



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **30.08.2024** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF : State Bank of India
Vs
Coastal Energen Pvt Ltd

MAIN PETITION NUMBER : IBA/757/2019

(IA/MA) APPLICATION NUMBERS

IA/2431(CHE)/2023

ORDER

IA(IBC)/2431(CHE)/2023

Present: Ld. Counsel Shri. T. Ravichandran for the RP.

Ld. Counsel Shri. Sandeep Singhi along with Counsel Shri. P.
Giridharan for the SRA.

Ld. Counsel Shri. Rangasayee for the Objectors.

Ld. Counsel Ms. Srideepa Bhattacharyaa for the CoC.

Vide separate order pronounced in Open Court, the resolution plan is
approved.

IA/2431(CHE)/2023 is **disposed of**.

The Registry is directed to send e-mail copy of the order forthwith to all
the parties and their Learned Counsel for information and for taking necessary
steps.

Sd/-

(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

MG

Sd/-

(SANJIV JAIN)
MEMBER (JUDICIAL)



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

IA(IBC)/2431(CHE)/2023 in IBA/757/2019

(Filed under Sec. 30(6) & 31 of the Insolvency & Bankruptcy Code, 2016)

In the matter of M/s. Coastal Energen Private Limited

Radhakrishnan Dharmarajan
Resolution Professional of
M/s. Coastal Energen Private Limited
No.31, Third Floor, Krishna,
1st Avenue, 100 feet Road,
Ashok Nagar, Chennai – 600 083

... Applicant

Present:

For Applicant

*: Vijay Narayanan, Senior Advocate
T. Ravichandran, Advocate
For RP*

*Srinath Sridevan, Senior Advocate
Sandeep Singhi, Advocate
For Resolution Applicant*

*Tushar Mehta, Senior Advocate
Gopal Jain, Senior Advocate
PS Raman, Senior Advocate
For Committee of Creditors*

*P.H. Arvindh Pandian, Senior Advocate
Ananth Merathia, Advocate
For suspended Directors of CD*

*S. Ravi, Senior Advocate
For suspended Director of CD*

*Rahul Balaji, Advocate
For Shareholder of CD*

*N.P. Vijay Kumar, Advocate
For Shareholder of CD*



*S. Sathyanarayana, Advocate
For Operational Creditor of CD*

*S. Indhumathi, Advocate
For Operational Creditor of CD*

*Jerin Asher Sojan, Advocate
For Operational Creditor of CD*

CORAM:

**SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

Order Pronounced on 30th August 2024

ORDER

(hearing conducted through hybrid mode)

IA(IBC)/2431(CHE)/2023 is an Application filed by the Resolution Professional of the Corporate Debtor viz., **Coastal Energen Private Limited** (*hereinafter referred to as 'Corporate Debtor'*) under Section 30(6) & 31 of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC, 2016') read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short, 'CIRP Regulation, 2016') seeking relief as follows;

- a) *Pass an order approving the Resolution Plan submitted by the Resolution Applicant Dickey Alternative Investment Trust in*



consortium with Adani Power Limited in respect of the Corporate Debtor under Section 31(1) of the Code and declare that the same is binding on the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan;

- b) Pass an order directing that pending disposal of the present Application, the Applicant herein shall continue to conduct her role as Resolution Professional of the Corporate Debtor and during such period shall have all powers, duties and protections as available to him as a Resolution Professional under the Code and CIRP Regulations thereunder;*
- c) Pass an order directing the Resolution Applicant to implement the Resolution Plan in the manner set out in the Resolution Plan;*
- d) Pass an order approving the appointment of Monitoring Agent (MA) and Monitoring Committee (MC) from the date of approval of Resolution Plan by this Hon'ble Tribunal until the date on which the Resolution Applicant acquires control of the Corporate Debtor i.e. closing date under the Resolution Plan and during such period extend protection to the MC (including extension of the protection of the moratorium against any suit, legal proceedings and investigations or have any ability with respect to anything which is done or intended to be done or omitted in good faith and in compliance with the Code, Regulations or any other applicable law to enable it to monitor the Corporate Debtor as a going concern;*
- e) Pass an appropriate order in relation to the grant of concessions, reliefs and dispensation sought for by the Resolution Applicant in the resolution Plan;*
- f) Pass an order directing all stakeholders to cooperate with the Resolution Applicant, Monitoring Agent to keep the Corporate Debtor as a going concern and to implement the Resolution Plan in the manner approved by this Tribunal and*



- g) *Pass such other order / orders as it may deem fit and proper in the facts and circumstances of the case and thus render justice.*

**2. CORPORATE INSOLVENCY RESOLUTION PROCESS –
COASTAL ENERGEN PRIVATE LIMITED**

- 2.1. On an Application filed under Section 7 of the IBC, 2016, by the Financial Creditor, the CIRP in respect of the Corporate Debtor was initiated by this Tribunal vide order dated 04.02.2022 and the applicant herein was appointed as the IRP. The IRP caused paper publication on 07.02.2022 in accordance with Section 15 of IBC, 2016 r/w Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in “Business Standard” (English) and “Hindu”, (Tamil).
- 2.2 The Applicant received claims from various financial creditors and operational creditors and thereafter the Applicant constituted the CoC in terms of Regulation 17 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The 1st meeting of the CoC was held on 04.03.2022 where discussions were held for appointment of the Applicant as the “Resolution Professional”.
- 2.3. In the meantime, suspended directors of the Corporate Debtor filed an appeal before Hon’ble NCLAT and the



Hon'ble Appellate Tribunal vide its order dated 11.03.2022, stayed the further proceedings of the CoC and directed the Applicant to run the Corporate Debtor as a going concern.

- 2.4. 180th day of CIRP in respect of the Corporate Debtor came to an end on 02.08.2022. However, in view of the interim stay granted by the Hon'ble NCLAT, CIRP process could not be completed. The interim stay was vacated by the Hon'ble NCLAT on 06.01.2023. The appeal filed by the suspended directors of the Corporate Debtor was also dismissed.
- 2.5. Immediately on the dismissal of appeal by Hon'ble NCLAT, the Applicant conducted the 2nd CoC meeting on 11.01.2023. Various agendas including the appointment of the Applicant as Resolution Professional were placed before the CoC for approval via e-voting. In the said meeting the appointment of Applicant as Resolution Professional was confirmed through e-voting by CoC.
- 2.6. The Applicant filed an application seeking exclusion of 301 days in IA(IBC)/60(CHE)/2023 and the said application was allowed by this Tribunal vide order dated 02.02.2023. In terms of the said order, 180th day for completion of CIRP was reckoned as 30.05.2023.



- 2.7. The Applicant after taking charge as Resolution Professional appointed (1) AAA Valuation Professionals LLP and (2) GAA Advisory LLP the registered valuers to determine the Fair value and Liquidation value of the Corporate Debtor in accordance with Regulation 35 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The valuers submitted their reports. The average Liquidation value of the Corporate Debtor is Rs.2410.33 Crores.
- 2.8. The Applicant prepared the Information Memorandum and issued invitation for Expression of Interest (EoI) from the Prospective Resolution Applicants (PRAs) and issued Form- G as approved by the CoC on 10.02.2023. As per Form – G, the last date for the submission of EoI was 25.02.2023. The said timeline was extended from time to time in order to increase the participation of the PRAs in the Resolution Process and value maximization of the assets of the Corporate Debtor after obtaining necessary consent of the CoC. Accordingly, revised Form – G was published by the Applicant on 24.02.2023, 13.03.2023 and 10.04.2023 and the last date for the submission of EoI was extended till 17.04.2023. The Applicant received a total of 18 EoIs from the PRAs by the end of 17.04.2023.



- 2.9. In the 4th CoC meeting held on 06.04.2023, it was resolved by the CoC to file an application seeking extension of CIRP by 90 days with 97.80% voting with effect from 31.05.2023. This Tribunal vide order dated 02.06.2023 allowed the extension of CIRP period by 90 days till 28.08.2023.
- 2.10. Pursuant to the receipt of EoI's from the PRAs, the Applicant prepared the Provisional list & Final list of PRAs in accordance with the provisions of Code and Regulations framed thereunder. Accordingly, the Applicant issued the Request for Resolution Plan (RFRP) on 02.05.2023 to 14 PRAs as approved by the CoC in its 5th CoC meeting held on 25.04.2023.
- 2.11. The last date kept for submission of resolution plan was 01.06.2023. In the meantime, the PRAs visited the plant of the Corporate Debtor and carried their due diligence. Few PRAs requested for further time to complete their due diligence and to submit a feasible Resolution Plan. Hence, with an intent of value maximization and to ensure a viable resolution for the Corporate Debtor, the last date to submit the resolution plan was extended from time to time after taking the consent of CoC members. Accordingly, the last date to submit the resolution plan, after extensions, was fixed as 04.08.2023.



2.12. In response to the RFRP issued, the Applicant received 3 Resolution Plans from the following PRAs:

- (i) Sherisha Technologies Pvt. Ltd.
- (ii) Dickey Alternative Investment Trust in consortium with Adani Power Limited.
- (iii) Jindal Power Limited

2.13. Pursuant to the decision of the CoC in the 8th meeting held on 07.08.2023, the Applicant filed another IA(IBC)/1629(CHE)/2023 seeking permission to complete the CIRP by 27.10.2023 and this Tribunal vide its order dated 14.09.2023 allowed the application and extended the CIRP timeline till 27.10.2023.

2.14. The CoC members in 11th meeting held on 06.10.2023 discussed and approved the negotiation process and template of commercial offer to be submitted by the PRAs. The Applicant also apprised the members of the CoC in the said meeting that he has received request for extension of timeline to submit revised Resolution Plan. Such extension was granted after obtaining approval from the CoC keeping in mind the fact that the evaluation process and the approval process are likely to take some more time. The CoC members with 100% voting rights in the 11th CoC meeting approved for extension of CIRP for another 60



days. Accordingly, this Tribunal vide its order dated 19.10.2023, passed in IA(IBC)/1933(CHE)/2023 approved the extension of CIRP by 60 days and the last date for completion of CIRP was 26.12.2023.

2.15. After several rounds of discussions, the PRAs submitted their revised financial offer and draft resolution plans on 04.10.2023. Out of three PRAs, two PRAs participated in the negotiation / bidding process held on 20.10.2023 and 21.10.2023. The third PRA viz. Sherisha Technologies Private Limited did not participate in the process and informed about the same to the Applicant vide email dated 19.10.2023.

2.16. Subsequent to the negotiation process, the Applicant received revised draft resolution plans from PRAs on 30.10.2023. The Applicant, after conducting due diligence, requested the PRAs to submit their final draft resolution plan by 15.11.2023 and the final signed resolution plan by 17.11.2023.

2.17. The Applicant received the final resolution plans from PRAs on 17.11.2023. The Applicant after satisfying himself that the plans are in conformity with the Code and



Regulations, prepared the compliance report and placed it before the CoC for further consideration.

2.18. The CoC in its 16th meeting held on 22.11.2023 deliberated on the Resolution Plans in detail with regard to the feasibility and viability and ultimately the plans were put for e-voting in the said meeting. The e-voting commenced on 25.11.2023 i.e. 2 days after circulation of minutes of the 16th CoC Meeting. The e-voting was to end on 16.12.2023. However, keeping in mind the requests of the members of the CoC, the voting lines were extended till 22.12.2023.

2.19. As per the terms of RFRP, the successful Resolution Applicant needs to bring in Performance Bank Guarantee of Rs.100 crores within three working days from the date of issue of letter of intent. Since the time for completion of the CIRP was 26.12.2023, keeping in mind the intervening holidays and the steps to be taken by the RP, an email was sent to the members of the CoC seeking approval of the CoC to enable the Applicant to approach the Tribunal seeking further extension of 20 days. The members of the CoC by a majority of 87.72% requested the Applicant to seek extension of time upto 15.01.2024. Accordingly, the Applicant filed an Application vide SR No. 2834 dated 22.12.2023 seeking extension of timeline till 15.01.2024.



2.20. The CoC with 97.80% approved the Resolution Plan submitted by Dickey Alternative Investment Trust in consortium with Adani Power Limited. The copy of the minutes of the 16th CoC meeting along with the voting result and the copy of the approved Resolution Plan are appended as Annexures – A13 to A15. The list of Financial Creditors and the distribution of voting share among them are as follows;

S. No.	NAME OF CREDITOR	VOTING SHARE (%)	ASSENT / DISSENT
1	State Bank of India	29.80	Assented
2	Punjab National Bank	10.20	Assented
3	Central Bank of India	9.12	Assented
4	UCO Bank	8.35	Assented
5	Indian Overseas Bank	7.38	Assented
6	HUDCO	6.25	Assented
7	Indian Bank	5.09	Assented
8	IFCI Ltd.	5.00	Assented
9	Union Bank of India	4.78	Assented
10	Bank of India	3.81	Assented
11	Bank of Baroda	3.40	Assented
12	Jammu & Kashmir Bank	2.32	Assented
13	Canara Bank	2.31	Assented
14	Tamilnad Mercantile Bank	2.20	Dissented

2.21. The Applicant has filed the Compliance Certificate in Form H under Regulation 39(4) containing details of the compliances of the Resolution Plan with mandatory requirements under the Code and CIRP Regulations. The copy of the declaration affidavit furnished by the SRA



under Section 29A of the Insolvency and Bankruptcy Code, 2016 are appended as Annexure - A20.

2.22. The Applicant issued LoI to the SRA on 23.12.2023. Pursuant to the same, the Applicant received an email from the SRA on 26.12.2023 attaching the performance Bank Guarantee for a sum of Rs.100.0 Crores in compliance with the terms of RFRP.

2.23. It is stated that the Applicant, while going through the books of Account of the Corporate Debtor and on the basis of the Transaction Audit Report, found that certain preferential and fraudulent transactions were carried out by the persons who were in control and management of the Corporate Debtor during the relevant period. The Applicant filed applications under Section 43 and 66 of IBC, 2016 i.e. IA/1678(CHE)/2023, IA/1679(CHE)/2023 and IA/1798(CHE)/2023 which are pending adjudication before this Tribunal.

2.24. It is stated that as per the terms and conditions of the Resolution Plan, any recovery under the aforementioned applications will be utilized for the benefit of CoC.

2.25. It is stated that pursuant to the approval of the Resolution Plan by the CoC under Section 30(4) of IBC, 2016, the



present Application has been filed under Section 30(6) of IBC, 2016 on 27.12.2023 seeking approval of the resolution plan submitted by Dickey Alternative Investment Trust in consortium with Adani Power Limited in terms of Section 31(1) of the Code.

3. OBJECTIONS TO THE RESOLUTION PLAN – SUSPENDED DIRECTOR

3.1. It is stated that Dickey Alternative Investment Trust ("DAIT") had submitted its Expression of Interest ("EoI") to the RP and CoC on or before the last date for submission of EoI which was 17.04.2023, in its individual capacity as a Prospective Resolution Applicant ("PRA") and not as part of any kind of consortium. It is stated that it is for the RP & CoC to substantiate and explain, whether the RFRP allows for submission of a resolution plan by a PRA as an individual entity in its individual capacity or jointly as part of a consortium.

3.2. It is stated that in the instant case, DAIT was originally declared as a PRA in its individual capacity and not as part of a consortium. It is stated that DAIT had submitted a resolution plan in its individual capacity before the RP and CoC before 04.08.2023 itself (Volume 1, page no.117, 120). It is stated that as can be inferred from the minutes of the 7th CoC meeting, Adani Power Limited was vying to be a PRA in its independent capacity as recently as on 29.07.2023 and



was not allowed to do so because of the delayed submission of EoI.

- 3.3. It is stated that the detailed Expression of Interest published by the RP clearly stipulates the eligibility criteria for a PRA, where it is implied that any PRA if it decides to submit an EoI as part of a consortium, the same ought to be done at the time of submission of the EoI itself. If the formation of a consortium is done at a later stage, then it can only be done between 2 eligible PRA's who are already in the fray and not with someone from outside the final list of eligible PRA's. Reliance is placed on the clauses of the Expression of Interest published by the RP of the Corporate Debtor.

“ ...

Category D-Consortium

- *At least one of the members must hold at least 26% of total equity participation in the consortium who shall be designated as the lead member with other members having a minimum profit/voting share of 10% in the Consortium.*
- *The lead member shall meet the criteria of its category, and the overall consortium shall meet the threshold of equivalent Net Worth of at least INR 500 Crores (Indian Rupees Five Hundred Crores) on weighted average basis as per the latest available audited financial statements which shall not be earlier than March 31, 2022. For the members falling in:*
 - *Category A and B Consolidated Tangible Net Worth shall be used*



- *Category C-Higher of AUM/committed funds shall be used*
- *All the members of the consortium shall be jointly and severally responsible for compliance with the terms of the invitation for EoI, the request for resolution plan and the resolution plan submitted by the consortium.*
- *Each member of the Consortium shall nominate and authorize a Lead Partner to represent and act on behalf of the members of the Consortium and should have authority to bind, represent and take decisions on behalf of the Consortium. Such Lead Partner shall be the single point of contact on behalf of the Consortium with the Resolution Professional and the CoC, their representative and advisors in connection with all matters pertaining to the Consortium.*
- *All the other members of the Consortium would need to have a minimum profit/voting share of 10% in the Consortium.*
- *Any change in the consortium shall require the prior approval of the CoC.*
- *If any resolution applicant(s) from Category A or B or C or member of the Consortium is disqualified under Section 29A of the Code, then the entire Consortium or such Resolution Applicant or members of such Consortium shall stand disqualified.*
- *If one member is a part of any other category or any other consortium which is submitting Expression of Interest herein then that member cannot be a part of another group of consortium or category which is also submitting Expression of Interest for Coastal Energen Private Limited.*
- *The Tangible Net Worth / AUM or committed funds requirement for the Lead Partner of the successful*



resolution applicant will continue to be applicable until the resolution plan is implemented by the successful resolution applicant post approval by the Hon'ble National Company Law Tribunal. All the members of the Consortium shall be jointly and severally responsible for legal compliance and compliance with the terms of this document, the request for resolution plans and the relevant resolution plan.

