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

IA/1286/CHE/2022 in IBA/471/2020

*(Filed under Sec. 30(6) and Section 31 (1) of the Insolvency & Bankruptcy
Code, 2016)*

In the matter of **UCAL Auto Private Limited**

RENUKA DEVI RANGASWAMY

Resolution Professional of
UCAL Auto Private Limited
Having Office at:
Arthi Illam, #9., Jothi Nagar
3rd Street, Uppilipalayam (Post)
Coimbatore- 641 015.

... Applicant

Present:

For RP: *Mr. Ramasubramaniam Raja, Advocate*

CORAM:

**Justice RAMALINGAM SUDHAKAR, PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)**

Order Pronounced on 22nd March 2023

ORDER

Per: Justice RAMALINGAM SUDHAKAR, PRESIDENT

I. FACTUAL MATRIX OF THE CASE:

1.1 IA/1286/CHE/2022 is an Application which is moved by the Resolution Professional of the Corporate Debtor viz. **UCAL Auto Private Limited** under Section 30(6)& 31 (1) of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC, 2016') seeking approval of the



Resolution Plan submitted by the successful Resolution Applicant viz.
Suja Shoei Industries Private Limited.

1.2 Before advertng to the facts of the case, it is pertinent to point out that the Applicant Corporate Debtor is an MSME having UDHAYAM registration no: UDYAM-TN-02-0000019.

II. CORPORATE INSOLVENCY RESOLUTION PROCESS - IN BRIEF

2.1 In an Application filed under Section 9 of the IBC, 2016 in IBA/1237/2019, this Tribunal initiated Corporate Insolvency Resolution Process in respect of the Corporate Debtor vide its order dated 04.06.2021 and appointed one Mr.Narayanan Seshasayee as the IRP.

2.2 It can be seen that pursuant to the order dated 04.06.2021, public announcement for the commencement of insolvency has been made in Trinity Mirror (English) and Makkal Kural (Tamil) on 13.06.2021. The said copies are placed as **Annexure-2** of the Application typeset.

2.3 Further the IRP received claims from the Financial Creditors and the Operational Creditors. It is averred in para 5 of the Application that initially 5 claims were received from Financial



Creditors of the Corporate Debtor, however they were related parties to the Corporate Debtor and thus they were not included in the Committee of Creditors (CoC). Further, it was submitted that 2 claims were received from the Operational Creditors.

2.4 It is averred in the Application that the 1st COC meeting dated 28.07.2021 was held with only 2 (two) Operational Creditors, pending claim verification of M/s. Bajaj Finance Limited as the Financial Creditor.

2.5 Subsequently, it was submitted that the CoC was reconstituted and the 2nd COC meeting was held on 05.08.2021 with M/s Bajaj Finance Limited as the sole CoC member with 100% voting rights.

2.6 It is seen from the submissions that the IRP was replaced by one Mrs. Renuka Devi Rengaswamy viz. the Applicant herein as the RP pursuant to the order of this Tribunal dated 24.09.2021 passed in IA/874/CHE/2021.

2.7 The sole CoC member M/s. Bajaj Finance Limited with 100% voting rights assigned its debts held in the Corporate Debtor to one M/s. Aequitas Debt Solutions Private Limited having its Registered office at 34/75, First Floor, 3rdMain Road, Kasturba Nagar, Adayar,





Chennai- 600 020. The same has been averred in para 7 of the Application.

2.8 It is submitted by the Ld. Counsel for the Applicant that this Tribunal vide its common order dated 07.01.2022 passed in IA/665,666,667,668,669/CHE/2021 set aside the IRP's decision declaring four financial creditors viz. Integrated Data Management Services LLP, Integrated Investment Management Services LLP, Integrated Insurance Broking Services Pvt Ltd and Integrated India Pvt. Ltd as related parties and directed the IRP to include them in the CoC.

