IN THE NATIONAL COMPANY LAW TRIBUNAL, SPECIAL BENCH CHENNAI

MA/1433/2019 in CP/941/IB/2018

(Application filed under Sec. 30(6) of the IBC, 2016)

*In the matter of **M/s. GVR Infra Projects Limited***

Vandana Garg
Resolution Professional of
M/s. GVR Infra Projects Limited
252, Veer Savarkar Marg,
Shivaji Park, Dadar,
Mumbai-400070

...... Applicant/RP

Present:

Counsel for RP	:	Shri. Aslam Ahmed, Advocate Ms. Isha J Kumar, Advocate Shri. Sumant Nayak, Advocate For M/s. Desai & Diwanji
Counsel for RA	:	Shri. Robin Singh Sirohi, Advocate
Counsel for COC	:	Ms. Akshaya, Advocate

MA/99/2020 in CP/941/IB/2018

(Application filed under section 60(5) of the IBC, 2016)

In the matter of ***M/s. GVR Infra Projects Limited***

IIFCL Mutual Fund
Through
IIFCL Asset Management Company Limited
5th Floor, Block 2, Plate A,
NBCC Towers East Kidwai Nagar
New Delhi-110023
Mumbai-400070

...... Applicant

Vs

Committee of Creditors
GVR Infra Projects Private
Through State Bank of India
2nd Floor, Office Complex Building,
LHO Campus
65, Saint Marks Road
Bengaluru-560001

---Respondent-1/COC

Consortium
UV Asset Reconstruction Company Limited
WL Structures Private Limited
704, 7th Floor, Deepali Building,
92 Nehgru Place
New Delhi-110019

---Respondent-2/Resolution Applicant

Vandana Garg
Resolution Professional of
M/s. GVR Infra Projects Limited
252, Veer Savarkar Marg,
Shivaji Park, Dadar,
Mumbai-400070

---Respondent-3/Resolution Professional

Present:

Counsel for Applicant	:	Ms. Deepika Murali, Advocate
Counsel for RP	:	Shri Aslam Ahmed, Advocate Ms. Isha J Kumar, Advocate Shri Sumant Nayak, Adovate For M/s. Desai &Diwanji
Counsel for RA	:	Shri. Robin Singh Sirohi, Advocate
Counsel for COC	:	Ms. Akshaya, Advocate

CORAM:

R. VARADHARAJAN, MEMBER (JUDICIAL)
S. VIJAYARAGHAVN, MEMBER (TECHNICAL)

COMMON ORDER

Per:R. VARADHARAJAN,MEMBER (JUDICIAL)

Order Pronounced on: 20.07.2020

The MA/1433/2019 is filed by the Resolution Professional of the Corporate Debtor viz., **Vandana Garg** under Section 30(6)of the Insolvency and Bankruptcy Code, 2016 (in short IBC, 2016) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)

Regulations, 2016 (in short, **"Regulation"**) seeking the approval of the Resolution Plan submitted by the successful Resolution Applicant viz., UV Asset Reconstruction Company Limited and WL Structures Private Limited.

2. The Learned Counsel for the Resolution Professional submitted that one M/s. Reliance Capital Limited, in the capacity as a Financial Creditor has filed an Application under Section 7 of IBC, 2016, against the Corporate Debtor viz. GVR Infra Projects Limited and this Authority vide order dated 15.10.2018 admitted the said Application and initiated Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor by appointing one Mr. Arumugam Arumugam as the Interim Resolution Professional (IRP).

3. The First Committee of Creditors (CoC) meeting, it is seen was held on 16.11.2018 wherein was it decided that the IRP was to be replaced by an RP and thereafter the COC through the lead bank i.e. State Bank of India had filed an application under section 22(3)(b) of IBC, 2016, and this Authority vide order dated 21.12.2018 appointed the Applicant as the Resolution Professional (RP) of the Corporate Debtor.