...”

3.4. It is stated that neither the EoI submitted by Dickey Alternative Investment Trust nor the belatedly submitted EoI by Adani Power Limited which was rejected by the CoC, discloses the intention of forming a consortium with each other. It is stated that their union is akin to a 'marriage of convenience' as Adani Power Limited is trying to accomplish what it could not do directly in an indirect, backhanded manner. It is stated that it is a well-established law that what cannot be done directly, cannot be done indirectly, which is exactly what is being attempted by Adani Power Limited in the instant case.

3.5. It is stated that the resolution plan submitted by a PRA shall be irrevocable and binding on the said PRA. It is questioned whether *“any modification, alteration, amendment or change can be allowed to be made to a resolution plan submitted by a resolution applicant, or whether 'modification' implies that the very constitution of the prospective resolution applicants itself can be changed or altered at the whims and fancies of the CoC,*



even when one of the members of the consortium did not even feature in the final list of eligible PRAs". It is stated that an entity which does not form a part of the final list of PRAs cannot be allowed to submit a resolution plan as a part of a consortium or independently as the same is contrary to the laws in force. In the instant matter, Adani Power Limited was ineligible to be a PRA as it had evidently missed the timelines specified by the RP and the CoC and a decision to this effect had been taken by the RP and the CoC and was also duly recorded in the 7th CoC meeting.

- 3.6. It is stated that there turned out to be a union of sorts between DAIT and Adani Power Limited in a rather unilateral and arbitrary manner wherein the said entities re-submitted a resolution plan as part of a consortium in the 11th CoC meeting dated 06.10.2023. It is stated that there had been no recorded deliberation on the forming of a consortium between the said entities and that the RP never proposed a resolution for the CoC members to discuss upon and vote on the said aspect. It is stated that, this formation of a consortium and re-submission of a resolution plan by DAIT had never been expressly and formally allowed by the CoC in any of its meetings. It is stated that there is no provision which allows for a resolution applicant to unilaterally change / withdraw the resolution plan once it is submitted to the RP because in the



instant matter, DAIT had submitted a resolution plan in its individual capacity on 04.08.2023 and then without any approval by the CoC, DAIT modified the very constitution of the resolution applicants and arbitrarily brought in Adani Power Limited who was never in the final list of PRAs. It is stated that there have been flagrant violations, thereby nullifying the very plan submitted by the said PRA. It is stated that the onus is on the RP and the CoC to demonstrate before this Tribunal as to whether the RFRP allows for such modifications without the CoC expressly discussing and recording the same in the minutes of the various CoC meetings.

- 3.7. It is stated that in the instant case, the consortium was not formed between 2 or more PRA's but between an entity which had been disallowed from participating in the CIRP process due to its tardy submission and failure to meet the timelines specified under the provisions of IBC, 2016. It is stated that Adani Power Limited was never a part of the final list of Prospective Resolution Applicants in the first place, thus casting a cloud of ambiguity over its eligibility to be allowed to be a part of the consortium in the first place. It is stated that the very formation of the consortium is tainted with procedural irregularities which continued throughout the plan approval process.



3.8. It is stated that even from the Board Resolution dated 26.07.2023 of Adani Power Limited, it can be clearly inferred that it did not have any intention of forming a consortium with any other entity for the purposes of submitting a resolution plan in the CIRP of the Corporate Debtor. It is to be noted that this Board Resolution itself is extremely belated and comes well after the last date for submission of EoI (i.e. 17.04.2023) and resolution plan (i.e. 21.07.2023). It is stated that the said Consortium Agreement is also not found in the Resolution Plan.

3.9. It is stated that nowhere in any formal document submitted to the Tribunal, the RP has recorded the reasons for the following questions;

- (i) How Dickey Alternative Investment Trust ("DAIT") was declared as an eligible PRA and whether it met all the technical requirements outlined and mandated in the detailed EoI?
- (ii) How Adani Power Limited was allowed to be a part of a consortium when it was disallowed to be a PRA in the 7th CoC Meeting?
- (iii) How was DAIT allowed to form a consortium and re-submit a whole new resolution plan before the CoC along with the disallowed PRA Adani Power Limited at a much belated stage?
- (iv) How and when the CoC accorded its blessings using the commercial wisdom bestowed on it on the consortium formed by the parties on



03.08.2023 just one day before the last date of submission of the resolution plan?

- (v) How & under what authority did the CoC allow DAIT to re-submit a plan along with Adani Power Limited?

3.10. It is stated that the actions of the RP in the instant matter by failing to record detailed reasons for allowing the participation of Adani Power Limited as a member of the consortium along with DAIT at such a belated stage of the CIRP process, well after Adani Power Limited had been disallowed from being an eligible PRA due to its tardy submission of EOI is in direct violation and contravention of the provisions of First Schedule of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 which deals with the "Code of Conduct of Insolvency Professionals".

3.11. It is stated that Regulation 36A (5) & (6) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, clearly stipulate that any EoI received after the time specified in the Form-G, shall be rejected. Thus as Adani Power Limited submitted its EoI only on 29.07.2023, i.e. after the deadline specified in the revised Form-G & date approved by the CoC which was 17.04.2023, it was clearly disqualified from being an eligible PRA.



3.12. It is stated that as per the Regulation 39 (1A) & (1B) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, modification of the resolution plan cannot be allowed more than once and that the CoC shall not consider any plan received from a person who does not appear in the final list of prospective resolution applicants. Thus, in the present case, when the law is crystal clear on the point, the approval of the plan submitted by Adani Power Limited by the CoC herein is in complete contravention of the law, thereby vitiating the entire process.

3.13. The tabulation of various violations and non – compliances by the consortium of DAIT and Adani Power Limited is as follows;

PROVISIONS OF IBBI (IRPCP) REGULATIONS, 2016	REMARKS / OBSERVATION
Reg. 36A (5) A prospective resolution applicant, who meets the requirements of the invitation for expression of interest, may submit expression of interest within the time specified in the invitation under clause (b) of sub-regulation (3).	Not complied with by Adani Power Limited
Reg. 36A (6) -The expression of interest received after the time specified in the invitation under clause (b) of sub-regulation (3) shall be rejected	Not complied with by Adani Power Limited - thus the EoI was not considered and Adani was not allowed to participate in the CIRP process (7 th CoC)



<p>Reg. 36A (7) An expression of interest shall be unconditional and be accompanied by- documents (a)-(g)</p>	Not provided by Adani Power Limited
<p>Reg. 36A (8)-The resolution professional shall conduct due diligence based on the material on record in order to satisfy that the prospective resolution applicant complies with-</p> <p>(a) the provisions of clause (h) of sub-section (2) of section 25;</p> <p>(b) the applicable provisions of section 29A, and I other requirements, as specified in the invitation for expression of interest.</p>	Report of Due Diligence carried out by RP on DAIT and Adani to be produced before this Hon'ble Bench
<p>Reg. 36A (10) The resolution professional shall issue a provisional list of eligible prospective resolution applicants within ten days of the last date for submission of expression of interest to the committee and to all prospective resolution applicants who submitted the expression of interest</p>	Adani Power Limited did not feature in the list of eligible PRAs.
<p>Reg. 36A (11) Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) maybe made with supporting documents within five days from the date of issue of the provisional list.</p>	No objection to the exclusion of Adani Power Limited was received by the RP
<p>Reg. 36A (12) On considering the objections received under sub-regulation (11), the resolution professional shall issue the final list of prospective resolution applicants within ten days of the last date for receipt of objections, to the committee</p>	Adani Power Limited did not feature in the final list of eligible PRAs
<p>Reg. 39(1) A prospective resolution applicant in the final list may submit resolution plan or plans prepared in accordance with the Code and these regulations to the resolution professional electronically within the time given in the request</p>	DAIT which was in the final list of PRA's submitted initially. a plan



for resolution plans under regulation 36B along with documents (a) - (c).	Subsequently, changed the constitution of the very RA itself and entered consortium into with Adani Power Limited which is not a PRA featured in the final list, thereby making it ineligible.
Reg. 39 (1A) -The resolution professional may, if envisaged in the request for resolution plan- (a) allow modification of the resolution plan received under sub-regulation (1), but not more than once, or	Not complied with by the RP
Reg. 39 (1B) - The committee shall not consider any resolution plan- (a) received after the time as specified by the committee under regulation 36B;	The plan submitted by the Consortium and Adani was received only after the last date for receipt of plans.
Reg. 39 (1B) -The committee shall not consider any resolution plan- (b) received from a person who does not appear in the final list of prospective resolution applicants; or	The plan submitted by the Consortium of DAIT and Adani is not to be considered as Adani is not in the final list of PRA's

3.14. It is stated that the Regulation 39(1B) of the CIRP Regulations deals with the cases where resolution plan shall not be considered by the COC. As per regulation 39(1B)(a), where a resolution plan is received after the time specified for submission of the Resolution Plans under regulation 36B of the CIRP Regulations, such delayed resolution plan cannot be considered by the CoC. Similarly,



the resolution plans received from those persons, who are not featured in the final list of PRAs cannot be considered by the COC, as per Regulation 39(1B)(b). Further, supplementing section 30(3) of the IBC, regulation 39(1B) (c) of the CIRP Regulation, provides that a resolution plan that does not comply with section 30(2) or that does not comply with Regulation 39(1) of the CIRP Regulations, cannot be considered by the CoC.

3.15. It is stated that thus, in view of the mandatory provision contained in regulation 39(1B) of the CIRP Regulations, it is trite that the timeline contained in the regulations for submission of resolution plans and expression of interest, is mandatory and any breach thereof, would entail the rejection of the resolution plan or expression of interest, as the case may be, *in limine*. It is submitted that Adani Power Limited is legally not entitled to be allowed as an eligible PRA and thus its attempt to make a backdoor entry into the instant CIRP process needs to be condemned and set aside by this Tribunal.

3.16. It is stated that there has been a lot of side-stepping done by the RP given the vexatious manner in which Adani Power Limited has been allowed to make a backdoor entry into the resolution process in a sneaky manner without recording the proper reasons for its inclusion. It is stated



that there has been no demur from the CoC about the fact that DAIT had submitted a plan in its independent capacity first and subsequently as part of a consortium with a disqualified entity-without any explanation whatsoever.

3.17. It is stated that DAIT in its independent capacity does not have the eligibility to be a PRA in the resolution process of the Corporate Debtor as it has not disclosed anywhere in the Resolution Plan about it currently operating a thermal power plant capacity of at least 300MW as on the date of submission of the EoI.

3.18. It is stated that the Resolution Applicant is Dickey Alternative Investment Trust, a Mudhra Fund as the Lead member holding 51% interest in the consortium and Adani Power Limited ("Adani") holding 49% in the consortium. Dickey Investment is stated to be the lead member of the consortium representing the consortium for all purposes. It is stated that the value of the Resolution Plan is Rs. 3330.88 crores. The debt outstanding is about Rs.11,851 crores. The consortium has to therefore bring minimum of Rs.3330.88 crores. The proportion expected from DAIT: Adani would be Rs.1700.0 crores by DAIT and Rs.1630.88 crores by Adani Power Limited. However as per the source of funds given to RP by DAIT, its fund size is only Rs.339.79 crores. It needs to be noted that DAIT is AIF, Category II Fund. This



means that it is closed ended fund and its sources of fund cannot be expanded beyond Rs.339.79 crores. For the remaining Rs.3000 crores, it is dependent on Adani Power Limited for funding. This is contrary to the consortium arrangement of 51%: 49% agreed between the Consortium partners. It is stated that the persons who appeared before the CoC and made submissions about the Resolution Plan were the representatives of Adani Power Limited, when Adani Power Limited and DAIT authorized one Mr. Bhaskar Rai of DAIT to represent and act on behalf of the consortium.

3.19. It is stated that the details available about DAIT are that the asset management Company comprises of two persons viz. Mr. Yogesh Gupta and Mr. Pradeep Sharma. The Trustee of the AIF is one Mr. Gian Chand Narang an IP professional, Mr. Rajan Beri calls himself as sponsor of the AIF. The fund which is interested in this Resolution Plan is Mudhra Fund. Its total size is hardly 10% of the value of Plan. No source of funds of the AIF is available or provided as part of the Plan.

3.20. It is stated that the RP and the CoC have to prove before this Tribunal about the financial ability of DAIT including last 3 years annual report. It is stated that DAIT does not have three-years track record at all. The fund is of 2022 and



the DAIT as such was founded only in the year 2019. It is stated that the RP and CoC ought to have questioned DAIT as to how it is eligible to submit bid when it being the lead member of the consortium does not fulfil the criteria of three years of financial performance.

3.21. It is stated that the Resolution Plan does not comprise of any Consortium Agreement entered into between DAIT and Adani. It is stated that the reason for raising the above issue is that DAIT is merely a front purportedly holding 51% in the consortium without even having the ability to contribute to 51% of the funding requirement of the consortium. The entire aim to have such a capital structure is to only project the acquisition as a combination where Adani Power Limited is seemingly seen as entity in minority holding 49%. The Plan also contemplates further funding of Rs.2200 crores. The additional fund of Rs.2200 crores are sought to be raised by way of fund infusion from internal accruals, fund raising or by securing assets of CD. It needs to be noted that DAIT would not be in a position to contribute at all as it has no resources.

3.22. It is stated that Clause 4.1 (a) of the plan requires RA to identify specific sources of funding under Section 30(2)(a) and section 30(2)(b) of the Code. It is stated that DAIT does



not have the same in its independent capacity and thus was not eligible to be a PRA in the first place.

3.23. It is stated that in light of the aforementioned facts and pleadings, Dickey Alternative Investment Trust is legally not entitled to be allowed as an eligible PRA in its independent capacity and thus its attempt to enter into a symbiotic relationship with Adani Power Limited in a bid to take over the assets of the Corporate Debtor in a rather arbitrary manner needs to be carefully scrutinized, condemned and set aside by this Tribunal.

4. REPLY OF THE COMMITTEE OF CREDITORS TO THE OBJECTIONS

4.1. It is stated that the objectors being the suspended directors of the Corporate Debtor do not have the locus to object to the resolution plan especially when all the relevant notices as well as documents and minutes have been shared with them from time to time.

4.2. It is stated that the CIR Process has been run in a very fair and transparent manner and the resolution plan submitted by the SRA has been approved by the CoC in its commercial wisdom exercised in accordance with the Code and the CIRP Regulations.



4.3. It is stated that the notice of all the meetings of the CoC (along with the relevant documents and presentations) as well as the minutes of all the meetings of the CoC were duly shared by the Resolution Professional with both Mr. Ahmed Buhari and Mr. Parmeswaran. More importantly, the draft of the RFRP which was to be discussed in the 5th CoC meeting that was proposed to be held on 25.04.2023 was circulated to both Mr. Ahmed Buhari and Mr. Parmeswaran along with the notice of such meeting vide e-mail sent by the Resolution Professional on 22.04.2023. Further, the finalized RFRP basis the discussions in the 5th CoC meeting held on 25.04.2023 was also circulated along with the minutes of the aforesaid CoC meeting by the Resolution Professional vide e-mail dated 26.04.2023.

4.4. It is stated that one of the objectors namely, Mr. Ahmed Buhari was not able to attend any of the CoC meetings due to the fact that he is presently incarcerated in jail for the fraudulent activities pertaining to the Corporate Debtor and criminal investigations and proceedings are going on against him. For reasons best known to him, Mr. Ahmed Buhari did not appoint any constituted attorney on his behalf to attend the CoC meetings regularly. It is thus clear that Mr. Parmeswaran was acting as the eyes and ears of Mr. Ahmed Buhari in the CoC meetings and was passing



on all the information to him, as is clear from the tenor of their objections which are almost identical in nature.

4.5. It is stated that Mr. Parameswaran, on the one hand has attended every single meeting of the CoC till the 16th meeting held on 22.11.2023 when the resolution plans along with the OTS proposal given by the promoter / shareholders of the Corporate Debtor had been placed for approval of the CoC (except for the meeting held on 12.10.2023) while on the other hand, he is behaving as if he was completely in dark about the process and only recently, he has become aware of what has transpired in the CIR Process of the Corporate Debtor. It is stated that Mr. Parmeswaran knew right from the CoC meeting held on 07.08.2023 (when the resolution plans were opened) that DAIT has submitted a resolution plan in consortium with Adani Power Limited and most importantly, was present throughout in the 13th CoC meeting when the negotiation process was conducted. It is stated that from time to time during the negotiation process, Mr. Parameswaran's views were also sought, and he had specifically mentioned that the process was going on smoothly.

4.6. It is stated that Mr. Parameswaran is an employee of the Corporate Debtor whose contract is till 30.04.2024. He is not a shareholder/promoter director of the Corporate Debtor



and therefore, in that sense, not a person who can be called vitally interested in the Corporate Debtor as he has no personal liability as a personal guarantor or otherwise in respect of the debts of the Corporate Debtor. It is stated that Mr. M. K. Parameshwaran was appointed as the Plant Head for the Mutiara plant of the Corporate Debtor in Tuticorin vide appointment letter dated 06.01.2021, for an initial period of 2 years, which expired during the ongoing CIR Process. His appointment is now being extended from time to time and is currently valid until 30.04.2024. As per the information available on the website of the Ministry of Corporate Affairs, he was then appointed as a director on 23.03.2021. It is stated that one plausible reason for his appointment as a director of the Corporate Debtor was that he had to perform his role as plant head and "factory occupier" and under the provisions of the Factories Act, the factory occupier has to be a director. It is intriguing that a person who is an employee of the Corporate Debtor and who is being paid salary by the Corporate Debtor and importantly a person who is not a promoter, shareholder or a personal guarantor of the Corporate Debtor is making such bald objections against the Resolution Plan, which has been duly discussed, deliberated and approved by the CoC in its commercial wisdom.



4.7. It is stated that it is very clear from the conduct of Mr. Parameswaran that he has filed the objections with the malafide intention of driving the SRA out and he is acting hand in gloves with the promoters of the Corporate Debtor. He has not come with clean hands before this Tribunal and has concealed and suppressed the material facts on affidavit and has thus filed a false affidavit. It is stated that he has suppressed the fact that that he was present in the CoC meetings wherein the resolution plan of SRA was deliberated upon and therefore, his conduct warrants serious consequences.

