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

IA/1172/CHE/2022 in IBA/1052/2019

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

IN THE MATTER OF:

CHITRAPERINKULAMRAGHAVAN,  
Resolution Professional,  
Sri Varadaraja Food Exports Private Limited  
Old No.16, New No.7,  
Appadurai Street, Seethamma Colony,  
Teynampet, Chennai – 600 018

... Applicant

Present:

For RP: Avinash Krishnan Ravi, Advocate  
Jerin Asher Sojan, Advocate

CORAM:

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

Order Pronounced on 15<sup>th</sup> November, 2023

ORDER

(Hearing Conducted through VC)

IA/1172/CHE/2022 is an Application which has been moved by the Resolution Professional of the Corporate Debtor viz. SRI VARADARAJA FOOD EXPORTS PRIVATE LIMITED under Section 31 of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC, 2016') seeking approval of the Resolution Plan submitted by the successful Resolution

Applicant viz., *TRISHAKTHI VARAHI FOODS PRIVATE LIMITED* seeking the following relief:

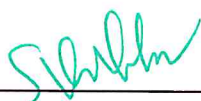
- a) *To pass an order under Section 31 of the Insolvency and Bankruptcy Code, 2016 approving the Resolution Plan submitted by Trishakthi Varahi Foods Pvt Ltd and approved by the CoC in the 8<sup>th</sup> meeting of the Committee of Creditors and pass such other order or orders as this Tribunal may deem fit.*

## **II. CORPORATE INSOLVENCY RESOLUTION PROCESS - IN BRIEF**

2. In an Application filed under Section 9 of IBC, 2016 by an Operational Creditor viz. Disha Communications Private Limited, this Adjudicating Authority vide order dated 11.02.2020 passed in IBA/1052/IB/2020 initiated the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor (CD) viz. Sri Varadaraja Food Exports Private Limited, by appointing one Mr. Srividhya Subramanian as the Interim Resolution Professional (IRP).
3. The IRP had caused Public Announcement in Form-A published in "Trinity Mirror" and "Makkal Kural" on 13.03.2020 and

invited the creditors to submit the claim before the IRP on or before 24.03.2020.

4. It was averred in the application that due to outbreak of the COVID-19 Pandemic, the IRP conducted the first meeting of CoC only on 19.12.2020, in which, the Applicant herein viz. Chitra Perinkulam Raghavan was proposed as the Resolution Professional (RP) of the Corporate Debtor by the CoC comprising of the Sole Financial Creditor Viz, KarurVysya Bank.
5. Based on the recommendation of the CoC, an application bearing IA/32/2021 was filed under Section 22 of IBC and the same was allowed by this Tribunal vide order dated 25.02.2021.
6. Pursuant to the order of Appointment of RP, the Applicant herein took charge of the Corporate Debtor and appointed Registered Valuers on 17.03.2021 for the valuation of the Corporate Debtor. The Applicant conducted the 2<sup>nd</sup> CoC meeting on 17.03.2021 wherein the RP updated the CoC about the developments in the process, including the appointment of valuers for the valuation of the Corporate Debtor.



**CLAIMS RECEIVED AND ADMITTED BY IRP/RP:**

7. It is seen from the components of plan submitted by the RP vide S.R.No.749 dated 16.02.2023 that within the 90 day period, the RP received a total of 65 claims. Out of the same, 6 were of the Financial Creditors, 8 were of the Operational Creditors and 51 were of the other creditors. The table depicting the total number of claims received, value claimed and amount claimed is reproduced hereunder:

DESCRIPTION OF CREDITOR	NO OF CLAIMS	AMOUNT CLAIMED	AMOUNT ADMITTED
Secured Financial Creditors	1	14,64,05,486.74	14,64,05,486.74
Unsecured Financial Creditors	5	1,63,57,602.00	70,78,343.00
Operational Creditors (Workmen)	0	0	0
Operational Creditors (Employees)	1	1,13,500.00	1,13,500.00
Operational Creditors (Government Dues)	2		
PF		65,46,001	65,46,001
ESI		36,53,468	36,52,468
Operational Creditors (others)	5	5,03,83,333.00	3,98,61,549.00
Other Creditors	51	14,38,80,252.21	11,44,63,954.00
<b>Total</b>	<b>65</b>	<b>36,73,39,642.95</b>	<b>31,81,22,301.74</b>

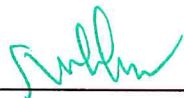
8. In the 3<sup>rd</sup> CoC meeting held on 19.04.2021, it was decided by the CoC with 100% voting to seek extension of timelines for CIRP and for exclusion of time lost in COVID-19. Accordingly, the



Applicant preferred an application bearing IA/831/2021 before this Tribunal and the same was allowed vide order dated 24.12.2021 by extending 90 days of CIRP which ends on 27.03.2022.