4. The Learned Counsel for the Resolution Professional submitted that the applicant had published Form G along with the invitation for Expression of Interest (in short "EOI") on 19.01.2019 and the last

date for its receipt was fixed as 08.02.2019 and also eligibility criteria *vis-a-vis* for EOI would be subject to evaluation on the Financial Capacity of the Resolution Applicant which are as follows:

☐ **Financial Capacity**

1. **<u>Category A – Private / Public Limited Company, LLP, Body Corpo-rate, Nonbanking financial company ("NBFC") whether incorporated in India or outside India</u>**

    - Minimum Tangible Net Worth (TNW) of INR 100 crores (as per Companies Act, 2013 or in case of NBFCs, applicable RBI regulations) at the end of the immediately preceding completed financial year or average of last 3 immediately preceding FYs.

2. **<u>Category B – Financial Institutions (FI) / Funds / Private Equity (PE) Investors / Any other applicant</u>**

    - Minimum Asset Under Management (AUM) of INR 200 crores at the end of the immediately preceding completed financial year or average of last 3 immediately preceding FYs.

3. **<u>Category C – Individual Investor / Consortium of individual Investors:</u>**

    - Minimum consolidated net worth of INR 100 crores at sole or at the consortium level.

        - Individual investor to include HUFs and family trusts.
        - Net Worth of consortium shall be calculated as weighted average of individual member's Net Worth (value of negative Net Worth members shall be considered as Nil) basis their proposed participation in the consortium

4. **<u>Category D – Consortiums</u>**

    - At least one of the members must hold at least 26% total equi-ty participation in the consortium who shall be designated as the lead member. All other members would need to have a minimum stake of 10% each in the consortium.

- All the members of the consortium shall be jointly and several-ly responsible for compliance with the terms of the invitation for submission of EoI, the request for resolution plan and the resolution plan submitted by the consortium.

- **<u>Consortium of Body Corporates / NBFCs :</u>** TNW of consortium shall be calculated as weighted average of individual member's TNW (value of negative TNW members shall be considered as Nil) basis their proposed equity participation in the consortium

Pursuant to issue of Expression of Interest (EoI), the Resolution Applicant submitted its Plan on 05.12.2019 and the Resolution Applicant falls under the **Category-A.**

5. The RP in relation to invitation for EOI had apprised in the 3rd COC meeting held on 06.02.2019 that three (3) EOIs had been received in response to the invitation published on 19.01.2019. However, as there was a possibility to receive few more EOIs, it is seen that the RP had suggested to extend the last date for submission of EOIs in relation to the CIRP and accordingly the last date was extended till 23.02.2019, to which suggestion, the CoC has also accorded its consent and accordingly the RP had published a corrigendum to Form-G dated 08.02.2019 in the Financial Express (Circulated in English).

6. Further, at the Fourth meeting of COC held on 05.03.2019, the COC was apprised that as on the cut-off date i.e. 23.02.2019, as many as Nine (9) EOIs had been received and a provisional list of prospective RAs was published same day. It is pertinent to note that

RPG Asset Management Pvt. Ltd (in short **"RPG"**) had submitted its EOI on 22.02.2019 and UV Asset Reconstruction Company Limited (in short **"UVARC"**) had submitted its EOI on 25.01.2019.

7. Thereafter, a total five (5) RAs has confirmed their participation in the process by submitting their confidentiality undertaking to access Virtual Data Room for the purpose of scrutinizing the documents of the Corporate Debtor and undertaking a due diligence.

8. It is submitted that the Resolution Professional was not able to complete the CIRP within the 180 days timeline as mandated under Regulation 40A of the IBBI (IRCP) Regulations, 2016, therefore, before the expiry of 180 days of CIRP, the Resolution Professional filed an MA/406/2019 seeking for exclusion of 35 days from the CIRP and along with extension of 90 days of CIRP and this Authority vide order 30.04.2019 has rejected the prayer of the RP for exclusion of 35 days, however extended the CIRP for a period of ninety (90) days and disposed of the Application.

9. Thereafter, the Applicant preferred an appeal against the aforementioned Order dated 30.04.2019 before the Hon'ble National Company Law Appellate Tribunal, which was numbered as *Company Appeal (AT) (Insolvency) No. 603 of 2019*, praying for the exclusion of thirty-five (35) days (being the time lost before the present RP

could be appointed) and a further eighteen (18) days (from the date of filing the application before the Tribunal till the date of its aforementioned order dated 30 April 2019) from the CIRP. The Hon'ble National Company Law Appellate Tribunal allowed the said appeal on 2 July 2019 and granted an exclusion of a total of fifty-three (53) days from the CIRP.

