

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1



ITEM No. 303 - JA(Plan.)/21(AHM)2024
In
C.P.(IB)/335(AHM)2022

Order under Section 30 IBC, 2016
IN THE MATTER OF:

Kailash T Shah RP of
SPS Autotubes Pvt Ltd

.....Applicant

Order delivered on 16/10/2024

Coram:

Mr. Shammi Khan, Hon'ble Member (J)
Mr. Sameer Kakar, Hon'ble Member (T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER
(Hybrid Mode)

The case is fixed for the pronouncement of the order. The order is pronounced in open Court, vide separate sheet.

-sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

SEN

-sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I, AHMEDABAD**



IA(Plan)21/NCLT(AHM)2024
In
C.P (I.B.) No. 335/NCLT/AHM/2022

*(An Application under Section 30(6) of the IBC, 2016
seeking approval of the Resolution Plan)*

In the matter of :

Kailash T Shah

Resolution Professional
Of SPS Autotubes Private Limited
Having registered office at:
505, 21st Century Business Centre,
Near World Trade Centre, Ring Road,
Surat-395002, Gujarat.

... Applicant

Order Pronounced on 16.10.2024

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

Appearance:

For Applicant(s) : Mr. Nipun Singhvi, Advocate
For the RP : Mr. Kailash T Shah, RP in person
For the FC : Mr. Jitendra Shah, Chief Manager,
The Cosmos Co. Op Bank Ltd.

ORDER
[PER: BENCH]



1. **IA(Plan)/21(AHM)2024** is filed on 09.05.2024 under inwad no.E1219 by the Resolution Professional (hereinafter referred to as “**RP**”) of the Corporate Debtor – M/s. SPS Autotubes Private Limited under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 2016**”) seeking the following prayers:

- a) *This Hon’ble Adjudicating Authority may be pleased to approve the Resolution Plan under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 submitted by Mr. Satish Ashmalji Mehta & Ors., the successful Resolution Applicant and be further pleased to order and declare that such an approved Resolution Plan is binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, the State Government, the Local Authority and other authorities, the guarantors and all other stakeholders involved in the Resolution Plan;*
- b) *Any other order that the Hon’ble NCLT may deem fit in the facts and circumstances of the present case.*

2. The brief, facts of the case are as under:-

- I. This Tribunal vide its order dated 15.09.2023 passed an order for initiating the Corporate Insolvency Resolution Process (hereinafter referred to as “**CIRP**”)



against the Corporate Debtor – M/s. SPS Autotubes Private Limited in CP(IB) No. 335 of 2022 filed by Financial Creditor – The Cosmos Co-operative Bank Ltd., under Section 7 of the IBC, 2016. Mr. Kailash T Shah was appointed as Interim Resolution Professional (hereinafter referred to as “**IRP**”).

- II.** The IRP issued public announcement in Form A on 18.09.2023 with last date of submission of claims on 29.09.2023. Pursuant to the public announcement, the IRP received one claim from Secured Financial Creditor i.e., The Cosmos Co-operative Bank Limited and formed the Committee of Creditors (hereinafter referred to as “**CoC**”) consisting of sole Financial Creditor, having 100% voting share. The Details of Financial Creditor is as under:-

<i>Sr. No.</i>	<i>Name of Financial Creditor Member of COC</i>	<i>Amount of claim admitted in Rs.</i>	<i>Nature of Claim</i>	<i>Voting Share</i>
1.	<i>The Cosmos – Co-operative Bank Ltd</i>	<i>39,50,20,005.56</i>	<i>Secured Financial Creditor</i>	<i>100%</i>
	Total	<i>39,50,20,005.56/-</i>		100%

- III.** The 1st meeting of CoC was held on 09.10.2023



wherein the IRP provided the detailed information regarding the assets/machinery which was available at the premises of the Corporate Debtor and also informed the CoC that the Corporate Debtor is a going concern and is doing the job work of other parties. The CoC with 100% voting share resolved to appoint the IRP as RP.


IV. The 2nd CoC meeting was held on 03.11.2023 wherein the RP informed the CoC that since the Corporate Debtor is a going concern and as per IBC, it is mandatory to undertake transaction audit for a period of last 2 years of operations of Corporate Debtor. The CoC informed that they will internally discuss regarding the undertaking transaction audit. In the said meeting, the CoC resolved to publish the Form-G in two newspapers, namely, Financial Express – English & Gujarati Edition (combo) and Divya Bhaskar – Gujarati Edition. Pursuant to which Form-G was published on 09.11.2023 in two newspapers i.e., Financial Express (English and



Gujarati language) and Divya Bhaskat (Gujarati language) with last date of receipt of EoI on 25.11.2023.

- V.** The 3rd meeting of CoC was held on 12.12.2023 wherein the RP informed the CoC that RP has received 7 Expression of Interests (“**EoIs**”) from the Prospective Resolution Applicant (“**PRA**”) till date. Out of which one EoI from Mr. Sunilkumar Agarwal was received after the last date of submission i.e., on 25.11.2023 and one PRA – M/s. Rajratna Ventures Limited wants to withdraw its EoI and is demanding return of EMD. Now, there are 5 PRAs.
- VI.** The 4th CoC meeting was held on 15.01.2024 wherein the RP informed the CoC that till the last date of submission of Resolution Plan, the RP received one Resolution Plan from Mr. Satish Mehta a.w. Mr. Prakashraj Jain and Mr. Sunny Prakashraj Jain (Suspended Management). One PRA, Mr. Mitin Jain requested to extend the last date of submission of Resolution Plan by 15 days i.e., from 15.01.2024 to

30.01.2024 which was not extended.



