE LIMITED**

**...Corporate Debtor**

**Pronounced: 11.03.2025**

**CORAM:**

**HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)**

**HON'BLE SHRI ANIL RAJ CHELLAN, MEMBER (TECHNICAL)**



***Appearances: Hybrid***

For the Applicant/RP : Adv. Saurabh Bachhawat a/w Adv. Nishant Sogani.  
For the SRA : Adv. Deep Roy.

**ORDER**

**1. BACKGROUND**

1.1 The present Interlocutory Application (IA) has been filed by **Mr. Rohit Ramesh Mehra**, the Applicant/Resolution Professional (RP) of **Reliance Infrastructure Consulting & Engineers Private Limited** (Corporate Debtor). The IA seeks approval of the Resolution Plan under Section 30(6) read with Section 31(1) of the Insolvency and Bankruptcy Code, 2016 (Code) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations). The Resolution Plan as submitted by Mr. Manoj Kumar Upadhyay, the Successful Resolution Applicant (SRA) on 20.02.2024 along with the Addendum dated 26.03.2024 (Resolution Plan) was unanimously approved by the members of Committee of Creditors (CoC) of the Corporate Debtor in its 9<sup>th</sup> meeting held on 17.05.2024.

1.2 A copy of the compliance certificate under Regulation 39(4) of the CIRP Regulations prepared by the RP in Form 1 is annexed as Annexure A and copy of the Resolution Plan dated 20.02.2024, together with the Addendum dated 26.03.2024 is annexed to this Application as Annexure B.



- 1.3 After submitting the Resolution Plan for approval by the Adjudicating Authority (AA), the Applicant filed a clarificatory addendum (Clarificatory Addendum) on 08.11.2024 to the Resolution Plan. This addendum provides for a change in the implementation structure of the Resolution Plan, while keeping the Resolution Applicant and the proposed pay-outs proposed to the stakeholders of the Corporate Debtor unchanged. The Clarificatory addendum to the Resolution Plan was also approved by CoC in its meeting held on 22.11.2024 with 100% voting share.
- 1.4 The Ld. Counsel for the Applicant seeks to consider the Resolution Plan as well as the Clarificatory Addendum for approval by this Bench.

## **2. CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)**

- 2.1 The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by the AA *vide* Order dated 08.09.2023, passed in C.P. No. 01(MB)/2023, filed by Axis Trustee Services Limited under Section 7 of the Code. By virtue of the said Order, Mr. Rohit Ramesh Mehra was appointed as the Interim Resolution Professional ('IRP').
- 2.2 The IRP made a Public Announcement in Form 'A' inviting claims from the creditors against the Corporate Debtor on 13.09.2023. On the basis of the claims admitted, the IRP constituted the CoC as per section 21 of the Code on 28.09.2023 and convened its first meeting on 06.10.2023. In this meeting,



the CoC resolved, *inter alia*, to confirm Mr. Rohit Ramesh Mehra as the RP of the Corporate Debtor.

2.3 The claims existing as on the date of filing of this IA are given in the tables below:

<b>Creditors</b>	<b>Claims Received</b>	<b>Claims Admitted</b>
Secured Financial Creditors	496,36,34,654	496,36,34,654
Unsecured Financial Creditors	518,87,84,398	518,87,84,398
Operational Creditors (Employees and Workmen Dues)	-	-
Operational Creditors (Government Dues)	-	-
Operational Creditors (Other than Government Dues, Employees and Workmen Dues)	24,68,060	24,64,077
Other Creditors	35,59,00,000	35,59,00,000
<b>TOTAL</b>	<b>1051,07,87,112</b>	<b>1051,07,83,129</b>

**The break-up of various creditors**

<b>Sr. No.</b>	<b>Financial Creditors</b>	<b>Category</b>	<b>Amount Claimed</b>	<b>Amount Admitted</b>	<b>Voting %</b>
1.	Axis Trustee Services Ltd. (on behalf of Franklin Templeton)	Secured Financial Creditor	496,36,34,654	4,96,36,34,654	48.89%
2.	J.C. Flowers Asset Reconstruction Company Pvt. Ltd.	Unsecured Financial Creditor	518,87,84,398	518,87,84,398	51.11%
	<b>TOTAL</b>		<b>1015,24,19,052/-</b>	<b>1015,24,19,052/-</b>	<b>100%</b>
<b>Sr. No.</b>	<b>Operational Creditors</b>		<b>Amount Claimed</b>	<b>Amount Admitted</b>	



1.	Axis Trustee Services Limited	6,51,863	6,51,146
2.	Central Depository Services (India) Limited	19,866	16,599
3.	Global Wind Infrastructure and Services Private Limited	17,96,331	17,96,331
	<b>TOTAL</b>	<b>24,68,060/-</b>	<b>24,64,076/-</b>
<b>Sr. No.</b>	<b>Other Creditor</b>	<b>Amount Claimed</b>	<b>Amount Admitted</b>
1.	Reliance Big Private Limited	35,59,00,000	35,59,00,000

2.4 As regards admission of claims, the Applicant states that after the period specified in Regulation 12(1) (i.e., after the issuance of the RFRP on 15.11.2023), the RP received certain claims against the Corporate Debtor. In terms of Regulation 13 (1B), the RP has verified all such claims and categorised the following as acceptable for collation:

<u>Name of Creditor</u>	<u>Type of Claim</u>	<u>Date of Receipt of Claim</u>	<u>Amount Claimed</u>	<u>Amount Verified</u>
JC Flower Asset Reconstruction Company Pvt. Ltd.	Form 'C'	22.03.2024	518,87,84,398	518,87,84,398
Reliance Big Private Limited	Form 'C'- Related Party	14.02.2024	35,59,00,000	35,59,00,000

The delay in filing the above claims was condoned by this Tribunal in I.A. No. 1866 of 2024, vide Order dated 23.04.2024. However, the claim filed by



Reliance Big Pvt. Ltd. has not been classified as financial debt; instead, the RP has treated the same as other debt and the creditor in question has not contested this classification before the Adjudicating Authority (AA).

2.5 During the 2<sup>nd</sup> CoC meeting convened on 16.10.2023, the following Registered Valuers were appointed to determine the Fair Value and Liquidation Value of each class of assets, specifically Land & Building (L&B), Property, Plant & Equipment (PPE), and Securities & Financial Assets (SFA), of the Corporate Debtor:

- Mr. Jayesh Mohan Kamat (for L&B) and Mr. Alok Kumar Gupta (for PPE & SFA); [collectively referred to as **Valuer 1**]
- Mr. Ashwin Vasu Shetty (for L&B), Mr. Nitin Amritlal Panchal (for PPE) and Mr. Ankit Ashok Kumar Kothari (for SFA); [collectively referred to as **Valuer 2**].

2.6 Pursuant to the discussions and deliberations in the 2<sup>nd</sup> CoC meeting, the eligibility criteria for the Prospective Resolution Applicants (PRAs) in terms of Section 25(2)(h) of the Code and publishing of Form 'G' along with detailed invitation for expression of interest as per Regulation 36-A of the CIRP Regulations were voted upon. The Applicant published Form 'G' inviting Expression of Interest (EOI) in two newspapers on 18.10.2023 in terms of Regulation 36-A of the CIRP Regulations. The last date for submission of EOI as per the aforesaid Form 'G' was 02.11.2023.



2.7 Based on the EOIs received, the Applicant published the final list of PRAs on 10.11.2023. The list of PRAs is as under:

- i. 4 Lions Films Pvt. Ltd.
- ii. Anirudh Agro Farms Ltd.
- iii. Kundan Care Products Ltd.
- iv. Mr. Manoj Kumar Upadhyay.
- v. Nalwa Steel and Power Ltd.
- vi. Shreeji Coke & Energy Pvt. Ltd.
- vii. Subhlaxmi Investment Advisory Pvt. Ltd.

2.8 The CoC at its 3<sup>rd</sup> meeting held on 15.11.2023, approved the Request for Resolution Plan (RFRP) and Evaluation Matrix (EM) and accordingly, the Applicant issued the RFRP along with the EM and the Information Memorandum (IM) to the PRAs on 15.11.2023 and provided access to the Virtual Data Room (VDR) to enable them to carry out their due diligence of the Corporate Debtor. The last date for submission of resolution plans was initially stipulated as 15.12.2023. However, at the request of PRAs, the last date was extended from 15.12.2023 to 02.01.2024.

2.9 The 4<sup>th</sup> CoC meeting was held on 04.01.2024. During the meeting, the RP informed the CoC that his team received 2 (two) resolution plans for the Corporate Debtor from the PRAs viz., (a) Mr. Manoj Kumar Upadhyay; and (b) 4 Lions Films Pvt. Ltd. The resolution plans submitted by the PRAs were opened before the CoC in the 4<sup>th</sup> CoC meeting, and in the 5<sup>th</sup> CoC meeting held on 06.02.2024, the RP invited the Resolution Applicants (RAs) to present their resolution plans. The RP and his team and the CoC, raised



certain concerns such as conditionalities and contingencies in the resolution plan, along with the detailed list of observations, and requested the RAs to submit their revised resolution plans latest by 14.02.2024.