2.9 Pursuant to the above mentioned order dated 07.01.2021, the RP had reconstituted the COC on 07.01.2022 as follows:

S. NO	NAME OF CREDITORS	CATEGORY OF CREDITORS	VOTING RIGHTS
1.	Aequitas Debt Solutions Pvt. Ltd.	Financial Creditor	1.01%
2.	Integrated Investment Management Services LLP	Financial Creditor	23.18%
3.	Integrated Insurance broking Services Pvt. Ltd.	Financial Creditor	21.06%
4.	Integrated Data Management Services Pvt. Ltd.	Financial Creditor	33.69%
5.	Integrated Enterprises (India) Pvt. Ltd.	Financial Creditor	21.06%
	Total		100%

2.10 It is submitted that the Corporate Debtor and UCAL Products Private Limited (UPPL) are closely held Companies. Mrs. Gayathri

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Sriram, one of the Suspended Directors of Corporate Debtor and UPPL, holding 99% shares along with her family member in both the Corporate Debtor and UPPL. It was submitted that the said suspended Director has sent an e-mail to the Applicant herein on 01.11.2021, stating that, when the 4th CoC meeting was held it was requested not to publish the Form-G (Expression of Interest), inviting prospective bidders for Corporate Debtor since the application for initiation of CIRP in respect of UPPL is under adjudication before this Tribunal and on admission of the same, the CIRP proceedings in respect of both Corporate Debtor and UPPL may be conducted together for value maximization. The said minutes of the 4th COC held on 01.11.2021 is placed as **Annexure 9** of the Application typeset.

2.11 It is submitted that the Applicant was appointed as the RP of UPPL for better coordination and resolution of the Corporate Debtor by the order of this Tribunal order dated 17.02.2022 passed in IA/105/CHE/2022 in CP/IB/78/CHE/2021.

2.12 It is submitted that in the 8th COC meeting dated 12.05.2022, the COC approved the Eligibility for inviting EOI and draft request for RFRP etc. The detailed minutes of the 8th COC meeting is placed as **Annexure 14** of the Application typeset.

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2.13 Pursuant to the 8th COC meeting, the Applicant published EOI in FORM G on 28.05.2022 in 'Trinity Mirror' (English) and 'Makkal Kural' (Tamil) inviting prospective resolution Applicants to submit their interest on or before 14.06.2022. The said copy of FORM G is placed as **Annexure 15** of the Application typeset.

2.14 Pursuant to the FORM G dated 28.05.2022, the Applicant received EOI from one *Suja Shoei Industries Private Limited* (hereinafter Prospective Resolution Applicant, for brevity 'PRA'). It is pertinent to mention that the same PRA had given EOI for the sister concern of the Corporate Debtor i.e, UPPL.

2.15 It is submitted that in the 9th COC meeting held on 23.06.2022, it was resolved by the COC to issue RFRP (Request For Resolution Plan) to the PRA. Pursuant to the same the Applicant RP communicated the same to the PRA. The said minutes is enclosed as **Annexure 17** of the Application typeset.

2.16 It is submitted that in response to the RFRP, the PRA requested to extend the timeline for submission of Resolution Plan. In the 10th COC meeting held on 12.07.2022, the COC deliberated on the same and extended the date of submission of Resolution Plan to 03.08.2022.





The said minutes of the meeting is placed as Annexure 18 of the Application typeset.

2.17 Further it can be seen from para 29 of the Application that on request of PRA for further extension of time to submit the Resolution Plan, the CoC in the 11th meeting dated 06.08.2022 extended the timeline to submit the plan upto 16.08.2022. Subsequently in the 12th COC meeting held on 20.08.2022 on request of PRA it can be seen that the timeline to submit the Resolution Plan was further extended to 23.08.2022. The minutes of the 11th and 12th COC meeting is placed as **Annexure 19 & 20** of the Application typeset.

2.18 It is averred in para 31 of the Application that the Applicant RP received the resolution plan submitted by the PRA on 22.08.2022.

III. **RELATED PARTY:**

3.1 It averred in para 31 of the Application that one of the suspended board of directors of the Corporate Debtor is a related party to the PRA i.e. Suja Shoei Industries Private Limited. Further it is submitted that as the Corporate Debtor is an MSME Unit and that under Section 240A of the code there is no bar or ineligibility in terms of Section 29A (c)&(h) to submit a Resolution Plan.