VII. The 5th meeting of CoC was held on 11.03.2024 wherein the authorized representative of PRA was instructed to submit modified Resolution Plan as requested to them in the last CoC meeting. In the said meeting, the CoC resolved to file an application seeking extension of 90 days beyond 180 days. Accordingly, this Tribunal vide its order dated 08.04.2024 in IA/526(AHM)2024, at the request counsel for the RP extended the CIRP period by 30 days and condoned the delay in filing the application as the Resolution Plan was approved by the CoC in 6th meeting held on 06.06.2024.

VIII. In 6th CoC meeting held on 06.04.2024, the RP informed the CoC regarding receipt of final Resolution Plan from PRA - Mr. Satish Ashmalji Mehta & Ors. The CoC requested the PRA to improve/modify the Resolution Plan. The modification in the Resolution Plan submitted by PRA were discussed by and between the CoC and the



PRA. The PRA submitted to RP and CoC a clarification note in relation to the Resolution Plan which shall be considered as integral part of the Resolution Plan and for any clarification or confusion on those points, the contents of this clarification note shall be considered as final.

IX. The RP informed the CoC that *he received nine claims from ex-workmen's amounting to Rs.79,51,505/- dated 15.12.2023. Out of total amount claimed of Rs.79,51,505/-, claims amounting to Rs.17,35,968/- are acceptable for collation as per the order of Hon. Labour Court, Ahmedabad and the same was also intimated to the Successful Resolution Applicant, who were also attending the meeting. RP further informed the members of the CoC and the Resolution Applicant that the accepted claims amounting to Rs.17,35,968/- are pertaining to more than 2 years old period from CIRP commencement date, those claims will be categorized under the head Operational creditors.*

X. The RP discussed the improved/modified Resolution Plan with CoC and the CoC resolved their queries and after various discussion and negotiations, the CoC having voting percentage of 100% approved the

Resolution Plan submitted by Mr. Satish Ashmalji Mehta & Ors. In the said 6th CoC meeting, following resolutions were passed:-

Sr No.	Description	Agree	Disagree
1.	RESOLUTION 1 RESOLVED THAT the Resolution Plan submitted by Mr. Satish Ashmalji Mehta & ors., Resolution Applicants is found to be appropriate, feasible & viable. The resolution plan submitted by them be and is hereby approved by the Committee of Creditors of M/s SPS Autotubes Private Limited subject to approval of the same by Hon'ble Adjudicating Authority, NCLT, Ahmedabad Bench."	100	0
2.	RESOLUTION 2 RESOLVED THAT the Receipt & Payment account as shared by the RP for the period from 15/09/2023 till 31/03/2024 be and is hereby approved and the cost incurred by the RP till that day be and is hereby ratified by the CoC members."	100	0
3.	Resolution No. 3(a) RESOLVED THAT the consent of the committee of creditors of M/s. SPS Autotubes Private Limited be and is hereby accorded to liquidate the corporate debtor M/s. SPS Autotubes Private Limited, subject to approval of Hon'ble Adjudicating Authority, NCLT – Ahmedabad Bench.	0	100
4.	Resolution No. 3(b) "RESOLVED THAT the total estimated Liquidation cost will be Rs. 15,00,000/- and liquid assets of the corporate debtor is NIL.	100	0
5.	Resolution No. 3(c) "RESOLVED THAT the approval of the members of CoC be and is hereby given to sale the corporate debtor - M/s. SPS Autotubes Private Limited as a going concern under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, subject to approval by Hon'ble Adjudicating Authority, NCLT- Ahmedabad Bench, if an order for liquidation is passed under section 33."	100	0



6.	Resolution No. 3(d) “RESOLVED THAT the approval of the members of CoC be and is hereby given to sale the business of the corporate debtor - M/s. SPS Autotubes Private Limited as a going concern under clause (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, subject to approval by Hon’ble Adjudicating Authority, NCLT- Ahmedabad Bench, if an order for liquidation is passed under section 33.”	100	0
7.	Resolution No. 3(e) RESOLVED THAT appointment of Mr. Pawan Jagetia as Liquidator is hereby approved for appointment as Liquidator of M/s. SPS Autotubes Private Limited, in case the Order for Liquidation is passed by the Hon’ble NCLT, Ahmedabad Bench.” “RESOLVED FURTHER THAT the Fees of the Liquidator is decided at Rs. 1,00,000/- (plus GST) per month.”	100	0

That in light of the abovementioned voting, it can be held that the COC has approved the resolution plan submitted by Mr. Satish Ashmalji Mehta & ors. (Copy of minutes of 6th CoC meeting dated 06.04.2024 along with voting sheet is attached and marked as **Annexure-K**).

XI. The 7th CoC meeting was held on 06.05.2024 wherein the CoC discussed about the commercial feasibility and viability of the plan and after discussion resolved that plan of Mr. Satish Ashmalji Mehta & Ors., confirms to all the mandatory requirements of the IBC, 2016.





XII. It is stated that the Corporate Debtor is MSME, bearing Udyam Registration No. “UDYAM-GJ-01-0053307” and further Corporate Debtor is Small Enterprise for the classification year of 2023-24 as on classification date of 09.05.2023. Since, the Corporate Debtor is MSME, the RAs are applicable to submit the plan and are not disqualified under Section 29A of IBC, 2016.

