

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

**IA (I.B.C) (Plan) No. 80/MB/2024**

**in**

**CP (IB) No. 880/MB/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]*

**TRUEUE IPE PRIVATE LIMITED**

**[Registration No. IBBI/IPE-0151/IPA-1/2023-24/50052]**

**RESOLUTION PROFESSIONAL OF**

**TRIUMVIRATE SORORITY PRIVATE LIMITED**

D-501, Ganesh Meridian

Opp. High Court, S.G. Road

Ahmedabad-380060, Gujarat.

**.....Applicant**

IN THE MATTER OF:

**GLOBAL WIND INFRASTRUCTURE AND SERVICES**

**PRIVATE LIMITED**

**...Operational Creditor**

V/s

**TRIUMVIRATE SORORITY PRIVATE LIMITED**

**...Corporate Debtor**

Pronounced: 25.10.2024

**CORAM:**

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

**HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)**

**Appearances: Hybrid**

Applicant/RP: Adv. Adv. G. Aniruth Purusothaman a/w Adv. Aditya Sharma,  
Adv. Vineet Jain & Pratik Pandey

**ORDER**

***[PER: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]***

**1. BACKGROUND**

1.1 This **IA (I.B.C) (Plan) No. 80/MB/2024** is filed by Truee IPE Private Limited, the Applicant/Resolution Professional (RP) on behalf of the Committee of Creditors (CoC) of Triumvirate Sorority Private Limited, the Corporate Debtor (CD), seeking approval of the Resolution Plan (Plan), under Section 30(6) read with Section 31 of the Insolvency and Bankruptcy Code, 2016 (IBC) and Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Process for Corporate Persons) Regulations 2016 (CIRP Regulations), submitted by West End Investment and Finance Consultancy Private Limited, i.e., Successful Resolution Applicant (SRA) and duly approved by 100% voting share of the CoC in its meeting held on 03.07.2024.

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

2.1 This Adjudicating Authority (AA) *vide* order dated 21.11.2023 in C.P.(IB) No.880/MB/2023, admitted the CD into Corporate Insolvency Resolution Process (CIRP) filed by Global Wind Infrastructure and Services Private Limited in respect of the CD, under Section 9 of the IBC. The Applicant was appointed as the Interim Resolution Professional and later confirmed as the RP for conducting CIRP of the CD.

2.2 Public announcement as per Regulation 6 of the CIRP Regulations in Form A was made on 24.11.2023 in two newspapers inviting claims from creditors,

workers and employees of the CD under Section 15 of the IBC. Based on the claims received, CoC was constituted on 13.12.2023.

2.3 The RP states that the CoC was reconstituted on 10.04.2024, comprising of one Financial Creditor (FC), i.e., Citi Securities and Financial Services Private Limited.

2.4 Form G, for Expression of Interest (Eol), was invited on 02.02.2024 pursuant to the resolution of the second CoC dated 25.01.2024. The last date for submission of Eol was 17.02.2024. Pursuant to the publication of Form G, the CoC, at its third meeting dated 26.02.2024 was informed that the Applicant had received Eols from three Prospective Resolution Applicants (PRAs):

<b>Sl. No.</b>	<b>Name of PRA</b>	<b>Eol Submission Date</b>
1.	Crown Steels along with HR Commercials Private Limited (Lead Member) & Sunrise Industries	15.02.2024
2.	West End Investment & Finance Consultancy Private Limited	15.02.2024
3.	Manikaran Power Limited	20.02.2024

However, despite late submission of Eol by Manikaran Power Limited, the Applicant was requested by the CoC to consider it as PRA. It is submitted by the RP that in the fourth meeting of the CoC dated 21.03.2024, a draft of the Request for Resolution Plan (RFRP) & Evaluation Matrix was approved by the CoC. After confirmation of the draft of RFRP & Evaluation Matrix, the Applicant

shared the RFRP, Information Memorandum and the Evaluation Matrix with all the PRAs on 08.03.2024 stating that the last date for submission of Resolution Plan by the PRAs as 07.04.2024. Later, the CoC extended time for submission of resolution plan up to 19.04.2024 upon requests from the PRAs. The RP informed the CoC in its fifth meeting on 25.04.2024 of the final list of PRAs, as under:

<b>Sl. No.</b>	<b>Name of PRA</b>	<b>Plan Submission Date</b>
1.	Crown Steels along with HR Commercials Private Limited (Lead Member) & Sunrise Industries	06.04.2024
2.	West End Investment & Finance Consultancy Private Limited	19.04.2024