2.10 The RAs requested the RP to provide them an extension in the timeline for submission of the final resolution plan which was allowed by the CoC, and accordingly, the last date for submission of the final resolution plan was extended till 20.02.2024. The final resolution plans were eventually submitted by both the RAs on 20.02.2024.

2.11 As the statutory period of 180 days for completing the CIRP of the Corporate Debtor was due to expire on 06.03.2024 and the resolution plans were still under review, the CoC in its 6<sup>th</sup> Meeting held on 29.02.2024, approved filing of an application under Section 12(2) of the Code before the Adjudicating Authority (AA) for seeking an extension of 45 days beyond 06.03. 2024 *vide* IA 2194 of 2024. Thereafter, another application *vide* IA No. 2689 of 2024, was filed before the AA for seeking one more extension of 45 days. Both the applications referred to above were allowed by this Tribunal *vide* Order dated 04.06.2024, with an order that CIRP period was extended up to 04.06.2024.

2.12 During the 8<sup>th</sup> CoC meeting held on 10.04.2024, the Applicant presented a summary of financial proposal of each resolution plan along with key terms of the resolution plan including transaction structure and key steps involved in implementation of the resolution plans. CoC members discussed the





resolution plans along with *inter se* distribution between the members of the CoC of the amounts proposed to be paid to the Financial Creditors under the resolution plans. Further, both the resolution plans were evaluated based on the scoring as per the EM. The details of such scoring are briefly capitulated in the table below:

<u>Parameter</u>	<u>Details</u>	<u>Max Score</u>	<u>Score of MKU</u>	<u>Score of 4 Lions</u>
Quantitative	Upfront Cash Payment to Secured Financial Creditors.	85	85	49
Quantitative	Upfront Cash Payment to Operational Creditors.	5	5	0
Qualitative	Reasonableness and Viability of Business Plan, Certainty, Likelihood, Feasibility and Eventuality of honouring proposed commitments.	5	5	2
Qualitative	Expertise and Pedigree of Overall Financial Capability	5	5	3
	<b>TOTAL</b>	<b>100</b>	<b>100</b>	<b>54</b>

In furtherance of discussions, the CoC requested some additional time for deliberation and decision on the *inter se* distribution between the CoC members and suggested that once it is finalised, the resolution plans could be put for voting.



2.13 In the 9<sup>th</sup> CoC meeting held on 17.05.2024, the members of CoC further discussed and deliberated on the resolution plans and also discussed the mechanism for *inter se* distribution of resolution plan amounts among the financial creditors. After some discussions, the members of CoC sought further time to decide on inter-se distribution. However, considering the limited time available for completion of CIRP on or before 04.06.2024, it was unanimously decided by the CoC that the resolution plans shall be put for voting and the *interse* distribution could be finalised in the subsequent CoC meeting which was scheduled to be held on 22.05.2024. Accordingly, as per the instructions of CoC, both the resolution plans were put for voting with the e-voting window to be kept open from 21.05.2024 to 27.05.2024, which was further extended upto 29.05.2024, at the request of one of the CoC members.

2.14 On 22.05.2024, the 10<sup>th</sup> CoC meeting was conducted to finalise and take on record the inter-se distribution methodology of the resolution plan amounts amongst the financial creditors in accordance with Section 30(4) of the Code. The CoC decided that the distribution of the total value accruing to the financial creditors under the resolution plan shall be in the ratio of 80:20 between the secured financial creditor i.e., Axis Trustee Services Ltd., on behalf of Franklin Templeton Asset Management (India) Private Limited, and the unsecured financial creditor i.e., J.C. Flowers Asset Reconstruction Private Limited Trustee of JCF, Yes Trust 2022-23/2, regardless of the value of their admitted claims.



2.15 After conclusion of e-voting on 29.05.2024, the Resolution Plan of the Successful Resolution Applicant (SRA) i.e. Mr. Manoj Kumar Upadhyay, stood approved by 100% voting share. A snapshot of the voting result is set out below:

<u>Resolution Applicant</u>	<u>Votes Cast in Favour</u>		<u>Abstain Votes</u>		<u>Votes Cast Against</u>	
	No. of Votes	%	No. of Votes	%	No. of Votes	%
Mr. Manoj Kumar Upadhyay	2	100%	-	-	-	-
4 Lions Films Private Limited	1	51.11%	-	-	1	48.89%

2.16 Pursuant to the approval of the Resolution Plan, on 29.05.2024, the Applicant issued the Letter of Intent to the SRA in accordance with RFRP, which was accepted by the SRA on 30.05.2024. Thereafter, the Performance Security of Rs.2,00,00,000/- as required under the RFRP was also provided by the SRA by way of direct transfer in the bank account of the Corporate Debtor.

2.17 The Applicant had appointed M/s. R.G. Agarwala & Company (Transaction Auditor) for the Corporate Debtor to assist the Applicant in identifying Preferential, Undervalued, Fraudulent and Extortionate Credit Transactions under Sections 43,45,49/66 and 50 of the Code respectively. On the basis of the Report given by the Transaction Auditor, the Applicant states that there are no avoidance transactions falling within the purview of the above-cited provisions.



### 3. VALUATION OF ASSETS OF CORPORATE DEBTOR AND CLAIMS RECEIVED

3.1 The RP submitted that, to ensure proper valuation of the Corporate Debtor's properties, two Registered Valuers were appointed by the CoC on 10.04.2024 pursuant to the first CoC meeting dated 02.04.2024. The Fair Value of the Corporate Debtor's assets is mentioned in Form H as Rs. 471.15 Lakh and the Liquidation Value of the CD's assets as Rs. 169.00 Lakh, which were determined as follows:

Particulars	Fair Value (in INR)			Liquidation Value (in INR)		
	Valuer 1	Valuer 2	Average	Valuer 1	Valuer 2	Average
Land & Building	0.11 crore	0.10 crore	<b>0.11 crore</b>	0.08 crore	0.07 crore	<b>0.08 crore</b>
Property, Plant & Equipment	0.91 crore	0.81 crore	<b>0.86 crore</b>	0.68 crore	0.61 crore	<b>0.65 crore</b>
Securities/ Financial Assets	3.74 crores	3.75 crores	<b>3.74 crore</b>	0.98 crore	0.95 crore	<b>0.97 crore</b>
<b>TOTAL</b>	4.76 crores	4.66 crores	<b>4.71 crores</b>	1.74 crore	1.63 crore	<b>1.69 crore</b>

Note: Securities & Financial Assets consist of cash of Rs. 0.66 Crore as on the insolvency commencement date. As per the Resolution Plan, the cash balance of the Corporate Debtor as on the NCLT Approval Date after adjustment of unpaid CIRP cost, would accrue to the benefit of the financial creditors as per the terms of the Resolution Plan read with Addendum to the Resolution Plan dated 26.03.2024.



#### **4. BRIEF BACKGROUND OF CD**

4.1 The Corporate Debtor i.e., Reliance Infrastructure Consulting & Engineers Private Limited, is a company incorporated under the Companies Act, 1956. The Corporate Debtor owns two (2) wind energy generators of 225 KW capacity each, located at Tenkasi, Tamil Nadu and two land parcels of approximately 4046.9 m<sup>2</sup> also in Tenkasi, Tamil Nadu. The electricity generated by the Corporate Debtor is regularly supplied to the Tamil Nadu Electricity Board till date.

#### **5. BRIEF BACKGROUND OF SRA**

5.1 Mr. Manoj Kumar Upadhyay is the Founder, Chairman & Managing Director of ACME Group. He is an innovator, technologist, and serial entrepreneur with several patents to his credit. He has more than two decades of experience in the telecom and energy sectors. He is an inventor of many disruptive products and solutions in the telecom energy space, which have seen large scale commercial success.

5.2 ACME Cleantech Solutions Private Limited, is one of the leading global sustainable and renewable energy companies founded by Mr. Manoj Kumar Upadhyay in the year 2003. It is engaged in the business of undertaking project management consultancy, land development services, and operation and maintenance for renewable power plants, energy management, and diversified into green ammonia and hydrogen business in and outside India.



It also undertakes supply contracts and is also responsible for the investment, sponsorship for its renewable business in India.

5.3 It has many subsidiaries spread across India, which are operating solar power plants, under construction phase of solar, wind and hybrid power projects as well as under-construction phase of green ammonia and hydrogen projects in Odisha and Tamil Nadu. Further, it is constructing one of the largest green ammonia and hydrogen projects through its subsidiary in the Sultanate of Oman.

