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

IA(IBC)/2253/(CHE)/2023

In

CP(IB)/316(CHE)/2021

(filed under Section 31 of the Insolvency & Bankruptcy Code, 2016 read with Regulation 39(4) of Insolvency & Bankruptcy Board of India Regulations, 2016)

*(In the matter of **Mallur Siddeswara Spinning Private Limited**)*

SHRI. P. ESWARAMOORTHY
Resolution Professional of Mallur Siddeswara Spinning Mills Private Limited
No. 44 & 44/1, 5th Street, Ramalingajothi Nagar,
Near Corporation Office, Nanjundapuram Road,
Ramanathapuram,
Coimbatore – 641 045

... Applicant/Resolution Professional

In the matter of

M/S. YARN UDYOG

... Petitioner/Operational Creditor

-Versus-

M/S. MALLUR SIDDESWARA SPINNING PRIVATE LIMITED

... Respondent/Corporate Debtor

*Order Pronounced on 22nd **December 2023***

CORAM

SHRI JYOTI KUMAR TRIPATI, MEMBER (J)
SHRI RAVICHANDRAN RAMASAMY, MEMBER (T)

Appearances:

For Applicant : Mr. B. Dhanaraj, Advocate

ORDER

1. IA(IBC)/2253/(CHE)/2023 is an application moved on 22.11.2023 by the Resolution Professional of the Corporate Debtor Viz., M/s. Mallur Siddeswara Spinning Private Limited under Section 31 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as ("**the**

Code")) read with Regulation 39(4) of the Insolvency & Bankruptcy Board of India Regulations, 2016 seeking reliefs as follows:

a) *Approve the Resolution Plan submitted by the Resolution Applicant namely M/s. H.M. Textiles Private Limited, as approved by the Committee of Creditors with 100% voting share during its 09th Committee of Creditors Meeting held on 31.10.2023*

b) *Pass such further or other orders as may be deemed fit and proper in the facts and circumstances of the case and thus render justice.*

2. *ABOUT THE CORPORATE DEBTOR*

The Corporate Debtor has been engaged in the business of the business of textiles spinning mills. The Corporate Debtor has around 42 years of experience in the field of textile spinning. The executive summary of the Corporate Debtor is as hereunder,

Name of the Corporate Debtor	*Mallur Siddeswara Spinning Mills Private Limited*
CIN	*U17121TZ2009PTC015279*
Date of Incorporation	*17.06.2009*

3. *CORPORATE INSOLVENCY RESOLUTION PROCESS OF MALLUR SIDDESWARA SPINNING MILLS PRIVATE LIMITED*

The Corporate Insolvency Resolution Process in respect of the Corporate Debtor viz., Mallur Siddeswara Spinning Mills Private Limited was initiated by this Adjudicating Authority vide its order dated 31.03.2023 based on an application moved by M/s. Yarn Udyog, in the capacity of an Operational Creditor under Section 9 of the code in CP(IB)/316/(CHE)/2021, and the applicant herein Mr. P. Eswaramoorthy was appointed as the 'Interim Resolution Professional'. The dates and events during the Corporate Insolvency Resolution Process period are tabulated as hereunder,

S.No.	Date	Events
1.	05.04.2023	Public Announcement regarding initiation of CIRP in "Business Standard" (English), "Daily Thanthi" (Tamil) with last date of submission of claim as 18.04.2023.
2.	26.04.2023	The Committee of Creditors was constituted by the IRP based on the claims received.
3.	02.05.2023	*1st CoC Meeting* - IRP Mr. P. Eswaramoorthy was confirmed as the RP by the CoC.
4.	15.06.2023	*2nd CoC Meeting* – Deliberations regarding Information Memorandum, draft Expression of Interest Request for Resolution Plan and eligibility criteria for Prospective Resolution Applicants were carried out. Information on appointment of Registered Valuers were made.
5.	16.06.2023	Form G (Expression of Interest (EoI)) was published in English Daily 'Business Standard' and Tamil Daily 'Daily Thanthi' with last date for submission of EoI as 09.08.2023.
6.	07.07.2023	*3rd CoC Meeting* – Appointment of Transactional Auditor was discussed to conduct audit on PUFE Transactions under the code. Discussion on the Provisional and Final List of Prospective Applicants were made.
7.	02.08.2023	Company Appeal (AT) (CH) (INS) No. 187 of 2023, an appeal filed by one of the suspended director of the Corporate Debtor against the CIRP order dated 31.03.2023 was dismissed by Hon'ble NCLAT.
8.	10.08.2023	An Application in IA(IBC)/1555(CHE)/2023 under Section 19(2) of the code was filed by the applicant herein against the suspended director seeking relevant information.