2.5 In the sixth CoC meeting dated 23.05.2024, the feasibility and viability of the resolution plans submitted by the PRAs were discussed. The resolution plans were further discussed in the seventh CoC meeting on 21.06.2024. The PRAs were given opportunity for submission of modified resolution plans. Accordingly, the PRAs submitted revised resolution plans which were considered by the CoC at its eighth meeting on 03.07.2024. Later, the resolution plans were put to vote under challenge mechanism from 15:30 PM on 29.07.2024 until 14:30 PM on 30.07.2024. The bid value of Rs.6,00,00,000/- proposed by West End Investment and Finance Consultancy Private Limited was considered highest and successful, and it emerged as the

SRA. The members of the CoC approved the Plan dated 23.07.2024 under Section 30(4) of the IBC with 100% voting share.

2.6 The CIRP period was extended to 25.11.2024 (by 90 days beyond 180 days of CIRP) *vide* order dated 27.08.2024. The present I.A. has been filed by the RP seeking approval of the Plan submitted by the SRA, after being approved by the CoC.

2.7 The SRA has provided to the RP affidavit dated 29.02.2024 confirming its eligibility under Section 29A of the IBC for the purpose of submitting the Plan. The Applicant issued letter of intent dated 12.08.2024 in favour of the SRA and confirmed that the Earnest Money Deposit (EMD) submitted at the time of EoI and 5% committed amount paid at the time of submission of Plan would be adjusted against Performance Guarantee as per the RFRP.

2.8 The Plan has been approved by the CoC in the eighth meeting held on 03.07.2024 with 100% voting share. The RP has complied with the requirements under Section 30(2)(a) to (f) of the IBC and Regulations 38(1)(a), 38(1A), 38(2)(a) to (c) and 38(3) of the CIRP Regulations. The RP has also provided compliance certificate in "FORM H" as mandated under Regulation 39(4) of the CIRP Regulations in seeking approval of the Plan by us. The RP has submitted that no application under Sections 43, 45, 47, 49, 50 or 66 of the IBC is pending.

### **3. VALUATION OF ASSETS OF CD AND CLAIMS RECEIVED**

3.1 In order to evaluate the CD's properties, Registered Valuers were appointed by the CoC in its second meeting dated 25.01.2024, who gave their valuation

reports and the Fair Value (FV) and Liquidation Value (LV) of the CD's assets were determined as follows:

Sl. No.	Name of Valuer / Date of Valuation Report	Land & Building (Rs.)	Plant & Machinery (Rs.)	Securities & Financial Assets (Rs.)
1.	GN Fair Valuation Pvt. Ltd. (19.03.2024)	1,12,90,000/- (FV) 90,32,000/- (LV)	8,14,30,000/- (FV) 5,70,05,000/- (LV)	-----
2.	R. K. Patel & Co. (01.02.2024)	1,29,15,000/- (FV) 1,03,32,600/- (LV)	8,76,22,000/- (FV) 6,13,38,000/- (LV)	-----
3.	Bhavin R. Patel (28.02.2024)	-----	-----	Rs.50,31,000/- (FV) 50,31,000/- (LV)
4.	Rahul Shivdayal Ahuja (09.05.2024)	-----	-----	Rs.50,16,682/- (FV) Rs.50,16,682/- (LV)

Based on the valuation reports submitted by the Registered Valuers, the average of the FV and LV of the CD's assets are as under:

<b>Sl. No.</b>	<b>Particulars</b>	<b>Average FV (Rs.)</b>	<b>Average LV (Rs.)</b>
1.	Land & Building	1,21,02,500/-	96,82,300/-
2.	Plant & Machinery	8,45,26,000/-	5,91,71,500/-
3.	Securities & Financial Assets	50,23,841/-	50,23,841/-

3.2 As on 11.04.2024, the list of CD's creditors, uploaded on the website of Insolvency and Bankruptcy Board of India (IBBI), based on the claims received by the Applicant is as under:

<b>Sl. No.</b>	<b>Creditors</b>	<b>Claim Amount (Rs.)</b>	<b>Claim Amount Admitted (Rs.)</b>	<b>No. of Claims</b>
1.	Unsecured Financial Creditors belonging to any class of creditors	27,62,62,48,686/-	6,29,78,06,400/-	6
2.	Operational Creditors (Government Dues)	71,64,900/-	NIL	1
3.	Operational Creditors (Other than Workmen and	5,16,00,203/-	2,88,08,385/-	1

	Employees and Government Dues)			
	<b>TOTAL</b>	27,68,50,13,789/-	6,32,66,14,785/-	7

3.3 It is submitted that the RP had not received any claims from the Operational Creditors (Workmen or Employees). On the issue of statutory claims, the Income-tax Department submitted a claim of Rs.71,64,900/- (Seventy-One Lakh Sixty-Four Thousand Nine Hundred Rupees) which was not admitted by the Applicant, and stands unchallenged.