**6. SALIENT FEATURES OF PLAN APPROVED BY COC**

6.1 The SRA has proposed Rs.1,05,00,000/- (One Crore and Five Lakh Rupees) for the resolution of the Corporate Debtor in the following manner:

Sr. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan	Amount Provided to the Amount Admitted (%)
1.	CIRP Cost	CIRP Cost	N.A.	N.A.	50,000/-	N.A.
2.	Secured Financial Creditors	(b)(ii) who voted in favour of the resolution plan	496,36,34,654	496,36,34,654	83,20,000/-	0.17%
3.	Unsecured Financial	(b)(ii) who voted in	518,87,84,398	518,87,84,398	20,80,000/-	0.04%



	Creditors	favour of the resolution plan				
4.	Operational Creditors	(b) Other than Workmen, Employees and Government dues	24,68,060	24,64,077	50,000/-	2.03%
5.	Other debts and dues	-	35,59,00,000	35,59,00,000	0	0%
<b>Total</b>			<b>1051,07,87,112/-</b>	<b>1051,07,83,129/-</b>	<b>1,05,00,000/-</b>	<b>0.099%</b>

**6.2 Infusion of Funds:** The SRA proposes to make the entire payment of the Resolution Amount within 30 days from the date of approval of the Resolution Plan by the AA. Further, the SRA proposes to infuse an Upfront Cash Payment of Rs.3,50,00,000/- into the Corporate Debtor in the form of equity by subscribing to the equity shares of the Corporate Debtor on the effective date (i.e., within 30 days from the Plan Approval Date). This Upfront Cash Payment will be utilised to make pay-outs towards the unpaid CIRP costs, Standstill Period Costs, discharge of debts of Operational Creditors and to fund the transaction cost of implementation of the Resolution Plan. It is clarified that any balance amount after the aforementioned payments and expenses shall be retained in the Corporate Debtor to be used for general corporate purposes and future expansion.



6.3 **CIRP Cost:** In accordance with the provisions of Section 30(2)(a) of the Code, the unpaid CIRP cost shall be paid in full and in priority over all the other debts of the Corporate Debtor. The Amount allotted by the SRA towards the CIRP cost is Rs.50,000/- only. The SRA understands that the RP, in the course of maintaining the Corporate Debtor as a going concern, has been making payment of the CIRP costs incurred. It is hereinafter clarified that the unpaid CIRP costs (as quantified to the extent possible and approved by the RP) shall be funded from the internal accruals and cash flows of the Corporate Debtor as on the Effective Date i.e., within 30 days from the Plan Approval Date. The Resolution Plan submitted by the SRA provides that any CIRP cost remaining unpaid post utilisation of the internal accruals and cash balance of the Corporate Debtor, shall be borne by the SRA upto the Allotted CIRP Cost Amount i.e. upto INR 50,000/-. In the event that such unpaid CIRP costs exceed the Allotted CIRP Cost Amount, then, the same shall be met out of amounts being paid to the Financial Creditors out of the FC Discharge Amounts.


#### 6.4 Treatment of Financial Creditors

- i. The SRA proposes to pay an amount of Rs.1,04,00,000/- (i.e., FC Discharge Amount) as full, final and complete discharge of admitted claims of the secured as well as unsecured financial creditors in the ratio of 80:20 respectively. Therefore, Rs. 83,20,000/- will be paid by the SRA to the Secured Financial Creditor and Rs. 20,80,000/- will be paid by the SRA to the Unsecured Financial Creditor out of the FC Discharge Amount.





- ii. The SRA will make the entire payment of the FC Discharge amount within 30 days from the date of approval of the Plan by the NCLT, if there is no stay on implementation of the Resolution Plan by the Appellate Authority.
- iii. The FC Discharge Amount shall be deposited by the SRA directly into the account of respective financial creditors, as confirmed and provided by the RP, after adjusting unpaid CIRP cost and any additional amounts payable in respect of operational debt in accordance with the provisions of applicable laws.
- iv. Upon payment of FC Discharge Amount by the SRA to the Financial Creditors on and with effect from the Effective Date, the liability of the Corporate Debtor towards the Financial Creditors shall be permanently settled, discharged and extinguished in full and reduced to *nil*.
- v. The Resolution Plan shall in no way affect the validity and enforceability of (a) the Personal Guarantees, if any, executed by the persons in the existing Promoter Group of the Company as of the Insolvency Commencement Date; (b) the Corporate Guarantees executed by third parties; and (c) any other security created by a third party, prior to the Insolvency Commencement Date, and the Secured Financial Creditors of the Corporate Debtor shall be entitled to take all steps and remedies and recourse available to them in Applicable Law for the non-recovery of the uncovered Financial Debt (i.e., the total dues of the Financial Creditors less



the Financial Creditors Payments Amount) from such guarantors and/or third party security providers, under their respective security documents.

- vi. Upon payment of the relevant amounts to the Financial Creditors of the Corporate Debtor, no recourse shall be available against the Corporate Debtor or its successor and/or the Resolution Applicant or its group companies for any third party guarantees or third party securities on behalf of the Corporate Debtor and the liability of the Corporate Debtor and/or the Resolution Applicant or its group companies including but not limited to MKU Holdings Private Limited towards the primary obligations under the third party guarantees will stand extinguished.
  
- vii. It is stated in the Resolution Plan that immediately following the payment of the FC Discharge Amounts, the principal amount in respect of the non-convertible debentures shall stand transferred in favour of the Resolution Applicant (Transferred Debt) and the balance interest shall stand extinguished. In furtherance to the transfer, the Transferred Debt shall stand converted into 29,84,66,632 Equity Shares having Face Value of Rs.10/- each of the Corporate Debtor. As an essential term of the Resolution Plan, the nature of the Transferred Debt and the terms in relation thereto shall stand modified to convert the Non-Convertible Debentures into Optionally Convertible Debentures and simultaneously convert Optionally Convertible Debentures into Equity Shares.



- viii. As per the Addendum dated 26.03.2024 to the Resolution Plan, any excess amounts lying as cash or in the bank account of the Corporate Debtor on the Plan Approval Date, after adjustment of unpaid CIRP cost as per the terms of this Resolution Plan, shall accrue to the benefit of the Secured Financial Creditors forming part of the CoC. Further, as per the Resolution Plan, in the event that the Corporate Debtor becomes entitled to any recovery or any right to recovery or receives any amount by virtue of an order passed by an appropriate judicial authority pursuant to an avoidance application, if any filed by the RP under Sections 43,45,49,50 and 66 of the Code, any such recovery shall be distributed to the Financial Creditors forming part of the CoC, in proportion of the claim owed to them by the Corporate Debtor.

**Treatment of Operational Creditors (Other than workmen and employees and Government Dues)**

- 6.5 The Resolution Plan states that as per the IM and the Balance Sheet, the estimated realisable value of the assets of the Corporate Debtor would not be sufficient to cover the debt of the Secured Financial Creditors of the Corporate Debtor. Accordingly, the amount payable to the Operational Creditors (other than Employees and Workmen) as per the initial Resolution Plan is *nil*. However, as per the final Resolution Plan, the SRA has allotted an amount of Rs.50,000/- for the Operational Creditors as against their claims amounting to Rs.24,64,076.62/- in full and final settlement.



### **Treatment of Workers' Dues**

6.6 The Applicant/RP has not received any claim toward workers' claims and, hence, the SRA does not propose to allocate any amount towards workers' dues. It is further stated in the Resolution Plan that there are no employees and workmen currently employed by the Corporate Debtor.

### **Payment towards the Statutory Dues**

6.7 As on the Resolution Plan Due Date, the SRA is given to understand that no claim of statutory or governmental authorities have been admitted by the RP. In light of the above, the SRA has allotted *nil* amounts to be paid to the statutory creditors and governmental authorities in respect of statutory dues and liabilities pertaining to the period prior to the Plan Approval Date.

6.8 **Payment to Other Creditors:** The SRA has offered NIL amount to other creditor(s).

### **6.9 Capital Reduction, extinguishment and re-issue of shares:**

- i. Under the Resolution Plan, no payment is proposed to be made to the existing shareholders of the Corporate Debtor. The existing paid up share capital of the Corporate Debtor, whether as Equity Shares or Preference Shares, along with any share application monies shall be cancelled and extinguished pursuant to the capital reduction.
- ii. The Plan Approval Order shall be deemed to have approved the Capital Reduction and shall not require any other procedure as required under any provision of law including but not restricted to Section 66 of the



Companies Act, 2013, or under the regulations issued by the Securities and Exchange Board of India , other than any corporate authorisations to be approved by the MC and filing required to be made with the Ministry of Corporate Affairs.

- iii. The existing pre-CIRP shareholding (including equity and preference share capital) of the Corporate Debtor shall stand cancelled, extinguished and permanently discharged for *nil* consideration. Pursuant to the approval of the resolution plan, the SRA shall hold 100% of the share capital and voting rights of the Corporate Debtor. Any other equity linked securities convertible into or exchangeable with equity shares of the Corporate Debtor other than specifically covered under the Resolution Plan shall also stand cancelled and extinguished without any payment.
  
- iv. The cancellation of and reduction of the entire existing share capital of the Corporate Debtor for nil consideration shall be effected as an integral part of this Resolution Plan as a “Capital Reduction” in terms of Section 66 of the Companies Act, 2013, by virtue of the Plan Approval Order without any further act, deed or instrument and there shall be no requirement to add “and reduced” in the name of the Corporate Debtor. Any filings or regulatory approvals or approvals from the stock exchange, as may be required under the laws of the land, shall be undertaken by the SRA.



- v. The Corporate Debtor in pursuance to Rule 19A of Securities Contracts (Regulation) Rules, 1957, shall maintain a minimum public shareholding of 5% of the expanded equity as a result of the implementation of the Resolution Plan by relisting the shares on the Stock Exchange.