9.	11.08.2023	*4th CoC Meeting* – Discussions on the reports received form the appointed Registered Valuers were made.
10.	25.08.2023	*5th CoC Meeting*- Discussions on revised resolution plans were made.
11.	07.09.2023	*6th CoC Meeting*- The Committee of Creditors granted time to the two prospective resolution applicants to submit improved resolution plan.
12.	12.09.2023	*7th CoC Meeting* – Discussion on the revised resolution plans were carried out.
13.	22.09.2023	*8th CoC Meeting* – Adoption of Swiss Challenge Method for securing better resolution plan value was put before CoC for its approval. The same was approved.
14.	27.09.2023	End of 180 days of Corporate Insolvency Resolution Process Period.
15.	03.10.2023	An order extending a period of 90 days of CIRP period was passed by this Adjudicating Authority in IA/(IBC)/1715/(CHE)/2023.
16.	31.10.2023	*9th CoC Meeting* – Revised Resolution Plan submitted by M/s. H.M. Textiles P. Ltd., was fixed as base bid. After due voting the plan submitted by M/s. H.M. Textiles P. Ltd., was approved by the CoC.
17.	01.11.2023	Letter of Intent was issued to the Successful Resolution Applicant
18.	10.11.2023	*10th CoC Meeting* – The CoC resolved to file the Resolution Plan submitted by the SRA for approval before this Adjudicating Authority.

4. DELIBERATION OF THE COC ON THE FEASIBILITY OF THE PLAN

During the 9th CoC Meeting held on 31.10.2023 deliberations were made by the members of the CoC on the Resolution Plan submitted by the SRA and decision was made to vote the same. Accordingly, the Resolution Plan was approved unanimously during the voting. The voting sheet showing the voting result is as hereunder,

Voting sheet was circulated to the members. Voting details are as follows;

Sl No	Name of the Member	Vote in favour	Vote Against	% of votes
1	Karnataka Bank Ltd	Yes	-	64.35
2	South Indian Bank Ltd	Yes	-	35.65
				100

5. DETAILS OF THE SUCCESSFUL RESOLUTION APPLICANT

NAME	CIN	CATEGORY	ELIGIBILITY OF RA
M/s. H.M. Textiles Private Limited	U17121TZ2009PTC015279	Private Limited Company	Eligible – An Affidavit & Declaration to that effect is submitted.

It is submitted that the SRA has proven footprints for about 25 years in the said field in around Bhiwandi, Malegaon, Surat, Delhi, Ludhiana, Kolhapur and Tamil Nadu and thus has sufficient years of experience to continue the business of the Corporate Debtor.

6. SOURCE OF FUND

- On a perusal of page 177 of the application filed, it is seen that the net worth of the Successful Resolution Applicant as per the Audited Balance Sheet as on 31.03.2022 is Rs. 93.35 Crore.

➢ The SRA has also furnished an unconditional and irrevocable bank guarantee for 50% of the plan value. Accordingly, the following payments were made in the Corporate Debtor's bank account. The schedule of payments made are as follows,

Sl No.	*Date of Payment*	*Amount (in Rs.)*
1	02.11.2023	2,50,60,000.00
2	03.11.2023	2,50,60,000.00
3	04.11.2023	2,50,60,000.00
4	06.11.2023	2,50,60,000.00
5	07.11.2023	2,50,60,000.00
	Total	***12,53,00,000.00***

➢ On perusal of clause 7.2 of the Resolution Plan submitted it is seen that the source of payment to meet the obligation under the Resolution plan along with schedule for such payment is as tabulated, the same is as follows,