- 3.** It is stated that as the Resolution Plan was approved, letter of intent was issued to the SRA on 22.04.2024 against which SRA has already paid Rs.1,43,00,000/- on 06.05.2024 towards Performance Guarantee. A copy of letter of intent and proof of payment of Performance Guarantee is annexed as Annexure-O.
- 4.** The Key features of the Resolution Plan, in brief, are stated to be as under:-

The key features of the Resolution Plan are summarized below:

Resolution Applicant Proposed Amount	Amount claimed (in Rs.)	Amount admitted (in Rs.)	Amount Provided In plan (in Rs.)	Payout As % Of admitted	Timeline [From the date of Appointed Date]	Page of Resolutio n Plan
A. Payment to the Financial Creditors	39,50,20,005.56	39,50,20,005.56	28,23,00,000	71.46%	6 years	25-27
B. Payment towards the Operational Creditors (excluding Statutory Dues)	2,00,00,116.60	1,37,43,663.60	10,00,000	7.28%	30 Days	27
C. Statutory Dues	1,48,658.00	0.00	NIL	NIL	NIL	28
D. Employees and Workmen	NIL	NIL	NIL	NIL	NIL	28
E. Payment to Existing Shareholders of the Corporate Debtor	NIL	NIL	NIL	NIL	NIL	20
TOTAL Payment	41,51,68,780.16	40,87,63,669.16	28,33,00,000	69.31		



*Note:-

1. **Payment of CIRP Cost** [Reference – Section IV Page 25 of Plan]- The Resolution Applicant agrees that the amounts to be paid toward CIRP costs shall be determined by the Resolution Professional as soon as practicable after the Hon'ble NCLT approval date and in any event no later than 30 (thirty) days from the date thereof. RA assumes that the CD is a going concern so CIRP costs should be paid from the same. In case there is any deficit in CIRP cost as of the date of approval of the plan, same shall be paid by the RA.


2. **Fresh Equity Infusion**[Reference – Section IV Page 25 of Plan]- The Resolution Applicant is proposing to infuse fresh equity in the Corporate Debtor to the tune of Rs. 1 crores which shall be infused upfront from its own sources. The existing shareholding will be extinguished and new shares will be issued. The existing shareholders will not be paid any consideration. The new list of shareholders will be given by Resolution Applicant when the plan gets approved. The Resolution Applicant will issue 10,00,000 shares having face value of Rs. 10 each.



Copy of resolution plan and Copy of clarification note to Resolution plan is annexed hereto and marked as "Annexure-P".

5. In respect of **Source of Fund**, (Section IV of plan), it is stated that:-

"One of the Resolution Applicant Mr. Satish Ashmalji Mehta alone is having a Net Worth of Rs. 1,253.95 lacs as on 22nd June 2023. The requisite Networth certificate has been already submitted as a part of the expression of interest. The Resolution Applicant shall infuse funds from its own reserves. In case of any additional fund requirement, the




Applicant is confident to raise further funds, while maintaining comfortable Debt-Equity Ratio. The said amount will be utilized for settlement and payments of claims of Financial, Operational and other Creditors. So the Resolution Applicant are able to make payment of CIRP cost within 30 days from their own funds.

6. In respect of the **Monitoring Committee** (Section XI of plan), it is stated that:-

As stated under Section XI at Page 51, the Implementation & Monitoring Committee shall comprise of one nominee of the Resolution Applicant, the Insolvency Resolution Professional and one nominee of the Approving Financial Creditors. The monitoring committee will be chaired by the Resolution Professional for the effective implementation of the Resolution Plan.

7. It is stated that the Resolution Plan is in compliance of Section 30(2) of the IBC, 2016 and Regulation 38(1A) of the CIRP Regulations, 2016. The Liquidation Value and Fair Value of the Corporate Debtor is Rs.8,29,03,641/- and Rs.19,15,43,136/- respectively.

8. This Tribunal vide its order dated 23.07.2024 allowed to



file the modified list of creditors. The said order records as under:-

It is stated by the RP that 6th CoC meeting was held on 06.04.2024, minutes of meeting are attached at page 37 and at page No. 40, CoC has discussed about claims as far as regarding the belated claims from the employees. The following discussion is recorded.

“The CoC members approved the claims amounting to Rs. 17,35,968/- as per the Order of the Hon. Labour Court, Ahmedabad and the same was also intimated to the Successful Resolution Applicant, who were also attending the meeting regarding acceptance of the claim amounting to Rs. 17,35,968/- and rejection of claim amounting to Rs. 62,15,537/-. The RP suggested the CoC members that an appeal should be filed before the appropriate forum for challenging the order of Hon'ble Labour Court, to which the CoC members agreed. The RP further informed the members of the CoC and the Resolution Applicants that the accepted claims amounting to Rs. 17,35,968/- are pertaining to more than 2 years old period from CIRP commencement date, those claims will be categorized under the head Operational creditors. The PRA's also took note of the same.”

Subsequent to the same, CoC with 100% majority directed the RP to file the present application and the relevant resolution is appended on page 58 & 59 of the application.

As claim of the workman emanating from an order of Labour Court and as the CoC has already with 100% majority approved the claims amounting to Rs. 17,35,968/-, we hereby allow prayer (A) to (C) and accordingly, this application is allowed and is disposed of.

9. In compliance of the order dated 17.05.2024 wherein this Tribunal has directed the RP to explain the difference in



fair value and liquidation value, the RP filed an affidavit under inward diary no.4515 dated 10.06.2024. In the said affidavit, the RP has given the reasons for the huge difference between the fair value and the liquidation value in the following manner:-


SECURITIES AND FINANCIAL ASSETS:-

a) As per Valuation Report submitted by the SFA valuers, there is difference in the following amounts:

Particulars	Fair Valur (in Rs.)	Liquidation Valur (in Rs.)	Difference	Reason
GST Balance	92,30,355.50	87,79,470.00	4,50,88.50	As per Electronic Credit ledger there is balance of 90,17,711.00 lying as GST Credit and accordingly the FMV and Liquidation Valur is assigned.
Deferred Tax Asset (DTA)	7,64,30,768.00	NIL	7,64,30,768.00	There is no reasonable certainty of the expected realization
Total	8,56,61,123.50	87,79,470.00	7,68,81,653.50	

PLANT & MACHINERY:-

b) The Average Fair Valur of the Plant & Machinery is Rs.6,34,62,636/- and Average Liquidation value of Plant & Machinery is Rs.3,99,16,664/- having estimated difference of 23% between the Fair Value and Liquidation Value. The variation of 23% between the Fair Value and Liquidation Value is fair as in case of Liquidation of CD the value of




Plant & machinery will be reduced. In the event of Liquidation of the CD, the successful bidder has to remove the Plant & Machinery from the Factory site. So, the liquidation value is 23% lower than the fair market value. (Copy of valuation report is attached and marked as Annexure B).