**D. EXPRESSION OF INTEREST (EOI)**

9. It is submitted that the Applicant issued two Expression of Interest in Form-G in Two Newspapers, namely Trinity Mirror in English and Makkal Kural in Tamil, vide notices dated 30.12.2021 and 02.02.2022. In response to which, the Applicant herein received an Expression of Interest from Trishakthi Varahi Foods Private Limited, ie., Prospective Resolution Applicant on 17.02.2022. The same was considered by the CoC in the 7<sup>th</sup> CoC Meeting and the CoC sought an additional period of 10 days in the form of exclusion to consider the resolution plan. Thereafter, an application bearing IA/966/2022 was filed before this Tribunal on 23.09.2022 and the same was allowed vide order dated 20.10.2022 by which 10 days from the date of the order was granted to complete the CIRP.



10. It is averred that as per the decision of CoC, the qualifying criteria for the Prospective Resolution Applicant was fixed as 10 crores. The RFRP, Information Memorandum and Model Evaluation Matrix were shared with the Prospective Resolution Applicant on 20.02.2022.
11. In the 8<sup>th</sup> CoC meeting held on 29.09.2022, the CoC approved the Resolution Applicant to pay the performance guarantee on or before 15.10.2022. The CoC further resolved that E-Voting portal shall be kept open from Sunday 02.10.2022 at 2. P.M and the same shall be closed on 03.10.2022 at 3. P.M for the approval of the Performance Guarantee.
12. In the 9<sup>th</sup> CoC meeting held on 22.10.2022, the CoC decided to provide the Resolution Applicant viz, Trisakthi Varahi Foods Pvt Ltd, additional time for payment of performance guarantee amount till 31.10.2022.
13. After filing of this application, this Tribunal vide order dated 02.01.2023 passed the following order:

*The Applicant / RP is represented by the Ld. Counsel Mr. Avinash Krishnan Ravi through video conferencing mode.*

*IA/1172(CHE)/2022 has been filed for approval of the Resolution Plan.*

*Ld. Counsel for the Applicant states that there are certain admitted claims with respect to PF Authorities.*

*Ld. Counsel states that the Applicant may be permitted to hold another CoC meeting to take into consideration of the outcome in the matter of “Jet Aircraft Maintenance Engineers Welfare Association Vs. Ashish Chhawchharia RP of Jet Airways (India) Ltd, Company Appeal (AT) (Insolvency) Nos. 752, 643, 792, 801 915 of 2021, 361, 771 & 987 of 2022 (2022 SCC Online NCLAT 418)”.*

*In view of the submissions, the RP is directed to hold one more CoC meeting within seven (7) days from the date of this order.*

*Considering the light of “Jet Aircraft Maintenance Engineers Welfare Association Vs. Ashish Chhawchharia RP of Jet Airways (India) Ltd, Company Appeal (AT) (Insolvency) Nos. 752, 643, 792, 801 915 of 2021, 361, 771 & 987 of 2022” by the Hon’ble NCLAT, modifications to the present Application are permitted.*

*The RP is directed to file necessary modification in the present Application based on the outcome of the CoC meeting along with relevant minutes and other documents.*

14. The RP filed an Additional Affidavit along with the Revised Form-H, Revised Resolution Plan and Minutes of the 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> Meeting of CoC vide S.R.No.529 dated 01.02.2023 by complying the orders of this Tribunal dated 02.01.2023. It is stated that a CoC meeting was convened with respect to enhancement of Plan value in terms of the order of the Hon’ble NCLAT in the matter of *Jet Aircraft Maintenance Engineers Welfare*

*Association Vs. Ashish Chhawchharia RP of Jet Airways (India) Ltd  
(2022 SCC Online NCLAT 418).*

15. The deliberations of the Minutes of CoC of 10<sup>th</sup> and 11<sup>th</sup> meeting of CoC are tabulated as follows:

S.No	CoC MEETING	DATE OF CoC	DELIBERATIONS
1	10 <sup>th</sup> CoC meeting	11.01.2023	To discuss the Resolution Plan submitted to Hon'ble NCLT Chennai in the context of recent judgment of Jet Airways
2	11 <sup>th</sup> CoC meeting	21.01.2023	To discuss the Resolution Plan submitted to Hon'ble NCLT Chennai in the context of recent judgment of Jet Airways

16. Thereafter, in the 12<sup>th</sup> CoC meeting held on 30.01.2023, the following resolution was passed with respect to the approval of Resolution Plan:

- a) **RESOLVED THAT** the consent of the all the members of the Committee of Creditors be and are hereby accorded to approve the Resolution plan presented by the Resolution Applicant for:

CIRP Cost	Will be paid in Full -Separate undertaking was provided by the Resolution Applicant
Operational Creditors – Employee	1% of the amount admitted by the RP
Operational Creditor – Government – ESI -PF	1% of the amount admitted by the RP Payment in full – over the period of 8.5 months
Operational Creditor – other than Govt and Workmen and Employee	1% of the amount admitted by the RP
Other Creditors	1% of the amount admitted by the RP
Secured Creditors – Security Interest over the Plant and Machinery of the Corporate Debtor	Rs.134.54 lacs – over the period of 8.5 months



b) **FURTHER RESOLVED THAT** Ms. Chitra Perinkulam Ragava, Resolution Professional be and is hereby authorized to move the necessary application in this connection before National Company Law Tribunal, Chennai Bench.

c) **RESOLVED FURTHER THAT** the electronic voting window shall be kept open for a period of one day viz. from 2.30 p.m. of 31.01.2023 till 1.30 p.m. of 01.02.2023.

#### **E. ABOUT THE RESOLUTION APPLICANT**

17. The Resolution Applicant viz, Trishakthi Varahi Foods Private Limited has been engaged in the trade business of marketing and exporting rice to various countries around the globe for more than a year.

#### **F. SALIENT FEATURES OF THE RESOLUTION PLAN**

18. The Salient features of the Resolution Plan are as follows:

##### **CIRP COSTS:**

- (i) In terms of Section 30(2) (a) of the IBC, the CIRP Costs are to be paid in priority to any other creditor of the Company.
- (ii) All CIRP Costs incurred after the approval of this Resolution Plan by the CoC and until the Approval Date, shall be incurred in accordance with the provisions of the IBC.
- (iii) Within 2 days of the Approval Date, the Resolution Professional shall provide a certificate to the Monitoring Committee confirming the total amount of CIRP Costs incurred by the Company (whether paid or unpaid, and without netting off any amounts), and whether, as on the Approval Date, there are any CIRP Costs which have

not yet been paid by the Company (such amount in aggregate being the “Unpaid CIRP Costs”).

- (iv) The Unpaid CIRP Costs shall be paid on the Approval Date in a manner compliant with Applicable Law and in priority to any other creditor of the Company, at the first instance out of (a) the available cash and cash equivalents in the Corporate Debtor; (b) in the event of insufficiency in the cash and cash equivalents, the same shall be adjusted out of the Fund Infusion.
- (v) Any security interest created over all or any assets / cash flows of the Corporate Debtor to secure the interim financing, if any, availed by the Corporate Debtor during the CIRP shall forthwith upon receipt of payment of the Unpaid CIRP Costs in full including the payable against interim finance be released and shall stand discharged, without the requirement of any further actions, documents or deeds.

#### **OPERATIONAL CREDITORS**

- a) In terms of Section 30(2)(b) of the IBC, Operational Creditors are required to be paid the Liquidation Value. Further, in terms of Regulation 38 (1) (b) of the CIRP Regulations, the Liquidation Value due to Operational Creditors is required to be paid in priority over the payments to Financial Creditors. All the Operational Creditors will be paid 1% of the admitted amount by the RP.
- b) **Workmen and Employee Dues:**

Eligible to receive 1% of the amount admitted by the RP.

c) **Government Dues:**

PF dues of the Government will be paid in full in the following manner. The total amount payable is Rs. 65,46,001/- ( Rupees Sixty-Five lakhs Forty Six Thousands and one only) and will be distributed in the following manner to the PF department.