Sl No.	*Claims*	*Sources*	*Schedule of Payment*
1.	CIRP Cost	Cash Reserve of the Promoters of the Resolution Applicant	Within 30 days
2.	Secured Financial Creditors	Term Loan obtained from financial institution and cash reserve of the promoters of the Resolution Applicant.	Within 30 days
	Karnataka Bank Limited		
	The South Indian Bank Limited		
3.	Unsecured Financial Creditors	Cash Reserve of the Promoters of the Resolution Applicant and by way of Unsecured loans, if required.	Within 30 days

4.	Operational Creditors Workmen Government Dues Other Creditors (other than workmen and Employees and Government Due)	Cash Reserve of the Promoters of the Resolution Applicant and by way of Unsecured loans, if required.	Within 30 days
5.	Repairs and Maintenance	Will be brought by Promoters of Resolution Applicant by way of Unsecured Loans.	Within 90 days
6.	Contingency	Will be brought by Promoters of Resolution Applicant by way of Unsecured Loans.	As and when requirement arises.

**Note: In case of any delay beyond the period of 30 days specified in the above schedule of payment, the Resolution Applicant shall be bound to pay a simple interest on the amount payable as per this Resolution Plan for the number of days of delay at the rate of 12% per annum.*

7. *SALIENT FEATURES OF THE RESOLUTION PLAN*

- The Resolution Applicant herein is well established and an experienced team with over 25 years in the same field as the Corporate Debtor and record of turn-around of business of insolvent Company.
- The Resolution Applicant satisfies the financial strength to implement the Resolution Plan envisaged in this Plan.
- The Resolution Plan provides for the shortest time period for its pay-out obligations
- The Resolution Plan provides for a recovery of more than 59% to the Secured Financial Creditors.
- The Resolution Plan meets the mandatory requirements of the code and balances the interests of all its stakeholders.

➢ The Resolution Applicant has vide this Resolution Plan ensured complete resolution of the Corporate Debtor.

8. ***PAY-OUT TO STAKEHOLDERS AS PROPOSED IN THE PLAN***

The SRA has proposed to pay the sum as tabulated against the admitted amount by virtue of the Plan Proposed, the table is as follows,

Sl No.	*Creditors or Class of Creditors*	*Amount admitted in CIRP*	*Amount Proposed under the Resolution Plan*	*% of realization on amount admitted*
1.	**CIRP Cost**	**30,00,000**	**30,00,000**	**100%**
2.	Secured Financial Creditors			
	Karnataka Bank Limited	15,79,18,178.56	13,58,09,634.00	86%
	The South Indian Bank Limited	8,75,04,905.60	7,52,54,219.00	86%
	Total	**24,54,23,084.16**	**21,10,63,853**	**86%**
3.	Unsecured Financial Creditors	19,91,377.00	2,00,000	10.04%
4.	Related Party Financial Creditors	66,19,875.00	---	---
	Total	**86,11,252.00**	**2,00,000.00**	**10.04%**
5.	Operational Creditors			
	Operational Creditors-Workmen & Employees (Admitted Claims)	34,58,044.00	34,58,044.00	100%
	Operational Creditors-Workmen & Employees (Claims under verification)	1,15,97,591.00	1,15,97,591.00	100%
	Total	**1,50,55,635.00**	**1,50,55,635.00**	**100%**

	Operational Creditors – State GST Dues	31,68,095.00	27,24,562.00	86%
	Other Governmental dues	1,39,78,342.00	19,56,968.00	14%
	Total	**1,71,46,437.00**	**46,81,530**	**27.30%**
6.	Operational Creditors – other than workmen, employees & government	10,75,13,666.00	65,98,983.00	06.13%
7.	Contingencies on Future Liabilities	---	25,00,000	---
8.	Repairs & maintenances	---	75,00,000	---
9.	Equity Shareholders	Nil	Nil	---

9. *IMPLEMENTATION & MONITORING COMMITTEE (IMC)*

- Implementation & Monitoring Committee shall be constituted to monitor the implementation of the Plan.