4.8. It is stated that there is absolutely no restriction on a Prospective Resolution Applicant (PRA) submitting a resolution plan by bringing on board partners / persons interested in acquiring the Corporate Debtor together with the PRA either under IBC or under any regulations framed thereunder.

4.9. It is stated that as per Section 5(25) of the Insolvency and Bankruptcy Code, 2016, the term "Resolution Applicant" means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under clause (h) of sub-section (2) of section 25 or pursuant to section 54K, as the case may. It is trite law that the Regulations



cannot override the express provisions of the Code. Further, the DAIT was a PRA in the final list and relying upon the provisions of the Code as mentioned above, it has entered into an arrangement with Adani for submitting a resolution plan. DAIT has submitted a resolution plan "jointly" with Adani and for the purpose of the Code, DAIT is "acting in concert" with Adani for the purpose of acquisition of the Corporate Debtor. This is in consonance with the Code as well as the RFRP. Therefore, it is clear that the Code allows for submission of resolution plan by a person individually or jointly with any other person.

4.10. In this connection reliance is placed on the Judgment of the Hon'ble Supreme Court in the matter of **Arcelor Mittal India Private Limited –Vs- Satish Kumar Gupta & Ors.** in *Civil Appeal Nos. 9402 – 9404 of 2018*, wherein while examining the ambit of the phrase "any other person acting jointly or in concert" it was held as follows;

38. The expression "acting jointly" in the opening sentence of Section 29-A cannot be confused with "joint venture agreements", as was sought to be argued by Shri Rohatgi. He cited various judgments including *Faqir Chand Gulati v. Uppal Agencies (P) Ltd.* [*Faqir Chand Gulati v. Uppal Agencies (P) Ltd.*, (2008) 10 SCC 345], and *Laurel Energetics (P) Ltd. v. SEBI* [*Laurel Energetics (P) Ltd. v. SEBI*, (2017) 8 SCC 541], to buttress his submission that a joint venture is a contractually agreed sharing of control over an economic activity. We are afraid that these judgments are wholly inapplicable. All that is to be seen by the expression "acting jointly" is whether certain



persons have got together and are acting “jointly” in the sense of acting together. If this is made out on the facts, no superadded element of “joint venture” as is understood in law is to be seen. The other important phrase is “in concert”. By Section 3(37) of the Code, words and expressions used but not defined in the Code but defined, inter alia, by the SEBI Act, 1992, and the Companies Act, 2013, shall have the meanings respectively assigned to them in those Acts. In exercise of powers conferred by Sections 11 and 30 of the SEBI Act, 1992, the 2011 Takeover Regulations have been promulgated by SEBI.

4.11. It is stated that the EoI dated 10.03.2023 submitted by DAIT stated that DAIT was financially qualified and in order to meet the technical criteria, DAIT may be entering into a tie up with a technical partner who meets the specified technical criteria for a period of atleast 2 years or more. Therefore, DAIT had made its intention to enter into a tie up for submissions of resolution plan from the very beginning, which the CoC and the RP were aware and accordingly DAIT reserved its rights in its EoI to tie-up with a technical partner to meet the technical criteria as per RFRP and the ambit of the phrase ‘tie-up’ will also include consortium.

4.12. It is stated that Clause 7.5 of the RFRP reads as follows

It is hereby clarified that subject to approval of the CoC:

(b) a Resolution Applicant may also submit a Resolution Plan along with a co-investor or along with any financial or strategic partner as it may deem fit;



Provided that in each such case, the Resolution Professional and the CoC shall have the right to require submission of additional documentation/undertakings as they may deem fit to ensure compliance with the provisions of the Code, CIRP Regulations, this RFRP and the undertakings annexed hereto and the RFRP Notwithstanding the above, the Prospective Resolution Applicant and/or any other entity as specified in Clause (a)(b) above should not be ineligible to submit a Resolution Plan as per the Code and shall be jointly and severally liable for all their duties, liabilities and obligations’.

- 4.13. It is stated that although there are different clauses dealing with entering into a tie-up and forming a consortium, the condition was not to choose between the two, a consortium partner can be chosen to meet the technical criteria as well. In the present case, DAIT formed a consortium with Adani to meet the technical criteria which was in line with DAIT’s EoI. Therefore the aforesaid clause of RFRP allows a PRA to submit a plan along with a co-investor or along with any financial or strategic partner, such wide amplitude that formation of a consortium can be read into it. Further, even in this case, the RFRP requires the co-investor or partner to not be ineligible to submit a resolution plan under the Code which is similar to Clause 29.9 which states that “Each of the members of the Consortium and / or joint venture will have to be eligible in terms of the Code”. Hence, it is stated that the intent of both the Clauses are same.



4.14. It is stated that the CIRP of the Corporate Debtor has been conducted in a fair and transparent manner. The Resolution Plan was submitted by the Consortium before the last date of submission of Resolution Plan i.e. 04.08.2023 with the knowledge of the CoC. In this regard, the CoC placed on record the following list of dates and events.

S. No	DATE	EVENT
1	10.02.2023	CoC approved the Form – G. The last date for submission of EoIs was extended from time to time till 17.04.2023. DAIT submitted the EoI before the deadline on 10.03.2023.
2	27.04.2023	Provisional list of PRAs was issued and DAIT was included in the list
3	02.05.2023	RFRP was issued to the PRA
4	12.05.2023	Final List of PRAs was issued, which included the name of DAIT
5	29.07.2023 And 01.08.2023	CoC received the EoI from Adani in its individual capacity. This was discussed by the CoC in its meeting held on 01.08.2023 and the CoC decided not to consider it, in order to complete the process in a timely manner. This rather clearly demonstrate the CoCs transparency in conducting the CIRP. RP accordingly sent a respondent to Adani on 02.08.2023.
6	03.08.2023	DAIT and Adani entered into a consortium Agreement for submission of Resolution Plan.
7	04.08.2023	Last date for submission of Resolution Plan on which date the Consortium submitted a Resolution Plan by way of email addressed to the RP wherein the representatives of both DAIR and Adani were marked. Further, the first page of the Resolution Plan states “Resolution Plan submitted by Dickey and Adani”.
8	07.08.2023	The Resolution plans received by the RP were opened in the 8 th CoC meeting in the presence of the relevant PRAs (except Jindal who did not attend the meeting). Although the minutes of the 8 th CoC meeting inadvertently do not record the name of Adani but the fact remains that the Resolution Plan was submitted by DAIT in consortium with Adani as evident from the documents and the CoC was aware that the Plan was submitted by the Consortium. The CoC on affidavit in its reply, has also stated that the Resolution Plan was submitted by the Consortium and the CoC was aware that the Resolution Plan was submitted by the Consortium on 04.08.2023.



9	12.08.2023	RP addressed an email to DAIT requesting Adani to submit the eligibility documents
10	06.10.2023	Negotiation process note and template of commercial / financial proposal was discussed in the 12 th CoC meeting. In the said meeting, the representatives of both DAIT and Adani and Mr. Parameshwaran were present.
11	20.10.2023 To 21.10.2023	13 th CoC meeting where the bidding process among the PRAs took place. In the said meeting, the representatives of both DAIT and Adani and Mr. Parameshwaran were present.
12	17.11.2023	RP received the revised signed Resolution Plan from all the PRAs.
13	21.11.2023	15 th CoC meeting where BDO India LLP ("BDO") presented the evaluation of Resolution Plans to the CoC members. SBI informed other CoC members that BDO has also been asked to evaluate the OTS proposal. Mr. Parameshwaran was present in the said meeting.
14	22.11.2023	16 th CoC meeting, the CoC decided to put the Latest OTS proposal along with the Resolution Plan for voting in the 16 th CoC meeting subject to compliance of Section 12A and Regulation 30A of the CIRP Regulations.
15	27.12.2023	Plan Approval Application is filed by the RP
16	29.02.2024	After 2 months, the present objections have been filed.

4.15. It is stated that the commercial wisdom of the CoC is paramount and the business decision of the CoC is not to be interfered with by the Adjudicating Authority or the Hon'ble Appellate Tribunal unless it is shown that there is a violation of Section 30(2) of the Code. The Adjudicating Authority has to act within the four corners of Section 30 and 31 of the Code, which circumscribe the jurisdiction of the Adjudicating Authority while considering an application for approval of a Resolution Plan.

4.16. It is stated that the CoC was well within its rights to formulate the process documents including the EoI



documents and the RFRP which allow a PRA to submit a Resolution in its individual capacity or form a Consortium and / or combine their resolution plans for purpose of presenting a common resolution plans for the Corporate Debtor and thereafter, approve the resolution plan of the SRA which is compliant with the underlying process documents. Since the CoC has approved the Resolution Plan of the SRA with a thumping majority of 97.8%, all this Tribunal is to see that the Resolution Plan is in compliance with Section 30(2) read with Section 31 of the Code.

4.17. It is stated that Clause 29.17 of the RFRP is not violative of Regulation 39 of the CIRP Regulations. Regulation 39(1) deals with prospective Resolution Applicant in the final list who may submit Resolution Plan or plans prepared in accordance with the Code. In this regard, the objectors have alleged change in constitution of consortium which, as demonstrated hereinabove, did not occur. It is stated that the suspended management was very well aware and present at the CoC meeting on 07.08.2023 where the Consortium's Resolution Plan was opened and it was noted that the plan was submitted by DAIT along with Adani before the last date of submission of 04.08.2023. The mere unsubstantiated allegations of impropriety cannot survive, and the suspended management be put to strict proof of their claimed ignorance of what transpired during the CoC



meeting held on 07.08.2023. It is stated that firstly, there has not been a modification of a Resolution Plan by way of Adani becoming a part of the Consortium. The Consortium of DAIT and Adani already submitted the plan prior to last date of submission. Secondly, the CoC permitted the same in light of its RFRP document and the governing Code and Regulations which do not prohibit formation and participation of a consortium.

4.18. It is stated that clause 29.11 of the RFRP states: *'unless otherwise permitted by the CoC, a Person will be allowed to submit only 1 (one) Resolution Plan, either individually as a PRA, or as a constituent of a Consortium. A Person who submits, or participates, directly or indirectly, in more than one Resolution Plan will cause all the Resolution Plans in which such Person has participated (directly or indirectly) to be disqualified at the CoC's discretion. The CoC may, at its discretion, allow two or more Resolution Applicants to form a consortium after the Resolution Plan Submission Date'*.

4.19. It is stated that Adani submitted only one resolution plan as a member of the Consortium. The said resolution plan was otherwise compliant with the provisions of the Code and the RFRP. It is stated that the fact that Adani's board resolution is dated 26.07.2023 is wholly immaterial and does not deserve consideration of this Tribunal. Further,



the fact that Adani had passed two resolutions on 26.07.2023, one for submitting Eol in its individual capacity and one for forming the consortium with DAIT is intended to create prejudice. CoC or the RP has no role to play in the internal matters of RA. The fact remains that Adani's individual Eol was rejected by the CoC and only the plan submitted by the Consortium before the last date of submission i.e. 04.08.2023 was considered and approved by the CoC in its commercial wisdom. In any event, as per the Eol dated 10.03.2023 submitted by DAIT, DAIT was financially qualified and in order to meet the technical criteria, it was stated that DAIT may be entering into a tie up with a technical partner who meets the specified technical criteria, for a period of at least 2 years or more, depending on the circumstances. Therefore, DAIT had made its intention to enter into a tie up for submission of resolution plan since the very beginning which the CoC and the RP were aware of.

4.20. It is stated that Clause 29.9 of the RFRP states *"Each of the members of the Consortium and/or joint venture will have to be eligible in terms of the Code. If any 1 (one) member of the Consortium is disqualified/ineligible under this RFRP, then the entire consortium i.e. all the members of the consortium shall stand disqualified, unless otherwise allowed by the CoC"*. It is stated that this clause cannot be read to disqualify Adani as



its Eol submitted in individual capacity was rejected not because it was disqualified but because it was submitted after the last date for submission of Eol had already elapsed.

4.21. It is stated that the reliance by the suspended Director on the aforesaid clause is misplaced as the intent of the clause is to ensure that the RAs are eligible in terms of Section 29A of the Code. There is no doubt that DAIT and Adani were eligible under Section 29A. The fact remains that as on 04.08.2023, both DAIT and Adani were eligible to submit the resolution plan as a consortium and were not disqualified or ineligible under any of the provisions of the Code or the RFRP Therefore, the aforesaid Clause 29.9 of the RFRP is not applicable at all. In any event, as per the Eol dated 10.03.2023 submitted by DAIT, DAIT was financially qualified and in order to meet the technical criteria, it is stated that DAIT may be entering into a tie up with a technical partner who meets the specified technical criteria, for a period of at least 2 years or more, depending on the circumstances. Therefore, it is stated that the said submissions do not sustain.

4.22. In relation to the objection raised by the suspended Director that DAIT breached confidentiality clause stipulated in the RFRP by sharing the access of VDR with Adani who was



not a PRA, it is stated that Clause 25 of the RFRP makes it clear that the Information relating to the examination, clarification, evaluation including the VDR is not intended to be shared with any party who is not officially concerned with the Resolution Plan process. It is stated that the clause is not breached when DAIT shared the information with Adani who was concerned with the Resolution Plan process as DAIT was submitting a Resolution Plan in consortium with Adani.

5. REPLY OF THE RESOLUTION PROFESSIONAL TO THE OBJECTIONS

- 5.1. It is stated that sufficient opportunities were granted to the Objectors, but they did not raise any objection at the earliest available opportunity, as such they are estopped from questioning belatedly. It is stated that the invitation along with agenda for the CoC meetings were sent to both the Objectors, while the Promoter Director did not choose to attend any of the meetings, the Employee Director who is the second objector attended all the CoC meetings.

- 5.2. It is stated that the Employee Director did not object to the Resolution Plan submitted by the consortium of Dickey Alternative Investment Trust ("DAIT") and Adani Power Limited. The Resolution Plan was opened on 07.08.2023 only in the 8th meeting of the CoC. The objections came to



be filed only on 27.02.2024. Both the directors did not question the inclusion of Adani Power in the resolution plan either by way of representation or by filing an application before this Tribunal. Thus, they have acquiesced by their conduct.

5.3. It is stated that the minutes of various meetings of the CoCs would reveal that the Objectors have been consistently trying to delay the process despite the fact that the purported proposals given by the Promoter were considered by the CoC in the meetings and were rejected by the CoC.

5.4 It is stated that while the objectors have been scrupulously violating and appearing before the Tribunal raising objections, they have not chosen to even file a reply in the avoidance transaction applications filed against them by the Applicant in:

- a) IA/1678/2023-Transaction value of Rs.88 Lakhs,
- b) IA/1679/2023-Transaction value of Rs.84 lakhs,
- c) IA/1798/2023-Transaction value of Rs.409.13 crores

5.5. With regard to the so-called procedural irregularity raised by the Objectors, it is stated that there is no prohibition either in the Insolvency and Bankruptcy Code, 2016 (Code) or in IBBI (Insolvency Regulation Process for Corporate



Persons Regulations) Regulations, 2016 or in the Expressions of Interest (EOI) disabling a short-listed Resolution Applicant to bring in a Co-Resolution Applicant. The argument of the objectors that by implication only those members who are part of the EOI and Consortium can form at a later stage has no basis.

- 5.6. It is stated that Clause 3, 4.1, 4.3(d) (viii), 7.5(b), 26.2, 29.9 to 29.11 and 29.17 of the RFRP and more particularly clause 7.5(b) and 29.11 would manifest the fact that there is no prohibition in the Code or Regulation for disabling a short-listed Resolution Applicant to bring in a Co-Resolution Applicant. It is stated that DAIT is well within its right to bring in a Co Resolution Applicant and there is no illegality committed either by the RP or by the CoC.

- 5.7. It is stated that the Resolution Plan was submitted by Dickey Alternative Investment Trust in consortium with Adani Power Ltd. The Resolution Professional acted strictly as per the provisions of the Code and Regulations by rejecting the EOI submitted by Adani Power Ltd since it was beyond the timeline. It is stated that Adani Power was not disqualified to submit a Resolution Plan. . It is stated that the RFRP conditions enabled Dickey Alternative Investment Trust to tie up with Adani Power Ltd.



- 5.8. It is stated that the contentions raised by the Objector that Adani Power Ltd came into picture only on 06.10.2023 has no basis. The Email at page 30 of the Common reply to objections filed by the Applicant and other documents would reveal that Adani Power Ltd had submitted the Plan on 04.08.2023 and that there was only one Resolution Plan.
- 5.9. It is stated that there cannot be an iota of doubt with regard to the provisions of Regulation 36A (5) & (6). As mentioned in the preceding paragraph Dickey Alternative Investment Trust which has been shortlisted as a PRA submitted its Resolution Plan in consortium with Adani Power Ltd which is in line with EOI and RFRP conditions. Therefore, there is no violation of Regulation 36A (5) and (6).
- 5.10. In relation to the contention that Dickey Alternative Investment Trust has no technical eligibility as per the EOI document, it is stated that Regulation 36A (10) sets out a timeline for issuing provisional list of PRAs and the RP published the list of PRAs. There was no objection by any of the PRAs and the Objectors did not even object to the selection of Dickey Alternative Investment Trust as PRA. Further, it is stated that the eligibility criteria as set out in Annexure (B) (page 255) of the objector's volume and the relevant technical qualification at page 260, DAIT has categorically stated that it will be entering into a tie up with



the technical partner who meets the specific technical criteria.

5.11. It is stated that in terms of Regulation 39(1), the PRA may submit a Resolution Plan to the RP electronically within the time specified in the request for Resolution Plan along with required data. The plan was submitted by Dickey Alternative Investment Trust [which was in the list prepared under Regulation 36A(10)] in consortium with Adani Power Limited.

5.12. It is stated that as mentioned above, as per the RFRP document coupled with the fact that there is no prohibition in the Code or Regulation, DAIT is entitled to submit the plan in consortium with Adani Power Ltd. Thus, there is no violation of Regulation 39(1). Further, it is stated that in terms of Regulation 39(1A), the RP may allow modification to the Resolution Plan but not more than once. There is no such violation in the instant case.