#### 6.10 Formation of Monitoring Committee

- i. With effect from the Plan Approval Date, the management of the affairs of the Corporate Debtor until the Effective Date, and duty to oversee the implementation of the Resolution Plan shall, *inter alia*, vest with the Monitoring Committee (MC), which shall be deemed to have been constituted as on the Plan Approval Date. The MC shall comprise of (i) one representative of the SRA; (ii) one representative of the Financial Creditors forming a part of the CoC; and (iii) the RP.
- ii. The RP shall be appointed as the Chairperson of the MC and the fees payable to the Chairman, as may be mutually agreed upon between the SRA and the RP, shall form a part of the Standstill Period Costs. All costs and expenses incurred by the MC, as approved by the RA, shall form a part of Standstill Period Costs. During the Standstill Period, the MC shall be responsible for implementation and supervision of the Resolution Plan.
- iii. The Quorum for a meeting of the MC would require the presence of at least one member of SRA and one representative of the FCs on the



MC. Each decision of the MC should be approved by at least one representative of the SRA and one representative of the FCs (forming part of the CoC) approving such decision. The RP shall have no right to vote in the MC. As per the Addendum, in case there is any deadlock on any decision to be taken by MC, the aggrieved party may approach the AA for seeking necessary relief(s).

- iv. The MC shall stand dissolved on the Effective Date (i.e., the date within 30 days from the Plan Approval Date) after making the relevant payments under the Resolution Plan and subsequent to the Effective Date, the powers of the board of directors shall vest with the new board of directors appointed in accordance with the provisions of this Resolution Plan.

**6.11 Timeline for Implementation**

Actions	Timelines
Plan Approval Date and Formation of MC	T
Filings by the MC for increase in authorized share capital of the Corporate Debtor in accordance with the terms of Resolution Plan and the Scheme of Merger	Within T+25
Infusion of the first Tranche of Funds by the Resolution Applicant	Within T+25
Effective Date	On or Before T+30



## 6.12 Scheme of Merger

i. **Merger:** On and around Effective Date, the Corporate Debtor shall be merged with MKU Holdings Private Limited, being a related party to the Resolution Applicant, with an Appointed Date to be the Effective Date. The draft of the scheme of the Merger is set out in Annexure A to the Resolution Plan, which shall be updated if required by the RA prior to filing of Resolution Plan with AA under Section 30 of the Code. The RP clarified that MKU Holdings Private Limited, being a related party to the SRA, is not disqualified under Section 29A of the Code.

### ii. Rationale of the Scheme

- a) Going forward, the group intends to position the Transferee Company as the flagship entity to carry out wind power business. Further, the management is also contemplating to consolidate this business under Transferee Company or any of its group company and is also looking to acquire other similar assets and setting up of new projects.
- b) The Ministry of New and Renewable Energy has recently come out with National Repowering & Life Extension Policy for Wind Power Projects to enable the old wind energy turbines to be repowered or refurbished with technological advancements to increase its operational life and efficiency. As part of this policy, the Government intends to provide fiscal and financial benefits. The management is of the view that due to policy support from the Government, the wind power sector could be a sunshine



sector for the next decade and therefore, it intends to participate in this growth journey.

- c) The scheme will lead to an increase in operational synergies and controls for the combined power business.
  - d) The scheme will lead to reduction in multiplicity of legal, regulatory and administrative compliances and their associated costs.
  - e) The scheme will lead to enhanced leveraging capability of the combined entity through debt or equity.
  - f) Transferee company's vast experience in the Indian Power Sector will help to expand the business of Transferor Company.
- iii. **Consideration of Scheme:** Pursuant to the amalgamation, the Transferee Company shall issue and allot 1000 shares to the shareholder of Transferor Company as consideration for merger.

**iv. Share Capital Structure:**

Transferor Company: The share capital structure of the Transferor Company, as of the date of filing of Resolution Plan is as follows:

Authorised Share Capital	Amount (Rs.)
9,91,001 Equity Shares of INR 10 each ("A" Equity Share)	99,10,010
8,999 Equity Shares of INR 10 each ("B" Equity Share)	89,990





<b>TOTAL</b>	<b>1,00,00,000/-</b>
<b>Issued, Subscribed and Paid Up Share Capital</b>	<b>Amount (Rs.)</b>
1,001 Equity Shares of INR 10 each ("A" Equity Share)	10,010
8,999 Equity Shares of INR 10 each ("B" Equity Share)	89,990
<b>TOTAL</b>	<b>1,00,000/-</b>

**Transferee Company:** The share capital structure of the Transferee Company, as of the date of filing of Resolution Plan is as follows:

<b>Authorised Share Capital</b>	<b>Amount (Rs.)</b>
20,00,000 Equity Shares of INR 10 each	2,00,00,000/-
<b>TOTAL</b>	<b>2,00,00,000/-</b>
<b>Issued, Subscribed and Paid Up Share Capital</b>	<b>Amount (INR)</b>
6,10,150 Equity Shares of INR 10 each	61,01,500/-
<b>TOTAL</b>	<b>61,01,500/-</b>

**Re-organised Share Capital of Transferee Company:** The Re-organised Share Capital of Transferee Company shall be as follows:

<b>Sr. No.</b>	<b>Shareholder</b>	<b>No. of Shares</b>	<b>Shareholding Percentage</b>
1.	Mamta Upadhyay	6,00,650	98.28%
2.	Manoj Kumar Upadhyay	10,500	1.72%
	<b>TOTAL</b>	<b>6,11,150</b>	<b>100%</b>



## 7. Modifications to the Resolution Plan approved by CoC

7.1 The Applicant/RP has filed an Additional Affidavit dated 25.11.2024, to place on record the clarificatory addendum dated 08.11. 2024 to the Resolution Plan dated 30.12.2023 submitted by the SRA in the insolvency resolution process of the Corporate Debtor. The Applicant states that he received an email dated 13.09.2024, after seeking approval of the AA, suggesting certain modifications in the implementation of Resolution Plan. As per the email, the SRA, *inter-alia*, proposed to implement the Resolution Plan through its affiliate entity ACME Cleantech Solutions Pvt. Ltd. (New Implementing Entity) instead of MKU Holdings Pvt. Ltd. (Implementing Entity), which is another affiliate entity of the SRA.

7.2 Upon receiving the aforesaid email, the Applicant, on 15.10.2024, convened the 13<sup>th</sup> CoC meeting to discuss the proposed changes in the implementation structure. The Applicant apprised the CoC that the New Implementing Entity is fully controlled by the SRA and his family. The said modifications were discussed in the 14<sup>th</sup> CoC meetings held on 08.11.2024 and put before the CoC for its consideration. The e-voting on the agenda for approval of the modifications in the implementation structure of the Resolution Plan concluded on 22.11.2024 at 7:00 P.M., wherein the same was approved by 100% voting share.



## 8. PERFORMANCE SECURITY

8.1 As per Clause 2.15.1 of the RFRP, the SRA shall furnish within a period of five business days from the date of issuance of the Letter of Intent, a sum of Rs.2 Crore or 10% of the Upfront Cash Payment proposed in the Resolution Plan, whichever is higher, as a performance security in one of the following ways:

- a. By way of irrevocable and unconditional performance bank guarantee issued by a scheduled commercial bank in favour of the Designated Lender (acting on behalf of the CoC); or
- b. By way of Direct Deposit into the bank account.

8.2 Accordingly, the Performance Security of Rs.2,00,00,000/- (Two Crore Rupees), as required under the RFRP, was also provided by the SRA by way of direct transfer in the bank account of the Corporate Debtor. It has been recorded in the 15<sup>th</sup> CoC meeting that a sum of Rs.2,00,00,000/- was received from Mr. Manoj Kumar Upadhyay towards the Performance Security upon being declared as the SRA.

8.3 As per Clause 2.15.8 of the RFRP, unless invoked or forfeited, the Performance Security of the SRA shall be returned within 75 (Seventy-Five) days from the expiry of the Performance Security Validity Period.



## 9. RELIEFS AND CONCESSIONS

9.1 The Applicant has sought several reliefs and concessions in Clause XII.A. of the Resolution Plan, which are stated as under:

9.2 Waiver from payment of fees, charges, stamp duty (whether by Department of Registration and Stamps and Governmental Authorities of Maharashtra and such other States and geographies where the Corporate Debtor or the Resolution Applicant carries on its business and operations or where its assets are located), registration and/or filing fees (including fees payable to the jurisdictional Registrar of Companies) for various actions contemplated under this Resolution Plan (including transfer of non-convertible debentures, issuance of Equity Shares pursuant to conversion of non-convertible debentures or otherwise, change in control, etc.) and that the fees payable (including stamp duty and any other charges) to the Registrar of Companies in respect of the increase of authorised share capital and amendment of memorandum of association and articles of association of the Corporate Debtor for allotment of fresh shares to the Resolution Applicant and other relevant parties be waived and the Registrar of Companies be directed to approve the relevant forms under the Companies Act and rules thereto without payment of fees in respect thereof.