  The members shall comprise -

  1. *Director of the Resolution Applicant*
  2. *A Representative nominated by the Secured Financial Creditors*
  3. *The Resolution Professional*

- The IMC shall continue till all payments under the Resolution plan are made.
- The Implementation and Monitoring Committee shall be constituted immediately on the approval of the proposed resolution plan by this Adjudicating Authority.

10. *MANAGEMENT OF THE CORPORATE DEBTOR*

- *Board of Directors and Management team:*

The board of directors of the Corporate Debtor on approval of the proposed Resolution Plan as mentioned in clause 16 of the Resolution Plan is as follows,

Sl No.	*Name of the Proposed Directors*
1	Mr. Manohar Jain Lal
2	Mr. Kishore Sethia Manoharlal

➢ *Equity Restructuring of the Corporate Debtor:*

On perusal of the Resolution plan it is seen that all the existing shares of the Corporate Debtor shall stand cancelled and fresh equity shares will be issued. The existing shareholders are not entitled to any payment and all their rights shall stand extinguished as on date of Approval of the Resolution plan. It is seen that 12,00,000 fresh equity shares at a face value of Rs. 100/- each of the Corporate Debtor shall be issued to the Resolution Applicant.

11. *MANDATORY COMPLIANCE UNDER IBC & REGULATIONS*

From the averments made in the application as well as on perusal of 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 under the IBC and the Compliance made under the Resolution Plan is as hereunder,

<table>
<tr><th>MANDATORY COMPLIANCE UNDER IBC, 2016</th><th>COMPLIANCE UNDER RESOLUTION PLAN</th></tr>
<tr><td><u>S. 30(1)</u> - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016</td><td>Resolution Applicant filed an Undertaking at page 226 of the application</td></tr>
<tr><td><u>S.30(2)(a)</u>- Payment of Insolvency and Resolution cost in the manner specified by the Board</td><td>Clause 10.1 of the Resolution Plan provides for the payment of CIRP costs.</td></tr>
<tr><td><u>S.30(2)(b)</u> -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.</td><td>Clause 10.5 of the Resolution Plan provides for the discharge of Operational Creditor claims.</td></tr>
<tr><td><u>S. 30(2)(c)</u>– Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.</td><td>Clause 11 of the Resolution Plan provides for Management and control of the operations of the Corporate Debtor.</td></tr>
<tr><td><u>S.30(2)(d)</u>– Implementation and Supervision of the Resolution Plan.</td><td>Clause 11.2.9 of the Plan at page 194 of the Application.</td></tr>
<tr><td><u>S. 30(2)(e)</u>– The plan does not contravene any of the provisions of the law for the time being in force.</td><td>-</td></tr>
<tr><td><u>S.30(2)(f)</u>– Conforms to such other requirements as may be specified.</td><td>-</td></tr>
<tr><td><u>S.30(4)</u> - Committee of Creditors approve the Resolution Plan by not less than 66% of the voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by the Board</td><td>The CoC, in its 09th meeting, has unanimously approved the Resolution Plan voting is given below;
<table>
<tr><th>Sl No</th><th>Name of the Member</th><th>Vote In favour</th><th>Vote Against</th><th>% of votes</th></tr>
<tr><td>1</td><td>Karnataka Bank Ltd</td><td>Yes</td><td>-</td><td>64.35</td></tr>
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MANDATORY CONTENTS OF THE RESOLUTION PLAN IN TERMS OF REGULATION 38 OF CIRP REGULATIONS.

	MANDATORY COMPLIANCE UNDER CIRP REGULATION	COMPLIANCE UNDER RESOLUTION PLAN
38(1)	The amount due to the Operational Creditor under Resolution Plan shall be given priority in payment over Financial Creditor.	Clause 3.7 & 5.2.2 of the Plan
38(1A)	A Resolution Plan shall include a statements as to how it has dealt with the interest of all stakeholders, including Financial Creditors and Operational Creditors of the Corporate Debtor.	Clause 14 of the Plan
38(1B)	A Resolution Plan shall include a statement giving details if the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.	Clause 11.2.11 of the Plan
38(2)	a) term of the plan and its implementation schedule	Clause 11 of the Plan
	b) management and control of the business of the Corporate Debtor during its term;	Clause 11.2.9 of the Plan
	c) adequate means for supervising its implementation	Clause 11.2.9 of the Plan
38(3)	a) it address the cause of default;	Clause 6 of the Plan
	b) it is feasible and viable	Clause 8 of the Plan
	c) it has provisions for effective implementation	Clause 11.2 of the Plan
	d) it has provisions for approval required and the timeline for the same; and	Clause 13 of the Plan
	e) the resolution applicant has the capability to implement the Resolution Plan.	Clause 11 of the Plan