LAND & BUILDING:

- c) The Average Fair Market Value of the Land & Building is Rs.3,28,48,000/- and Average Liquidation value of Land & Building is Rs.2,46,36,250/- having estimated difference of 14% between the Fair Value and Liquidation Value. The variation of 14% between the Fair Value and Liquidation Value is fair as in case of Liquidation of CD the value of Land & Building will be reduced.

10. This Tribunal vide its order dated 29.07.2024 directed the RP to file additional affidavit on the following grounds:-

- I. *RP to file RFRP document.*
- II. *RP to file copies of EoI received in response to publication of Form-G.*
- III. *It is seen that the SRA comprises of three persons, two are the Suspended Directors of the Corporate Debtor. RP to file agreement between the three parties for placing the present Resolution Plan before the RP.*
- IV. *Perusal of the plan reveals that payment to Financial Creditor under the Plan is spread over a period of six (6) years. The timelines for various payments are not specified in the plan. In the present form, the various timelines are very ambiguous. RP to obtain the same from the RA and get the same approved from the CoC. RP is permitted hereby to call another CoC meeting just for this limited purpose within next 10 days.*
- V. *Perusal of the plan reveals that a sum of Rs.2 Crores will be invested in the working capital of the Corporate Debtor. No timeline is given in the plan regarding such infusion. RP to obtain clarity from the SRA.*
- VI. *It is seen from the plan that majority of the payment to the Financial Creditor is on deferred basis through internal accruals generated out of*



the working of the Corporate Debtor. Detailed financial projection have not been attached along with the plan.

VII. *It is seen that financial viability was seen by the CoC in the 7th CoC meeting. The various parameters based upon which financial viability was established are not forming part of the present plan approval application. Let the same be filed.*

VIII. *29A compliance affidavit of the two Suspended Directors, Mr. Prakash Jain and Mr. Sunny Jain is not forming part of the present application. Let the same be filed.*

11. In compliance of the order dated 29.07.2024, the RP filed an additional affidavit under inward diary no. D6666 dated 29.08.2024 with Annexure A1 to Annexure A9. However, during the course of hearing on 30.08.2024, the counsel for the RP sought indulgence to get better affidavit-cum-undertaking in terms of Section 29A and to hold meeting of one more CoC to take a call on relief and concession. The order dated 30.08.2024 records as under:-

“....However, Ld. Counsel for the Applicant/RP seeks indulgence to get better affidavit-cum-undertaking in terms of Section 29A from the suspended directors, who are part of the SRA and file the same which is allowed.

Ld. Counsel for the Applicant/RP also seeks one more indulgence to hold meeting of one more CoC to take a call on the relief and concession as sought in the Resolution Plan by the SRA with deliberation in CoC meeting as well as other issues, if any and to place on record the same within 10 days which is also allowed....”.



- 12.** In compliance of the order dated 30.08.2024, an additional affidavit under inward diary no.D6972 dated 12.09.2024 was filed. As per the said affidavit, the RP convened the 9th CoC meeting on 06.09.2024 wherein the RP discussed the status of hearing of IA(Plan)21 of 2024 amongst the CoC members and further discussed the relief sought by SRA. Upon discussion, the CoC members with 100% voting right approved and resolved relief, concession and waivers sought by SRA. Further, the RP filed fresh affidavit-cum-undertaking in terms of Section 29A of IBC, 2016 of members of suspended directors which is attached as Annexure-3.
- 13.** A convenience compliation under inward diary no. D5973 dated 31.07.2024 is filed which is taken on record and we have gone through the same.
- 14.** The RP filed the revised Form-H under inward diary no. D7189 dated 20.09.2024. The same is taken on record.
- 15.** As per the revised Form H, the amount provided for the stakeholders under the Resolution Plan is as under:-



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

(Amount in Rs. lakh)

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan	NA	NA	NA	NA

		(ii) who voted in favour of the resolution plan	3,950.20	3,950.20	2,823.00	71.46%
		Total[(a) + (b)]	3,950.20	3,950.20	2,823.00	71.46%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan	NA	NA	NA	NA
		(ii) who voted in favour of the resolution plan	NA	NA	NA	NA
		Total[(a) + (b)]	NA	NA	NA	NA
3	Operational Creditors	(a) Related Party of Corporate Debtor	NA	NA	NA	NA
		(b) Other than (a) above: (i) Government	1.49	0.00	0.00	NA
		(ii) Workmen (dues are beyond 24 months)	79.52	17.36	01.26	01.58 %
		(iii) Employees	NA	NA	NA	NA
		(iv) Other	120.49	120.08	08.74	7.25 %
		Total[(a) + (b)]	201.50	137.44	10.00	4.96%
4	Other debts and dues	NA	NA	NA	NA	
Grand Total			4,151.70	4,087.64	2,833.00	68.24%

*If there are sub-categories in a category, please add rows for each sub-category.

Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.]