5.13. It is stated that in terms of Regulation 39(1B), the committee shall not consider Resolution Plan received from person who does not appear in the final list of PRAs. Admittedly in the instant case, the resolution plan was submitted by the person who was in the final list of PRAs i.e., Dickey Alternative Investment Trust.



- 5.14. It is stated that the argument of the Objector that clause 29.17 of the RFRP conditions is violative of Regulation 39(1A) has no basis inasmuch as in the instant case the resolution plan was accepted from a PRA who was shortlisted and was forming part of final list of PRAs'.
- 5.15. In relation to the objections raised on the Board Resolution dated 26.07.2023 provided by Adani Power, it is stated that the same is only an authorisation authorising somebody to present the Resolution Plan. So far as the RP is concerned, it is stated that the RP has not invited Adani Power Ltd to submit a Resolution Plan as set out in the Board Resolution and the RFRP was issued only to those persons who had submitted the EOI. It is stated that RP did not invite Adani Power Ltd to submit the EOI post issuance of invitation to EOI by him.
- 5.16. It is stated that there is no violation of confidentiality obligation by Dickey Alternative Investment Trust and Adani Power Limited against virtual data room. The access was given to only who were in the PRAs' list. In the instant case, Dickey Alternative Investment Trust was in the PRAs' list, the resolution plan was submitted by Dickey Alternative Investment Trust in consortium with Adani



Power Limited which is permitted under the RFRP document.

5.17. In relation to the Scheme of Arrangement and Scheme of amalgamation, reliance is placed on the judgment of NCLT, Chennai Bench in IA/600/CHE/2021 in IBA/873/2019 in the matter of **Balakrishnan Venkatachalam, Resolution Professional of M/s. ABT(Madras) Private Limited** approving the resolution plan by way of a scheme of merger.

6. REPLY OF THE INTERVENOR – ADANI POWER LIMITED

6.1. It is stated that the objections raised/filed by the Objectors are not maintainable and are liable to be dismissed *in limine*. It is stated that Mr. Buhari is in jail and by order dated 02.02.2024, this Tribunal recorded the submission of RP that he has no objection for supplying a copy of the resolution plan, provided that the suspended directors give a letter of confidentiality which the suspended directors agreed. From the objections claimed to have been filed by Mr.Buhari, it is not known as to whether Mr.Buhari, who is in jail, has given any confidentiality undertaking to the RP. Assuming Mr.Buhari has given any confidentiality undertaking from jail, it is not known as to how RP delivered the copy of the resolution plan to Mr.Buhari in jail. Further, the objection has been filed by an unnamed



person claiming to be the authorized representative of Mr.Buhari. Also, no authority letter by Mr.Buhari in favour of the purported authorized representative is placed on record along with the objections. It is stated that from the objections, it is not known as to when did the purported authorized representative met Mr.Buhari in jail for seeking instructions to file the objections. It is not known as to how Mr.Buhari, who is bound by the confidentiality letter, could have shared the resolution plan with the purported authorized representative. It is further not known as to who gave instructions to the lawyers for drafting the objections. Further, no affidavit has been filed with the objections.

- 6.2. It is stated that no clarification/answer, in respect of the aforesaid, has been provided by Mr.Buhari, either by filing affidavit or at the time of oral submissions. Considering the aforesaid, it is stated that the leave granted, as per order dated 02.02.2024 passed by this Tribunal, was subject to the conditions of confidentiality. Such confidentiality has been breached by Mr.Buhari. In such circumstances, Mr.Buhari is not entitled for any audience or any benefit of this Tribunal's benevolence. Further, no such objections in the name of an unnamed purported authorized representative can be taken on record. Not filing an affidavit along with the objection is in breach of Rules 126, 127 read with 111(2), 34(4) and Form NCLT 6 of the National Company Law



Tribunal Rules, 2016 ("NCLT Rules"). In the circumstances, objections claimed to have been filed by Buhari are not maintainable and are liable to be rejected with exemplary costs.

6.3. It is stated that by order dated 12.02.2024, this Tribunal granted 10 days' time to the suspended directors to file the objections. Mr.Buhari filed the objections somewhere on 26.02.2024 and Mr.Parameshwaran filed the objections somewhere on 01.03.2024, much after the time prescribed by this Tribunal and in complete violation of Rule 111(1) of the NCLT Rules. No application has been preferred by the Objectors explaining the reasons for such delay nor they sought any enlargement of time as required under Rule 153 of the NCLT Rules. In such circumstances, the objections of the Objectors cannot be taken on record.

6.4. It is stated that as per the records, Mr.Buhari, despite having due notice of each and every CoC meetings, remained absent in all the meetings of the CoC and never raised any objections or issues either to the terms of Expression of Interest ("EoI") or to the terms of Request For Resolution Plan ("RFRP") or in respect of the provisional list or the final list of the prospective resolution applicants or in respect of the Consortium or in respect of the resolution plan of the Consortium. On the other hand,



Mr. Parameshwaran, who is neither a shareholder nor a promoter nor a person being vitally interested, as an employee and who is paid salary, attended all the meetings of CoC and never raised any objections or issues, which are now sought to be raised as an afterthought. Even otherwise, the objections filed by the Objectors are barred by the principles of waiver and acquiescence. Thus, the objections are liable to be dismissed on this ground alone. Reliance is placed on the following judgements:

- a) **Alstom Power Boilers Limited v/s State Bank of India**; (2002) 112 CC 674 (Bom); para no 30 (Vol. 1. Sr. No. 1 of Compilation of Judgements filed by the Intervenor) [not attending the meeting...it is too late in the day for an objector to contend that the scheme is unfair);
- b) **JM Financial Asset Reconstruction Co. Ltd. vs Well-Do Holdings and Exports Pvt. Ltd.** NCLAT, Delhi; Dated 8.4.2019; para no. 19 (Vol. 1. Sr. No. 4 of Compilation of Judgements filed by the Intervenor) [persons having not challenged the expression of interest till the resolution plan was approved by the committee of creditors-not open to any person to challenge the same);
- c) **Galada Power Telecommunication Ltd. vs United India Insurance Co. Ltd.**: (2016) 14 SCC 161; para nos. 14 to 17 (Vol. 1. Sr. No. 2 of Compilation of Judgements filed by the Intervenor) (once a person is fully informed as to his rights and having full knowledge about the same intentionally relinquishes his



right-a person can be said to have waived his right).

6.5. It is stated that even otherwise, the Objectors have not approached this Tribunal with clean hands. It is the case of Mr.Buhari that he is also one of the promoters of the Corporate Debtor. The OTS proposal of the promoters under the provisions of Section 12A of IBC, 2016 has been rejected by the CoC. In respect of the OTS proposal, the promoters have filed IA 2345 of 2023 and IA 61 of 2024 ("OTS Applications") before this Tribunal, seeking consideration of their OTS proposal. The object of the Objectors is to either remove the intervenors so that the field for their OTS Applications is clear or if their OTS Applications are rejected, to ensure that the resolution plan submitted by the Intervenor should not be approved by this Tribunal to ensure liquidation of the Corporate Debtor.

6.6 It is stated that Mr.Parameshwaran, who is merely an employee of the Corporate Debtor, has been advancing the cause of the promoters without any independence. The objections filed by Mr.Parameshwaran are almost verbatim copies of the objections filed by Mr.Buhari. It is stated that Mr. Mr.Parameshwaran is hand in gloves with the promoters of the Corporate Debtor and is a helping hand to the promoters to fulfil their oblique goal. It is for this reason that Mr.Parameshwaran, though attended all the meetings



of CoC, is artificially behaving that he has been kept in dark. Further, it is stated that the RP has already formed a *prima facie* opinion that the Objectors have indulged in fraudulent transactions under Sections 43 and 66 of the Code of the transaction value of more than Rs. 400 Crores. Considering the aforesaid, it is stated that the Objectors who have not come with clean hands are not entitled for any reliefs from this Tribunal and the objections are liable to be rejected with cost.

6.7. In relation to the objection raised by the Promoter Director that Adani cannot be part of the Consortium, it is stated that Dickey had submitted the resolution plan on 04.08.2023 in Consortium with Adani Power Limited.

6.8. It is stated that the Consortium submitted its resolution plan on 04.08.2023 and not on 06.10.2023 as sought to be claimed by the Objectors. Mr. Parameshwaran was present in the 8th CoC meeting held on 07.08.2023 when the resolution plan of the Consortium was opened. Therefore, Mr. Parameshwaran was aware that the Consortium had submitted the resolution plan on 04.08.2023. The said contention raised by Mr. Parameshwaran that the Consortium had submitted the resolution plan only on 6.10.2023 is false to his knowledge. Such false contention is raised by Mr. Parameshwaran only to help the promoters in



achieving their oblique goal. The same clearly shows that Mr. Parameshwaran is hand in gloves with the promoters of the Corporate Debtor and is raising the contention at the dictates of the promoters of the Corporate Debtor without any application of independent mind.

6.9. It is stated that not recording the name of Adani along with Dickey in the minutes of the 8th CoC meeting held on 07.08.2023 is an inadvertent mistake. The fact that the Consortium had submitted the resolution plan on 04.08.2023 would be evident from the e-mail dated 04.08.2023 addressed by Dickey to RP with a copy marked to the representatives of Adani. The fact that the Consortium had submitted the resolution plan on 04.08.2023 would be further evident from the resolution plan dated 04.08.2023 produced by the RP in his reply to the objections filed by the Objectors. Further, the fact that the Consortium had not submitted the resolution plan on 06.10.2023 would be further evident from the e-mail dated 17.8.2023 addressed by the advocates for the CoC to the CoC members by which the advocates sent their comments on the resolution plan of the Consortium. . It is stated that in the 8th CoC meeting held on 07.08.2023, Mr. Divyansh Upadhyay of Dickey and Mr. Mitesh Chawla of Adani were present. . It is stated that the Objectors have completely failed to dislodge any of the aforesaid facts. It is stated that



the minutes of a meeting are not the exclusive evidence of what took place there. An unrecorded resolution may be proved *aliunde*.

6.10. In relation to the objection raised by the Promoter Director that Adani was not in the final list of prospective resolution applicants ("PRAs"), it is not entitled to submit the resolution plan through consortium and the CoC could not have considered the resolution plan of the Consortium in view of Regulation 39(1B)(b) of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations"), it is stated that Section 5(25) of the Code defines 'resolution applicant' to mean a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional. Thus, the legislature expressly recognises that a resolution applicant may be a person, who may submit a resolution plan jointly with any "other person". The term "other person" is kept as a distinct entity, from the person referred to in the first clause of the definition, and the definition clearly applies to the submission of the "resolution plan", and not to submission of EoI.

6.11. It is stated that the Objectors are requesting this Tribunal to artificially define "resolution applicant" as person or



persons who submit "Expression of Interest" jointly. It is a well settled canon of statutory interpretation that where the words of a statute have a clear meaning, Courts will not interpolate words of their own.

6.12. It is stated that Section 29A of the Code permits such person or any other person acting jointly or in concert with such person to submit a resolution plan subject to the eligibility prescribed under Section 29A of the Code. Thus, under the Code, there is no bar for the resolution applicant to submit the resolution plan either individually or jointly or in concert, with other persons(s). Further, it is stated that there is no provision either in the Code or in the CIRP Regulations which mandates PRAs to declare in advance about the consortium while submitting EoIs or mandates the names of the other members with the PRA to form the consortium to be mentioned either in the provisional list or in the final list. Neither the Code nor the CIRP Regulations stipulate any requirement on the contours of how such joint submission must be made by the consortium. Further, in the instant case, there is no requirement in the EoI published by RP which directs declaration of the consortium by the PRAs in advance.

6.13. It is stated that, under the invitation for EoI, even financial institution / private equity / venture capital investor /



NBFCs / ARCs /Banks, etc. are permitted to submit EoI if the said entities satisfy the eligibility criteria as stipulated in Annexure B to the EoI. Necessarily, such aforesaid entities would not be having any operating thermal power plant much less a thermal power plant of 300 MW capacity. It is in such circumstances and with a view to increasing participation, the EoI provides the options for technical eligibility criteria. Under the options, it permits the PRAs who do not have operating thermal power plant capacity of at least 300 MW as on the date of submission of EoI to either enter a tie-up with a technical partner or engage an operations and management contractor or demonstrate the methodology to be adopted by the PRA to run the operations of Corporate Debtor. At that time, the virtual data room was not open for the PRAs to take a conclusive decision. At the time of submitting the EoI, such flexibility was provided in the invitation of EoI to enable the PRAs to enter a tie-up. Such technical partner before the submission of the resolution plan, could either join the PRA through consortium or decide to provide only the technical expertise to the PRA to run the operations of the Corporate Debtor. With a view to achieve the aforesaid objective, Clause 7.5 of the RFRP also permits PRAs to submit a resolution plan along with co-investor or with any financial or strategic partner as the PRA may deem fit. The only requirement under Clause 7.5 of the RFRP is to submit such



additional documents to ensure compliance of the provisions of the Code and the CIRP Regulations. Thus, there is no requirement either under the Code or in the CIRP Regulations which mandates the PRAs to declare the consortium members in advance or directs the names of each consortium members with the PRA to be disclosed or mentioned either in the provisional list or the final list.

6.14. It is stated that there is no violation of Regulation 39(1B)(b) of the CIRP Regulations as Dickey appeared in the final list of PRAs. As stated earlier, there is no requirement either in the Code or in the CIRP Regulations which mandates the name(s) of other consortium member(s) with the PRA, who is in the final list, to be also forming part of the final list of PRAs. It is not the case of anyone that CoC considered the resolution plan from a rank outsider. It is stated that if the Objectors had any grievances, which is now sought to be raised as an afterthought, nothing prevented the Objectors to raise the objections at the time when the terms of EoI and RFRP were discussed in the CoC meetings.

6.15. In relation to the objection raised by the Promoter Director that the RFRP permits only 2 or more PRAs to form a consortium and not otherwise, it is stated that Adani was not disqualified either on the ground of eligibility criteria or on merits. The EoI of Adani was not accepted by the CoC



in view of the lapse of the time period for submitting the EoI. Thus, neither Adani was disqualified nor ineligible under the terms of EoI or RFRP. Further, it is stated that, Dickey was entitled to form a consortium and there was no requirement to declare in advance the names of other consortium members. On overall reading of the EoI and the RFRP, the PRAs were permitted to form the consortium even after submission of EoI by the PRAs. CoC permitting two or more PRAs to form a consortium does not negate the right of the P'RA to form a consortium with a person who has not submitted the EoI. The terms of EoI and RFRP specifically permit the same and there is no prohibition either under the EoI or under the RFRP. For illustration, Clause 7.5 of the RFRP specifically permits the PRA to submit a resolution plan along with a co-investor or along with any financial or strategic partner as the PRA may deem fit. Thus, the whole argument raised by the Objectors is devoid of any merit.

- 6.16. It is stated that Dickey had approached Adani for the tie-up in respect of the EoI submitted by it. Adani, in its individual capacity, was also interested in submitting EoI. During the said period, Adani was evaluating the options available to it. Considering the same, the Board of Directors of Adani passed separate resolutions for (i) submission of EoI by Adani; (ii) execution of Consortium Agreement with



Dickey, and (iii) submission of the resolution plan. Such resolutions were enabling resolutions depending upon the options. The resolution for submission of the resolution plan was as per the Format VIII of the RFRP. Such enabling resolution for submission of the resolution plan would not undergo any change if submitted either in the individual capacity or through consortium. It is submitted that there is no provision in the Code or the RFRP which bars a person from tendering EoI in two capacities, with full transparency. It is stated that reliance placed by the Objectors on the judgment in the case of **M.K. Rajagopalan Vs. Dr. Periasamy Palani Gounder & Anr. (2024) 1 SCC 42** is misplaced for the following reasons:

- (a) Adani was entirely transparent from the outset, unlike MK Rajagopalan.
- (b) Adani's solo EoI was not entertained by CoC (and therefore, Adani never entered the zone of consideration in its solo capacity), unlike MK Rajagopalan.
- (c) Adani entered the zone of consideration only in its capacity of partner of Dickey, and this, it did so, transparently and openly, which CoC acted upon and assented to.
- (d) Thus, Adani never had two bites at the apple, unlike MK Rajagopalan.



- 6.17. It is stated that the Objectors have completely failed to demonstrate as to which provision of law has been breached by Adani by passing the aforesaid enabling resolutions.
- 6.18. It is stated that under the EoI, eligibility criteria was divided into two parts. One was financial eligibility criteria and the second was technical eligibility criteria. The said eligibility criteria is mentioned in Annexure B to the EoI. Under financial eligibility criteria, Dickey was covered under Category C which required committed funds available for investment / deployment in Indian companies or Indian assets of Rs.500 Crores or more as per the latest available statement which shall not be earlier than 31.3.2022. Dickey, at the time of submitting EoI, had committed funds of Rs.549.83 Crores, as on 31.03.2022, i.e. more than the requirement under the financial eligibility criteria.
- 6.19. It is stated that the EoI in respect of technical eligibility criteria, provided three options. Option 1 required that the PRA should have either developed and/or is currently operating aggregate thermal power plant capacity of at least 300 MW as on the date of submission of EoI. If the PRA was not having an experience of operating a thermal power plant of 300 MW, under



Option 2, PRA can enter into a tie-up with a technical partner who meets the above technical criteria or engage an operations and management contractor who is operating aggregate thermal power plant capacity of at least 300 MW and who meets the above technical criteria for a period of at least 2 years. Another option under Option 3 was that the PRA should submit an undertaking stating and demonstrating the methodology to be adopted by the PRA to run the operations of the Corporate Debtor. It is stated that on perusal of the options under the technical eligibility criteria, it becomes evident that sufficient flexibility was given to PRAs to have a tie-up before the submission of the resolution plan. Based on the understanding of terms of EoI, Dickey, while submitting the EoI, clearly mentioned that to meet the technical criteria, Dickey would be entering into a tie-up with a technical partner who meets the specified technical criteria. As Dickey was qualified under the technical eligibility criteria, the same met with the approval of RP and CoC.