12. JUDICIAL PRONOUNCEMENTS OF THE HON'BLE SUPREME COURT IN RELATION TO APPROVAL OF A RESOLUTION PLAN

12.1 In so far as the approval of the Resolution Plan is concerned, this Authority is not sitting in 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."*

12.2 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 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).*

12.3 Further 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. <u>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</u>*

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)

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

12.5 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 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 maximization 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 maximization 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 maximization 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 exposited by this Court.

12.6 The Hon'ble Supreme Court in its recent decision in **Paschimanchal Vidyut Vitran Nigam Ltd. Verus Raman Ispat Private Limited & Ors.** *In Civil Appeal no. 7976 of 2029* dated 17.07.2023 has held as under;

49. Rainbow Papers (Supra) did not notice the 'waterfall mechanism' under Section 53 – the provision had not been adverted to or extracted in the Judgement. Furthermore, Rainbow Papers (Supra) was in the context of a resolution process and not during liquidation. Section 53, as held earlier, enacts the waterfall mechanism providing for the hierarchy or priority of claims of various classes of creditors. The careful design of Section 53, locates amounts payable to secured creditors and workmen at the second place, after the costs & expenses of the liquidator payable during the liquidation proceedings. However, the dues payable to the government are placed much below those of secured creditors and even unsecured creditors. This design was either not brought to the notice of the Court in Rainbow Papers (supra) or was missed altogether. In any event, the Judgment has not taken note of the provisions of the IBC which treat the dues payable to secured creditors at a higher footing than dues payable to central or state Government.

(emphasis supplied)

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

13. RELIEF & CONCESSIONS:

The Resolution Applicant has sought for various waivers and Concessions in Clause 9 of the Resolution Plan, which are as follows,

SL. NO.	RELIEF / CONCESSIONS SOUGHT FOR	ORDERS THEREON
1.	The TANGEDCO / EB of the Government of Tamil Nadu shall, upon submission of the Order of the Hon'ble Adjudicating Authority approving the Resolution Plan, provide / restore HT Connection / Windmills connection to the unit for operating its spinning mill to its full capacity, upon remittance of such deposits and charges as may be necessary and upon payment of such costs for transmission lines / transformers / meters so as to be able to commence and restart the operations immediately.	**Appropriate authorities to consider keeping in view the object of IBC, 2016.**
2.	The District Environmental Engineer, Tamil Nadu Pollution Control Board shall upon submission of the Order of the Hon'ble Adjudicating Authority approving the Resolution Plan, provide consent to operate immediately after the submission of the Order of the Hon'ble Adjudicating Authority.	**Appropriate authorities to consider keeping in view the object of IBC, 2016.**
3.	In relation to operating the unit, the Chief Inspector of factories shall, upon submission of the Order of the Hon'ble Adjudicating Authority approving the Resolution Plan, subject such inspection and conditions, as the said Authority may impose, shall grant license to operate the unit.	**Appropriate authorities to consider keeping in view the object of IBC, 2016.**

Reliefs sought as per Companies Act, 2013:

SL. NO.	RELIEF / CONCESSIONS SOUGHT FOR	ORDERS THEREON
1.	The Approval granted by the Hon'ble Adjudicating Authority under Section 31 of the Code shall be deemed to be ipso facto the approval accorded by the Hon'ble National Company Law Tribunal under Section 230 to 232 of the Companies Act, 2013 read with the Regulation 37 of the CIRP Regulations, 2016 and upon filing a Certified Copy of the Order approving the Resolution Plan the Corporate Debtor shall stand amalgamated with the Resolution Applicant, without any further act, deed or thing.	**Granted, subject to the provisions of IBC, 2016 and other Applicable laws**
2.	Order approving Resolution Plan under Section 31 of the Code, shall be treated as an Order passed under Section 230-232 of the Companies Act, 2013. Effective Date shall be the date on which a certified copy of the Order aforesaid is filed with the Registrar of Companies ('ROC'), in terms of sub-section (5) of Section 232 of the Companies Act, 2013 which in any case shall be filed with the ROC for registration within 30 days of the receipt of the certified copy of the Order. Upon such registration by ROC, the amalgamation shall come into force with effect from the Appointed Date.	**Appropriate authorities to consider keeping in view the object of IBC, 2016 & Companies Act, 2013.**
3.	All relevant Government Authorities to grant relief from payment of stamp duty and applicable fees (including fees payable to the jurisdictional Registrar of Companies) for the successful implementation of the Resolution Plan (including for the Capital Reduction, issuance of shares, increase in authorized share capital).The concerned state revenue/ stamp authorities are requested to	**Appropriate authorities to consider keeping in view the object of IBC, 2016.**

	waive penalties for non-registration and inadequate/ non-stamping of the documents executed for the implementation of this Resolution Plan.	
4.	As the Resolution Applicant is required to take over the Corporate Debtor's business on a 'going concern' basis by way of merger, all consents, licenses, approvals, clearances, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to, shall continue to remain valid, unless rescinded or revoked by the Resolution Applicant, notwithstanding any provision to the contrary in their terms, and provided that in case of consents, licenses, approvals, rights, entitlements, benefits and privileges that have expired or lapsed, notwithstanding that they may have already lapsed or expired due to any breach, non-compliance or efflux of time, be deemed to continue without disruption for the benefit of the Corporate Debtor and shall obtain such necessary approvals for the purposes of regularizing compliances, as required within a period of One year or within such period as provided for in respective laws, whichever is later as stated under sub-section (4) of Section 30.	**Not Granted**
5.	In the interest of keeping the Corporate Debtor a going concern, all contracts and agreements shall continue to remain valid and notwithstanding any lapse, non-compliance, breach or expiry of underlying terms of such contracts and agreements, these contracts and agreements shall be deemed to	**Not Granted**

	continue without disruption for the benefit of the Corporate Debtor for their original tenure, unless rescinded or revoked by the Resolution Applicant.	
6.	Neither the Resolution Applicant, nor any of its affiliates or connected persons, will be disqualified from or considered ineligible under the Code for proposing and / or implementing a plan in relation to the insolvency resolution of any person (other than the Corporate Debtor), merely on account of the implementation of this Resolution Plan by the Resolution Applicant.	**Not Granted**
7.	The jurisdictional Registrar of Companies to take on record and implement the Resolution Plan, upon approval of the Resolution Plan by NCLT, without any further compliances.	**Granted, subject to the provisions of IBC, 2016 and other Applicable laws**
8.	The cancellation of a portion of the existing equity share capital, increase in authorized share capital of the Corporate Debtor, appointment of statutory auditor and issuance or allotment of Equity Shares shall not require any corporate action by the Corporate Debtor or any other approvals by the Corporate Debtor. Pursuant to the approval of the Resolution Plan by the NCLT, the Corporate Debtor may file the order of the Adjudicating Authority to inform the Registrar of Companies regarding such cancellation of existing equity share capital, increase in authorized share capital and amendment to the memorandum of association.	**Granted, subject to the provisions of IBC, 2016 and other Applicable laws**
9.	That the fees payable to the Registrar of Companies in respect of the increase of authorized share capital and amendment of memorandum of association and articles of association	