IV. DELIBERATIONS OF COC ON FEASIBILITY OF THE RESOLUTION PLAN:

4.1 It is averred in para 48 of the Application that in the 14th CoC meeting held on 07.10.2022 approved the Resolution plan of the Successful Resolution Applicant (SRA) and the same falls within the timelines of the code.

V. DETAILS OF THE SUCCESSFUL RESOLUTION APPLICANT:

5.1 It is submitted that the SRA is in the business of manufacturing precision engineering component. The SRA has four plants at Mayiladuthurai, Tamil Nadu and Pondicherry. It is stated that the turnover of the SRA for the year of 2021-22 is Rs. 183 Cr with EBITDA of 8.30 Crore and the details of the same are placed at Page No 360 of Volume 3 of the Application typeset.

5.2 Creditworthiness of the SRA:

(i) The Networth of the SRA as on 31.03.2022 is Rs.60,04,36,605/- an is solvent. The SRA has submitted a Networth and Solvency Certificate dated 16.08.2022 and the same is placed at Page 399 of the Application typeset.

(ii) The CRISIL Rating of the SRA for long-term bank facility is 'Positive' and the same is placed at Page 404 of the Application typeset.

(iii) The Final Projection of the SRA is placed at Page 400 of the Application typeset. The SRA has given the Performance Bank



Guarantee for a sum of Rs.25 Lakhs and the same is placed at Page 375 of the Application typeset.

(iv) The valuation of the SRA as on 30.06.2022 for the purpose share value is placed at Page 602 of the Application typeset.

VI. SALIENT FEATURES OF THE RESOLUTION PLAN :

6.1. The rationale behind the Resolution Plan is reproduced below:

The plan proposes to keep the Corporate Debtor as a going concern till the implementation of the proposed Resolution Plan and the same is reiterated in clause 5.6.9 of the Resolution plan filed before this AA.

6.2. Payout as envisaged under the Resolution plan is extracted hereunder,

SCHEDULE-3					
Cost of the Resolution Plan					
Category of Creditors	Claim Received	Admitted Claims	Admitted %	Amount Offered In Resolution Plan	Offered % in The Resolution Plan
CIRP Cost	20,92,000	14,00,000	61.00%	14,00,000	100.00%
Unsecured Financial Creditors	25,25,83,044	25,25,83,044	100.00%	25,25,83,044	100.00%
List Of Class of Fixed Deposit Holders	76,41,944	49,14,143	64.30%	4,914	0.10%
Total Financial Debtors =	26,25,17,388	25,88,97,187	98.62%	25,39,87,958	98.10%
Operational Workmen and Employee Creditors	32,31,941	-	0.00%	-	0.00%
Operational Statutory Creditors	9,78,46,604	9,78,46,604	100.00%	97,847	0.10%
Operational Trade Creditors	11,33,61,465	9,69,34,398	85.51%	96,934	0.10%
Total Operational Debtors =	21,44,40,010	19,47,81,002	90.83%	1,94,781	0.10%
TOTAL LIABILITIES ADMITTED AND AMOUNT OFFERED IN RESOLUTION PLAN =	47,69,57,398	45,36,78,189	95.30%	25,41,82,739	56.01%



6.3. Timelines envisaged under the Resolution plan for payment to the various stakeholders as placed in Page 398 of the Application typeset is reproduced below:-

S.No	ACTIVITY	DAYS	TIME PERIOD
1.	Receipt of the Approval of the Resolution Plan from the Adjudicating Authority	A	-
2.	Cash payments to the creditors as per the Resolution Plan	A+15	Within 15 days from the Approval of the Resolution plan from the AA
3.	Issue of Equity shares to the consenting Financial Creditors	A+60	Within 60 days from the Approval of the Resolution Plan from the AA
4.	Issue of Non- convertible redeemable debentures to the consenting unsecured Financial Creditors	A+60	Within 60 days from the date of Approval of the Resolution Plan by the AA