- 6.20. It is stated that in the provisional list of PRAs, Dickey was shortlisted as PRA. Neither any other PRAs nor the Objectors raised any objections for the inclusion of Dickey as a PRA in the provisional list as required under Regulation 36A(11) of the CIRP Regulations. It is stated



that this Tribunal would not sit in appeal over the decision of expert bodies relating to eligibility criteria. The contention raised by the Objectors that Dickey does not fulfill the criteria of 3 years of financial performance is devoid of any merits. There is no requirement under the terms of EoI which requires 3 years of financial performance as sought to be contended by the Objectors. Thus, the contentions raised by the Objectors are completely an afterthought and devoid of any merits.

7. ANALYSIS

7.1. The CIRP in respect of the Corporate Debtor was initiated by this Tribunal on 04.02.2022. Paper publication was made on 07.02.2022. The 1st meeting of the CoC was held on 04.03.2022. The Promoter Director filed appeal before Hon'ble NCLAT and by order dated 11.03.2022, Hon'ble NCLAT stayed the further proceedings of the CoC. The interim stay was vacated by Hon'ble NCLAT on 06.01.2023, by which date the Appeal was also dismissed.

7.2. The RP prepared the Information Memorandum and issued the Expression of Interest (EoI) in Form – G on 10.02.2023. The revised Form – G was again issued on 24.02.2023, 13.03.2023 and 10.04.2023 and the last date for the submission of EoI was extended till 17.04.2023. RP



received a total of 18 EoIs from the PRAs as on the last date i.e. 17.04.2023. Thereafter, RP prepared the Provisional list & Final list of PRAs in accordance with the provisions of Code and accordingly, the RP issued the Request for Resolution Plan (RFRP) to 14 PRAs on 02.05.2023.

- 7.3. The last date kept for submission of the Resolution Plan was 01.06.2023 and the same was extended from time to time after taking the consent of CoC members. Accordingly, the last date to submit the resolution plan, after extensions, was 04.08.2023. In response to the RFRP issued, the RP received 3 Resolution Plans from (i) Sherisha Technologies Pvt. Ltd., (ii) Dickey Alternative Investment Trust in consortium with Adani Power Limited and (iii) Jindal Power Limited.
- 7.4. The CoC members in its 11th meeting held on 06.10.2023 discussed and approved the negotiation process and template of commercial offer to be submitted by the PRAs. After several rounds of discussion, the PRAs submitted their revised financial offer and draft resolution plans on 04.10.2023. Out of three PRAs, two PRAs participated in the negotiation / bidding process held on 20.10.2023 and 21.10.2023. Another PRA viz. Sherisha Technologies Private Limited did not



participate in the process and informed the Applicant vide email dated 19.10.2023.

7.5. The RP received the final resolution plans from the PRAs on 17.11.2023. The CoC in its 16th meeting held on 22.11.2023 deliberated on the Resolution Plans in detail with regard to the feasibility and viability and ultimately the plans were put for e-voting in the said meeting. The e-voting commenced on 25.11.2023 i.e. 2 days after circulation of minutes of the 16th CoC Meeting. The e-voting was to end on 16.12.2023, which was further extended till 22.12.2023. The CoC with 97.80% voting approved the Resolution Plan submitted by Dickey Alternative Investment Trust in consortium with Adani Power Limited.

8. FINDINGS

From the submissions made by the Learned Senior Counsel for the parties, the issues which are required to be decided are as under;

- (i) *Whether the Expression of Interest submitted by Dickey Alternative Investment Fund satisfies the Financial and Technical qualification as laid down in the EoI.*
- (ii) *Whether Dickey Alternative Investment Fund after submitting the EoI in its individual capacity and after the RFRP is issued to it by the RP, can submit a Resolution Plan in consortium with an outsider.*



- (iii) *Whether the terms contained in RFRP which was issued to the PRAs are in violation of Regulation 39(1B) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.*

9. ISSUE NO. (I)

- 9.1. *The issue no. (i) is whether the Expression of Interest submitted by Dickey Alternative Investment Fund satisfies the Financial and Technical qualification as laid down in the EoI*
- 9.2. During the CIRP of the Corporate Debtor, the RP prepared the Information Memorandum (IM) and Expression of Interest (EoI) in Form-G on 10.02.2023. The same were placed before the CoC and the CoC in the meeting held on 10.02.2023 approved the EoI. The revised Form-G was published on 10.04.2023. The last date for submission of EoI was 17.04.2023. The Financial Eligibility Criteria and the Technical Eligibility Criteria as laid down in the EoI are extracted as under.

**ANNEXURE B
Eligibility Criteria**

Financial Eligibility Criteria:

1. Category A- Individuals, LLP or Trusts whether incorporated in India or outside India

- Minimum consolidated Tangible Net Worth of INR 250 Crores (Indian Rupees Two Hundred and Fifty Crores) as per



the latest available audited financials which shall not be earlier than March 31, 2022.

2. **Category B - Private/Public Limited Company, Government Organizations or Body Corporate whether incorporated in India or outside India**

- Minimum consolidated Tangible Net Worth of INR 500 Crores (Indian Rupees Five Hundred Crores) as per the latest available audited financials which shall not be earlier than March 31, 2022.

3. **Category C - Financial Institution (FI)/ Fund / Private Equity (PE)/ Venture Capital (VC) Investor / NBFCs, Domestic/ Foreign Investment Institutions/ARCs, banks and similar entities, who are registered and permitted to be a Prospective Resolution Applicant under applicable law**

- Minimum Asset Under Management (AUM)/ loan portfolio of INR 1,000 Crores (Indian Rupees One Thousand Crores) as per latest audited financial statements which shall not be earlier than March 31, 2022, OR
- Committed funds available for investment/deployment in Indian Companies or Indian assets of INR 500 Crores (Indian Rupees Five Hundred Crores) or more as per the latest available statement which shall not be earlier than March 31, 2022.

4. **Category D - Consortium**

- At least one of the members must hold at least 26% of total equity participation in the consortium who shall be designated as the lead member with other members having a minimum profit/voting share of 10% in the Consortium
- The lead member shall meet the criteria of its category, and the overall consortium shall meet the threshold of equivalent Net Worth of at least INR 500 Crores (Indian Rupees Five Hundred Crores) on weighted average basis as per the latest available audited financial statements which shall not be earlier than March 31, 2022. For the members falling in:



- o Category A and B – Consolidated Tangible Net Worth shall be used
 - o Category C – Higher of AUM / committed funds shall be used
-
- All the members of the consortium shall be jointly and severally responsible for compliance with the terms of the invitation for EoI, the request for resolution plan and the resolution plan submitted by the consortium.
 - Each member of the Consortium shall nominate and authorize a Lead Partner to represent and act on behalf of the members of the Consortium and should have authority to bind, represent and take decisions on behalf of the Consortium. Such Lead Partner shall be the single point of contact on behalf of the Consortium with the Resolution Professional and the CoC, their representative and advisors in connection with all matters pertaining to the Consortium.
 - All the other members of the Consortium would need to have a minimum profit/voting share of 10% in the Consortium.
 - Any change in the consortium shall require the prior approval of the CoC.
 - If any resolution applicant(s) from Category A or B or C or member of the Consortium is disqualified under Section 29A of the Code, then the entire Consortium or such Resolution Applicant or members of such Consortium shall stand disqualified.
 - If one member is a part of any other category or any other consortium which is submitting Expression of Interest herein then that member cannot be a part of another group of consortium or category which is also submitting Expression of Interest for Coastal Energen Private Limited.
 - The Tangible Net Worth / AUM or committed funds requirement for the Lead Partner of the successful resolution applicant will continue to be applicable until the resolution plan is implemented by the successful resolution applicant post approval by the Hon'ble National Company Law Tribunal. All



the members of the Consortium shall be jointly and severally responsible for legal compliance and compliance with the terms of this document, the request for resolution plans and the relevant resolution plan.

Technical Eligibility Criteria (to be self-certified by PRA):

- The PRA, directly or through an Affiliate(s)/Group Company(s), should either have developed and/ or is currently operating aggregate thermal power plant capacity of at least 300 MW as on the date of submission of EoI. The Affiliate and Group Company for this purpose would be defined as under:

"**Affiliate**" with respect to any person shall mean any other person which, directly or indirectly: (1) Controls such person; or (2) is Controlled by such person; or (3) is Controlled by the same person who, directly or indirectly, Controls such person

"**Control**" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner. The term "Controlled" shall be read in accordingly.

"**Group Company**" shall in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and shall include (i) a joint venture company; (ii) an Affiliate; (iii) an associate company; and (iv) a person or company which is not eligible to submit a resolution plan in terms of Section 29A of the Insolvency and Bankruptcy Code, 2016, OR

- In case where the PRA does not have the experience in developing or operating a thermal power project, such PRA may enter into a tie-up with a technical partner who meets the above technical criteria or engage an operations and management (O&M) contractor who is operating aggregate thermal power capacity of at least 300 MW and who meets the above technical criteria, for a period of at least 2 (two) years. OR



- The PRA shall submit an undertaking stating and demonstrating the methodology to be adopted by the PRA to run the operations of CEPL.

9.3. As already alluded *supra*, the RP received Expression of Interest from 18 PRAs and out of which the RFRP was issued to 14 PRAs. In the present case, the Eligibility Criteria has been laid down in Annexure – B, which is extracted *supra*. In the said Eligibility Criteria, DAIT submitted its EoI in Category – C, i.e. in its individual capacity, by showing the Committed fund more than Rs.500 Crores. Hence, DAIT in its individual capacity has passed the threshold limit fixed under Category – C. In support of the same, DAIT submitted a certificate from the Chartered Accountant dated 10.08.2022 which states that DAIT has the following committed fund for investment in Indian Companies as on 31st March 2022.

PARTICULARS	AMOUNT (IN CRORES)
Dickey Vision Fund	305.00
Dickey Mudra Fund	244.83
Total	549.83

9.4. Thus, as per the above Certificate of the Chartered Accountant, DAIT is financially qualified to submit the Resolution Plan.



- 9.5. In so far as the technical eligibility criteria is concerned, DAIT *per se* does not have experience of developing or operating thermal power plant capacity of at least 300 MW. However, the second clause in the technical eligibility criteria gives leverage / flexibility to the PRA who does not have the experience in developing or operating a thermal power project, to enter into a tie-up with a technical partner who meets the above technical criteria or engage an operation and management (O&M) contractor who is operating aggregate thermal power capacity of at least 300 MW and who meets the above technical criteria, for a period of at least 2 (two) years.
- 9.6. Hence, as per Clause 2 of the technical eligibility criteria, DAIT has stated in the EoI that it may be entering into a tie – up with a technical partner, who meets the specified technical criteria for a period of atleast 2 (two) years or more, depending upon the circumstances. Thus, the above declaration given by DAIT in its EoI document would make it clear that DAIT could submit the Resolution Plan in respect of the Corporate Debtor. To meet the technical eligibility criteria, DAIT thereafter entered into a Consortium Agreement with Adani Power Limited on 03.08.2023 i.e. before the last date of submission of the plan.



9.7. Thus, we are of the view that the Expression of Interest submitted by Dickey Alternative Investment Fund satisfies the Technical and Financial qualification as laid down in the EoI and accordingly issue no. (i) is answered in the affirmative.

10. ISSUE NO. (II) & (III)

10.1. The issue no. (ii) is *Whether Dickey Alternative Investment Fund after submitting the EoI in its individual capacity and after the RFRP is issued to it by the RP, can submit a Resolution Plan in consortium with an outsider*

10.2. The issue no. (iii) is *Whether the terms contained in RFRP which was issued to the PRAs are in violation of Regulation 39(1B) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016*

10.3. In order to answer above said issues, it is noted that DAIT after submitting its EoI and after finding place in the Final List of PRAs was issued the RFRP, Information Memorandum along with other PRAs on 02.05.2023, to submit the Resolution Plan. The last date for submission of the Resolution Plan was extended from time to time and was fixed as 04.08.2023. At this juncture, it is required to be noted that Adani Power Limited also



submitted its Expression of Interest to the RP on 29.07.2023. However, the said EoI was rejected by the CoC on the ground of delay.

- 10.4. Thereafter, DAIT formed a consortium with Adani Power Limited as per the Consortium Agreement dated 03.08.2023 and submitted the Resolution Plan to the RP on 04.08.2023. i.e. on the last date for submission of Resolution Plan. It was sent by way of an email to the RP and the copy of the email was also marked to an official of Adani Power Limited.
- 10.5. The RP opened the Resolution Plan in the 8th CoC meeting held on 07.08.2023. The CoC by way of an Affidavit has stated that when the Resolution Plan was opened in the 8th CoC meeting, it became aware of the fact that the Resolution Plan was submitted by DAIT in consortium with Adani Power Limited.
- 10.6. Be that as it may, the issue which is required to be decided is whether the PRA i.e. DAIT after submitting the EoI in its individual capacity and after issuance of the RFRP, can submit a Resolution Plan in consortium with an outsider.



10.7. It is to be noted here that when the RFRP was issued, Adani Power Limited was nowhere in picture. DAIT while submitting the EoI had clearly stated that in order to meet the specified technical eligibility criteria, it may be entering into a tie up with a technical partner who meets the specified technical criteria for a period of atleast two years or more, depending upon the circumstances. It was only on the submission of EoI by DAIT, it was declared as PRA and RFRP was issued to DAIT.

10.8. The contention of the objector that consortium was invalid as a consortium can be formed only between and among the PRAs whose names were there in the final list of PRAs, is misconceived. Section 5 (25) IBC, 2016 defines the term Resolution Applicant". It means a person who individually or jointly with any other person, submits a resolution plan to the Resolution Professional pursuant to the invitation made under Clause (h) of sub-section (2) of Section 25 or pursuant to Section 54(k) as the case may. Section 29A of the Code also recognizes the consent of a Resolution Applicant acting jointly or in concert with such person. It starts with the following words – "A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person.....". Thus the IBC allows for



submission of Resolution Plan by a person individually or jointly on in concert with any other person. At this juncture, it is pertinent to point out Clause 7.5 of the RFRP which reads as follows

It is hereby clarified that subject to approval of the CoC:

(b) a Resolution Applicant may also submit a Resolution Plan along with a co-investor or along with any financial or strategic partner as it may deem fit;

Provided that in each such case, the Resolution Professional and the CoC shall have the right to require submission of additional documentation/undertakings as they may deem fit to ensure compliance with the provisions of the Code, CIRP Regulations, this RFRP and the undertakings annexed hereto and the RFRP Notwithstanding the above, the Prospective Resolution Applicant and/or any other entity as specified in Clause (a)(b) above should not be ineligible to submit a Resolution Plan as per the Code and shall be jointly and severally liable for all their duties, liabilities and obligations’.

- 10.9. The above Clause in the RFRP enables DAIT to form a consortium with Adani Power Limited. In the present case, DAIT formed a consortium with Adani to meet the technical criteria which is in line with the undertaking given by DAIT at the time of submission of Expression of Interest. Therefore the aforesaid clause of RFRP allows a Resolution Applicant to submit a plan along with a co-



investor or along with any financial or strategic partner. Further, even in this case, the RFRP requires the co-investor or partner not to be ineligible to submit a resolution plan under the Code which is similar to Clause 29.9 which states that “Each of the members of the Consortium and / or joint venture will have to be eligible in terms of the Code”.

- 10.10. It cannot be said that the above clause is in violation of the provisions of the Code and CIRP Regulations. It is only a clarificatory in consonance with the eligibility criteria laid down in the EoI and the Code. Thus there is no violation of Regulation 39(1B)(b) of CIRP Regulations as Dickey appeared in the final list of PRAs. There is also no requirement either in the Code or the Regulations which mandates the name of other consortium member to the PRA who is in the final list to be forming part of final list of PRAs. It is not the case that the CoC considered the Resolution Plan from a rank outsider. Clause 26.2 of RFRP also provides that Resolution Plan may be submitted as an individual entity or jointly as a consortium. In the event, Resolution Applicant is a consortium or is acting jointly or in concert with any person or each member of the consortium and each person acting jointly or in concert with the Resolution Applicant must submit an Affidavit under Section 29A of



the Code and if the Resolution Plan involves another entity on behalf of the Resolution Applicant, all such entities would be required to submit the Affidavit under Section 29A of the Code. In the instant case, both the consortium members before the approval of the Resolution Plan have submitted their Affidavits under Section 29A stating that they are not ineligible to submit the plan individually or as consortium and that they shall be jointly and severally liable for the obligations under RFRP, Resolution Plan and for the implementation of the approved Resolution Plan.

- 10.11. Another issue which was raised by the objector was that Regulation 39(1B)(b) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that the committee shall not consider any resolution plan received from a person who does not appear in the final list of Prospective Resolution Applicants. It is trite law that Regulations cannot override the express provisions of the Code. In the instant case, DAIT was a PRA and its name was appearing in the final list of PRAs. Further, the RFRP issued by the RP enables the PRA to bring in a co-investor and as such in the present case, DAIT has entered into a tie-up with Adani Power Limited for submitting



Resolution Plan who meets the technical eligibility criteria.

10.12. The Learned Counsel for the objector placed reliance upon the Judgment of the Hon'ble NCLAT in the matter of **N.V. Rama Raju and Ors. V. Rajkumar Ralhan, RP of Leo Meridian Infrastructure Projects and Hotels Limited and Ors., Company Appeal (AT) (CH) (Insolvency) No. 61 of 2021** to point out the importance of adhering to Regulation 39(1B) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. In the aforementioned case, the plan of the Appellant was already declared as H1 before the RP decided to call a fresh vote on all the Resolution Plans and hence Hon'ble NCLAT observed that the RP could not have called for fresh plans beyond the stipulated time period. However, as to the facts of the present case, DAIT and Adani had submitted a Resolution Plan before the last date of submission on 04.08.2023 and there was no declaration of H1 and the process was still at the stage of submission of resolution plans. Further, there is no violation of Regulation 39(1B) in the present case as DAIT's name was already present in the final list of PRAs.