10. It is further submitted that the Applicant/RP did not have access to all relevant financial information of the Corporate Debtor, however, after furnishing the available information to the auditors, the RP obtained transaction audit report dated 22nd May, 2019 from one M K Aggarwal and Co. The said transaction audit report stated that no transactions had been carried out in relation to the Corporate Debtor as contemplated under Sections 43,45, 50 or 66 of the IBC, however, the Applicant filed MA/1084/2019 under Section 66(1) of the Code, 2016 seeking directions against Mr. K.Ganga Prasad, the erstwhile Managing Director of the Corporate Debtor and another application MA/1085/2019, seeking for condonation of delay of one hundred and forty-five (145) days in filing aforementioned MA/1084/2019. It is pertinent to note that MA/1085/2019 has been allowed by this Tribunal vide order dated on 04.11.2019; however MA/1084/2019 is pending adjudication.

11. In this regard, it is pertinent to mention that the Applicant also filed an application MA/598/2019 under Section 19 of the IBC, 2016, before this Tribunal, for directing a non-cooperating employee to comply with the instructions of the RP and to cooperate with her in collection of information and management of the Corporate Debtor; thisTribunal vide order dated 17th July, 2019 has disposed the said application by directing the employee to cooperate with the Applicant.

12. Pursuant to the Request for Resolution Plan (In short **'RFRP'**), two entities submitted their respective resolution plans, namely, (i) RPG Asset Management Private Limited (hereinafter referred to as **"RPG"**) having its registered office at 2, 1st Main road, Shashtri Nagar, Adyar, Chennai 600020 on 30 July 2019 and (ii) a consortium of UV Asset Reconstruction Company Limited, (hereinafter referred to as the **"Lead Member"**), a company incorporated under the provisions of Companies Act, 1956 and having its registered office at 704, 7thFloor, Deepali Building, 92 Nehru Place, New Delhi and WL Structures Private Limited, a company incorporated under the provisions of Companies Act, 2013 and having its registered office at No. 33, 3rd Floor, Rutland Towers, Shafee Mohammed Road, Chennai, Tamil Nadu 600006 on 19 July 2019 (hereinafter referred to as **"UVARC"**).

13. That upon opening all the received bids together on 31 July 2019 at the meeting of the CoC of the same date, it was found that the resolution plan submitted by RPG was far from being compliant both under the Code as well as the Request for Resolution Plan (RFRP), whereas on a preliminary review of UVARC's resolution plan, it appeared to comply with the Request for Resolution Plan **(RFRP)** as well as the Code. Such fact was communicated to RPG vide an email dated 31st July, 2019 itself and RPG was further advised to submit a revised resolution plan at the earliest. It is pertinent to note that RPG had been given multiple opportunities to submit its resolution plan before the final cut-off date of submission of plans on 30 July 2019, as well as for submitting a revised compliant plan even after 31 July 2019, however, it failed to do so. That in view of its failure to submit a revised resolution plan, even after being given multiple opportunities, the Applicant after discussion with the CoC, disqualified RPG as a prospective resolution applicant in its 12thCoC meeting dated 13.08.2019 and informed RPG of its disqualification vide an email dated 16.08.2019 and no response was received from RPG in relation to the same. However, it is averred that RPG had issued a frivolous legal notice dated 01.08.2019 to which the Applicant replied on 06.09.2019.

14. In view of the above, only one resolution applicant remained for the Corporate Debtor i.e. that of UVARC and was declared as the

successful resolution applicant (hereinafter referred to as the "successful RA/Resolution Applicant"). Pursuant to deliberation and negotiations between the successful RA, the Resolution Professional (the Applicant) and the CoC, after many revisions of the resolution plans, which was finally revised on 27.08.2019, submitted the same before the CoC for its consideration on 29.08.2019.

15. Thereafter, the Applicant filed MA/926/2019 before this Tribunal seeking extension of seven (7) days of the CIRP as available under amended Code (amendment dated 05.08.2019). This Tribunal, whilst dismissing the said application as infructuous vide order dated 29.08.2019, observed that the Applicant is at liberty to avail extension of CIRP as contemplated under the said amended provisions of the Code.