6.4. Payment as to the various stakeholders under the Resolution Plan as averred in Para 38 of the Application is extracted hereunder:-

Class Of Creditors	Amount Claimed	Claim Admitted	Amount Offered In The Resolution	Mode of Dispersal		
				Paid-up E/Shares of Suja Shoei Industries Pvt.Ltd.,	Redeemable debentures @ 10% from Suja Shoei Industries Pvt.Ltd.,	Upfront Cash payment
Financial creditors	25,25,83,044	25,25,83,044	25,25,83,044	21,75,33,045	3,50,49,999	0
Class of Fixed Deposit Holders	76,41,944	49,14,143	4,914	0	0	4,914
Workmen & Employees	32,31,941	-	0	0	0	0
Government dues	9,78,46,604	9,78,46,604	97,847	0	0	97,847
Trade Creditors	11,78,10,374	9,69,34,398	96,934	0	0	96,934
Total =	47,91,13,907	45,22,78,189	25,27,82,739	21,75,33,045	3,50,49,999	1,99,695



6.5. A perusal of the Resolution Plan proposed by the Resolution Applicant provides for a Scheme of Merger in which the Corporate Debtor (Transferor) is merged with **Suja Shoei Industries Private Limited** (Transferee), subject to the payment obligations of the Resolution Applicant and such other terms and conditions of this Resolution Plan. At this juncture, this Tribunal deems it fit to refer to Regulation 37 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, 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.


6.6. 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. Thus, the Resolution Plan provided by the Resolution Applicant involves a merger of the Corporate Debtor with the Resolution Applicant subject to the payment obligations of the Resolution Applicant and such other terms and conditions of this Resolution Plan.

6.7 At this juncture it becomes relevant to extract the rationale of the scheme, appended as Page 409 to 439 of the Application typeset

C. Rationale of the Scheme:

- (i) UCAL Auto Private Limited (UAPL) or the Corporate Debtor is currently undergoing Corporate Insolvency Resolution Process (CIRP) as per the provisions of the IBC, 2016 (Code) Pursuant to an order of

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the Hon'ble NCLT, Chennai (the Adjudicating Authority) vide: IBA/1237/2019, dated- 04.06.2021 (NCLT Order).

- (ii) The Corporate Debtor has an Associate Company in India, namely UCAL Products Private Limited (UPPL) which is also in Corporate Insolvency Resolution Process by order of the Hon'ble NCLT, Chennai vide CP/IB/78/CHE/2021, Dated 10/12/2021.
- (iii) Mrs. Renuka Devi Rangaswamy (Reg. No: IBBI/IPA-001/IP-P-01863/2019-2020/12871) is the Resolution Professional of UAPL to conduct the CIRP.
- (iv) In accordance with the provisions of Section 25(2)(h) of the Code read with Regulation 36A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations"), the Resolution Professional published Form-G- Expression of Interest through Newspapers advertisements in "Trinity Mirror:- English Newspaper and "Makkal Kural"- Tamil Newspaper published on 28.05.2022 from interested and eligible prospective resolution applicants for the purpose of submission of resolution plans that are compliant with the requirements of the Code for presentation to the Committee of Creditors for its consideration and approval.
- (v) Based on the aforesaid invitation of the Resolution Professional, a Resolution Plan is being submitted by Suja Shoei Industries Private Limited ("Resolution Applicant") to the Resolution Professional, for the consideration and approval of the Committee of Creditors.
- (vi) In the Resolution Plan, the Resolution Applicant has detailed the plan and approach in accordance with the provisions of Section 30, 31 of the Code read with Regulations 37, 38 and 39 of the CIRP Regulations for the consideration and approval of the Committee of Creditors.
- (vii) The Resolution Applicant proposes acquisition of full ownership and control over the management of the Corporate Debtor and its associated company by **Merger by absorption**.
- (viii) This scheme provides in detail the terms and process of Merger of the Corporate Debtor ("UAPL") with Suja Shoei Industries Private Limited (Transferee Company).