10.13. The Learned Counsel for the objector further placed reliance upon the Judgment of the Hon'ble NCLAT **First**



Global Finance Pvt Ltd. v. IVRCL Limited, Company Appeal (AT) (Ins) No.918-919 of 2019 to point out that the Resolution Applicant has to strictly adhere to the timeline and requirement of furnishing of the documents necessary for a full and compliant submission of the resolution plan. In the aforesaid case, the resolution plan of the Appellant was rejected because of (i) non-compliance with the minimum qualification criteria as defined in the EoI; (ii) non-submission of the EMD along with the submission of the Resolution Plan application as required by the Bid process Memorandum; and (iii) constitution of the Resolution Applicants as per the Resolution Plans being different from the constitution of the Resolution Applicant as per the EOI submitted earlier. However, as to the facts of the present case, it is seen that as per the EoI dated 10.03.2023 submitted by DAIT, it was financially qualified and in order to meet the technical criteria, DAIT entered into a tie-up with Adani Power Limited. Therefore, DAIT had made its intention to enter into a tie up for submissions of resolution plan at the time of Expression of Interest stage itself, which the CoC and RP were aware of. Further, DAIT and Adani are both fully compliant with the provisions of the Code and the RFRP. Hence, reliance placed on this judgment by the objector is misplaced.



- 10.14. The Learned Counsel for the objector placed reliance upon the Judgment of the Hon'ble NCLAT **Amit Gupta vs Yogesh Gupta**, *Company Appeal (AT) (Ins) No.903 of 2019* to point out that even a few hours delay in the submission of EoI after the timeline, would render the EoI submitted liable for rejection. As to the facts of the present case, the EoI submitted by the DAIT in the present case was well within the timeline prescribed and the late EoI submitted by Adani in its individual capacity was rejected by the CoC pursuant to the discussion held in the CoC meeting on 01.08.2024. Therefore, the findings of this case are not relevant to the present case.
- 10.15. It is to be noted that neither the Expression of Interest nor the provisions of IBC, 2016 does restrict that the tie up partner should only be the technical partner and not the technical cum financial partner. It was only on the basis of EoI which was approved by the RP / CoC, DAIT entered into a Consortium Agreement with Adani and DAIT as a lead member. The Consortium submitted the Resolution plan jointly with the RP for acquisition of the Corporate Debtor. Even the Consortium who meets the financial eligibility criteria and declared as PRA in terms of EoI can tie up with a technical partner to submit a Resolution Plan who can also be a technical cum financial partner. It is well settled canon of statutory



interpretation that where the words of a statute have a clear meaning, Courts will not interpolate words of their own.

10.16. As regards the objections that Board of Directors of Adani passed three Resolutions on 26.07.2023, it is seen that Adani in its individual capacity was also interested to submit the EoI. It submitted the EoI on 29.07.2023 which was placed before the CoC on 01.08.2023. The EoI was not accepted being submitted belatedly after the last date. There is nothing on record to indicate that Adani was disqualified or was declared ineligible on merits under the terms of EoI. On the basis of the second Resolution, DAIT entered into a tie up with Adani who was technically qualified to submit the plan as consortium. Since Adani was evaluating all possibilities, it entered into the Consortium Agreement with DAIT on 03.08.2023. That being the position, the Resolution / RFRP does not bar DAIT to submit the plan in consortium with Adani. The case relied upon by the Objector in the matter of **M.K. Rajagopalan Vs. Dr. Periasamy Palani Gounder & Anr. (2024) 1 SCC 42** is not applicable to the facts of this case. Even the interpretation placed by the Objectors on Clause 29.9 and 29.11 of the RFRP is misplaced. The contention raised by the Objectors that DAIT does not fulfill the criteria of



three years of financial performance also does not hold good since there is no such requirement in the EoI. A perusal of the resolution of Adani makes it clear that its intention was to venture into all possibilities to participate in the resolution of the Corporate Debtor. There is no specific bar in law for a Prospective Resolution Applicant to venture into any method for participating in the resolution process. Therefore, the attempt by Adani to submit a resolution plan or in alternate, venture into a consortium is permissible under IBC.

- 10.17. Now coming to the contention that RP and the CoC did not conduct the process in a fair and transparent manner by allowing DAIT to enter into a consortium with Adani after the last date for submission of the plans had elapsed. At the outset, it is to note that no such objection was taken by the Objectors when the plans were submitted, discussed and approved by the CoC, though they were present in the meetings held from time to time.
- 10.18. In the instant case, last date for submission of plan was 04.08.2023. The plan was submitted by the consortium on 04.08.2023 as seen from the email Annexure-2 to RPs reply to objections at Page 30 and Resolution Plan at Page 318 Annexure – 15, Vol-III of IA-2341. The copy of the



email was also marked to the representatives of Adani. The RP in his reply at Page 31-152 has also submitted that the consortium had submitted the plan on 04.08.2023. The Resolution Plans were opened in the 8th CoC meeting held on 07.08.2023 in the presence of the PRAs as evident from the document at Page 713-719 Volume – 5 of IA 2341. Admittedly, the minutes of 8th CoC meeting do not find mention about the plan submitted by DAIT in consortium with Adani, but it is seen from the document / email dated 17.08.2023 at Page 155 of RP reply that the CoC legal advisor had given comments on the Resolution Plan submitted by the consortium. The CoC in its Affidavit has also stated that the Resolution Plan was submitted by the consortium and CoC was aware that the plan was submitted on 04.08.2023. The minutes also records the presence of Mr. Divyansh Upadhyay and Mr. Mithesh Chawla, representatives of DAIT and Adani (Page 714-15 Volume V of IA 2341). On 12.08.2023, RP had addressed a mail to DAIT requesting Adani to submit the eligibility documents (Page 153 of RPs reply). Negotiation process note and template of commercial / financial proposals were discussed in the 12th CoC meeting (Pg 749-763, Volume – V of IA 2341). That being the position, it cannot be said that no Resolution Plan was submitted by the consortium on or before 04.08.2023, the



last date for submission of plan and the consortium plan was submitted only on 06.10.2023.

10.19. After consideration of all the pleadings and documents on record, it is clear that the CoC in its 16th meeting held on 22.11.2023 considered all the resolution plans submitted by PRAs in detail and in terms of Section 30(3) of IBC, 2016. It is also necessary to understand that in terms of Section 30(2) of IBC, 2016, there is a specific duty cast on the Resolution Professional to examine the Resolution Plan received by him as to whether all the requirements which are mandated by law in addition to the conditions imposed by the CoC in the invitation for EoI are satisfied prior to placing of all the Resolution Plans before the Committee for consideration. Thus, it is reasonable to conclude that the Resolution Professional has satisfied himself as matter of diligence that all the criteria's considered necessary by the CoC were duly met prior to consideration of Resolution Plan.

10.20. Further, it is pertinent to highlight that for the purposes of issuing the invitation for EoI as well as RFRP from PRAs, the CoC is vested with the ultimate discretion for including any commercial, technical or financial terms as it may deem necessary for the purpose of resolution of a Corporate Debtor. In the present case, it is seen that the



CoC has ultimately approved the Resolution Plan submitted by the SRA i.e. Dickey Alternative Investment Trust in consortium with Adani Power Limited. The question as to whether the SRA has in fact satisfied the technical and financial criteria as laid down in the invitation for EoI may not have relevance as it is the CoC which had laid down such qualification and therefore, when a Resolution Plan is ultimately presented before the CoC for its consideration, it is the CoC which is required to look into the same. Once the CoC is commercially satisfied with the Resolution Plan presented before it, then minor procedural irregularities will not nullify the entire process. At this juncture, we find it apt to refer to the Judgment of the Hon'ble NCLAT in the matter of **Anil Kumar Vs. Jayesh Sanghrajaka, Resolution Professional, SK Elite Industries India Ltd.** in *Company Appeal (AT)(Ins) No. 513 of 2023* in which it held as follows;

25. It has been contended by the Appellant that procedural deviation by way of non-publication of Form G is an act of material irregularity. The Adjudicating Authority erred in not taking cognizance of this lapse while approving the resolution plan which was in contravention of the IBC provisions. In support of their contention, it has been submitted by the Appellant that the Hon'ble Supreme Court in *Secy State of Karnataka vs. Uma Devi (3) 2006 4 SCC 1* and in *J. Jayalalitha & Ors. Vs. State of Karnataka & Ors. (2014) 2 SCC 401* held that when a statute provides for a particular procedure, the



authority has to follow the same and that following any other course is not permissible and amounts to be an illegality.

26. We have no quarrel with the above observations made by the Hon'ble Supreme Court but note that these were not made in the context of IBC. The Appellant has also relied on the judgment delivered by the Hon'ble Supreme Court in Gounder supra but that does not come to the aid of the Appellant since it has been held therein that a statutory provision regulating a matter of practice or procedure will generally be read as directory and not mandatory. In that case the procedural irregularity in terms of non-publication of Form G on the designated website was disregarded by the Hon'ble Supreme Court on the ground that technicality of non-compliance to CIRP Regulations cannot annul the resolution process which had reached an advanced stage wherein the Resolution Professional has taken all requisite steps in consonance with the provisions of IBC.

10.21. The question as to whether the SRA has in fact satisfied the criteria's or qualifications of EoI or RFRP may have relevance when such an objection is raised by any competing Resolution Applicant. However, in the present case, this objection has been raised by the suspended management of the Corporate Debtor. It is also a well-established principle that the decision of CoC with respect to approval of a Resolution Plan cannot be interfered by Adjudicating Authority unless there is any specific plea of statutory contravention under the Code. In this regard, it may be relevant to refer to the judgment



Jaypee Kensington Boulevard Apartments Welfare Association & Ors v. NBCC (India) Ltd. & Ors (*Civil Appeal No. 3395 of 2020*) wherein the Hon'ble Supreme Court has clarified that this Adjudicating Authority does not have the jurisdiction to look into any commercial aspect or decision of the CoC while considering approval of a resolution plan under IBC.

10.22. Further reliance was placed by the Objector on the Judgment of the Hon'ble Supreme Court in the matter of **Vallal RCK v. Siva Industries and Holdings Limited and Ors.**, *AIR 2022 SC 2636* to state that CoC decision can be interfered with if is arbitrary and capricious. As to the facts of the present case, the objector has miserably failed to point out as to how the decision of the CoC is arbitrary and capricious. Further, in the said case, the Hon'ble Supreme Court has held that the Adjudicating Authority cannot sit in appeal over the commercial wisdom of CoC in accepting or rejecting the settlement proposal.

10.23. Another objection was raised as to that the value of the Resolution Plan is Rs. 3330.88 crore and the proportion expected from DAIT: Adani would be Rs.1700 crores by DAIT and Rs.1630.88 crores by Adani Power Limited. However as per the source of funds given to RP by DAIT, its fund size is only Rs.339.79 crores and DAIT is AIF,



Category II Fund, which means it is a closed ended fund and its sources of fund cannot be expanded beyond Rs.339.79 crores. For the remaining Rs.3000 crores, it is dependent on Adani Power Limited for funding. This is contrary to the consortium arrangement of 51%: 49% agreed between the Consortium partners.

- 10.24. In this regard, it is seen that only the equity participation in respect of the DAIT and Adani is arrived at 51%:49%, which does not mean that DAIT has to bring in 51% of the Resolution Plan amount. The Resolution Plan can comprise of equity and debt. The Financial eligibility criteria for the Lead member of the consortium is fixed as follows;

Committed funds available for investment / deployment in Indian Companies or Indian assets of INR 500 Crores (Indian Rupees Five Hundred Crores) or more as per the latest available statement which shall not be earlier than March 31, 2022.

In the present case, DAIT has shown that the committed funds available for investment in Indian Companies as on 31.03.2022 are Rs.549.83 Crores. The said condition stipulated by the CoC in the Financial eligibility criteria has been satisfied by the Resolution Applicant i.e. DAIT.



In the Instant case, the CoC has fixed the eligibility criteria and the Resolution Applicant has satisfied the said eligibility criteria. Further, the CoC in its commercial wisdom has ascertained that the Resolution Applicant is capable of implementing the Resolution Plan. The issue as to whether DAIT can maintain equity participation and other terms and conditions stipulated under the eligibility criteria would arise only at the time of implementation of the Resolution Plan. Thus, the objections raised by the objectors in this regard are premature. The Monitoring Committee will supervise the implementation of the Resolution Plan as per the terms and conditions stipulated under the eligibility criteria and any deviation forthwith shall be brought to the knowledge of this Tribunal.

- 10.25. With respect to the objection as to the contravention under 39(1B)(b) of the CIRP Regulations, 2016 which contemplates that the resolution plan of a person who does not appear in the final list of PRAs shall not be considered, we are of the view that the SRA i.e., Dickey Alternative Investment Trust has clearly made its name in the final list of PRA. The interpretation of the phrase *“each Member of the Consortium shall be considered as the Resolution Applicant within the meaning of the Code and each member of the Consortium shall be bound by the obligations*



undertaken in the Resolution Plan” in RFRP is in fact a mere reiteration of the obligation of a member of the consortium to be bound by the contractual terms undertaken by such a member in the Resolution Plan. It is to be borne in mind that the regulations prescribed by the Board are purely intended to have a level playing field in the business environment and not to curtail the vested right of the CoC. The test for identification as to any regulatory contravention is to find whether the process of inviting PRAs and arriving at a SRA, places any PRA in a disadvantageous or prejudicial position. In the present case, no PRAs were put in a disadvantageous or prejudicial position. It is therefore clear that the process adopted is certainly in accordance with law and there is no substance in the objection as to any contravention. The argument that an unsuccessful Resolution Applicant / or a third party is not entitled to submit a Resolution Plan by way of entering into a Consortium Agreement at a final stage of submission of a Resolution Plan dilutes the provisions of IBC, does not hold water as the person appearing in the final list will always remain the lead consortium member. Specifically, when a PRA is permitted under the invitation of EoI to enter into a tie-up with any person, it can never be understood as a way for a third party entering into the



fray since such a tie-up by way of a consortium is entered into at the behest of the lead member of the consortium.

10.26. Further, at this juncture, it is significant to refer to the Judgment of Hon'ble NCLAT in the matter of **Mr. Ramesh Kesavan –Vs- CA Jasin Jose, Resolution Professional – M / s SD Pharmacy Pvt Ltd, & Anr** in *Company Appeal (AT)(CH)(Ins)No. 422 of 2023*, has been held as follows;

10. At this juncture, we address to the 'locus' of the Appellant challenging the approval of the Resolution Plan. It has been held in 'Ravi Shankar Vedam vs. Tiffins Barytes Asbestos and Paints Limited and Others' that the Promoter / Shareholder of the Corporate Debtor Company has no locus to challenge the Plan, after its approval. Learned Counsel for the Appellant placed reliance on the Judgement of the Apex Court in 'M.K. Rajagopal v. Dr. Periasamy Palani Gounder' in Civil Appeal No. 1682-1683 of 2022, in support of his submission that the Appellant, being a Promoter has the locus to challenge the approval of the Resolution Plan. The ratio of the Judgement in the matter of 'M.K. Rajagopal' (Supra), is not applicable to the facts of the attendant case on hand as the subject matter of that case is that there was an established material irregularity in the approval of the Plan and the issue of the 'locus' has not been specifically been addressed to. More ever, the Judgement of the Hon'ble Apex Court in the matter of 'Ravi Shakar Vedam' (Supra) is dated 06.11.2023 and is later than 'M.K. Rajagopalan' (Supra) which is dated 03.05.2022. The relevant Paragraphs of the NCLAT Judgement in 'Ravi Shakar Vedam', pertinent to the issue of 'locus' of the Shareholder / Promoter in challenging the approval of the Plan are reproduced as hereunder:

"27. From the aforementioned observations, it is clear that once the affairs of the Corporate Debtor was handed over to the IRP, any action taken by Shareholder, even if a Majority shareholder, would not be maintainable.



28. Keeping in view, the scope and intent of the Legislature, and that the 'I & B Code, 2016' is a distinct shift from 'Debtor in Possession' to 'Creditor in Control' Insolvency System, where the Shareholders have a limited role and are only confined to co-operate with the Resolution Professional as specified under Section 19 of the Code, are entitled to receive the Liquidation value of its equity, if any, in accordance with Section 53 of the Code, we are of the considered opinion that a 'Shareholder' has 'no locus standi' to challenge the Resolution Plan."

11. **On an Appeal before the Hon'ble Supreme Court in CA No. 5516 / 2023, the Hon'ble Supreme Court vide Order dated 06.11.2023 dismissed the Appeal and hence, the issue whether a shareholder has locus to challenge the Resolution Plan has attained finality.**

10.27. Thus, in view of the said Judgment of Hon'ble NCLAT which was confirmed by Hon'ble Supreme Court, the Shareholder / promoter does not have any locus to challenge the Resolution Plan.

10.28. In view of the dispositive reasoning as stated supra, we are of the view that the EoI and RFRP allow the PRA to bring in technical partner or technical cum financial partner along with it to submit a Resolution Plan and also the terms contained in the RFRP are not in violation of Regulation 39(1B) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

10.29. Accordingly, issue no. (ii) and (iii) are decided in favour of the Resolution Applicant.



10.30. In view of the above, the objections raised by the promoters / shareholders of the Corporate Debtor stand rejected and this Adjudicating Authority proceeds further in relation to the merits of the Resolution Plan.