	of the Corporate Debtor for allotment of fresh shares to the Resolution Applicant, be waived and the Registrar of Companies be directed to approve the relevant forms under the Companies Act, 2013 and rules thereto without payment of fees in respect thereof.	**Granted, subject to the provisions of IBC, 2016 and other Applicable laws**
10.	The Ministry of Corporate Affairs of the Government of India (MCA), the Registrar of Companies (ROC), and the Collector of Stamps, Revenue Department, Government of Tamil Nadu to waive all past non-compliances of the corporate debtor in respect of the requirements under the Companies Act, 2013 and the rules and regulations there under.	**So far as MCA is concerned, the relief sought is granted subject to the provisions of IBC, 2016 and other Applicable laws and the rest is for the Appropriate authorities to consider keeping in view the object of IBC, 2016.**
11.	Given that the Resolution Applicant will acquire control of the affairs of the Corporate Debtor on the Closing Date, all Governmental Authorities (as they are Operational Creditors) to waive any penalties, or any other liabilities and dues that may arise from any defaults or non-compliances by the Corporate Debtor prior to the Closing Date of Applicable Laws, including but not limited to the provisions of the Companies Act, 2013, Electricity Act 2003, Contract Labour (Regulation and Abolition) Act, 1970, all relevant and applicable Direct and Indirect tax laws, the relevant stamp acts of the different States of India, relevant environmental laws and any other government instrumentality in force as applicable.	**Appropriate authorities to consider keeping in view the object of IBC, 2016.**

12.	The vacation of office by the directors who comprised the suspended board of directors, or the appointment of new directors on the board of the Corporate Debtor (for the interim period and/or by the Closing Date, as the case may be) shall not require any corporate action by the Corporate Debtor or any other approvals and the Corporate Debtor may file the order of the NCLT to inform the Registrar of Companies regarding such vacation and appointment.	**Granted, subject to the provisions of IBC, 2016 and other Applicable laws**
13.	All benefits and incentives, including but not limited to, under all such incentive schemes, subsidy schemes and policies that the Corporate Debtor is entitled under, and all such benefits shall remain vested in the Corporate Debtor with effect from the Approval Date.	**Appropriate authorities to consider keeping in view the object of IBC, 2016.**
14.	All assets leased by any Person and which are integral to the operations of the Project, shall vest with the Corporate Debtor.	**Not Granted**
15.	All fines and penalties for any delay in submission of statutory returns to the authorities shall be completely waived and other compliances post approval of Resolution Plan provided under the Companies Act, 2013, the Income Tax Act 1961, or any other applicable Act shall be complied with, by the newly constituted Board of Director, as though the time limit for such compliances run from the Approval Date.	**Appropriate authorities to consider keeping in view the object of IBC, 2016.**
16.	Any tax liability that may arise on account of any write down of liability or the Capital Reduction shall be, without any further act, deed or thing, deemed to have been fully settled as NIL and shall stand permanently extinguished by virtue of the order of the NCLT approving this Resolution Plan and the Company or the	**Appropriate authorities to consider keeping in view the**

	Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.	**object of IBC, 2016.**
17.	For such further or other relief/s be granted and/or directions be given as the NCLT may deem fit and proper in the facts and circumstances of the case and in the interests of resolution of the insolvency of the Corporate Debtor.	**Not Granted**
18.	That the concerned Registrar of Companies be directed to associate the Directors Identification Numbers (DIN) of the Directors who would be taking charge collectively as Board of Directors of the Corporate Debtor pursuant to the approved Resolution Plan upon necessary filings being made in accordance with Applicable Law.	**Granted, subject to the provisions of IBC, 2016 and other Applicable laws**
19.	The Promoters / Suspended Directors of the Corporate Debtor have not furnished several records with respect to the assets of the Corporate Debtor such as the investments, vehicles, and windmills. While there are four wind turbine generators in the balance sheet of the Corporate Debtor, as per the Information Memorandum furnished by the Resolution Professional, only one appears to be identified since it is mortgaged with a Financial Creditor. In relation to the complete records of the investments, vehicles, windmills the Promoters / Suspended Directors are liable to furnish complete records such as land documents, commissioning certificate, energy wheeling agreement and insurance of windmill, RC books and insurance certificate of vehicles etc.	**The Resolution Applicant is at liberty to approach this Adjudicating Authority as and when required in this regard subject to the provisions of IBC, 2016.**
20.	In case before the Approval Date, they do not furnish records of any asset of the Corporate Debtor including but not limited to investments, vehicles, windmills, suitable orders if required, is required to be passed in this regard.	**The Resolution Applicant is at liberty to approach this**