9.3 The Corporate Debtor and the Resolution Applicant shall be granted an exemption from all Taxes, levies, surcharges, cess, fees, transfer premiums, and surcharges that arise from or relate to various actions contemplated



under this Resolution Plan (including issuance of Equity Shares, change in control, etc.).

- 9.4 With effect from the Effective Date, National Securities Depository Limited, Central Depository Services Limited and depository participants are requested to credit the new equity shares to the account of the new owners, the Resolution Applicant within timelines applicable under law; any prior dues to the depositories shall be waived off. In case the shares are not in the dematerialised form, the existing hard copy of shares stands null and void without any value being attributable from the Effective Date.
- 9.5 On approval of resolution plan, all expenses claimed by the Company in the preceding eight years and returns as submitted or not submitted to be treated as assessed and all carry forward losses and depreciation to be treated as allowed.
- 9.6 The Corporate Debtor or the Resolution Applicant shall not, at any point of time, be held financially liable under the provisions in relation to the liability of the Corporate Debtor as per Section 170 of the Income-tax Act, 1961, on account of any action taken pursuant to this Resolution Plan including acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan.



9.7 The requirement of obtaining a no objection certificate under Section 81 of the Central Goods and Services Tax Act, 2017, Section 281 of the Income-tax Act and provisions of taking over predecessor's tax liability under Section 170 of the said Act shall not be applicable and be waived off. Further, the transaction shall not be treated as void under Section 28-I of the Income-tax Act for any claims in respect of tax or any other sum payable by the Corporate Debtor or its existing shareholders or any principal officer as defined under Section 2(35) of the Income-tax Act or their successors. Similarly, any requirements to obtain waivers from any Tax Authorities including in terms of Section 79 and Section 115JB or any other applicable provisions of the Income-tax Act is deemed to have granted upon approval of this Resolution Plan on the Effective Date. In addition, the requirement of affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner of the Corporate Debtor under Section 79 of the Income-tax Act is deemed to have been fulfilled upon approval of this Resolution Plan.

9.8 Any change in shareholding of the Corporate Debtor pursuant to this Resolution Plan shall not result in lapse of any carry forward accumulated tax losses of the Corporate Debtor in view of the specific provisions under Section 79 of the Income-tax Act. Further, the Section 79 Notice may be issued to the Principal Commissioner or the Commissioner of Income-tax, as the case may be, by the Resolution Professional. If no representation is received from the Principal Commissioner or Commissioner of Income-tax



within 30 (thirty) days of issuance of the Section 79 Notice or the Plan Approval Date, whichever is earlier, it shall be deemed that the Principal Commissioner or Commissioner of Income-tax have no objections to the Corporate Debtor carrying forward its tax losses and such notice shall be treated as having accorded a reasonable opportunity of being heard to the Principal Commissioner or Commissioner of Income-tax in relation to this Resolution Plan. Furthermore, upon approval of the Resolution Plan by AA, all tax losses (including capital losses) of the Corporate Debtor shall be allowed to be carried forward and set off by MKU Holdings Private Limited.

9.9 The Corporate Debtor shall be entitled to carry forward the accumulated input tax credit balances under the indirect tax laws and to utilise such amounts to set off against tax liability arising in future in accordance with applicable laws.

9.10 The Ministry of Corporate Affairs to release and extinguish all the security interests created by the Corporate Debtor in favour of the creditors on and from the Effective Date.

9.11 The Resolution Applicant shall be granted a waiver, from all actions, Proceedings or penalties under any applicable law for any non-compliance for an additional period of 12 (twelve) months starting from the day following the Effective Date.





9.12 Without prejudice to the other provisions of this Resolution Plan, it is prayed that the taxes which may arise pursuant to implementation of this Resolution Plan (including but not limited to tax under Sections 269T, 56, 41(1), and 28 of the Income-tax Act, pursuant to implementation of this Resolution Plan) either on the Resolution Applicant or the Corporate Debtor and/or its successors or any other person who is likely to be impacted due to the implementation of this Resolution Plan shall be waived and shall stand extinguished.

9.13 All Business Permits, rights, licences, approvals, registrations, consents, etc., of the Corporate Debtor that may have lapsed or expired, shall stand renewed by the respective Governmental Authorities with effect from the Effective Date and the Resolution Applicant shall take all necessary steps to ensure such renewal in furtherance of its statutory duties under Section 20(1) read with Section 23(2) of the Code. For avoidance of doubt, it is hereby clarified that, all Business Permits, rights, entitlements, benefits, subsidies and privileges whether under applicable law, contract, lease or licence granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled to or accustomed to, which have expired on the Effective Date, shall be deemed to be renewed by the relevant Governmental Authority on an expedited basis and pending receipt of such Business Permits, the Corporate Debtor shall be permitted to continue to operate its business as a going concern, without disruption for the benefit of the Corporate Debtor for a period of 24 (twenty four) months or until renewed by the relevant Governmental Authority,



whichever is later. Without any liability for non-compliance by the Corporate Debtor, during the time specified above, the Resolution Applicant undertakes to cause the Corporate Debtor to obtain/renew such expired consents, licenses, approvals, rights, entitlements, benefits, incentives, subsidies and privileges, whether under law, contract, lease or licence, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to, evaluate the steps required to address the same and take steps remedy the same to the extent possible. During the 24 (twenty four) month period, the Resolution Applicant and the Corporate Debtor shall have immunity from any actions and penalties under any applicable law for any non-compliance of applicable Law in relation to the Corporate Debtor as well as with the terms of any agreement or arrangement entered into with the Corporate Debtor which was existing as on the Effective Date and which continues for a period of 24 (twenty four) months from the date of acquisition of Control by the Resolution Applicant. If (i) any Governmental Authority has suspended, cancelled, revoked or terminated any Business Permits of the Corporate- Debtor; or (ii) any Governmental Authority has threatened to suspend, cancel, revoke or terminate any Business Permits or the operations of any unit or facility of the Corporate Debtor; or (iii) where the Corporate Debtor has been in breach of the terms of any Business Permits or the provisions of applicable law, then all such relevant Governmental Authorities shall provide 24 months after the Effective Date in order for the Resolution Applicant to assess the status of these Business Permits or such Non-Compliances and ensure that the Corporate Debtor is compliant with the



terms of such Business Permits and applicable law, without such Governmental Authorities initiating any investigations, actions or proceedings in relation to such non-compliances or taking any adverse measure which may interrupt or suspend the operations of the Corporate Debtor or any facility/unit thereof.

9.14 From the Effective Date, all inquiries, investigations, suits, Claims, disputes, counter-claims, Proceedings (including any Tax Proceedings), non-compliances against the Corporate Debtor, pending or threatened, present or future in relation to any period until the Effective Date, or arising on account of implementation of this Resolution Plan, shall stand withdrawn and dismissed and all liabilities and obligations therefore, whether or not set out in the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor will be deemed to have been written off fully, and permanently extinguished and no adverse orders passed in the said matters should apply to the Corporate Debtor or the Resolution Applicant. Upon approval of this Resolution Plan, all new inquiries, assessments, reassessments, rectifications, revisions, surveys, summons, investigations, notices, suits, claims, disputes, litigations, arbitrations or other judicial, regulatory (including any Tax Proceedings) or administrative proceedings will be deemed to be barred and will not be initiated or admitted against the Corporate Debtor in relation to any period until the Effective Date and the Corporate Debtor and/ or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.



9.15 From and on the Effective Date, all assets of the Corporate Debtor (whether under dispute or not) (including freehold properties, leasehold interests, or rights of the Corporate Debtor under leave and licence agreements executed by it until the Effective Date) shall be vested in the Corporate Debtor, free and clear of all encumbrances, other than encumbrances required to be assigned to the Resolution Applicant (to the extent applicable).

9.16 All benefits, exemptions, deductions, rebates, reliefs, credits etc., under any tax laws in India available to the Corporate Debtor shall not lapse pursuant to the Resolution Plan and shall be available to MKU Holdings Private Limited post the Effective Date.

9.17 From and on the Effective Date, all non-compliances and defaults of the Corporate Debtor with any statutory or government authority or any other rules, regulations, circulars or guidelines issued by such authority for the period prior to the Effective Date shall be waived of and extinguished. It is hereinafter clarified that the Resolution Applicant shall not be liable for any non-compliances, breach or defaults in respect of the Corporate Debtor with the relevant statutory authority under applicable laws for the period prior to the Plan Approval Date.

9.18 The Corporate Debtor shall not be liable in any manner whatsoever or otherwise prosecuted (threatened, impleaded or otherwise) as a result of, arising from or in connection with, any transaction, act, omission,



commission, default, (whether identified or unidentified) of the Company or Existing Promoters, subsidiary companies and/or group companies of the Company, for the period prior to and up to the Effective Date.

9.19 Any approvals that may be required from Governmental Authorities (including Tax Authorities) in connection with the implementation of the Resolution Plan including on account of change in ownership/Control/voting power of the Corporate Debtor shall be deemed to have been granted on the Effective Date.

9.20 No Governmental Authority (including regulatory, judicial and quasi-judicial authority) shall issue any orders, directions, decrees, judgments etc., that will be in contravention of the provisions of the Resolution Plan (including the financial plan).