16. The Schedule of Payment as mentioned in the additional affidavit dated 29.08.2024 is as under:-

Schedule of Payment	
Date of Approval of Resolution Plan = T	
PROPOSED PAYMENT TO OPERATIONAL CREDITORS	
Payment	No. of Days From Hon'ble NCLT order
1,000,000.00	T+30 days
1,000,000.00	
PROPOSED PAYMENT TO FINANCIAL CREDITORS	
Payment	No. of Days From Hon'ble NCLT order
15,875,000.00	T+90
15,875,000.00	T+180
15,875,000.00	T+270
15,875,000.00	T+360
11,906,250.00	T+450
11,906,250.00	T+540
11,906,250.00	T+630
11,906,250.00	T+720
11,906,250.00	T+810
11,906,250.00	T+900
11,906,250.00	T+990
11,906,250.00	T+1080
11,906,250.00	T+1170
11,906,250.00	T+1260
11,906,250.00	T+1350
11,906,250.00	T+1440
11,906,250.00	T+1530
11,906,250.00	T+1620
11,906,250.00	T+1710
11,906,250.00	T+1800
7,084,218.75	T+1890
7,084,218.75	T+1980
7,084,218.75	T+2070
7,084,218.75	T+2160
282,336,875.00	



NOTE: The undersigned, hereby declare that in accordance with the submitted resolution plan, an investment of additional 2 crores will be made by the Resolution Applicants(s) towards the working capital of the corporate debtor within a period of six months from the date of approval of the resolution plan. The purpose of this allocation is to ensure that the corporate debtor has adequate liquidity to support its operational requirements and facilitate smooth business operations. The fund of 2 crores will be infused in accordance with below mentioned schedule

Schedule of Payment	
Date of Approval of Resolution Plan = T	
Payment	No. of Days From Hon'ble NCLT order
30,00,000.00	T+30
30,00,000.00	T+60
30,00,000.00	T+90
30,00,000.00	T+120
30,00,000.00	T+150
50,00,000.00	T+180
2,00,00,000.00	

17. The interests of existing share holders have been altered by the Resolution plan as under:-

8. The interests of existing shareholders have been altered by the Resolution plan as under:

Sl. No	Category of Share Holder	Name	No .of Shares held before CIRP	No .of Shares held after the CIRP	Voting Share (%)held before CIRP	Voting Share (%)held after CIRP
1	Equity	Sunny Jain	49,93,900	4,50,000	99.88%	45.00%
		Sarojben Jain	6000	—	0.12%	0.00%
		Satish Mehta	—	50,000	0	5.00%
		Prakashraj Mehta	—	5,00,000	0	50.00%
		Total		49,99,900	10,00,000	100%
2	Preference		-	-	-	-

18. The compliance of the resolution plan is as under:-

9. The compliance of the Resolution Plan is as under:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance Yes /No
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Yes (Section IX pg. 42)	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Section I (Para 6). Further, as CD is MSME Clause (c) to (h) of Section 29A are not applicable to Resolution Applicant	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Yes	Yes
Section 30(2)	Whether the Resolution Plan-		
	(a) provides for the payment of insolvency resolution process costs?	Section III (Point 1), Section IV (Point 1.2 (b)(i)) & Section VI (i)	Yes
	(b) provides for the payment to the operational creditors?	Section III (Point 2), Section IV (Point 1.2 (b)(iii)) and Section VI (iii)	Yes
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Section IV (Point 1.2 (b)(iv))	Yes
	(d) provides for the management of the affairs of the corporate debtor?	Section III (Point 3)	Yes



	(e) provides for the implementation and supervision of the resolution plan?	Section III (Point 4)	Yes
	(f) contravenes any of the provisions of the law for the time being in force?	Section III (Point 5), Section IV(C)(iii)	Yes
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66 % voting share?	Yes Yes	Yes Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Yes	Yes
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?]	Section III (Point 19)	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Section III (Point 20)	Yes
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]	Section III (Point 21), Section V (2) NA	Yes NA
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	Section III (Point 22) and Section XII Section III (Point 22) and Section XI Section III (Point 22) and Section XII	Yes Yes Yes
38(3)	Whether the resolution plan demonstrates that – (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same?	Section-III (Point 23) Section-III (Point 23) Section-XIII (Point 23) Section-XIII (Point 23) Section-XIII	Yes Yes Yes Yes



	(e) the resolution applicant has the capability to implement the resolution plan?	(Point 23)	Yes
Regulation 39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him? No	NA	NA
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]**	Yes	Yes

**Performance Security was received from successful resolution applicant on 06.05.2024 amounting to Rs. 1,43,00,000/- (Proof of Performance Security is attached at Pg. no. 153 of approval of resolution plan application bearing IA (Plan) no. 21 of 2024)

19. The timelines for the implementation of the resolution plan mentioned in Section XIII of the plan is as under:-

Sr. No.	Activity	Indicative Timeline(days)
I - Approval Process		
1.	Presentation of Resolution Plan to the COC.	To be completed prior to Hon'ble NCLT approval of the Resolution Plan
2.	Approval of Resolution Plan by COC.	
3.	Application to the Hon'ble NCLT for approval of the Resolution Plan.	
4.	Approval of Resolution Plan by the Hon'ble NCLT on Hon'ble NCLT Approval Date (such date, "T").	T
5.	Writing off certain dues of the Corporate Debtor in accordance with the Resolution Plan and Code, as on the Hon'ble NCLT Approval Date, as set out in this Resolution Plan.	T+5
6.	Formation and appointment of the Implementation and Monitoring Committee and reconstitution of Board.	
7.	Intimation to all Financial Creditors and Operational Creditors, existing shareholders and other stakeholders.	
II - Interim Period		
8.	Completion of the Condition Precedent and Issue of Implementation Notice.	T+7
III - Infusion of Funds and Acquisition Actions		
9.	Upfront Equity Infusion into the Corporate Debtor along with Capital Reduction (i.e., for the acquisition of control of the Corporate Debtor by the Resolution Applicant)	T+30
IV - Settlement of Creditors and Mandatory Payments		
10.	Fund Infusion in terms of this Resolution Plan to make all mandatory payments in accordance with the Code and settle all relevant dues in accordance with the Resolution Plan to <i>interalia</i> Financial Creditors in accordance with this Resolution Plan and Admitted Financial Creditor Debt Settlement	T+6 years
11.	Payment of CIRP costs, and all other mandatory payments required to be made in accordance with the Code.	T+30
12.	Admitted Financial Creditor Debt Settlement.	T+6 years
13.	Payment to Employees and Workmen.	Not Applicable
14.	Payment to Operation Creditors (Other than Employees and Workmen)	T+30