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

4.1 The CD was incorporated on 24.03.2006 as a private limited company. The CD was engaged in the business of electricity generation and was initially known as 'AAA Pivotal Enterprises Private Limited' which got merged with four other infrastructure related private companies *vide* order of the Hon'ble Bombay High Court dated 28.09.2015. Later, the CD's name was changed from 'AAA Corporation Private Limited' to 'Triumvirate Sorority Private Limited' on 09.12.2019. The CIN of the CD is U70100MH2006PTC160725 and its registered address is 502, Plot No. 91/94, Prabhat Colony, Santacruz (East), Mumbai-400055, Maharashtra.

4.2 In the first CoC meeting dated 22.12.2023, the Applicant was informed by Mr. Rahul Jain, representative of the suspended Board of Directors of the CD that the CD had 18 windmills (3 of 750KW each and 15 of 225KW each) and 7 Acre land in Tirunelveli District, Tamil Nadu and 15 Acre land in Dharapuram



District, Tamil Nadu. All these windmills were used for generating electricity supplied to the Tamil Nadu Electricity Board (TNEB).

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

5.1 M/s West End Investment and Finance Consultancy Private Limited [CIN No. U67120MH1985PTC037793] was incorporated on 18.10.1985 as non-banking financial company. It is involved in the business of providing financial services to various business houses, investment, mutual funds, etc., and is led by eminent professionals with relevant experience in investment, banking, accounting, taxation and finance. The registered office of the SRA is in Mumbai, Maharashtra.

5.2 The net-worth of the SRA is Rs. 20,009.77 Lakhs as on 31.03.2024 as reflected in the Net Worth Certificate dated 16.07.2024 given by the Chartered Accountants, M/s P.M. Agrawal & Associates and the audited Balance Sheet of the RA for the FYs 2021-2022 and 2022-2023.

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

6.1 The summary of the payments to be made under the Plan dated 23.07.2024 as proposed by the SRA is as follows:

<b>Sl. No.</b>	<b>Particulars</b>	<b>Period</b>	<b>Amount (Rs.)</b>
1)	CIRP Costs	90 days from the closing date*	40,00,000/-

2)	Unsecured Financial Creditors belonging to any class of creditors	90 days from the closing date	5,40,00,000/-
3)	Operational Creditors (Workmen and Employees)	NIL	NIL
4)	Operational Creditors (Other than statutory claims, workmen and employees)	90 days from the closing date	20,00,000/-
5)	Operational Creditors (Statutory Dues)	NIL	NIL
6)	Upfront Amount to the Secured Financial Creditors	NIL	NIL
<b>TOTAL</b>			<b>6,00,00,000/-</b>
<p>* The date when the SRA completes implementation of the Plan and the SRA and/or Affiliates or nominees thereof shall acquire ownership of the CD in the manner set out in the Plan, which shall not be later than 90 business days from the date of approval of Plan by NCLT].</p>			

6.2 It is submitted that the terms of the Plan and its implementation schedule shall be within a period of 90 (Ninety) days from the date of approval of the Plan by us. It is submitted that the Plan provides for effective implementation as per the timelines set out, which is in compliance with Regulation 38(2)(a) of the CIRP Regulations.

6.3 In Part III of the Plan, the SRA has stated the causes for default committed by the CD, and has thus complied with the provisions of Regulation 38(3)(a) of the CIRP Regulations.

6.4 As far as the source of funds for the implementation of the Plan is concerned, the SRA has provided the following details:

<b>Means of Finance/Source of Funds</b>	<b>Amount (Rs.)</b>
Equity/Debt by SRA and/ or its nominees/ affiliates / associates/Special Purpose Vehicle (SPV)/SPC/Holding Company, within 90 days of the Closing Date.	6,00,00,000/-
<b>TOTAL</b>	<b>6,00,00,000/-</b>

6.5 Fund infusion into the CD has been described in Part V of the Plan. The Implementation Schedule is at paragraph 4.4 under Part IV of the Plan.