16. It is pertinent to mention that the CoC had considered and evaluated the aforementioned resolution plan submitted by the successful RA, however, despite the best efforts of the RP and CoC, the said plan could not be approved by the CoC as the CoC did not find the same as feasible and viable. That a majority of the CoC, on 09.09.2019, voted against the said resolution plan (88.16% against and 9.94% for) and consequently on 10.09.2019, the Applicant filed an application (numbered as SR/1077/2019) seeking an order for liquidation of the Corporate Debtor as a going concern as it was in

the best interest of the Corporate Debtor. This Tribunal heard the parties on 19.11.2019 and pursuant thereto, the said application was withdrawn by the Applicant on the said date.

17. It is submitted that the RP and the CoC have taken adequate care to ensure that fair and equal opportunities were given to all resolution applicants [in this case there were only two (2)] to submit their respective resolution plans for the Corporate Debtor. The two (2) resolution applicants were also requested to be available for discussions with the CoC at various occasions at the venue of the meeting of the CoC. However, despite the best efforts of the RP and CoC, the sole resolution applicanti.e. UVARC was only present.

18. Thereafter, the successful RA addressed an email to the Applicant as well to the members of the CoC stating that it further sought to revise the resolution plan dated 29.08.2019 and requested the Applicant and the CoC to consider the revised offer. However, as the said resolution for the approval of the Resolution Plan had already been voted negatively by the CoC, the RP did not proceed to place the revised offer of the successful RA before the CoC.

19. In view of the above, on 09.10.2019, the successful RA preferred an application MA/1178/2019 before this Tribunal praying for directions that the revised plan as annexed to the said application be considered by the Applicant as well as by the CoC. The successful

RA also argued that in the light of the amendment to the Code notified on 16.08.2019, the CIRP would expire on 15.11.2019.

20. The said application was listed before this Tribunal on 04.11.2019 wherein no orders were passed. However, this Tribunal observed that if the Applicant and the CoC deem fit they may proceed as per the Code. Accordingly, the successful RA submitted a resolution plan dated 06.11.2019 for the consideration by the CoC. Thereafter in the 16th CoC meeting held on 12.11.2019, the Resolution Professional placed the revised Resolution Plan before the CoC members for their approval.

21. It is significant to point out here that in the interim, the Applicant filed another application before this Tribunal, which was numbered as MA/1271/2019 seeking extension of fifteen (15) days of the CIRP as available under amended Code. This Tribunal on 19.11.2019 extended the CIRP by another twenty (20) days from 15.11.2019 and consequently, the CIRP of the Corporate Debtor was to expire on 05.12.2019.

22. Pursuant to the above, the Applicant as well as the CoC deliberated upon the Resolution Plan and having found it to be feasible and viable in accordance with Section 30(4) of the Code and

Regulation 39(4) of the CIRP Regulations, approved the same with 67.97% of the CoC voting in its favour on 27.11.2019.

23. It is submitted by the Applicant the Resolution Plan is compliant with the technical and commercial requirements of the RFRP and is also in compliance with the Code as well as the Regulations.

24. The Applicant in accordance with Section 30(6) of the Code read with Regulation 39(4) of the CIRP Regulations, has enclosed the compliance certificate in Form-H of the Schedule and the evidence of receipt of performance security required under sub-regulation (4A) of regulation 36B.

25. It is evident from Form – H that the Resolution Applicant has submitted his revised Resolution plan before the Committee of Creditors on 27.11.2019 and in the 16th CoC meeting the Committee of Creditors have approved the Resolution Plan with the following distribution of voting share;

S. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan
1	State Bank of India Chennai Bench	30.10	Assented
2	**Punjab National Bank**	**17.40**	**Dissented**
3	Bank of Baroda Erstwhile Vijaya Bank	11.12	Assented
4	IDBI Bank	11.15	Assented
5	**Axis Bank**	**2.70**	**Dissented**
6	**Federal Bank**	**1.16**	**Dissented**
7	ICICI Bank	1.14	Assented