S.NO.	GOVERNMENT – PF DUES	INSTALLMENT (X-APPROVAL DATE)	AMOUNT AVAILABLE FOR DISTRIBUTION (RS.)
1	4,44,936.31	X+15	15,00,000/- * Note
2	8,25,000.00	X+ 45	25,00,000/-
3	8,25,000.00	X+ 75	25,00,000/-
4	8,25,000.00	X +105	25,00,000/-
5	8,25,000.00	X+135	25,00,000/-
6	8,25,000.00	X+165	25,00,000/-
7	8,25,000.00	X+195	25,00,000/-
8	8,25,000.00	X+225	25,00,000/-
9	3,26,064.69	X+255	Balance amount

**Note:** After paying the CIRP costs, Operational Creditors Viz, Government, Employee, others, and Dissenting financial Creditors, balance funds will be paid over the period as stated above.

Other government dues are eligible to be received 1% of the amount admitted by the RP.

d) **Other Operational Creditors**

- (i) In the analysis of the Resolution Applicants, the Liquidation Value will be insufficient to make payments in full to the secured creditors in terms of Section 53 of the Code.
- (ii) Eligible to receive 1% of the amount admitted by the RP. The RP vide Affidavit dated 31.10.2023



has stated that the Operational Creditors will be paid in priority over the dues to be paid to the Financial Creditor.

**e) Other Creditors:**

Eligible to receive 1% of the amount admitted by the RP.

**FINANCIAL CREDITORS**

- (i) As per the terms of the Resolution Plan, a sum total of Rs. 1,34,53,999/-, (Rupees One Crore Thirty-Four Lakhs Fifty-Three Thousand Nine Hundred And Ninety Nine only) shall be paid to the secured financial creditors of the Corporate Debtor. The said sum shall be paid in the following manner:

S.No.	NAME OF THE SECURED FINANCIAL CREDITOR – KARURVYSYA BANK LIMITED	INSTALLMENT (X- APPROVAL DATE)	AMOUNT AVAILABLE FOR DISTRIBUTION (Rs.)
1	8,89,872.63	X+15	15,00,000/- * Note
2	16,75,000.00	X+ 45	25,00,000/-
3	16,75,000.00	X+ 75	25,00,000/-
4	16,75,000.00	X +105	25,00,000/-
5	16,75,000.00	X+135	25,00,000/-
6	16,75,000.00	X+165	25,00,000/-
7	16,75,000.00	X+195	25,00,000/-
8	16,75,000.00	X+225	25,00,000/-
9	8,39,126.37	X+255	Balance amount



\* **Note:** After paying the CIRP costs, Operational Creditors and Dissenting financial Creditors, if any funds available, it will be paid to the secured Financial Creditor.

**(ii) Unsecured Financial Creditor:**

Eligible to receive 1% of the amount admitted by the RP.

**(iii) Extinguishment of All Other Liabilities:** It is hereby unequivocally clarified that no monies whatsoever, whether claimed or unclaimed, crystallised or uncrystallised, whether reduced to in the form of a decree or otherwise by any order of court or authority, shall be payable to any secured financial creditor, under this Resolution Plan. Monies due from the Corporate Debtor, apart from those which have been admitted by the Resolution Professional and set out in the information memorandum, shall stand extinguished and shall no longer be the liability of the Corporate Debtor, after the approval of the resolution plan by the Adjudicating Authority.

**(iv) Priority to Dissenting Financial Creditors:** Payment of monies inter-se financial creditors shall be made in priority to dissenting financial creditors, before any disbursement of funds to assenting financial creditors.

**(v) Right of Financial Creditors to Proceed against Personal Guarantors Preserved:** The creditors are free to proceed against the corporate guarantors and personal guarantors to the Corporate Debtor, as they stood prior to the approval of

the resolution plan. Such guarantors shall not have any right of subrogation or any right to seek repayment from the Corporate Debtor or the Resolution Applicant. The Corporate Debtor or Resolution Applicant shall not be liable in any manner whatsoever, for any corporate guarantees given by the Corporate Debtor prior to the approval of the Resolution Plan. All Corporate Guarantees given by the Corporate Debtor shall stand extinguished and waived upon the approval of the Resolution Plan.