6.6 It is submitted that the Plan shall be implemented through the following structure:

- a) SRA/SPV2 (or through its nominees/ affiliates / associates/Holding Company) shall acquire and hold 100% paid up equity capital of the CD through SPV2 (formed/to be formed) which will be under the control of the SRA.
- b) As per the Plan, the Wind Power Project of the CD shall be demerged and transferred to SPV1 (formed/to be formed).
- c) Immediately upon implementation of Plan and issue of equity capital as mentioned in para (a) and demerger of Wind Power Project as

mentioned in para (b), the CD will be merged with the SPV2 in accordance with the scheme of arrangement.

- d) The Annexure II to the Plan deals with the steps for implementing the same.

6.7 The Plan would require the approval of various authorities including this AA for its effective implementation:

<b>Sl. No.</b>	<b>Nature of Approval</b>	<b>Relevant Authority for grant of approval/NOC</b>
1)	Approval as the SRA	NCLT
2)	No objection to the SRA and/or the Implementation Entity acquiring the ownership of the CD	NCLT
3)	Change of control of the CD having a certificate of registration as a participant from SEBI in terms of SEBI (Depositories and Participants) Regulations, 2018	SEBI
4)	Infrastructure Clearance Certificate	Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)
5)	Commissioning Certificate	a) TNEB b) TANGEDCO
6)	No Objection Certificate (NOC) for Transfer of Ownership	TANGEDCO

6.8 Further, the SRA gave its undertaking to comply with the provisions of Regulation 31A of the CIRP Regulations as regards payment of applicable regulatory fee to the IBBI in the event of approval of the Plan.

## **7. MANAGEMENT OF CD**

7.1 The SRA has undertaken that implementation of the Plan will be managed and controlled by it under the guidance and supervision of a Monitoring Committee (MC) upon approval of the Plan.

7.2 The MC shall comprise of one representative of the CoC, an independent Insolvency Professional, as decided by the SRA in its discretion, and one representative of the SRA, who shall be deemed to possess the same powers, rights and privileges as that of the RP during the CIRP, subject to the provisions of the Plan.

## **8. PERFORMANCE GUARANTEE**

8.1 It is submitted that the SRA has provided a performance bank guarantee of Rs.27,00,000/- (Twenty-Seven Lakh Rupees) on 07.08.2024 and has also paid an amount of Rs.3,00,000/- (Three Lakhs Rupees) as EMD on 22.04.2024 to the bank account of the CD by RTGS after submission of EoI on 15.02.2024. This was done in compliance with the RFRP considering the adjustment of the already deposited EMD which was relevant as the RFRP stated that the SRA had to submit 5% of the committed plan-amount submitted with the Plan.

## **9. RELIEFS AND CONCESSIONS**

9.1 The SRA has sought various reliefs and concessions based on the clean slate concept laid down by the Hon'ble Supreme Court in various judgements, which are necessary to keep the CD as a going concern; release the CD from any and all liabilities/proceedings, disputes and noncompliance prior to the date of approval of the Plan by us and extended period for renewal or revival of licences for running the business of the CD.

9.2 The SRA also sought waiver from payment of fees, stamp duty, etc., regarding the Plan as well as providing a reasonable opportunity of being heard to the jurisdictional Principal Commissioner under the Income-tax Act, 1961.

9.3 It is submitted that the Applicant/RP has not filed any avoidance transactions during the CIRP of the CD.

## **10. ANALYSIS AND FINDINGS**

10.1 We have heard the Ld. Counsel for the RP and perused the Plan and related documents submitted along with the I.A.

10.2 The CoC has considered the feasibility and viability of the Plan and approved the same by 100% of the voting shares of the FCs. We notice that the Plan is in compliance of Section 30 of the IBC in that it provides for-

- a) priority of payment of CIRP cost to the payment of other debts of the CD;
- b) payment of debts of the OCs;
- c) the management of the affairs of the CD after approval of the Plan; and
- d) the implementation and supervision of the Plan.

10.3 In *K Sashidhar Vs. Indian Overseas Bank and Ors.* (Civil Appeal No.

10673/2018), the Hon'ble Supreme Court 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). 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.

10.4 We find that the Plan meets the requirements under Section 30(2) of the IBC

and that it is not in violation of provisions of any law for the time being in force.