9.21 The provisions of this Resolution Plan shall prevail over the provisions of all agreements/arrangements/purchase orders/work orders, etc., entered into by the Corporate Debtor to the extent of any inconsistencies.

9.22 The Resolution Applicant and the Corporate Debtor shall have immunity in respect of any proceedings initiated by any person at any time in connection with any matter whatsoever which relates to the period prior to the Effective Date. For the avoidance of doubt, it is hereby clarified that such immunity shall also extend to: (i) any director or officer of the Corporate Debtor who



was associated with the Corporate Debtor prior to the Effective Date and continues to be a director or officer of the Corporate Debtor following the Effective Date and (ii) any individual who becomes a director or officer of the Corporate Debtor following the Effective Date.

9.23 All agreements, contracts, confirmations, terms and conditions, guarantees, indemnities, work orders, purchase orders, invoices, employment agreements, offer letters, standing orders, letters, commitments, guarantees, indemnities, power(s) of attorneys, acceptances, promises, notes, hypothecations, pledges, mortgages, charges, trusts and/or any other deed or document in favour of, or for the benefit of, or executed with, any Operational Creditor, including any person whose claim has not been filed or if filed, not been admitted, or any trustee or agent of such Operational Creditor, in relation to any period until the Effective Date, shall stand terminated, unless as otherwise specified herein.

9.24 Any approval from any statutory authority, including but not limited to Registrar of Companies, Registrar of Trademarks, etc., for giving effect to the terms of the Scheme of Merger shall be deemed to have been granted to the Resolution Applicant and MKU Holdings Private Limited on the receipt of the Plan Approval Order.



## ANALYSIS AND FINDINGS

10. We have heard the Ld. Counsel for the RP and the SRA. We have also perused the Resolution Plan submitted along with the present Application, the Clarificatory Addendum to the Resolution Plan filed thereafter and other documents on record.
11. The records reveal that the Resolution Plans submitted by Mr. Manoj Kumar Upadhyay, and 4 Lions Films Private Limited were voted in the 9<sup>th</sup> CoC meeting of the Corporate Debtor held on 17.05.2024. The Resolution Plan dated 20.02.2024, along with the Addendum dated 26.03.2024, submitted by Mr. Manoj Kumar Upadhyay received unanimous approval from the CoC. As a result, Mr. Manoj Kumar Upadhyay was declared as the SRA. Consequently, the Applicant issued a Letter of Intent to the SRA on 29.05.2024, in accordance with RFRP, which was accepted by the SRA on 30.05.2024. Following this, the SRA provided the Performance Security of Rs.2,00,00,000/- by way of direct transfer in the bank account of the Corporate Debtor, as required under the RFRP.
12. The Applicant has filed this IA seeking approval of the aforesaid Resolution Plan submitted by the SRA. However, while this IA was pending, the Applicant filed a Clarificatory Addendum on 08.11.2024. This Clarificatory Addendum states that there are no changes to the proposed pay-outs to the stakeholders of the Corporate Debtor, but only provides for certain changes in the implementation structure of the approved Resolution Plan as under:



- (i) The Resolution Plan will be implemented by the Resolution Applicant through ACME Cleantech Solutions Private Limited (New Implementing Entity), which is an Affiliate of the Resolution Applicant and is entirely owned and controlled (directly or indirectly) by the Resolution Applicant and his relatives. Notwithstanding anything to the contrary, the Resolution Applicant shall be solely responsible for implementation of the Resolution Plan.
- (ii) The infusion of the upfront cash payment into the Corporate Debtor on the Effective Date to make the pay-outs towards unpaid CIRP Costs, Standstill Period Costs and the discharge of debts of Operational Creditors and to fund the transaction cost of implementation of the Resolution Plan shall be made by the Resolution Applicant through the New Implementation Entity.
- (iii) The payment and/or deposit of the FC Discharge Amounts towards the extinguishment and transfer of the admitted debt of the secured Financial Creditors in the form of non-convertible debentures along with all securities and encumbrances created by the Corporate Debtor shall now be made by the Resolution Applicant through the New Implementing Entity, instead of MKU Holdings Private Limited. Hence, the transfer of title documents in relation to the assets of the Corporate Debtor, issuance of no-dues certificates, execution of definitive documents and all other corresponding actions in relation thereto shall now be undertaken by/in favour of the New Implementing Entity. Accordingly, all references to MKU Holdings Private




Limited in this regard under the Resolution Plan, would hereinafter be replaced and refer to the New Implementing Entity.

- (iv) The Resolution Plan shall not envisage the conversion of the Transferred Debt into Equity Shares of the Corporate Debtor having face value of Rs.10/- upon the payment of the FC Discharge Amount. Hence, there shall be no requirement for increasing the share capital of the Corporate Debtor to the extent of allotment and issuance of Equity Shares qua the Transferred Debt. Accordingly, all references under the Resolution Plan relating to the conversion of the Transferred Debt into Equity Shares of the Corporate Debtor pursuant to the payment of the FC Discharge Amount, increase of share capital in relation thereto and the allotment and issuance of the relevant Equity Shares in relation thereto shall stand deleted and/or accordingly modified.
- (v) In furtherance to the infusion of the Upfront Cash Payment into the Corporate Debtor by the Implementing Entity, the Equity Shares being allotted and issued in favour of the Resolution Applicant shall now be allotted and issued in favour of the New Implementing Entity, such that the Implementing Entity shall hold 100% (one hundred percent) of the shareholding of the Corporate Debtor. Accordingly, all references to the Resolution Applicant in this regard under the Resolution Plan, would hereinafter be replaced and refer to the New Implementing Entity.




- (vi) The Corporate Debtor, pursuant to the implementation of the Resolution Plan, shall now be merged with the New Implementing Entity instead of MKU Holdings Private Limited. Accordingly, all references to MKU Holdings Private Limited in this regard under the Resolution Plan, would hereinafter be replaced and refer to the New Implementing Entity. Accordingly, the Annexure A of the Resolution Plan shall stand replaced with the Scheme of Merger in Schedule A.
- (vii) The Appointed Date for the Merger shall now be 01.04.2024 instead of the Effective Date.
- (viii) All actions with regard to necessary filings to be made in relation thereto, initiating, continuing or defending legal proceedings, payment of the Total Consideration, seeking necessary reliefs and concessions, allotment and issuance of shares, merger of the Corporate Debtor, declarations and undertakings made under the Resolution Plan, and all ancillary actions to be undertaken qua implementation of the Resolution Plan shall now deemed to be undertaken by the New Implementing Entity instead of the Resolution Applicant and/or MKU Holdings Private Limited. Accordingly, all references under the Resolution Plan to the Resolution Applicant and/or MKU Holdings Private Limited in relation thereto shall now be deemed to be made to the New Implementing Entity.
- (ix) The Clarificatory Addendum is incorporated as part of the Resolution Plan by reference and shall be deemed as a part of the Resolution Plan. Any



reference to the Resolution Plan in any other documents shall be construed as the Resolution Plan including the Clarificatory Addendum. This Addendum shall be treated as a part and parcel of the Resolution Plan and shall be read in conjunction with the clauses of the Resolution Plan. In case of any inconsistency between the provisions of the Clarificatory Addendum and the Resolution Plan, the provisions of the Clarificatory Addendum shall prevail.

(x) The Resolution Applicant undertakes and confirms that the non-grant and/or rejection of the clarifications provided by the Resolution Applicant by way of Clarificatory Addendum, shall not affect the implementation of the Resolution Plan by the Resolution Applicant, and obligation of the Resolution Applicant to implement the Resolution Plan shall continue to remain unconditional and binding.

(xi) Resolution Applicant further agrees to infuse on the Closing Date, through the New Implementing Entity, an additional amount at actuals qua the CIRP Cost being incurred by the Corporate Debtor for the period from 20.09.2024 up to the 1st (first) effective hearing in the interlocutory application bearing number IA (IBC) (Plan)/64/2024 R/Plan filed by the RP for approval of the Resolution Plan. Such additional infusion amount shall not exceed Rs.5,00,000/- (Five Lakh Rupees) per month, for the aforesaid period. Notwithstanding anything contained herein, the additional infusion being made by the Resolution Applicant shall be subject to a maximum




cap of Rs.15,00,000/- (Fifteen Lakh Rupees) in aggregate. The additional infusion amount shall be deemed to form a part of the cash and bank balance of the Corporate Debtor as on the Approval Date by this Bench and treatment for the same shall be as per the Resolution Plan.