- (ix) The scheme of Merger of UCAL Products Private Limited, an associate company of UAPL with Suja Shoei Industries Private Limited (SSIPL) is dealt in a separate scheme.
- (x) The order of the Adjudicating Authority sanctioning the Resolution Plan shall be deemed to be an order under Section 230 to 234 of the Companies Act 2013 confirming such Merger between the Transferor Company together with their business and undertakings, with the Transferee Company, so as to achieve the following:
- a. The Transferor Company ("UAPL") currently provides manufacturing services and supplies of automotive assemblies like Fuel Taps, Oil Pump Assemblies, Auto Chain Tensioners, Fuel Filters, Fuel Hoses, Drain Plugs and non-automotive assemblies like Fuel Taps, Fuel Filters, Pressure Plate, Oil Pumps for Tractors & Tillers.
 - b. The Transferee Company ("SSIPL"), is a leading manufacturer of Rubber products for motorcar, Diaphragms, Metal to rubber bonded products, Gaskets, Valve-combination, Oil Seals, packing which is an essential input for the manufacture/assembly of products developed by the Transferor Company which would lead to a forward integration.
 - c. The aforesaid synergistic benefits accruing from the consolidation would ultimately contribute to the future business and profitability of the merged entity.
 - d. Both the Transferor Company and Transferee Company can achieve larger product portfolio, access new domestic and export markets, increase market share, economies of scale, efficiency, and other related economies through this Merger. This Scheme intends to merge the operations of the Transferor Company with that of the Transferee Company to fulfil this objective.
- (xi) Thus, Merger of the Transferor Company with the Transferee Company in terms of the Scheme will be beneficial to the all the stakeholders involved in the Insolvency Resolution of the CD.





VII. MANAGEMENT OF THE CORPORATE DEBTOR

7.1. With regard to the management of the Corporate Debtor it can be seen from clause 5.1.1 that the following is envisaged

“Pursuant to and in accordance with the directions of the Adjudicating Authority, on the Transfer Date, the board of directors of the Corporate Debtor shall be shall cease to be members of the board of directors of the Corporate Debtor (whether through resignation, cessation or otherwise) and **by virtue of the Scheme attached to this Proposed Resolution Plan, this CD will get Amalgamated/ merged with the Resolution Applicant.**”

For this purpose, the existing directors and/or relevant Representative as the case may be of the Corporate Debtor shall cooperate with the Resolution Applicant and shall promptly make relevant filings under Applicable Law for the aforesaid reconstitution including their resignation from the board of directors of the Corporate Debtor. Pursuant to and in accordance with the directions of the Adjudicating Authority, the Resolution Applicant (along with its nominees) shall exercise full control over the management of the affairs of the Corporate Debtor.”

VIII. IMPLEMENTATION AND SUPERVISION

8.1. With regard to the implementation and supervision of the Resolution plan clause 5.6.2 of the Resolution Plan envisages the following:-



“The Resolution Applicant proposes that the Resolution Professional (subject to her consent) or such other Person as may be mutually identified by the Resolution Applicant and the CoC be appointed as the "Monitoring Professional". The remuneration and other terms of appointment of the Monitoring Professional shall be the same as that of a resolution professional under the CIRP and such remuneration, cost and expenses of the Monitoring Professional shall be paid through internal accruals of the Corporate Debtor and the balance amount, if any, will be funded through the Promoter Contribution received from the Resolution Applicant.

During the period between the Approval Date till the Transfer Date, the Monitoring Professional, acting on the sole instructions of the Monitoring Committee (as defined below), shall perform duties *inter alia* similar to that of a resolution professional under the CIRP and shall have powers similar to that of a resolution professional under the CIRP.