11. ABOUT THE RESOLUTION PLAN

11.1. The total Resolution Plan amount offered by the SRA is Rs.3335.52 Crores (excluding CIRP costs). The proposed distribution of the same under the Plan is as under;

S. No	PARTICULARS	AMOUNT CLAIMED (RS. LAKHS)	ADMITTED CLAIM (RS. LAKHS)	RESOLUTION AMOUNT ALLOCATED (RS. LAKHS)	
				Based on Plan	% of Claim / Admitted
1	CIRP Cost *	10,911.52	-	10,911.52	100%
2	Secured Financial Creditor	11,74,387.98	11,67,775.57	3,33,088.00	28.52%
3	Unsecured Financial Creditor (Related Party)	17,325.55	10,717.74	-	-
4	Operational Creditor (Workmen and Employees)	-	-	-	-
5	Operational Creditor (other than workmen including Govt. dues and other than related party)	72,327.37	44,145.35	464.00	1.05%
6	Operational Creditor – Related Party (other than workmen including Govt. Due)	2,142.51	2,116.30	-	-

* CIRP cost mentioned as on 31.08.2023



- 11.2. The plan proposes upfront payment of Rs.3335.52 Crores (Excluding CIRP costs amount) within a period 60 days from the date of approval of the Resolution Plan by this Tribunal.
- 11.3. It is stated that the EPFO had lodged a claim for a sum of Rs.21,004/- and the Resolution Applicant has earmarked a sum of Rs.4.64 Crores as a part of payment to Operational Creditors including statutory dues. It is stated that as per the distribution schedule discussed in the 16th CoC meeting held on 22.11.2023, it has been agreed that the entire amount claimed by EPFO to the tune of Rs.21,004/- will be paid.
- 11.4. The plan proposes incorporation or use of an existing Company as a Special Purpose Vehicle (SPV) (which shall be eligible u/s 29A of the Code) for the implementation of the resolution plan in accordance with the terms mentioned thereunder in clause 1.3.1 of the resolution plan. The SRA vide its letter dated 26.12.2023 has stated that they have commenced the process of incorporating the SPV in the form of a Company under the Companies Act, 2013 in the state of Tamilnadu with registered office at Chennai. Further, the SRA by memo S.R.993 dated 26.02.2024 has stated that they have incorporated the SPV with the name “Moxie Power



Generation Limited”. The SPV has been incorporated on 30.01.2024 and is having its registered office at Ramcon Fortuna Towers 4th, Kodambakkam High Road, Nungambakkam High Road, Chennai, Chennai- 600034.

- 11.5. The Resolution Applicant has also obtained approval from Competition Commission of India (CCI) vide letter dated 13.02.2024 for the acquisition of 100% equity share capital of Coastal Energen Private Limited by DAIT and APL in the ratio of 51:49 respectively under Section 31(1) of the Competition Act, 2002.

12. ABOUT THE RESOLUTION APPLICANT

The Resolution Applicant has experience in revival of the Stressed Assets. The experience of DAIT is as follows;

- 12.1. The Trust through one of its schemes has acquired a Hyderabad based edible oil processing and trading company via one of its special purpose vehicle mainly dealing in Crude Sunflower seed oil, Rapeseed oil. Soya bean oil, Cottonseed oil, Palm oil & Palm Mid Fractions etc. The company has an installed processing facility of approx. 70 million litres per annum, the company has been under financial distress since it started its operations in 2016, due to overbearing debt and unable to service its obligations the company stopped its



operations in 2019. The trust has settled the company's term loan via OTS and successfully acquired the company. Also, the company has been provided with funds for its working capital requirements and the management of the company has been changed.

12.2. The Trust through one of its schemes has acquired assets from a distressed company, situated at Tata Motors Vendor Park. Industrial Area, Pantnagar, Uttarakhand via its special purpose vehicle. The trust has settled the Liabilities of the Company as a consideration for the assets. The operations of the special purpose vehicle involve Die Casting, Machining, Painting, Assembly, and making varied automotive parts for 2-wheelers, 4-wheelers, LCVs, and HVs, fulfilling the requirements of Tata Motors and aftermarket sales. The special purpose vehicle is operating the plant successfully under the look after of the Trust.

12.3. One of the Trust's special purpose vehicles is engaged in the business of land development, colonizing and real estate development, construction of roads, bridges, dams, railways, along with processing of equipment related to the construction activity. The special purpose vehicle has entered in a joint venture with a renowned entity for devolvement/ marketing of commercial



projects at Gurgaon and is in process of acquiring residential projects at Gurgaon and Noida

12.4. The Trust through one of its schemes has also acquired a group of distressed companies via its special purpose vehicle engaged in business of Energy Generation, transmission, distribution, Power trading based on Thermal, Coal, Hydro, Nuclear and Gas and including manufacture, trading, export, import of power related equipment and systems. Where one of the companies is engaged in setting up of a Hydro Power Plant of 90 MW, in the state of Himachal Pradesh, the other company has entered into a joint venture with a government entity in Chhattisgarh for the purpose of scientific exploration, commercial exploitation and viable trading of minerals.

12.5. The experience of Adani Power Limited (APL) in revival of stressed assets is as follows;

12.5.1. APL is India's largest private power producer with total installed thermal power capacity of 15,250 MW. Over the past few years, Adani Power Limited has developed strong capabilities in Engineering. Procurement. Construction, Commissioning. Operations and Maintenance of large supercritical units. It has also built



expertise in construction and operations of large capacity, high voltage AC and DC transmission lines.

12.5.2. Resolution Applicant is backed by promoters and management who have a strong record of accomplishment of acquisition and turn around of distressed companies post acquisitions, an illustrative list in relation to which is set out herein below:

(a) Mahan Energen Limited (formerly known as Essar Power MP Limited):

Adani Power Limited successfully acquired the 1200 MW thermal power plant under the provisions of the Code. The committee of creditors of Essar Power MP Limited approved the resolution plan of Adani Power Limited and subsequently the Principal Bench of the NCLT approved the same vide order dated November 1, 2021. Adani Power Limited has implemented the approved resolution plan on March 16, 2022.

(b) Raigarh Energy Generation Limited (formerly known as Korba West Power Company Ltd)-

Adani Power Limited successfully acquired the 600 MW subcritical thermal power plant under the provisions of the Code. The committee of creditors of Korba West Power Company Limited approved the resolution plan of Adani Power Limited and subsequently the Ahmedabad Bench of NCLT approved the same. Post-acquisition, Adani Power Limited has implemented the approved resolution plan and has revived the plant, which was closed for



2 years before initiation of CIRP due to major failure of the generator. Raigarh Energy Generation Limited has been amalgamated with APL under a scheme of amalgamation.

(c) Raipur Energen Limited (formerly known as GMR Chhattisgarh Energy Limited ("GCEL")) –

Adani Power Limited acquired the 1.370 MW supercritical thermal power plant. Equity stake in GCEL was acquired from its consortium of lenders, following the approval of APL's resolution plan to acquire a controlling equity stake and restructure its debt. The balance equity stake was acquired from the GMR Group. The acquisition of GCEL was concluded at an enterprise valuation of approx. Rs. 3,550 Crure. Post-acquisition, APL injected necessary working capital, procured spares and has been successfully operating the plant since its acquisition. Raipur Energen Limited has been amalgamated with APL under a scheme of amalgamation.

(d) Adani Electricity Mumbai Ltd

Erstwhile Adani Transmission Ltd. ("ATL") acquired Reliance Infrastructure's integrated utility comprising of generation, transmission and retail electricity distribution. The integrated utility includes the power generation units based at Dahanu, power transmission network across Maharashtra including Mumbai and the retail power distribution network in Mumbai suburbs. The newly acquired business was integrated in Adani Electricity Mumbai Land ("AEML"), a newly formed entity and a 100% subsidiary of ATI.. The distribution network of AEMI, spans over 400 Sq. kms catering to the electricity needs of over 3 million customers today.



(e) Udupi Power Corporation Limited

Adani Power Limited acquired the 1,200 MW power plant from Lanco Infratech Limited in April 2015. Adani Power Limited has implemented its high standards of project operations to help improve the project life and operating parameters. The present credit rating of Udupi Power Company limited is A-(A minus). Udupi Power Corporation Limited has been amalgamated with APL under a Scheme of Amalgamation.

13. SOURCE OF FUND

13.1. It is stated in Clause 1.9 of the Resolution Plan that the Fund Infusion and the Performance Security shall be funded from the internal accruals of the Resolution Applicant and / or its Affiliates (which entities shall be eligible under Section 29A of IBC, 2016). In addition to the same, the Net worth Certificate of Adani Power Limited is appended as Annexure – A19, which shows the Total Net worth of the Company as Rs.12,828.55 Crores.

14 ACQUISITION AS A GOING CONCERN

14.1. The detailed steps involved in the Acquisition and implementation of the Resolution Plan are as follows;



Step I: Infusion of funds into SPV

Formation of an SPV and infusing funds into the SPV by way of equity, equity – linked, quasi equity and / or other securities and / or shareholder debt and / or deposits, third party debt or a combination thereof, as determined at the sole discretion of the Resolution Applicant for an amount equivalent to Fund Infusion so as to enable the SPV to perform actions and obligations under the Resolution Plan including making payments as proposed under the Resolution Plan.

Step II: Fund Infusion by SPV into the Corporate Debtor

SPV shall infuse funds into the Corporate Debtor through fresh capital infusion for a nominal amount as may be determined in the sole and absolute discretion of the Resolution Applicant

Step III: Conversion of debt into equity followed by Capital Reduction

- (i) The Admitted other Operational Creditor debt minus other Operational Creditor payments, shall stand converted into equity shares of the Corporate Debtor and shall simultaneously be subjected to capital reduction (as specified in **Clause 3 (Acquisition as a Going Concern)** of this Resolution plan), without any further action or deed required from the Corporate Debtor.
- (ii) Save and except the equity shares issued and allotted to the SPV under Step II above, the pre-CIRP issued equity share capital (including equity shares of the Corporate Debtor on the CIRP Commencement Date) of the Corporate Debtor existing as on the Effective Date together with the equity shares that are issued pursuant to conversion of any convertible instruments held by shareholders of the Corporate Debtor, if any, and the converted shares pertaining to, Admitted Other



Operational Creditor Debt, as applicable, Admitted Workmen and Employee Debt, as applicable and Admitted Other Creditors Debt and or any other debt converted equity shares under this Resolution Plan, shall be entirely cancelled and extinguished ("**Capital Reduction**"), for NIL consideration. It is clarified that no consent shall be required from such creditor. There shall be no requirement to add "and reduced" in the name of the Corporate Debtor.

- (iii) For the avoidance of doubt, the conversion into equity shares and Capital Reduction shall be effective from the Effective Date and the approval of the NCLT (*pursuant to Section 31 of the Code*) to the Resolution Plan shall constitute approval of the conversion of the Admitted Other Operational Creditor Debt, as applicable, Admitted Workmen and Employer Debt, as applicable, and Admitted Other Creditor Debt and simultaneous Capital Reduction of share capital and the same shall be binding on the Corporate Debtor and its stakeholders (including its creditors and shareholders) and no further action or deed including any secretarial filings shall be required to be undertaken by the Corporate Debtor.
- (iv) The Capital Reduction shall not require any payment by the Corporate Debtor of the Resolution Applicant to any existing shareholders of the Corporate Debtor
- (v) The Capital Reduction shall not require the consents of any of the creditors of the Corporate Debtor or approval of any of the shareholders of the Corporate Debtor, or any other Person having security interest over such shares and the approval of the NCLT (*pursuant to Section 31 of the Code*) to the Resolution Plan shall constitute approval of the reduction of share capital and shall be binding on



the Corporate Debtor and its stakeholders (including its creditors and shareholders

- (vi) The Corporate Debtor shall record reduction in the issued equity share capital of the Corporate Debtor by way of cancellation of its existing issued share capital (together with the equity shares that are issued pursuant to conversion of the Admitted Other Operational Creditor Debt, as applicable, the Admitted Workmen and Employee Debt, as applicable and Admitted Other Creditor Debt), save and except the equity shares issued and allotted to the SPV under Step II above, and the amount of such cancelled equity share capital pursuant to capital reduction shall be credited to other equity' in accordance with the applicable Indian Accounting Standards.

On the Effective Date, immediately after the Capital Reduction (as set above in Step III above, the SPV and or its Affiliates Nominee (which entity shall be eligible under Section 29A of the Code) shall, as part of the SPV Capital Infusion, will hold 100% of the share capital of the Corporate Debtor, Provided that the Resolution Applicant (i.e. Consortium Members) shall be entitled to transfer the shares in the SPV inter-se between each other and or to their respective Affiliates

Step IV: Merger of the Corporate Debtor into the SPV

- (i) Pursuant to the provisions of the Code and the rules and regulations made thereunder, the Corporate Debtor shall stand merged into and all Undertakings of the Transferor Company shall stand transferred and vested into the SPV also defined as "Transferee Company" in the Scheme of Amalgamation), as a going concern, without any further set, instrument, deed, matter or thing so as to become, with effect from the appointed date (in the Scheme of Amalgamation) ("Appointed Date"), post completion of



Step III provided above, by virtue of and in the manner provided herein under Step IV ("Merger"). Pursuant thereto, the Corporate Debtor shall stand dissolved without winding up, without further act or deed and the SPV shall continue to exist as the surviving entity. It is clarified that this step as regards Merger along with the Scheme of Amalgamation is an integral part of the Resolution Plan and is a step essential as part of the implementation of this Resolution Plan including the Acquisition.

- (ii) **"Undertaking of the Transferor Company"** shall have the same meaning as ascribed to it under the Scheme of Amalgamation annexed herewith as Annexure 2.
- (iii) On the Effective Date, the Corporate Debtor will be a wholly owned subsidiary of the Transferee Company, hence in consideration, of the Merger, the Transferee Company will not issue any shares under the Scheme of Amalgamation. Consequently, the existing shareholding of the Transferee Company in Transferor Company shall be cancelled.

Step V: Payment of the Total Resolution Amount to the stakeholders in accordance with the Resolution Plan

All actions set out in this Section 3.3, above shall take effect simultaneously and the Effective Date shall not occur unless all such actions are consummated

The detailed terms of the Merger is annexed herewith as Annexure 2 (Scheme of Arrangement and Amalgamation)

For all action set out in Section 3, and for any action requiring the consent of the shareholders until the Effective Date, by virtue of the NCLT Order approving the Resolution



Plan, such consents of shareholders under the applicable provisions of the Companies Act, 2013, shall be deemed to have been provided and no separate shareholder consent shall be required until the Effective Date

For the avoidance of doubt, and subject to Section 3.5, it is clarified that filings to be made with the jurisdictional ROC in relation to the transactions under this Resolution Plan, as required, shall be completed on or after the Effective Date, in accordance with the time limits prescribed under Applicable Law. However, the filings with respect to the steps, which has been taken before Effective Date could also be made earlier immediately after the said steps being taken by the implementation and Monitoring Committee.

Given the nature of the Code as a complete code providing single window clearance upon the receipt of certified copy of the order of the NCLT approving this Resolution Plan, or a copy of the order of the NCLT approving this Resolution Plan from the NCLT website, and in light of the General Circular No. 18C 01/2017 dated October 25, 2017 issued by the Ministry of Corporate Affairs of the Government of India and the explanation provided to Section 30(2)(e) of the Code, clarifying that there is no requirement for obtaining approval of the shareholders members of the Corporate Debtor during the CIRP for any actions under the Resolution Plan, the relevant transactions forming part of this Resolution Plan as approved by the NCLT shall be given effect to on the Effective Date without any further act or deed. Subject to the above, the Corporate Debtor and the Resolution Applicant, as applicable, shall take appropriate Corporate actions necessary for implementation of all the provisions of this Resolution Plan including: (i) filing of appropriate documents or forms with relevant regulatory authorities, (ii) issuance of shares and instruments as provided in the Resolution Plan, and (iii) regular compliance as per the Applicable Law.



To the extent any secretarial filings, corporate actions and or any other actions, filings, intimation, etc., are required to be made in connection with any step set forth above before the Effective Date, the Implementation and Monitoring Committee shall be deemed to be fully authorized to act on behalf of the Corporate Debtor and to undertake all such actions.

15. IMPLEMENTATION AND MONITORING COMMITTEE

15.1. Upon the occurrence of the NCLT Approval Date, a committee shall be constituted which shall comprise of one nominee on behalf of the Approving Financial Creditors, the Insolvency Professional (as mutually agreed between the Resolution Applicant and the Approving Financial Creditors subject to agreement achieved between the Resolution Applicant and the Insolvency Professional on the commercial terms of such engagement) ("**Insolvency Professional**") and one nominee of Resolution Applicant ("**Implementation and Monitoring Committee**"). On and from the NCLT Approval Date and till the Effective Date, the management and affairs of the Corporate Debtor shall be managed by the Implementation and Monitoring Committee. The Implementation and Monitoring Committee shall stand dissolved on and from the Effective Date without any further action or deed required from the Corporate Debtor



- 15.2. The terms of appointment of the members of the Implementation and Monitoring Committee (including the Insolvency Professional), and details of the functioning of the Implementation and Monitoring Committee and appointment of any advisors to the Implementation and Monitoring Committee (if required) will be finalized in the first meeting of the Implementation and Monitoring Committee after the NCLT Approval Date.
- 15.3. On the Effective Date, the suspended Board of Directors of the Corporate Debtor shall be dissolved, and all directors of the suspended Board of Directors of the Corporate Debtor shall be deemed to have resigned without any further act or deed from any other persons, and the Resolution Applicant shall reconstitute the Board of the Corporate Debtor on such date in accordance with Applicable Law.
- 15.4. The term “Effective Date” is defined as 60 days from the date on which NCLT sanctions the Resolution Plan.



16. TABULATION OF VARIOUS COMPLIANCES REQUIRED UNDER THE PROVISIONS OF IBC, 2016

16.1. The Applicant has submitted the details of various compliances as envisaged within the provisions of IBC, 2016 and CIRP Regulations, which require a Resolution Plan to adhere to, which are reproduced hereunder:

CLAUSE OF S.30(2)	REQUIREMENT	HOW DEALT WITH IN THE PLAN
(a)	Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	Clause 1.3.1 of the Resolution Plan.
(b)	Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53; or Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall be not less than amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher and (iii) provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such manner as may be specified by the Board.	Clause 1.3.1 and Clause 2.3 of the Resolution Plan,
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause 7 of the Resolution Plan.
(d)	Implementation and Supervision.	Clause 3.3 and Clause 8 and 8.6 of the Resolution Plan.



(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Clause 1.8.4 of the Resolution Plan.
(f)	Conforms to such other requirements as may be specified by the Board.	Clause 1.8.4 of the Resolution Plan.