20. Relief and Concession:



Sr. No.	Concessions / Reliefs / Waivers / Directions sought	Orders thereon
1.	Given that the Resolution Applicant will acquire control of the affairs of the Corporate Debtor on the Effective Date, all Government and Statutory Authorities (as they are Operational Creditors) to waive any financial penalties, or any other financial liabilities and dues that may arise from any defaults or non-compliances by the Corporate Debtor prior to the Effective Date of Applicable Laws, including but not limited to the provisions of the Companies Act, 2013, Electricity Act 2003, Contract Labour (Regulation and Abolition) Act, 1970, all relevant and applicable labour laws, all relevant and applicable Direct and Indirect tax laws, the relevant stamp acts of the different States of India, relevant environmental laws and any other government instrumentality.	Granted in terms of Ghanashyam Mishra vs. Edelweiss ARC
2.	The change in shareholding of the Corporate Debtor pursuant to the Resolution Plan shall not lead to lapse of any brought forward losses of the Corporate Debtor and provisions of	To approach concerned Authorities.



	Section 79 of the Income Tax Act, 1961 are not applicable.	
3.	As the Resolution Applicant is required to take over the Corporate Debtor's Business on a "going concern" basis, all consents, licenses, approvals, clearances, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to, shall continue to remain valid, notwithstanding any provision to the contrary in their terms, and provided that in case of consents, licenses, approvals, rights, entitlements, benefits and privileges that have expired or lapsed, notwithstanding that they may have already lapsed or expired due to any breach, non-compliance or efflux of time, be deemed to continue without disruption, for the benefit of the Corporate Debtor, for a period of 12 (twelve) months from the Effective Date or such other period as required under Applicable Law.	Granted.
4.	Credit in respect of minimum alternate tax paid by the Corporate Debtor shall continue with the Corporate Debtor on a going concern basis and shall be	To approach concerned Authorities.



	available for the benefit of the Resolution Applicant or the Corporate Debtor, as the case may be.	
5.	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 in respect of any transaction carried out before the Effective Date or contemplated under the Resolution Plan or 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.	To approach concerned Authorities.
6.	The plan will be implemented within a period of 12 months of the approval date, but If there is any delay due to statutory compliances, such delay may be condoned.	The Applicant is given liberty to approach this Tribunal within 30 days of the breach.
7.	In the interest of keeping the Corporate Debtor a going concern, unless otherwise specified in this Resolution Plan, all contracts and agreements shall continue to remain valid and notwithstanding any lapse, non-compliance, breach or expiry of underlying terms of such contracts and	Granted.



	agreements, these contracts and agreements shall be deemed to continue without disruption for the benefit of the Corporate Debtor for their original tenure.	
8.	All contractual arrangements (except for any contracts that vest property rights in the Corporate Debtor) entered into by the Corporate Debtor with the Related Party of the Corporate Debtor (Including any contracts of employment or consultancy with, and any benefits, fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages or any policy of providing such bertefits, fees, commissions, perquisites or profits extended by the Corporate Debtor) shall be deemed to be terminated on and from the NCLT Approval Date. Any claims or financial liabilities arising as a consequence of any termination of such contracts till the NCLT Approval Date shall be cancelled and written-off on the Hon'ble NCLT Approval Date, and shall be permanently extinguished and writtern-off on the NCLT Approval Date.	Granted.
9.	The Resolution Applicant, or the Corporate Debtor shall not be liable to pay any	Granted.



	<p>Taxes (direct or indirect) whatsoever arising (directly or indirectly on such entity) as a result of the actions taken by the Corporate Debtor prior to the Effective Date or arising from the actions under this Resolution Plan. It may also be clarified that any Tax liabilities pertaining to any period or action prior to the Effective Date, whether assessed or unassessed, by the relevant Government and Statutory Authority shall be deemed to have been extinguished and written-off on the NCLT Approval Date.</p>	
10.	<p>All penalties and dues arising out of any short supply of power/unfulfilled contracts/quality issues in supply in the past or till the approval of Resolution Plan by the Adjudicating Authority shall be deemed to have been extinguished and waived off on the NCLT Approval Date. No liability shall accrue due to this and all benefits and deposits shall be refunded forthwith to the Resolution Applicant.</p>	Granted.
11.	<p>All financial liabilities (including any contingent claims) relating to any investigations, inquiries, show-cause notices, causes of actions; suits, claims, disputes, litigations, arbitrations or other judicial</p>	Granted.





	or regulatory or administrative proceedings shall be deemed to be extinguished and written-off.	
12.	Any and all other claims, rights and entitlements of any Person, including any actual or potential Creditors of the Corporate Debtor (including but not limited to all Financial Creditors, Operational Creditors, Other Creditors, and Government and Statutory Authorities and any person who may claim to be a creditor by way of exercise of rights under Applicable Law or equity), whether or not such claims rights or entitlements (including any demand for any losses or damages, principal, interest, compound interest, penal interest, liquidated damages and other charges already accrued/accruing or in connection with any third party claims) have been filed before the Resolution Professional or not, whether admitted by the Resolution Professional or not, whether or not set out in the Information Memorandum, the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor, being due or contingent, asserted or unasserted, crystallized or	Granted in terms of Ghanashyam Mishra vs. Edelweiss ARC.