#### G. REVISED FINANCIAL PROPOSAL:

19. The revised financial proposal of the Resolution Applicant was considered, discussed and thereafter put to vote. After considering the feasibility and viability of the revised financial proposal, the COC, on 01.02.2023, approved the revised financial proposal by a vote of 97.23%. Accordingly, the revised financial proposal is as follows:

NAME OF THE CREDITOR	AMOUNT ADMITTED	AMOUNT PROPOSED AS PER RESOLUTION PLAN	% PROPOSED AS PER THE PLAN
CIRP Costs	30,00,000	30,00,000	100.00
KarurVysya Bank Limited	14,64,05,486.74	1,34,53,999.00	9.19
Unsecured Financial Creditors	70,78,343	70,783.43	1.00
PF Dept dues	65,46,001	65,46,001	100
Other Govt Creditors	36,53,468	36,534.68	1

Operational Creditors (Employees)	1,13,500	1,135	1
Operational Creditors	3,98,61,549	3,98,615.49	1
Other Creditors	11,44,63,954	11,44,639.54	1
<b>Total</b>	<b>32,11,22,301.74</b>	<b>2,46,51,708.14</b>	

#### **H.SOURCE OF FUNDS**

20. As the Resolution Plan proposes the payment of monies to various stakeholders under this Plan, the payment will be made by the Resolution Applicant, through loans availed by the Resolution Applicant/ its group company/nominees by the issue of shares to the existing shareholder or the new shareholder and subsequently, from the future revenues of the Resolution Applicant Proof in relation to which is enclosed as **Annexure A**. The Business Plan of the Resolution Applicant for revival of the Corporate Debtor is enclosed as **Annexure A**.

#### **I. MONITORING COMMITTEE:**

21. As per clause 6 of the Resolution Plan, a Monitoring Committee shall be formed for supervising the implementation of the Resolution

Plan. The Monitoring Committee shall comprise of the following persons:

- (a) Resolution Professional (Mrs. Chitra Perinkulam Raghavan)
- (b) One Representative of the Financial Creditors and
- (c) One Representative of the Resolution Applicant.

**22. MONITORING COMMITTEE: FUNCTIONS, DUTIES AND RESPONSIBILITIES  
POST MONITORING PERIOD – ACTIONS FOR HANDING OVER:**

**(i) Acquisition of Control**

On the Closing Date, fresh equity share capital shall be issued to the Resolution Applicant and existing shares will be cancelled. The paid share capital of the Corporate Debtor is Rs. 3,00,00,000/- and the same shall be issued in the form of 30,00,000 shares of Rs. 10/- each, in the following manner, to the nominees of the Resolution Applicant, upon completion of payment terms, as set out in this Resolution Plan.

**(ii) Operation of the Company**

- a. On the Closing Date, the Resolution Applicant shall be in the Board of Directors in its capacity as the shareholder and the members of such Board of Directors shall not suffer any ineligibility under Section 29A of the Code.
- b. As of the Closing Date, all powers of attorney and / or other corporate authorizations or mandates issued by the Company to any person to enable such person to carry out various functions of the Company, to sign and execute various documents and / or represent the Company, and to operate the bank accounts of the Company shall stand revoked with immediate effect, and the re-constituted Board of Directors of the Company shall be entitled to authorize such persons as it



deems fit to carry out such functions of the Company, sign and execute various documents and / or represent the Company, and to operate the bank accounts of the Company.

- c. The Resolution Applicant shall identify members of the board of directors and the same shall be appointed in compliance with all Applicable Laws on the expiry of the Monitoring Period.
- d. The Resolution Applicant intends to retain the existing senior management personnel of the Corporate Debtor and will further appoint additional members as key managerial personnel to spearhead and strengthen the business and operations of the Company. Such new board of directors shall not have as its members any of the members who constituted the board of directors of the Corporate Debtor immediately prior to the Insolvency Commencement Date.
- e. The Resolution Applicant shall provide its expertise in operating and managing the day-to-day operations of the Corporate Debtor.

#### **J.IMPLEMENTATION SCHEDULE**

S NO.	ACTIVITY	TIMELINE (DAYS)
<b>Part I – Approval Process of the Proposed Plan</b>		
1	Approval of plan by Committee of Creditors	X
2	Application to NCLT for approval of plan	X+2
3	Approval of plan by NCLT	X+45 or such other later date when the Resolution Plan may be approved by the Hon'ble NCLT (hereinafter referred to as Y)

Part II – Implementation of Plan & Settlement of Creditors		
4	Handing over of the Corporate Debtor, including all its assets, licenses, permissions, grants, etc in favour of the Corporate Debtor.	Y + 7
5	Extinguishment of all liabilities of the Corporate Debtor, abatement of all legal proceedings, etc, i.e. coming into effect of all the terms of the Resolution Plan as enshrined in Clause 3.2 of this Resolution Plan	Y
6	Payment of CIRP costs	Y +15
7	Payment to operational creditors including government creditors (except PF dept)	Y+15
8	Payment of 1st tranche to secured financial creditors - Payment will be made along with Secured Financial creditors & PF department	Y+45

23. The Successful Resolution Applicant (SRA) has given a performance bank guarantee to the RP from Karur Vysya Bank for a sum of Rs. 20,00,000, by way of Demand Drafts dated 31.10.2022. The copy of the same has been filed as a memo vide **S.R.No.6120** dated **21.11.2022**.