13. This Clarificatory Addendum was also approved by CoC in its meeting held on 22.11.2024 with 100% voting share.
14. In the circumstances, the preliminary issue before us is whether the Clarificatory Addendum placed on record by the Applicant, which seeks certain modifications to the Resolution Plan, should be taken into account for approval under Section 30(6) and 31(1) of the Code.
15. It is the contention of the Applicant that the following provisions of the RFRP and the Resolution Plan provide flexibility in respect of adoption of the acquisition structure and infusion of funds through affiliates for the purpose of plan implementation by the Resolution Applicant, subject to approval of the financial creditors –

***“Provisions of RFRP-***

*Clause 2.3.14 Change in implementation structure-Subject to the provisions of Section 29A of the Code, the Resolution Applicant may elect to perform any of its obligations under the resolution plan, in part or in full, either directly or indirectly, through or with, any direct or indirect subsidiaries and affiliates of the Resolution Applicant, either individually or collectively or any other*



*person which is a related party or a non-related party to the Resolution Applicant (and the term "Resolution Applicant" shall be read to include the Resolution Applicant and each such designated entity, unless the context requires otherwise).*

*Clause 2.13.4 - Modification in Resolution Plan after approval of CoC once the committee of creditors approves the Resolution Plan, the Resolution Plan shall become final and binding on the Resolution Applicant and no amendment or modification thereof would be permitted except with the prior approval of the Committee of Creditors or pursuant to the order of the Hon'ble Adjudicating Authority."*

***"Provision of the Approved Resolution Plan***

*Clause VII C (3) (i) read with point 22 of the Addendum - Change in implementation structure*

*"Notwithstanding anything to the contrary, but without prejudice to the current financial commitments and the timelines set forth in this Resolution Plan with respect to each category of Stakeholders, i.e., the Financial Creditors, Operational Creditors and other Stakeholders, (a) the Resolution Applicant upon approval of the Monitoring Committee, shall be entitled to revise the Acquisition Structure, which would be compliant with the provisions of the Code and the applicable regulations framed thereunder, (including, the implementation thereof) to implement the Resolution Plan by providing notice to the Monitoring Committee; (b) the Resolution Applicant and the Monitoring Committee may implement the Resolution Plan by way of an alternate*



*structure which may be mutually acceptable to them and compliant with the provisions of the Code and the applicable regulations framed thereunder. Without prejudice to the above, it is clarified that the abovementioned steps, including repayment of debt, infusion of fresh capital through subscription of equity and/or equity-like and/or debt instruments of the Corporate Debtor, may be undertaken by the Resolution Applicant or any Person nominated by the Resolution Applicant (provided such nominated Person is eligible under Section 29A of the Code to be a resolution applicant).”*


16. Another argument advanced by the Ld. Counsel for the Applicant is that the changes suggested by Clarificatory Addendum are only relating to the implementation structure and not to the Resolution Plan.
17. The term ‘Resolution Applicant’ as defined in Section 5(25) of the Code read with Sections 30 and 29A indicates that the entity with whom the Corporate Debtor is proposed to be merged would be regarded as a person in concert with the Resolution Applicant, if not treated as Resolution Applicant. Therefore, it is evident that the Clarificatory Addendum aims to modify the parties acting jointly or in concert with the Resolution Applicant.
18. Additionally, the Clarificatory Addendum introduces several other changes, including the responsibility of Resolution Applicant for infusion of cash payment, appointed date for merger, etc. Consequently, we are of the view that the changes and modifications proposed through the Clarificatory



Addendum cannot be classified merely as adjustments to the implementation structure, rather as modifications to the Resolution Plan submitted along with this application for approval.

19. The legal position as regards permissibility of modification of a resolution plan approved by CoC has been settled by the Hon'ble Supreme Court in *Ebix Singapore Private Limited v. CoC of Educomp Solutions Limited & Anr.* (2021] 14 S.C.R. 321), where it was held:

*“202. The residual powers of the Adjudicating Authority under the IBC cannot be exercised to create procedural remedies which have substantive outcomes on the process of insolvency. The framework, as it stands, only enables withdrawals from the CIRP process by following the procedure detailed in Section 12A of the IBC and Regulation 30A of the CIRP Regulations and in the situations recognized in those provisions. Enabling withdrawals or modifications of the Resolution Plan at the behest of the successful Resolution Applicant, once it has been submitted to the Adjudicating Authority after due compliance with the procedural requirements and timelines, would create another tier of negotiations which will be wholly unregulated by the statute. Since the 330 days outer limit of the CIRP under Section 12(3) of the IBC, including judicial proceedings, can be extended only in exceptional circumstances, this open-ended process for further negotiations or a withdrawal, would have a deleterious impact on the Corporate Debtor, its creditors, and the economy at large as the liquidation value depletes with the passage of time. A failed negotiation for modification*



after submission, or a withdrawal after approval by the CoC and submission to the Adjudicating Authority, irrespective of the content of the terms envisaged by the Resolution Plan, when unregulated by statutory timelines could occur after a lapse of time, as is the case in the present three appeals before us. Permitting such a course of action would either result in a down-graded resolution amount of the Corporate Debtor and/or a delayed liquidation with depreciated assets which frustrates the core aim of the IBC.

**203. If the legislature in its wisdom, were to recognize the concept of withdrawals or modifications to a Resolution Plan after it has been submitted to the Adjudicating Authority, it must specifically provide for a tether under the IBC and/or the Regulations. This tether must be coupled with directions on narrowly defined grounds on which such actions are permissible and procedural directions, which may include the timelines in which they can be proposed, voting requirements and threshold for approval by the CoC (as the case may be). They must also contemplate at which stage the Corporate Debtor may be sent into liquidation by the Adjudicating Authority or otherwise, in the event of a failed negotiation for modification and/or withdrawal. These are matters for legislative policy.**

**204. In the present framework, even if an impermissible understanding of equity is imported through the route of residual powers or the terms of the Resolution Plan are interpreted in a manner that enables the appellants' desired course of action, it is wholly unclear on whether a withdrawal of a CoC-approved Resolution Plan at a later stage of the process would result in the Adjudicating Authority directing mandatory liquidation of the Corporate**






Debtor. Pertinently, this direction has been otherwise provided in Section 33(1)(b) of the IBC when an Adjudicating Authority rejects a Resolution Plan under Section 31. **In this context, we hold that the existing insolvency framework in India provides no scope for effecting further modifications or withdrawals of CoC-approved Resolution Plans, at the behest of the successful Resolution Applicant, once the plan has been submitted to the Adjudicating Authority.**

205. It would also be sobering for us to recognize that whilst **this Court has declared the position in law to not enable a withdrawal or modification to a successful Resolution Applicant after its submission to the Adjudicating Authority**, long delays in approving the Resolution Plan by the Adjudicating Authority affect the subsequent implementation of the plan.”  
(Emphasis Supplied)

20. The principle set out in the *Ebix* judgement (supra) has also been reiterated by the Hon’ble Supreme Court in *SREI Multiple Asset Investment Trust Vision India Fund Vs. Deccan Chronicle Marketeers & Others* [(2023) SCC On Line SC 298.
21. Based on the clear terms of the statute and the decisions mentioned hereinabove, this AA lacks the authority to allow the modifications to the Resolution Plan by the SRA nor to give effect to any such clauses within the Resolution Plan. The fact that the Clarificatory Addendum was subsequently approved by the CoC does not create an exception to the above principle. However, it is worth noting that even in the Clarificatory Addendum, the SRA



confirmed and agreed that the non-grant and/or rejection of the clarifications provided by him by way of this Clarificatory Addendum, shall not impact the implementation of the Resolution Plan by the SRA. The obligation of the SRA to implement the Resolution Plan remains unconditional and binding. This undertaking has also been noted by the CoC in its meeting held on 08.11.2024.

22. In the facts and circumstances of the case, we are of the view that Clarificatory Addendum is nothing, but a modification of the Resolution Plan submitted for approval of this AA. As such, it should be completely disregarded. Therefore, this AA is obligated to evaluate the Resolution Plan without considering the Clarificatory Addendum.
23. Before considering the Resolution Plan, it is important to notice certain facts of this case. The CIRP against the Corporate Debtor was initiated by a financial creditor under Section 7 of the Code due to the Corporate Debtor's failure to redeem the debentures it had issued. The original applicant submitted a claim of Rs.496.36 Crore, which was admitted by the Applicant and is one of the members of the CoC with voting share of 48.89%. Another member has an admitted debt of Rs.518.88 Crore, which pertains to guarantee obligations of the Corporate Debtor.
24. The assets of the Corporate Debtor consist of investments in two related entities, two wind mills with capacity of 225 KW each located in the State of Tamil Nadu, and cash balances in three bank accounts with a cumulative balance of approximately Rs.69 Lakh. The valuers appointed by the Applicant

valued the assets of the Corporate Debtor with an average fair value of Rs.4.71 Crore and average liquidation value of Rs.1.69 Crore.