	uncrystallized, known or unknown, disputed or undisputed, in relation to any period prior to the Effective Date, shall be deemed to be written-off and permanently extinguished with effect from the Effective Date. The Corporate Debtor or the Resolution Applicant shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto.	
13.	Extinguishment and write-off of any financial liabilities against the Corporate Debtor or the Resolution Applicant, including as result of termination of any agreements by the Corporate Debtor.	Granted.
14.	Extinguishment and write-off of all financial liabilities (including past liabilities) against the Corporate Debtor or the Resolution Applicant that may accrue due to non compliance with any clearance Issued by any Government and Statutory Authority.	Granted.
15.	Extinguishment of any other liability, investigations, inquiry pending against the Corporate Debtor due to non-compliance with any environmental clearance issued by any Government and Statutory Authority.	To approach concerned Authorities.
16.	Waiver and write-off of any dues, penalty or financial	Not applicable since unlisted company.



	liabilities in respect to the stock exchanges or under the provisions of Securities and Exchange Board of India.	
17.	The Corporate Debtor shall be entitled to carry forward and set off of all the accumulated Tax losses and unabsorbed depreciation of the Corporate Debtor in accordance with the returns of income filed under the Income-tax Act, 1961.	To approach concerned Authorities.
18.	The Corporate Debtor shall be entitled to carry forward and set off all the brought forward book losses and unabsorbed depreciation as shown in the books of account and considered in the returns filed under the Income-tax Act, 1961;	To approach concerned Authorities.
19.	All Disputes to be initiated against the Corporate Debtor (including those proceedings that relate to the Corporate Debtor) at any time till the Effective Date shall stand automatically abated, revoked, released, cancelled, withdrawn, dismissed and deemed null and void (as the case may be) and all financial obligations in relation to such Dispute shall be permanently extinguished on the NCLT Approval Date, after payments being made to any such Creditors if mandatorily required in	Granted.



	accordance with the provisions of the Code.	
20.	All benefits and incentives, including but not limited to, under all such incentive schemes, subsidy schemes and policies that the Corporate Debtor is entitled under, and all such benefits shall remain vested in the Corporate Debtor with effect from the Effective Date	Granted.
21.	On and from the NCLT Approval Date, by order of the Hon'ble NCLT sanctioning this Resolution plan, a restraint on and prohibition of, all Adverse Actions shall be deemed to be declared until the Effective date.	Granted.
22.	The Resolution Applicant will not be liable for any non-compliance pertaining to Income Tax Act and will not be held liable to any penalty, fine, interest, cost, etc pertaining to the default occurred during pre CIRP period.	Granted.
23.	The Resolution Applicant will not be liable for any non-compliance pertaining to Customs Act and will not be held liable to any penalty, fine, interest, cost, etc pertaining to the default occurred during pre CIRP period.	Granted.
24.	The Resolution Applicant will not be liable for any non-compliance pertaining to	Granted.




	Service Tax Act/GST Act/VAT Act and will not be held liable to any penalty, fine, Interest, cost, etc pertaining to the default occurred during pre CIRP period.	
25.	The Resolution Applicant will not be liable for any non-compliance pertaining to Excise Act and will not be held liable to any penalty, fine, Interest, cost, etc pertaining to the default occurred during pre CIRP period.	Granted.
26.	The Resolution Applicant will not be liable for any non-compliance pertaining to FEMA Act and will not be held liable to any penalty, fine, interest, cost, etc pertaining to the default occurred during pre CIRP period.	Granted.
27.	The Resolution Applicant will not be liable for any non-compliance pertaining to FERA Act and will not be held liable to any penalty, fine, interest, cost, etc pertaining to the default occurred during pre CIRP period.	Granted.
28.	The Resolution Applicant will not be liable to any action or investigation by Enforcement Directorate for non-receipt of Foreign Remittances by the Corporate Debtor during the pre CIRP period.	Granted.



29.	The Resolution Applicant will not be liable to any action or investigation by Enforcement Directorate for any act by the Corporate Debtor during the pre CIRP period.	Granted.
30.	The Resolution Applicant will not be held liable to any action or investigation by Crime investigation Department for any act by the Corporate Debtor during the pre CIRP period.	Granted.

21. ANALYSIS AND FINDINGS OF THIS TRIBUNAL

- 1) It is seen from the revised Form – H that the Liquidation Value of the Corporate Debtor is arrived at Rs. 8,29,03,641/- and the corresponding Fair Value is arrived at Rs.19,15,43,136/- The Resolution Plan is for an amount of Rs. 28,33,36,875/- (excluding CIRP cost).
- 2) Further, it is seen from Form – H, that presently no application under Section 43, 45, 49 and 66 of IBC, 2016 in the present matter is pending on the file of this Tribunal.
- 3) The Implementation & Monitoring Committee shall comprise of one nominee of the Resolution Applicant, the Insolvency Resolution Professional and one nominee of the Approving Financial Creditors. The monitoring



committee will be chaired by the Resolution Professional for the effective implementation of the Resolution Plan.

- 4) In so far as the approval of the Resolution Plan is concerned, this Authority is convinced on the decision of the Committee of Creditors, following the Judgment of Hon'ble Supreme Court in the matter of **K. Sashidhar – Vs– Indian Overseas Bank (2019) 12 SCC 150**, wherein in para 19 and 62 it is held as follows;

“19..... In the present case, however, our focus must be on the dispensation governing the process of approval or rejection of resolution plan by the CoC. The CoC is called upon to consider the resolution plan under Section 30(4) of the I&B Code after it is verified and vetted by the resolution professional as being compliant with all the statutory requirements specified in Section 30(2).

62.In the present case, however, we are concerned with the provisions of I&B Code dealing with the resolution process. The dispensation provided in the I&B Code is entirely different. In terms of Section 30 of the I&B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC and they express their opinion on the proposed resolution plan in the form of votes, as per their voting share. In the meeting of the CoC, the proposed resolution plan is placed for discussion and after full interaction in the presence of all concerned and the Resolution Professional, the constituents of the CoC finally proceed to exercise their option (business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, non-recording of reasons would not per se vitiate the collective decision of the financial creditors. The legislature has not envisaged challenge to the “commercial/business decision” of the financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count.”