		Adjudicating Authority as and when required in this regard subject to the provisions of IBC, 2016.
21.	The Resolution Applicant reserves right to apply to the Adjudicating Authority for necessary directions and orders to the Promoters or respective Regulatory Authorities, Central or State Government, Government Organs, Sub-Registrar Office, District Revenue Office, municipal and other local bodies for the purpose of collecting and maintaining complete records in relation to every activity, asset, approvals, clearances, consents and licenses, which are not found on the premises of the Corporate Debtor on the date of taking over physical possession and control of the Corporate Debtor.	**Granted, subject to the provisions of IBC, 2016 and other Applicable laws**
22.	In addition, the TANGEDCO / EB Department of Tamil Nadu may be directed to consider extending the tenure of Wheeling Arrangement, subject to such conditions they may be impose.	**Appropriate authorities to consider keeping in view the object of IBC, 2016.**
23.	In the event of any registration certificate or any other document proving title of the Corporate Debtor to the ownership of any assets or properties of the Corporate Debtor, the respective Authorities shall register the name of the Resolution Applicant after approval of the Resolution Plan by the Hon'ble Adjudicating Authority in terms of the scheme of amalgamation forming part and parcel of this Resolution Plan.	**Appropriate authorities to consider keeping in view the object of IBC, 2016.**
24.	Without prejudice to anything set out in this Resolution Plan, for any	

	breaches or non-compliances with the provisions of Applicable Law; or any litigations, investigations or disputes, arising as a result of an alleged breach of contract, Applicable Law or otherwise; which have not been settled, cured and are continuing, and which if not settled, cured or remedied may have a material impact on the business of the Corporate Debtor, the Resolution Applicant will investigate as to veracity of such allegations and if so required, take or cause to be taken remedial actions in this regard within a reasonable period of time, during which time the related litigations/ proceedings/investigations should be kept in abeyance and that no coercive action be taken against the Resolution Applicant.	**Not Granted**
25.	All Government Authorities to grant any relief, concession or dispensation as may be required for implementation of the transactions contemplated under the Resolution Plan in accordance with its terms and conditions.	**Appropriate authorities to consider keeping in view the object of IBC, 2016.**

14. The Applicant has filed Form -H in accordance with the IBBI (CIRP Regulations, 2016) along with this Application and the same is placed along with the application. Further, it is observed from Form-H that the amount proposed in the plan is much higher than the Liquidation Value of the Corporate Debtor. The fair value and the Liquidation Value as mentioned in Form-H is as hereunder,

1.	*Fair Value*	Rs. 28.10 Crore
2.	*Liquidation Value*	Rs. 22.28 Crore
3.	*Plan Value*	Rs. 25.06 Crore

It is seen from Form-H, that there are no PUFE Applications filed by the applicant.

15. It is seen that the resolution plan has been approved with 100% 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 made by the RP and the Resolution Applicant for making the plan effective after approval by this Authority. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Section 30 & 31 of the IBC and also in compliance with regulations 38 & 39 of the IBBI (CIRP) Regulations, 2016.

16. In the light of the aforesaid, it is hereby ordered that payment to the members of the Monitoring Committee shall be made by the Corporate Debtor on such terms and conditions agreed between the parties for the entire period of implementation as mentioned in this resolution plan.

17. In case of non-compliance/non-implementation/ failure during implementation of this order or withdrawal of the Resolution Plan by the Successful Resolution Applicant, the RP shall forfeit the EMD/Performance Guarantee or any further amount paid as per the terms of the resolution plan without any recourse to this Authority.

18. Subject to the observations made in this Order, 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.

19. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for its record and also return to the Resolution Applicant. 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.

20. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.

21. Liberty is granted for moving any Application if required in connection with the implementation of this Resolution Plan.

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

23. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.

24. **IA(IBC)/2253/CHE/2023** stands **disposed of** accordingly.

25. 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.

26. File be consigned to the record.

-Sd-

SHRI RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-Sd-

SHRI JYOTI KUMAR TRIPATI
MEMBER (JUDICIAL)