Immediately on receipt of order of the Adjudicating Authority, a "**Monitoring Committee**" shall be constituted that shall comprise of 1 (one) representative of the Financial Creditors those who were forming part of the CoC, 2 (two) representatives of the Resolution Applicant and the Monitoring Professional. During the period commencing from the Approval Date till the Transfer Date, the existing board of the Corporate Debtor shall be and remain suspended and all powers and duties of the board shall vest with the Monitoring Committee who shall carry out the day-to-day management of the business and operations of the Corporate Debtor as currently being conducted on the Submission Date and supervise the implementation of the Resolution Plan, subject to Clause 5.5.1.3 (Continuance of

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operations in the ordinary course) of this Resolution Plan, in trust for the Resolution Applicant. On the Approval Date, the Monitoring Committee shall be deemed authorized by the Adjudicating Authority and entitled to do all such acts, deeds, matters and things as may be necessary, desirable or expedient to supervise the implementation and give effect to this Resolution Plan in accordance with its terms. All decisions of the Monitoring Committee other than the actions expressly contemplated under this Resolution Plan shall be by way of a majority vote of all members.

The existing directors of the Corporate Debtor or any other stakeholder of the Corporate Debtor shall not interfere with the functioning of the management of business and operations of the Corporate Debtor.”

IX. It is further submitted that the Resolution Plan is approved by all the CoC members with requisite majority of 100% and the same can be inferred from the minutes of the 14th COC meeting dated 07.10.2022. Further, the Resolution Professional has certified the Form-H in accordance with the CIRP Regulations 39(4) and the same is placed as page no 633 of the Application typeset. Further it can be seen from the FORM-H that there are “NIL” PUF E Applications pending with relation to the Corporate Debtor. The fair value and liquidation value as per the Form-H filed is extracted hereunder:-

1.	FAIR VALUE	Rs. 15,37,22,869/-
2.	LIQUIDATION VALUE	Rs. 11,30,25,000/-





X. MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS

10.1. From the averments made in the Application as well as in Form-H as filed by the Resolution Professional in relation to the procedural aspects, the same seems to have been duly complied with, for which the Resolution Professional has issued a Certificate and it is not necessary for this Authority to go into the same. However, this Authority is duty bound to examine the Resolution Plan within the contours of Section 30(2) of the IBC, 2016. A comparison *vis-à-vis* with the Mandatory compliance under the IBC and the Compliance made under the Resolution Plan is captured hereunder;

MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS	COMPLIANCE UNDER RESOLUTION PLAN
S. 30(1) - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	The Affidavit of the Resolution Applicant (RA) is filed as P. 357 to 359 of the application typeset wherein it was stated that he / she is eligible under Section 29A of IBC, 2016 to submit a Resolution Plan
S. 30(2)(a) -Payment of Insolvency and Resolution cost in the manner specified by the Board	Clause 5.2.1 of the Resolution Plan
S. 30(2)(b) -Payment of debts of Operational Creditors in such manner as may be specified by the Board, which shall not be less than the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under Sec. 53	Clause 5.2.2 of the Resolution Plan
Reg. 38(1) -Resolution Plan identifies	

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<p>specific source of funds that will be used to pay the</p> <p>(a) Insolvency Resolution Process cost?</p> <p>(b) Liquidation value due to Operational Creditors?</p> <p>(c) Liquidation value due to dissenting financial creditors</p>	<p>Clause 3.7 and 5.2.2 of the Resolution Plan</p>
<p>Reg. 38(1A) -Resolution Plan shall include a statement as to how it has dealt with the interest of all the stakeholders, including financial creditors and operational creditors of the Corporate Debtor</p>	<p>Clause 3.7 of the Resolution Plan</p>
<p>S. 30(2)(c) -Management of the affairs of the Corporate Debtor after approval of the Resolution Plan</p>	<p>Clause 5.1 and 5.2.3.6 of the Resolution Plan.</p>
<p>S. 30(2)(d) -Implementation and Supervision of the Resolution Plan</p> <p style="text-align: center;">and</p> <p>Reg. 38(2) – Resolution Plan shall provide:</p> <p>a) term of plan and its implementation schedule</p> <p>b) management and control of the business of the Corporate Debtor during its term;</p> <p>c) it has provisions for effective implementation</p> <p>d) it has provisions for approval required and the timeline for the same; and</p> <p>e) the Resolution applicant has the capability to implement the Resolution Plan.</p>	<p>Clause 5.8 of the Resolution Plan</p> <p>Clause 5.3 & 5.4 & Annexure -2 of the Resolution Plan</p> <p>Clause 5.6 of the Resolution Plan</p> <p>Clause 5.7 of the Resolution Plan</p> <p>Clause 3.7 of the Resolution Plan</p> <p>Clause 3.7 of the Resolution Plan</p>
<p>Reg. 38(3) -Resolution Plan shall demonstrate:</p>	