- 5) Further the Supreme Court in the matter of **K. Sashidhar v. Indian Overseas Bank and Ors. (2019) 12**



SCC 150 has lucidly delineated the scope and interference of the Adjudicating Authority in the process of approval of the Resolution Plan and held as follows;

“55. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite per cent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides: (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.”

58. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with Section 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT)



is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters “other than” enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers.”

(emphasis supplied)

- 6) The Hon’ble Supreme Court in its recent decision in **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Ltd. & Ors.**, in *Civil Appeal no. 3395 of 2020* dated 24.03.2021 has held as follows;

“..76. The expositions aforesaid make it clear that the decision as to whether corporate debtor should continue as a going concern or should be liquidated is essentially a business decision; and in the scheme of IBC, this decision has been left to the Committee of Creditors, comprising of the financial creditors. Differently put, in regard to the insolvency resolution, the decision as to whether a particular resolution plan is to be accepted or not is ultimately in the hands of the Committee of Creditors; and even in such a decision making process, a resolution plan cannot be taken as approved if the same is not approved by votes of at least 66% of the voting share of financial creditors. Thus, broadly put, a resolution plan is approved only when the collective commercial wisdom of the financial creditors, having at least 2/3rd majority of voting share in the Committee of Creditors, stands in its favour.

77. In the scheme of IBC, where approval of resolution plan is exclusively in the domain of the commercial wisdom of CoC, the scope of judicial review is correspondingly circumscribed by the provisions contained in Section 31 as regards approval of the Adjudicating Authority and in Section 32 read with Section 61 as regards the scope of appeal against the order of approval.


77.1. Such limitations on judicial review have been duly underscored by this Court in the decisions above-referred, where it has been laid down in explicit terms that the powers of



the Adjudicating Authority dealing with the resolution plan do not extend to examine the correctness or otherwise of the commercial wisdom exercised by the CoC. The limited judicial review available to Adjudicating Authority lies within the four corners of Section 30(2) of the Code, which would essentially be to examine that the resolution plan does not contravene any of the provisions of law for the time being in force, it conforms to such other requirements as may be specified by the Board, and it provides for: (a) payment of insolvency resolution process costs in priority; (b) payment of debts of operational creditors; (c) payment of debts of dissenting financial creditors; (d) for management of affairs of corporate debtor after approval of the resolution plan; and (e) implementation and supervision of the resolution plan.

77.2. The limitations on the scope of judicial review are reinforced by the limited ground provided for an appeal against an order approving a resolution plan, namely, if the plan is in contravention of the provisions of any law for the time being in force; or there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period; or the debts owed to the operational creditors have not been provided for; or the insolvency resolution process costs have not been provided for repayment in priority; or the resolution plan does not comply with any other criteria specified by the Board

77.6.1. The assessment about maximisation of the value of assets, in the scheme of the Code, would always be subjective in nature and the question, as to whether a particular resolution plan and its propositions are leading to maximisation of value of assets or not, would be the matter of enquiry and assessment of the Committee of Creditors alone. When the Committee of Creditors takes the decision in its commercial wisdom and by the requisite majority; and there is no valid reason in law to question the decision so taken by the Committee of Creditors, the adjudicatory process, whether by the Adjudicating Authority or the Appellate Authority, cannot enter into any quantitative analysis to adjudge as to whether the prescription of the resolution plan results in maximisation of the value of assets or not. The generalised submissions and objections made in relation to this aspect of value maximisation do not, by themselves, make out a case of interference in the decision taken by the Committee of Creditors in its commercial wisdom



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

- 7) Also, the Hon'ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Ors.** (2020) 8 SCC 531 after referring to the decision in **K. Sashidhar (supra)** has held as follows;


"73. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or sub-class of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial



decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal."

(emphasis supplied)

- 8) The Hon'ble Supreme Court in the case of **Ramkrishna Forgings Limited vs. Ravindra Loonkar, Resolution Professional of ACIL Limited & Anr in Civil Appeal No. 1527 of 2022** also has reiterated that CoC wisdom is supreme.
- 9) Thus, from the catena of judgments rendered by the Supreme Court on the scope of approval of the Resolution Plan, it is amply made clear that only limited judicial review is available for the Adjudicating Authority under Section 30(2) and Section 31 of IBC, 2016 and this Adjudicating Authority cannot venture into the



commercial aspects of the decisions taken by the Committee of Creditors.

- 10) On hearing the submissions made by the Ld. Counsel for the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with 100% voting share in 6th CoC meeting. As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Bench. On perusal of the documents on record, we are also satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- 11) As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under Section 31(4) of the Code.
- 12) The Resolution Plan in question is hereby approved by this Adjudicating Authority, subject to the observations and condition made in this order. The Resolution Plan shall form part of this Order. The Resolution Plan is binding on the Corporate Debtor and other stakeholders.
- 13) The Resolution Applicant is directed to make payment of the entire Resolution Plan amount within the time period



as stipulated under the Resolution Plan, failing which the entire amount paid by the Resolution Applicant (including the Performance Bank Guarantee, if any) as on the said date would stand automatically forfeited, without any recourse to this Tribunal.

- 14) Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
- 15) Liberty is hereby granted for moving any application if required in connection with the implementation of this Resolution Plan.
- 16) A copy of this Order is to be submitted to the concerned Office of the Registrar of Companies.
- 17) Accordingly, **IA(Plan)/21(AHM)2024 stands allowed** and disposed off.
- 18) The Monitoring Committee is directed to file a status report after 180 days from the approval of the Resolution Plan.

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

-sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

SEN