We find that the Plan value is below the liquidation value assessed by the Registered Valuers. However, in *Maharashtra Seamless Limited Vs.*

*Padmanabhan Venkatesh & Ors.*, [Civil Appeal No. 4242 of 2019], the

Hon'ble Supreme Court held that once a resolution plan is approved by the

CoC, the statutory mandate on the Adjudicating Authority under Section 31(1)

of the IBC is to ascertain that it meets the requirement of sub-sections (2)

and (4) of Section 30 of the IBC. It was observed that there is no provision in

the IBC or the regulations that the bid of a resolution applicant has to match

with that of liquidation value determined under Regulation 35 of the CIRP

Regulations. 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 adjudicating authority is satisfied that the requirement of Section 30(2) has been complied with. The law laid down by the Hon'ble Supreme Court in *Maharashtra Seamless Limited* (Supra) and *Kalpraj Dharamshi* (Supra) has been recently applied by the Hon'ble NCLAT, Chennai in *Mr. Ramesh Kesavan Vs. CA Jasin Jose & Anr.*, [Company Appeal (AT) (CH) (INS.) No. 422/2023, wherein it was held that approval of resolution plan below the liquidation value is within the commercial wisdom of the CoC. Neither the IBC or the extant regulations expressly bar that value offered in a resolution plan should be over and above the liquidation value.

10.5 In the case of *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. The Hon'ble Supreme Court in the matter of *Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited*, [Civil Appeal No. 8129 of 2019] held that on the date of the approval of the resolution plan by the AA, all such claims which are not a part of the resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the resolution plan. There is no pending application before us for preferential transaction under Section 43, undervalued transaction under Section 47, fraudulent transaction under Section 49, extortionate credit transaction under Section 50 or fraudulent trading or wrongful trading under Section 66 of the IBC.



10.6 In view of the discussions and the law thus settled, we are of the considered view that the Plan meets the requirements of Section 30(2) of the IBC and Regulations 37, 38, 38(1A), and 39(4) of the CIRP Regulations. The Plan is not in contravention of any of the provisions of Section 29A of the IBC, as undertaken by the SRA, and is in accordance with law. We are satisfied that the Plan has provisions for its effective implementation. In view of factual and legal considerations, we find that the present application deserves to be allowed.

### **ORDER**

The **IA (I.B.C.) (Plan) No. 80 of 2024 in C.P.(IB) 880 of 2023 is allowed** and the Resolution Plan submitted by 'West End Investment & Finance Consultancy Private Limited' is hereby **approved** in terms of Section 31(1) of the IBC.

- I. The Plan shall become effective from the date of this Order and shall form part of this Order. It shall be binding on the CD, 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, such as, authorities to whom statutory dues is owed, guarantors and other stakeholders involved in the Plan.
- II. Accordingly, no person or authority will be entitled to initiate or continue any proceedings with respect to a claim prior to the approval of the Plan which is not part of the Plan.

- III. The approval of the Plan shall not be construed as a waiver of any future statutory obligations/liabilities of the CD and shall be dealt with by the appropriate authorities in accordance with the law. Any waiver sought in the Plan relating to the period after the date of this Order, more particularly, licences and approvals for keeping the CD as a going concern, shall be subject to approval by the authorities concerned and by this Order, we do not deter any authority from dealing with any of the issues arising after effecting the Plan. The CD may obtain necessary approvals required under any law for the time being in force from the appropriate authorities within a period of one year from the date of approval of the Plan.
- IV. The CD shall not be prosecuted for any offence committed prior to the commencement of CIRP in terms of Section 32A of the IBC.
- V. Further, all such claims which are not a part of the Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings with respect to a claim which is not a part of the Resolution Plan.
- VI. The MC as proposed in the Plan shall be constituted to supervise and implement the Plan.
- VII. The moratorium declared under Section 14 of the IBC shall cease to have effect on and from the date of this Order.
- VIII. The 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.
- IX. The SRA shall have access to all the CD's records, documents, assets and premises with effect from the date of this Order.

- X. The RP is further directed to hand over all records, documents and properties of the CD to the SRA to enable it to carry on the business of the CD.
- XI. Liberty is granted to the parties for moving any application, if required, in connection with implementation of this Plan.
- XII. 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.
- XIII. The Applicant/RP shall forthwith send a certified copy of this Order to the CoC and the SRA respectively for necessary compliance.
- XIV. The Registry is directed to send electronic version of the Order to all the parties and their Ld. Counsel.
- XV. **I.A. (I.B.C) (Plan) No. 80/MB/2024 in C.P.(IB) No. 880/MB/2023 is allowed and the Plan is approved.** The I.A. is disposed of in terms of the above.

**Sd/-**  
**SANJIV DUTT**  
**MEMBER (TECHNICAL)**

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

//Tanmay Jain//