<p>a) it address the cause of default</p> <p>b) it is feasible and viable</p> <p>c) it has provisions for effective implementation</p> <p>d) it has provisions for approval required and the timeline for the same</p> <p>e) the resolution applicant has the capability to implement the resolution plan</p>	<p>Clause 3.7 of the Resolution Plan</p>																												
<p>S. 30(2)(e) -Does not contravene any of the provisions of the law for the time being in force</p>	<p>Clause 5.8 of the Resolution Plan</p>																												
<p>S. 30(4) -Committee of Creditors approve the Resolution Plan by not less than 66% of voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by the Board</p>	<p>The CoC, in its 14th meeting has approved the Resolution Plan in the following voting pattern;</p> <table border="1" data-bbox="837 1137 1404 1700"> <thead> <tr> <th>S.No</th> <th>Name of Creditor</th> <th>Assent (%)</th> <th>Dissent (%)</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>Aequitas Debt Solutions Pvt. Ltd</td> <td>1.01</td> <td>-</td> </tr> <tr> <td>2.</td> <td>Integrated Investment Management Services LLP</td> <td>23.18</td> <td>-</td> </tr> <tr> <td>3.</td> <td>Integrated Insurance broking Services Pvt. Ltd.</td> <td>21.06</td> <td>-</td> </tr> <tr> <td>4.</td> <td>Integrated Data Management Services Pvt. Ltd.</td> <td>33.69</td> <td></td> </tr> <tr> <td>5.</td> <td>Integrated Enterprises (India) Pvt. Ltd.</td> <td>21.06</td> <td></td> </tr> <tr> <td></td> <td>TOTAL</td> <td>100%</td> <td>-</td> </tr> </tbody> </table>	S.No	Name of Creditor	Assent (%)	Dissent (%)	1.	Aequitas Debt Solutions Pvt. Ltd	1.01	-	2.	Integrated Investment Management Services LLP	23.18	-	3.	Integrated Insurance broking Services Pvt. Ltd.	21.06	-	4.	Integrated Data Management Services Pvt. Ltd.	33.69		5.	Integrated Enterprises (India) Pvt. Ltd.	21.06			TOTAL	100%	-
S.No	Name of Creditor	Assent (%)	Dissent (%)																										
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5.	Integrated Enterprises (India) Pvt. Ltd.	21.06																											
	TOTAL	100%	-																										

XI. RELEVANT JUDICIAL PRONOUNCEMENTS OF THE HON'BLE SUPREME COURT:

11.1 In so far as the approval of the Resolution Plan is concerned, this Authority is not sitting on an appeal against the decision of the





Committee of Creditors and this Authority is duty bound to follow the much-celebrated Judgment of the Supreme Court in the matter of **K. Sashidhar –Vs– Indian Overseas Bank(2019) 12 SCC 150**, wherein in para 19 and 62 it is held as follows;

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

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

11.2 Further, 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 follows;

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).

11.3 Further the Supreme Court in the matter of **K. Sashidhar v. Indian Overseas Bank and Ors.** (2019) 12 SCC 150 has lucidly delineated the scope and interference of the Adjudicating Authority in the process of approval of the Resolution Plan and held as follows;

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





speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.

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

(emphasis supplied)

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

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





creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal."

(emphasis supplied)

11.5 The 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.

11.6 Thus, from the catena of judgments rendered by the Supreme Court on the scope of approval of the Resolution Plan, it is amply made clear that only limited judicial review is available for the Adjudicating Authority under Section 30(2) and Section 31 of IBC, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the Committee of Creditors.