**K. RESTRUCTURING OF CAPITAL:**

24. The existing shareholding shall stand extinguished vide resolution plan and fresh shares shall be issued in the name of

the Resolution Applicant. The relevant clause is placed at *Page No. 84* of the revised Resolution Plan.

**L. MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS**

25. From the averments made in the Application as well as in revised 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. 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 has been captured hereunder;

MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS	COMPLIANCE UNDER RESOLUTION PLAN
<b>S.25(2)(h)</b> - Resolution Applicant meets the criteria approved by the CoC regard to the Complexity and scale of Operations of business of the CD	Clause 7 & 9 of the Resolution Plan
<b>S. 30(1)</b> - 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 at clause 14 & Annexure F of the Resolution Plan wherein it was stated that he / she is eligible under Section 29A of IBC, 2016 to submit a Resolution Plan
<b>S. 30(2)(a)</b> - Payment of Insolvency and Resolution cost in the manner specified by the Board	Clause 3.3.2 of the Resolution Plan
<b>S. 30(2)(b)</b> - Payment of debts of	Clause 3.3.3 of the Resolution Plan

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	
<b>Reg. 38(1)</b> - Resolution Plan identifies specific source of funds that will be used to pay the (a) Insolvency Resolution Process cost? (b) Liquidation value due to Operational Creditors? (c) Liquidation value due to dissenting financial creditors	Clause 4 of the Resolution Plan
<b>Reg. 38(1A)</b> - 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	Clause 12 of the Resolution Plan
<b>Reg. 38(1B)</b> - 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.	—
<b>S. 30(2)(c)</b> - Management of the affairs of the Corporate Debtor after approval of the Resolution Plan	Clause 6 & 7 of the Resolution Plan
<b>S. 30(2)(d)</b> - Implementation and Supervision of the Resolution Plan  <b>and</b>  <b>Reg. 38(2)</b> - Resolution Plan shall provide: a) term of plan and its implementation schedule b) management and control of the business of the Corporate Debtor during its term; c) it has provisions for effective implementation d) it has provisions for approval required and the timeline for the same; and e) the Resolution applicant has the capability to implement the Resolution	Clause 3.2 & 8 of the Resolution Plan   Clause 4,6,7 & 8 of the Resolution Plan  Clause 4,6,7 & 8 of the Resolution Plan  Clause 8 of the Resolution Plan  Clause 8 of the Resolution Plan



Plan.	Annexure B of the Resolution Plan																																
<p><b>Reg. 38(3)</b> - 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 1.2 of the Resolution Plan</p> <p>Clause 9 of the Resolution Plan</p> <p>Clause 8 of the Resolution Plan</p> <p>Clause 8 of the Resolution Plan</p> <p>Annexure B of the Resolution Plan</p>																																
<p><b>S. 30(2)(e)</b> - Does not contravene any of the provisions of the law for the time being in force</p>	Clause 12 of the Resolution Plan																																
<p><b>S. 30(4)</b> - 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 12<sup>th</sup> meeting has approved the Resolution Plan in the following voting pattern;</p> <table><tr><th>S.No</th><th>Name of Creditor</th><th>Assent (%)</th><th>Dissent (%)</th></tr><tr><td>1.</td><td>KarurVysya Bank</td><td>95.39</td><td>-</td></tr><tr><td>2.</td><td>Tata Capital Financial Services Limited</td><td>1.84</td><td>-</td></tr><tr><td>3</td><td>Jayanthilal Jain</td><td></td><td>1.14</td></tr><tr><td>4</td><td>Kalpesh Jain</td><td></td><td>0.48</td></tr><tr><td>5</td><td>Seema Jain</td><td></td><td>0.57</td></tr><tr><td>6</td><td>Sharmila Jain</td><td></td><td>0.57</td></tr><tr><td></td><td>TOTAL</td><td>97.23%</td><td>2.76</td></tr></table>	S.No	Name of Creditor	Assent (%)	Dissent (%)	1.	KarurVysya Bank	95.39	-	2.	Tata Capital Financial Services Limited	1.84	-	3	Jayanthilal Jain		1.14	4	Kalpesh Jain		0.48	5	Seema Jain		0.57	6	Sharmila Jain		0.57		TOTAL	97.23%	2.76
S.No	Name of Creditor	Assent (%)	Dissent (%)																														
1.	KarurVysya Bank	95.39	-																														
2.	Tata Capital Financial Services Limited	1.84	-																														
3	Jayanthilal Jain		1.14																														
4	Kalpesh Jain		0.48																														
5	Seema Jain		0.57																														
6	Sharmila Jain		0.57																														
	TOTAL	97.23%	2.76																														