- 25.** The Transaction Audit of the Corporate Debtor was conducted by the Applicant through R.G. Agarwala & Co, Chartered Accountants, who submitted their report dated 12.02.2024. Since the erstwhile management of the Corporate Debtor did not provide any information/documents, the Transaction Auditor relied on Bank Statements for FY 2021-2022, 2022-2023 and from 01.04.2023 to 08.09.2023 and Audited financial Statements for FY 2021-2022, Provisional Balance Sheet and Profit & Loss Account F.Y 2022-2023 and trial balance for the period from 01.04.2023 to 08.09.2023. No application under Section 19 of the Code is pending before this Tribunal. Based on the available information and documents, the Transaction Auditor submitted its report stating that no preferential, undervalued extortionate or fraudulent transaction were identified during the Audit. Accordingly, the Applicant has formed an opinion that there are no extortionate or preferential transactions in the Corporate Debtor, and the CoC has agreed with his assessment.
- 26.** As referred to in the above summary of the Resolution Plan, the Applicant has admitted claims to the extent of Rs.1051,07,83,129/- but the average liquidation value of the Corporate Debtors assets is only Rs.1.69 Crore. The Resolution Plan provides for payment of Rs.1,04,50,000/-, which amounts to just 0.10% of the admitted claims. It is also noted that the CoC voted in favour of the Resolution Plan with 100% approval. The Hon'ble Supreme Court in *K. Sashidhar Vs. Indian Overseas Bank and Ors.* (Civil Appeal No. 10673/2018),



held that if the committee of creditors approves a resolution plan by the requisite percentage of voting share under section 30(6), it is imperative for the resolution professional to submit the plan to the AA. The AA is then required to satisfy itself that the resolution plan, as approved by the CoC, meets the requirements specified in Section 30(2) of the Code. The law is now settled that the role of the AA is no more and no less than the above. The role of the AA with respect to a resolution plan is limited to matters specified in Section 30(2) of the IBC. Further, the AA is not required to interfere with the commercial wisdom of the CoC.

**27.** This Bench observes that the Resolution Plan of the SRA is in compliance with Section 30(2) of the Code, as it provides for-

- a) payment of CIRP cost in priority to the payment of other debts of the Corporate Debtor;
- b) payment of debts of the Operational Creditors as specified in Section 30(2)(b) of the Code;
- c) the management of the affairs of the Corporate Debtor after approval of the Plan; and
- d) the implementation and supervision of the Plan.

**28.** We find that the Plan meets the requirements under Section 30(2) of the Code and that it is not in violation of provisions of any law for the time being in force. Further, in *Kalpraj Dharamshi & Anr. Vs. Kotak Investment Advisors Ltd & Anr.*, [Civil Appeal Nos. 2943-2944 of 2019], the Hon'ble Supreme



Court also held that the commercial wisdom of CoC must be adhered to unless the AA is satisfied that the requirement of Section 30(2) has not been complied with.

- 29.** Further, in *Committee of Creditors of Essar Steel India Limited through Authorised Signatory Vs. Satish Kumar Gupta and Ors.*, [Civil Appeal No. 8766-67 of 2019], the Hon'ble Apex Court clearly held that the Adjudicating Authority would not have the power to modify the Resolution Plan which the CoC in their commercial wisdom has approved.
- 30.** After careful consideration of the discussions and the relevant legal framework, we are of the considered view that Resolution Plan dated 30.12.2023, as amended and restated on 20.02.2024 read with the Addendum dated 26.03.2024 (Annexure B to the Application) satisfies the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A), and 39(4) of the CIRP Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code, as undertaken by the SRA and confirmed by the Applicant, and is in accordance with the law. The Applicant has also provided a compliance certificate in 'FORM H' as mandated under the Code, to seek Tribunal's approval for the Resolution Plan. We are satisfied that the Plan has provisions for its effective implementation. In the light of the above discussion, we find that the present IA deserves to be allowed.



**ORDER**

31. The IA (I.B.C.) (Plan) No. 64 of 2024 in C.P.(IB) 01/MB/2023 is allowed and the Resolution Plan dated 30.12.2023, as amended and restated on 20.02.2024 read with the Addendum dated 26.03.2024 (Annexure B to this IA), submitted by **Mr. Manoj Kumar Upadhyay**, is hereby **approved** in terms of Section 31(1) of the IBC. The Addendum dated 08.11.2024 stands rejected.
32. The Resolution Plan dated 30.12.2023, as amended and restated on 20.02.2024 read with the Addendum dated 26.03.2024 (Annexure B) shall become effective from the date of this Order and shall form part of this Order. It shall be binding on the Corporate Debtor, its employees, members, creditors including the Central Government, any State Government, or any local authority, to whom a debt in respect of the payment of dues arising under any law for the time being in force is owed, guarantors and other stakeholders involved in the Resolution Plan.
33. Accordingly, no person or authority shall be entitled to initiate or continue any proceedings with respect to a claim prior to the approval of the Resolution Plan, which is not part of the Resolution Plan in accordance with the principle laid down by Hon'ble Supreme Court in case of ***Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited (Civil Appeal No. 8129 of 2019 decided on 13.04.2021)***.



34. The approval of the Resolution Plan shall not be construed as a waiver of any future statutory obligations/liabilities of the Corporate Debtor and shall be dealt with by the appropriate authorities in accordance with law. Any waiver sought in the Plan relating to the period after the date of this order, more particularly licenses and approvals for keeping the Corporate Debtor as a going concern, shall be subject to approval by the Authorities concerned and this Tribunal will not deter such Authorities from dealing with any of those issues arising in giving effect to the Resolution Plan. The Corporate Debtor may obtain necessary approval required under any law for the time being in force from the Appropriate Authority within a period of one year from the date of approval of the Resolution Plan.
35. The Corporate Debtor shall not be prosecuted for any offence committed prior to the commencement of CIRP in terms of Section 32A of the Code. However, this relief shall not extend to any non-compliance after approval of the Resolution Plan and to any director or officer of the Corporate Debtor who was associated with the Corporate Debtor prior to the Effective Date whether continues to be a director or officer of the Corporate Debtor following the Effective Date.
36. As regards transfer of unpaid debt to the SRA as well as conversion of non-convertible debentures into optionally convertible debentures and its subsequent conversion into equity shares of the Corporate Debtor as contemplated in the Plan, this AA has no objection so long as it is in accordance with law and the judicial precedents, whereby the unpaid debt



of the creditors stands extinguished, or under the Companies Act, 2013, and accounting standards notified thereunder, and subject to necessary procedures and filing as prescribed under the Companies Act, 2013. Any increase in the authorised capital shall be subject to payment of prescribed fee, if any applicable, and filing of prescribed forms with the Registrar of Companies. Further, the Income-tax Department shall be at liberty to examine the tax implications arising from such conversion in terms of Section 2(24), Section 28 and Section 56 of the Income-tax Act, 1961 read with GAAR provisions thereunder.

- 37.** Certain reliefs/waivers have been sought with respect to the requirement of obtaining a no objection certificate under Section 81 of the Central Goods and Services Tax Act, 2017; and Section 28, 41(1), 56, 79, 115JB, 281, 170, 269T of the Income-tax Act, etc. Waiver of these procedural requirements and granting of such reliefs fall within the jurisdiction of the appropriate authorities empowered under those statutes. Hence, these are not granted. However, the SRA is at liberty to approach authorities to seek such reliefs.
- 38.** As regards stipulation of merger of Corporate Debtor into the implementing entity, the AA does not exercise jurisdiction in the present Application over the implementing entity. Thus, the merger shall be subject to following the procedure prescribed under the Companies Act, 2013, and applicable to the implementing entity. However, the procedural requirements required under the Companies Act, 2013, or any other law for the time being in force, for reduction and cancellation of whole or part of the equity capital and





reconstitution of the Board of Directors of the Corporate Debtor are allowed subject to the filing of necessary forms with the concerned authorities. Accordingly, MoA and AoA of the Corporate Debtor shall be amended and filed with the Registrar of Companies, Mumbai (Maharashtra) for information and record as prescribed.

39. It is clarified that the SRA shall, pursuant to the Plan approved under section 31(1) of the Code, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided under law.
40. The SRA may file appropriate application, if required, for renewal of all Business Permits, rights, entitlements, benefits, subsidies and privileges whether under applicable law, contract, lease or license granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled to or accustomed to, which have expired on the Effective Date, and follow the due procedure prescribed for the purpose upon payment of prescribed fees. The contract with third parties shall be subject to the consent of such parties. It is clarified that continuance of approvals shall not be refused on account of extinguishment of any dues under the Code.
41. Other reliefs and concessions not specifically covered in the aforesaid paragraphs are not granted.
42. The moratorium declared under Section 14 of the Code shall cease to have effect on and from the date of this Order.



43. The Applicant/RP shall stand discharged from his duties with effect from the date of this Order. However, he shall perform his duties in terms of the Plan as approved by us.
44. The SRA shall have access to all the Corporate Debtor's records, documents, assets and premises with effect from the date of this Order.
45. The Applicant/RP is further directed to hand over all records, documents and properties of the Corporate Debtor to the SRA to enable it to carry on the business of the Corporate Debtor.
46. The Applicant/RP shall forward all records relating to the conduct of the CIRP and the Plan to the IBBI along with a copy of this Order for information and record.
47. The Applicant/RP shall forthwith send a certified copy of this Order to the CoC and the SRA respectively for necessary compliance.
48. In case of non-compliance with this Order or withdrawal of the Plan, in addition to other consequences which follow under law, the CoC shall forfeit the Performance Security, already paid by the SRA.
49. The Registry is directed to send the electronic version of the Order to all the parties and their Ld. Counsel, including the IBBI for record.



50. I.A. (I.B.C) (Plan) No. 64/MB/2024 in C.P.(IB) No. 01/MB-II/2023 is **allowed** and the **Resolution Plan is approved**. The I.A. is decided in terms of the above.

**Sd/-**  
**ANIL RAJ CHELLAN**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**K. R. SAJI KUMAR**  
**MEMBER (JUDICIAL)**