XII. RELIEF / CONCESSIONS :

12.1 The Resolution Applicant has sought for various prayers and Concessions in Clause 11 of the Resolution Plan, which are as follows:-

SL. NO.	RELIEF / CONCESSIONS SOUGHT FOR	ORDERS THEREON
A	Issue directions for the transfer of the whole of the undertaking, property of the UCAL Auto Private Limited, transferor company by merger of absorption to the Suja Shoei Industries Private Limited, transferee company from the appointed date being 01.04.2022.	Granted, subject to the provisions of IBC, 2016 and other Applicable laws
B	Issue directions that all liabilities of the transferor company as on insolvency commencement date being dealt in accordance with this approved resolution Plan.	Granted, subject to the provisions of IBC, 2016 and other Applicable laws





C	Issue directions for the allotment of fully paid-up equity shares and debentures by the transferee company to the assenting creditors under this Resolution Plan.	Granted, subject to the provisions of Companies Act, 2013 and other Applicable laws
D	Issue directions that the dissenting creditors be settled as in this approved resolution plan.	Since there are no dissenting Financial Creditors, this relief becomes infructuous
E	Issue directions that dissolution of Transferor company without winding-up.	Granted, subject to the provisions of Companies Act, 2013 and other Applicable laws
F	Issue directions that where the transferor company is dissolved, the fee, if any. paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorize capital subsequent to the merger.	Granted, subject to the provisions of Companies Act, 2013 and other Applicable laws
G	Issue directions that such incidental, consequential and supplemental matters as are deemed necessary to secure that the merger is fully and effectively carried out.	Appropriate authorities to consider keeping in view the object of IBC, 2016
H	Issue directions that all income tax benefits accrue by way of merger under the Companies Act, 2013 is deemed to accrue by approval of this Resolution Plan.	This is for the CBIDT and other appropriate authorities to consider keeping in view the object of IBC, 2016
I	Declare that this Resolution Plan and the terms and conditions therein is binding on all the stakeholders of the Corporate Debtor including the Relevant Authorities to whom a debt in respect of the payment of dues arising under any Applicable Law for the time being in force, or Relevant Authorities to whom statutory dues are owed.	Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i> 2021 SCC Online SC 313

12.2 In so far as the relief as claimed in Clause 11 of the resolution plan, we hereby hold that this order approving the Resolution Plan shall be deemed to be an order of sanctioning a Scheme of arrangement with creditors under the provisions of Section 230 to 232 of the Companies Act,



2013. While approving the Resolution Plan as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law. Further, we make it clear that the Resolution Applicant shall make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the after setting off the fees already paid by the Corporate Debtor.

12.3 Thus, the Resolution Plan is hereby **approved** and is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect and the "Moratorium" imposed under section 14 of IBC, 2016 is lifted and shall not have any effect henceforth. The Resolution Professional shall submit the records collected during the commencement of the Proceedings to the Insolvency & Bankruptcy Board of India for their record and further hand it over to the Resolution Applicant or the New Promoters as the case may be. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance. Liberty is hereby granted for moving any Interlocutory Application, if required, in connection with implementation of this Resolution Plan. That in respect of stepping by the New





Promoters/Resolution Applicant into the shoes of the erstwhile Company and taking over the business, the provisions of Companies Act, 2013 shall be applicable and because of this reason a copy of this Order is to be submitted in the Office of the Registrar of Companies, Coimbatore for due compliance.

12.4 The Resolution Professional is further directed to handover all data, records, premises / documents, designs, drawings, statutory records on date to Resolution Applicant to finalise the further line of action required for starting of the operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access and rights to all the records, data, premises / documents through Resolution Professional to finalise the further line of action required for starting of the operation.

12.5 With the above said reliefs/concessions & directions this application stands **allowed**.



— Sd —

SAMEER KAKAR
MEMBER (TECHNICAL)



— Sd —

JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT

Vinita Varshini. K