**M. ANALYSIS AND FINDINGS OF THIS TRIBUNAL**

26. The Applicant has filed revised Form – H vide S.R.No.4178 dated 03.10.2023 in accordance with the IBBI (Corporate Insolvency Resolution Process for Corporate Persons) Regulations, 2016 along with this Application and the same is placed at Page Nos. 1 to 8 of the Additional typeset. It can be seen from revised FORM-H that the Resolution plan that has come for approval before this adjudicating authority is much higher than the liquidation value. The fair value and liquidation value as per the revised Form-H filed is extracted hereunder:-

1.	FAIR VALUE	Rs. 110,00,000
2.	LIQUIDATION VALUE	Rs. 80,25,000

27. The present Resolution Plan submitted by the Resolution Applicant is initially for a value of **Rs.2,16,51,708.14/-**. After adding the CIRP costs of Rs. 30,00,000/- the Revised Plan Value is **Rs.2,46,51,708.14/-**.

28. It is seen from the revised Form – H, that the RP has not filed any avoidance transactions under Section 43, 45 and 50 and fraudulent trading / wrongful trading applications under Section 66 of IBC, 2016.

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

29. 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 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.”

29.1. 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).

29.2 The Hon'ble 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 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)*

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

"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

*S. Venkatesh*

*[Signature]*

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)*

29.4. 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 under;

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

*S. Venk*





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.

29.5. 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.

30. 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 97.23 % 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 approval by this Bench. On perusal of the documents on record, we are also satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

31. The Resolution Plan is hereby **Approved** by this Adjudicating Authority. The Resolution Plan shall form part of this Order. The





Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that the revival of the Debtor Company shall come into force with immediate effect. The Moratorium imposed under section 14 shall cease to have effect from the date of this Order.

**O. RELIEF / CONCESSIONS:**

32. The Resolution Applicant in Para 17 of the Resolution Plan has sought for a total of 11 Reliefs and concessions from this Adjudicating Authority so as to implement the Resolution Plan. These are ordered as follows;

SL. No.	RELIEF / CONCESSIONS SOUGHT FOR	ORDERS THEREON
1	All Governmental Authorities including FEMA, FERA, RBI, AML, ROC, Income Tax and other statutory authorities shall waive the non-compliances of the Corporate Debtor. The relevant governmental authorities shall also not initiate any investigations, actions or proceedings in relation to any noncompliance with applicable law by the corporate debtor during the period prior to the approval date. Neither shall be resolution applicant, nor the corporate debtor, nor their respective directors, officers and employees appointed on and as of the approval date be liable for any violations, liabilities, penalties or fines with respect to or pursuant to the corporate debtor not having in place the requisite licenses and approvals required to undertake its business as per applicable law, or any non-compliances of applicable law by the corporate debtor. Further, wherever necessary, the relevant governmental authorities will provide a reasonable period of time after the approval date, for the resolution applicant to assess the status of any non-compliances under the applicable law and to procure that the company regularizes such non compliances under the	<b>Granted in terms of Section 32A of IBC, 2016</b>