17. MANDATORY CONTENTS OF THE RESOLUTION PLAN IN TERMS OF REGULATION 38 OF THE CIRP REGULATIONS:-

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Resolution Plan</i>
38(1)	The amount due to the Operational Creditors under a Resolution Plan shall be given priority in payment over Financial Creditor.	Clause 1.3.1 and 2.3 of the Resolution Plan
38(1A)	A Resolution Plan shall include a statements as to how it has dealt with the interest of all stakeholders, including Financial Creditors and Operational Creditors of the Corporate Debtor	Clause 2.19 of the Resolution Plan
38(1B)	A Resolution Plan shall include a statement giving details if the resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.	Clause 1.8.2 of the Resolution Plan
38(2)	A Resolution Plan shall provide (a) the term of the plan and its implementation schedule	Clause 1.7 of the Resolution Plan.
	(b) the management and control of the business of the Corporate Debtor during its terms; and	Clause 4 and 7 of the Resolution Plan
	(c) adequate means for supervising its implementation	Clause 3.3 and 8 of the Resolution Plan



<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Resolution Plan</i>
38(3)	A Resolution Plan shall demonstrate that (a) It addressed the cause of default;	S.No. 3 of Schedule I of the Resolution Plan
	(b) It is feasible and viable;	Clause 5 of the Resolution Plan
	(c) it has provisions for its effective implementation;	Clause 3.3 and 8 of the Resolution Plan
	(d) it has provisions for approvals required and the timeline for the same; and	Clause 8 of the Resolution Plan
	(e) the Resolution Applicant has the capability to implement the Resolution Plan	Clause 1.8 and 1.9 of the Resolution Plan

18. The successful Resolution Applicant has submitted a Certificate of Eligibility under Section 29A of IBC, 2016 to submit a Resolution Plan under the provisions of IBC, 2016 and the same has been filed by way of additional document to the typed set filed along with the Application.

19. OBJECTIONS AS TO THE MERITS OF THE RESOLUTION PLAN

19.1. The Learned Counsel for the objector submitted that the Cash balance available with the Corporate Debtor ought to be utilized for the purposes of the stakeholders of the Corporate Debtor and not to be solely utilized by the



Resolution Applicant. In relation to the said objection, it is pertinent to point out that the Hon'ble Supreme Court in **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta**, (2020) 8 SCC 531 has clearly stated that conditions specified in the resolution plan approved by the CoC and the underlying process documents cannot be interfered by the Adjudicating Authority, Therefore, Clause 1.10 of the resolution plan which provides that cash balance will go to the Corporate Debtor for the benefit of the Resolution Applicant has been approved by the CoC in its commercial wisdom and it cannot be challenged.

19.2. The Learned Counsel for the objector stated that there is ambiguity regarding the distribution of proceeds pertaining to avoidance applications. We are of the view that, the said objection raised by the objector is required to be eschewed in view of the fact that Clause 2.7.6. read with Clause 1.10(iii) of the Resolution Plan clearly states that the proceeds arising out of the avoidance applications shall be for the benefit of the CoC.

19.3. Further, the Learned Counsel for the objector submitted that the Resolution Applicant has committed tax evasion as it envisages capital reduction. The same cannot be done in terms of Section 66 of the Companies Act which



states that no such reduction shall be made if the company is in arrears in the repayment of any deposit accepted by it.

19.4. The said objection raised by the objector is baseless as the process of capital reduction is being undertaken in terms of Clause 3 of the Resolution Plan and underlying process documents, within the domain of commercial wisdom of the CoC. Further, Clause 3 clarifies that *“The Capital Reduction shall not require the consents of any of the creditors of the Corporate Debtor or approval of any of the shareholders of the Corporate Debtor, or any other Person having security interest over such shares and the approval of the NCLT (pursuant to Section 31 of the Code) to the Resolution Plan shall constitute approval of the reduction of share capital and shall be binding on the Corporate Debtor and its stakeholders (including its creditors and shareholders)”*. In this regard, it is pertinent to refer to following Judgments wherein conversion of debt into equity was allowed by the Adjudicating Authority;

- (i) **State Bank of India –Vs- Ushdev International Ltd.,**
NCLT Mumbai dated 07.11.2019
- (ii) **Beacon Trusteeship Ltd. –Vs- Radius Estates and Developers Pvt. Ltd.,** *NCLT Mumbai* dated 09.01.2023.



(iii) **ICICI Bank Limited –Vs- Essar Power MP Ltd.,**
NCLT Principal Bench, dated 01.11.2021.

19.5. It is also required to be noted that SRA has sought for certain reliefs and waivers including carry forward of unabsorbed losses as per section 79 of the Income Tax Act, 1961. However, Clause 8.4 of the Resolution Plan categorically states that it shall be binding, and shall subsist and be in full force and effect irrespective of whether any reliefs, waivers or concessions sought by the Resolution Applicant are granted by the Hon'ble NCLT, NCLAT, the Supreme Court of India, or any other judicial, quasi-judicial, regulatory or administrative entity, department or authority.

19.6. It is also required to be noted that the jurisdictional Income Tax Officer is at liberty to take action against violation committed qua any enactment, statutory rule or regulation, in accordance with law. In this regard, it is significant to refer to the following Judgment of the Hon'ble Supreme Court;

(i) **Dept. of Income Tax –Vs- Vodafone Essar Gujarat Limited;** (2015) 16 SCC 629

19.7. The Learned Counsel for the objector submitted that the SRA proposes to pay an adhoc sum of Rs.4,64,00,000/- to the Operational Creditors including Workmen,



Employees and Government Authorities and the resolution plan fails to provide clarity in the payments proposed to be made to each category of Operational Creditors. The Claims submitted by the Employee State Insurance Corporation and Employee Provident Fund Organization shall be treated in the same manner as Other Operational Creditors Dues Further, the admitted claim of Operational Creditors other than Workmen, Employees and Statutory Authorities is to the extent of Rs. 450 Cr., however, only an amount of Rs.4.64 Cr is being provided under the approved resolution plan.

19.8. In relation to the said objection, it is seen that the payments made to the Operational Creditors are made in accordance with Section 53 of IBC, 2016 and hence the objection raised by the objector in this regard is baseless.

19.9. The Learned Counsel for the objector submitted that Resolution Plan under IBC, 2016 and a Scheme under Section 230 of the Companies Act, 2013 cannot be considered together and a separate procedure is required to be followed under Section 230 – 232 of the Companies Act, 2013.



19.10. In this regard, it is imperative to refer to Regulation 37 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which is as follows;

37. Resolution plan.

A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets, including but not limited to the following: -

(a) transfer of all or part of the assets of the corporate debtor to one or more persons;

(b) sale of all or part of the assets whether subject to any security interest or not;

(ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;

(c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;

(ca) cancellation or delisting of any shares of the corporate debtor, if applicable;

(d) satisfaction or modification of any security interest;

(e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;

(f) reduction in the amount payable to the creditors;

(g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;

(h) amendment of the constitutional documents of the corporate debtor;



(i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;

(j) change in portfolio of goods or services produced or rendered by the corporate debtor;

(k) change in technology used by the corporate debtor; and

(l) obtaining necessary approvals from the Central and State Governments and other authorities.

19.11. It is seen by way of Notification No. IBBI/2019-20/GN/REG052, dated 27th November, 2019 with effect from 28.11.2019, clause (ba) of Regulation 37 was inserted so as to imply that a Resolution Plan may also provide for merger, amalgamation and demerger.

19.12. Thus the objections raised by the objector in relation to the merits of the Resolution Plan are baseless and stand rejected.

20. ANALYSIS AND FINDINGS OF THIS TRIBUNAL

20.1. It is seen from Form – H that the Liquidation value of the Corporate Debtor is arrived at Rs.2,410.33 Crores and the corresponding Fair value is arrived at Rs.3,175.48 Crores and the Resolution Plan value is Rs.3,333.52 Crores.



20.2. Further, it is seen from Form – H, that the RP has filed three Applications under Section 43 and 66 of IBC, 2016. As per the terms of Resolution Plan, any benefits realized under PUFÉ transactions will be passed to the Committee of Creditors. Hence, in the present case, the CoC will prosecute the Applications filed under Section 43 and 66 of IBC, 2016, after the approval of the Resolution Plan.

20.3. 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 much-celebrated Judgment of the 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 under;

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

62.In the present case, however, we are concerned with the provisions of I&B Code dealing with the resolution process. The dispensation provided in the I&B Code is entirely different. In terms of Section 30 of the I&B Code, the decision is taken collectively after due negotiations between the



financial creditors who are constituents of the CoC and they express their opinion on the proposed resolution plan in the form of votes, as per their voting share. In the meeting of the CoC, the proposed resolution plan is placed for discussion and after full interaction in the presence of all concerned and the Resolution Professional, the constituents of the CoC finally proceed to exercise their option (business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, non-recording of reasons would not per-se vitiate the collective decision of the financial creditors. The legislature has not envisaged challenge to the “commercial/business decision” of the financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count.”

20.4. The Hon’ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steels –Vs– Satish Kumar Gupta & Ors. in Civil Appeal No. 8766 – 67 of 2019** at para 42 has held as under;

42.Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of Section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and Section 32 read with Section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (*supra*).

20.5. The Hon’ble Supreme Court in the matter of **K. Sashidhar v. Indian Overseas Bank and Ors. (*supra*)** has



lucidly delineated the scope and interference of the Adjudicating Authority in the process of approval of the Resolution Plan and held as under;

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



not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.

58. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with Section 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters “other than” enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers.”

(emphasis supplied)

20.6. Also, the Hon’ble Supreme Court 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)

20.7. 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.

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

20.9. 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 **97.80%** voting share. As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the



Resolution Applicant for making the plan effective after the approval by this Tribunal. 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.

20.10. The Resolution Plan in question is hereby **approved** by this Adjudicating Authority, subject to the observations made in this order. The Resolution Plan shall form part of this Order. The Resolution Plan shall binding on the Corporate Debtor and other stakeholders.

20.11. In the present case, the Resolution Applicant has sought for reliefs and concessions under the Resolution Plan and the same are dealt with hereunder;

SL. NO	RELIEF AND/OR CONCESSIONS AND APPROVAL SOUGHT BY RESOLUTION APPLICANT (CHAPTER 12 OF RESOLUTION PLAN)	ORDERS THEREON
1	On and from the NCLT Approval Date, by order at the 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 in terms of Section 31(4) of IBC, 2016 and also in view of clean slate principle enshrined under IBC, 2016.
2	On and from the NCLT Approval Date, by order of the NCLT sanctioning this Resolution Plan, all Related Party	



	<p>contractual arrangements (including lease agreement dated April 1, 2018 executed between Buhari Estate and Company and the Corporate Debtor and any amendments thereto and amenities agreement dated April 1, 2018 executed between Buhari Facility Management Pvt. Ltd. and the Corporate Debtor and any amendments thereto) entered into by the Corporate Debtor shall be deemed to be terminated, with such termination being effective from the NCLT Approval Date. Any claims or liabilities arising as a consequence of such Termination shall be deemed to be relinquished, cancelled and written-off on the NCLT Approval Date</p>	<p>Granted</p>
3	<p>On and from the NCLT Approval Date, by order of the NCLT sanctioning this Resolution Plan, all counterparty(ies) including any Governmental Authorities or statutory authorities to the Company Contracts shall be deemed to be have given their approval for change in ownership of the Corporate Debtor with effect from the Effective Date, without any further action on part of the Corporate Debtor or Resolution Applicant and any penalty or other monetary liabilities and any Non-Compliance in relation to such change in ownership shall be deemed to have been waived off.</p>	<p>Granted, in respect of the dues prior to CIRP period.</p>
4	<p>As the Resolution Applicant is required to take over the Corporate Debtor's Business as a 'going concern, on and from the NCLT Approval Date, by order of the NCLT sanctioning this Resolution Plan, all consents, licenses, approvals, clearances, rights, entitlements, benefits and privileges whether under law, contract, lease or license. granted in favor 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 later of (i)</p>	<p>Granted in terms of Section 31(4) of IBC, 2016 for a period of 1 year.</p>



	12 (twelve) months from the Effective Date or (ii) such other period as required under Applicable Law. Further, no coercive actions shall be taken against Resolution Applicant or Corporate Debtor post NCLT Approval Date towards lapse of any consents, licenses, approvals, clearances, etc, under the Applicable Law during or prior to the CIRP Period	
5	On and from the NCIT Approval Date, by order of the NCLT sanctioning this Resolution Plan, the Resolution Applicant shall be given an exemption of 3 (three) years from the Effective Date to correct, amend and remedy for corporate social responsibility expenses, as required under any law or statutory documents	As per Section 31(4) of IBC, 2016 only a period of one year is granted
6	On and from the NCLT Approval Date, by order of the NCLT sanctioning this Resolution Plan, the Resolution Applicant and the Corporate Debtor shall be deemed to have received a waiver from all actions, Proceedings or penalties under any Applicable Law for any Non-Compliance, including in connection with any transfer of assets, contracts or business by Corporate Debtor	Granted in terms of Section 32A of IBC, 2016
7	On and from the NCLT Approval Date, by order of the NCLT sanctioning this Resolution Plan, all Assets whether leased or owned by the erstwhile Promoters, other individuals, Related Parties or affiliates of the erstwhile Promoters, which are integral to the operations of the Corporate Debtor shall vest with the Corporate Debtor	Granted, in terms of Section 32A of IBC, 2016
8	On and from the NCLT Approval Date, by order of the NCLT sanctioning this Resolution Plan, the implementation of the Resolution Plan by the Resolution Applicant and any change in control of the occurring pursuant thereto shall not impact or breach the validity of any such agreements, contracts etc. (including but not limited to Existing PPA and Existing (O&M Contract), to which the Corporate Debtor is a party	Granted, subject to the provisions of IBC, 2016 and other applicable laws



9	<p>On and from the NCLT Approval Date, by order of the NCLT sanctioning this Resolution Plan, all Non-Compliances related to environmental laws including environment clearances in accordance with Environmental Impact Assessment Notification 1994-2006, renewal of consents for operations and authorization order under Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution Act), 1989, certification from Central Ground Water Authority permit under Plastic Waste Management Rules, 2016 and Hazardous and Other Waste (Management and Transboundary Movement) Rules, 2016 and such other terms Rules Regulations, till Effective Date shall be deemed to be waived by the respective authorities, including MoFF/NGT and the order of the NCLT shall be deemed to have granted to the Corporate Debtor Resolution Applicant an additional period of 36 thirty-six months from the Effective Date to comply with environmental norm as including the emission norms and norms for installation of Flue Gas Desulphurization (FGD) and no coercive action be taken against the Corporate Debtor or Resolution Applicant for Non-Compliance with any Applicable Law or norms or licenses, etc. till the expiry of the period of 36 thirty-six) months from the Effective Date and the Corporate Debtor Resolution Applicant shall not be held liable for any claims. penalties, fines, etc in this regard</p>	<p>As per Section 31(4), only one year time period is granted.</p>
10	<p>Any stamp duty liabilities or Tax liability arising pursuant to the transactions contemplated under this Resolution Plan shall be exempted or waived off. No cost, fee. charges and expenses (including any taxes and duties) in connection with the Merger and incidental to the amalgamation of the Transferor Company into Transferee Company including stamp duty, if any, shall be payable by virtue of the fact that while approving the Resolution Plan, NCLT has also exempted and waived</p>	<p>Not Granted</p>



	off the payment of such costs, fee and duties.	
11	All liabilities, costs, expenses, fees, duties, stamp duty, charges, transfer charges, etc., that may be payable to any counter parties: Governmental Authorities on account of transfer of ownership of the Corporate Debtor or change in control/management of the Corporate Debtor or transfer of land, leases on account of Acquisition of the Corporate Debtor pursuant to the Resolution Plan, under any contract, agreement, deed including lease deed with private party, shall stand abated, waived off and permanently extinguished on and from the Effective Date.	This is for the appropriate authorities to consider, keeping in view of the clean slate principles enshrined under IBC, 2016
12	To permit the transportation of coal through roadways for the period of at least 60 months between the Tuticorin Port and the power plant of the Corporate Debtor located in Tuticorin, Tamil Nadu	This is for the appropriate authorities to consider.
13	On and from the NCLT Approval Date, by order of the NCLT sanctioning this Resolution Plan, all Non-Compliances related to transportation of coal through road or rail or any other such operation which is necessary for the successful operation the business of the Corporate Debtor in accordance with any notification issued by any of the authorities, from time to time and such other norms rules regulations, till Effective Date shall be deemed to be waived by the respective authorities and the under of the NCLT shall be deemed to have granted to the Corporate Debtor Resolution Applicant SPV an additional period of 24 (twenty-four) months front the Effective Date to comply with said norms and to coercive action be taken against the Corporate Debtor and or Resolution Applicant/SPV for Non-Compliance with any Applicable Law or norms or licenses, etc. till the expiry of the period of 24 (twenty-four) months from the Effective Date and the Corporate Debtor Resolution Applicant SPV shall not be held liable for any claims, penalties, fines, etc in this regard	Granted, in terms of Section 32A of IBC, 2016. However, As per Section 31(4), only one year time period is granted.



- 20.12. 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.
- 20.13. In case of non-compliance with this order or withdrawal of the Resolution Plan by the Successful Resolution Applicant, the Monitoring Committee shall forfeit the Performance Security furnished by the Resolution Applicant in the form of Performance Bank Guarantees.
- 20.14. The Resolution Applicant is directed to make payment of the entire Resolution Plan amount within the time period stipulated under the Resolution Plan i.e. 60 days, failing which the entire amount paid by the Resolution Applicant (*including the Performance Guarantee*) as on the said date would stand automatically forfeited, without any recourse to this Tribunal.
- 20.15. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
- 20.16. Liberty is hereby granted for moving any Application if required in connection with the implementation of this Resolution Plan.



20.17. A copy of this Order is to be submitted to the concerned Office of the Registrar of Companies.

21. IA(IBC)/2431/CHE/2023 stands **disposed of** accordingly.

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.

Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Sd-

SANJIV JAIN
MEMBER (JUDICIAL)