	applicable law existing prior to the approval date.	
2	Certain Business permits (including but not limited to permission for supply of water, electricity, operation of lifts) of the corporate debtor which would be required for the corporate debtor to operate as a going concern have lapsed, expired, suspended, cancelled, revoked or terminated or the corporate debtor has non compliances in relation thereto. Accordingly, all governmental authorities to provide reasonable time period after the Approval Date to the Corporate Debtor/ Resolution Applicant to renew the business permits, licenses, sanctions and approvals and to ensure that the corporate debtor is compliant with the terms of such business permits and applicable law without initiating any investigations, penalty, actions or proceedings in relation to such non compliances;	<b>This is for the appropriate authorities to consider, keeping in view of the clean slate principle envisaged under IBC, 2016.</b>
3	The Central Board of Direct Taxes to consider the corporate debtor as a closely held company for the purposes of section 79 read with section 2 (18) of the Income Tax Act, 1961 and the change in shareholding of the corporate debtor pursuant to the plan to not lead to lapse of brought forward losses of the corporate debtor.	<b>This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016</b>
4	The Corporate Debtor, Resolution Applicant and its nominees shall not be liable for any taxes on account of the allotment of shares in their favour under the Resolution Plan, more particularly on the basis of any "deemed profit" having been made by the Resolution Applicant under the tenets of section 56 of the Income Tax Act, 1961.	<b>This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016</b>
5	Under section 115JB of the Income Tax Act, 1961, assessee company for which a rehabilitation scheme was approved or reference was made under the provisions of the erstwhile SICA was not subject to minimum alternate tax until the networth becomes positive. Similar benefit to be extended to a resolution plan approved in accordance with the code and CIRP regulations since the code supersedes all other applicable law and deals with the same subject matter as the erstwhile SICA. In light of this, the Central Board of direct Taxes to not subject income or gain or profits, if any, arising as a result of giving effect to the plan to tax including minimum alternate tax in the hands of Corporate debtor;	<b>This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016</b>
6	All Governmental authorities to grant any relief, concession or dispensation as may be required for implementation of the transactions contemplated under the plan in accordance with its terms and conditions;	<b>This is for the appropriate authorities to consider, keeping in view of the clean slate principle envisaged under IBC, 2016.</b>
7	All Assets(including properties, whether freehold, leasehold or license basis) of the Corporate Debtor to be	<b>Granted in terms of the</b>



	vested in the restructured corporate debtor free and clear all encumbrances	<b>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</b>
8	The Resolution Applicant shall be allowed to terminate/ renegotiate material contracts including but not limited to agency agreements entered by the corporate debtor before the insolvency commencement date without any penalty or interest at its own discretion.	<b>Granted, subject to the provisions of Contract Act, 1872 and other applicable laws</b>
9	The CBDT shall grant exemption/waiver from: (a) treating any transaction contemplated in this plan as being void or non compliant with any provisions of the Income-tax Act, 1961; and (b) all Tax Liabilities (including interest and penalty) and tax proceedings arising in respect of periods up to the Approval Date, including such liabilities/proceedings for periods up to the Approval Date in respect of on-going or potential income tax litigations at all levels.	<b>This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016</b>
10	All designated authorised dealer category I Banks/RBI to approve or dispense such actions as may be required for actions contemplated under the plan in accordance with its terms and conditions.	<b>This is for the appropriate authorities to consider</b>
11	All creditors of the corporate debtor to withdraw all legal proceedings commenced against the corporate debtor in relation to claims, including without limitation all criminal proceedings, proceedings under section 138 of the Negotiable Instruments Act, 1881 and proceedings under SARFAESI and RDDBFI, within 60 (sixty) days of the approval date and undertake to not take any action which precipitates the proceedings against the corporate debtor.	<b>Granted, subject to the provisions of IBC, 2016 and other applicable laws</b>

33. 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.

34. In case of non-compliance with this order or withdrawal of the Resolution Plan by the Successful Resolution Applicant, the CoC shall forfeit the Performance Security furnished by the Resolution Applicant in the form of Performance Bank Guarantees.
35. 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 also return to the Resolution Applicant or New Promoters. The Resolution Professional is further directed to hand over all records, premises/factories/documents to the Resolution Applicant to finalize the further line of action required for starting the operation of the Corporate Debtor under the control of the Resolution Applicant.
36. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
37. Liberty is hereby granted for moving any Application if required in connection with the implementation of this Resolution Plan.
38. A copy of this Order is to be submitted to the Office of the Registrar of Companies, Chennai.



39. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.
40. IA(IBC)/1172/CHE/2022 shall stand **disposed of** accordingly.
41. 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. File be consigned to the record.

- Sd -

VENKATARAMAN SUBRAMANIAM  
MEMBER (TECHNICAL)

- Sd -

SANJIV JAIN  
MEMBER (JUDICIAL)

*Sriram Ananth.V*