8	**Lakshmi Villas Bank**	**1.10**	**Dissented**
9	Canara Bank	3.28	Assented
10	Bank of India	2.68	
11	Allahabad Bank	0.74	Assented
12	**Tamilnadu Mercantile Bank Limited**	**1.89**	**Abstained**
13	**Bank of Maharashra**	**5.09**	**Dissented**
14	Reliance Capital Limited	0.93	Assented
15	Corporation Bank	1.93	Assented
16	IIFCL Mutual Fund (IDF)	3.94	Assented
17	Ashoka Buildcon Ltd.	1.27	Assented
18	Sunstar Hotels and Estates Private Limited	1.13	Assented
19	State Bank of India Bengaluru Branch	1.24	Assented

26. The Resolution Applicant (A Consortium of UV Asset Reconstruction Company Limited (Lead Member)) and WL Structures Private Limited (Other Consortium Member), who is a third party and has submitted an affidavit pursuant to section 30(1) of the code conforming eligibility under Section 29A of IBC, 2016, to the Resolution Professional.

27. In the Resolution Plan the Resolution Applicant proposed to make payment towards the resolution Claims and dealt with the interest of all the Stakeholders in the following manner

(Rs. in crores)

Category of Claims	Admitted amount as per IM/data room	Proposed payment
Insolvency Resolution Process (IRP Costs)	10.50	To be paid in full 10.50
Payment towards Resolution Claims		
i) Workmen and	20.34	3.00

employee dues (including amount payable in respect of gratuity amounting to Rs. 3.24 cores)		
ii) Operational Creditors (including Statutory Dues but excluding workmen due and Employee due)	175.13	3.00
iii) Claims of **Financial Creditors** (including the amount of un-invoked live bank guarantees)	2271.08	352.00
Total	**2477.05**	**368.50**

28. As per information provided by the Resolution Professional, unpaid IRP costs as on September 2019 stands at Rs.10.50 Crores (Indian Rupees Ten Crores and Fifty Lakhs only). The Resolution Applicant proposes to pay the said amount of Rs. 10.50 Crores (Indian Rupees Ten Crores and Fifty Lakhs only) in full, out of the Upfront Payment. Further, it is also proposed that IRP Costs, as approved by CoC, for the period after September 6, 2019 shall be paid out of the Upfront Payment or Residual Payment, in priority to any other payments out of the funds so infused or realized. Any increment in the IRP Cost as approved by the CoC, attributable to the period after September 6, 2019 which could not be paid out of the internal accruals of the Corporate Debtor, shall be paid by the Resolution Applicant in addition to the Resolution Amount.

29. As per Clause 7A of Part B of the Resolution Plan, the payment of Rs.3 Crores which is to be paid to the Operational Creditor as against their total claim of Rs.175.13 Crores, will be paid within 60 days from the Effective Date.

30. As per Clause 7B of Part B of the Resolution Plan, the payment of Rs.3 Crores, which is to be paid to Workmen and Employees of the Corporate Debtor as against the claim of Rs.20.34 Crores, will be paid within 60 days from the Effective Date.

31. In relation to distribution of Rs. 352 Crores to the Financial Creditors as contemplated under the resolution plan, the following position emerges upon a combined reading of the Resolution plan along with documents annexed thereunder with this application which is as follows:-

Executive summary para (2) of B and Schedule XI of the Resolution Plan:

i) The total admitted claims of the Financial Creditors of Rs. 2271.08 Crores (Indian Rupees Two Thousand two Hundred and Seventy One Crores and Eight Lacs only) are proposed to be settled for an amount of Rs.352 Crores (Indian Rupees Three Hundred and Fifty Two Crores only). Out of the said amount of Rs.352 Crores (Indian Rupees Three Hundred and Fifty Two Crores only), it is proposed that the Lead Member shall pay Rs.35 Crores (Indian Rupees Thirty Five Crores Only)

("Assignment Consideration") for assignment of debt to extent of Rs.250 Crores (Indian Rupees Two Hundred and Fifty Crores Only) along with all the rights, and security interest in the assets collateralized by the sureties **("Assigned Debt")** by the Financial Creditors (as specified in Schedule – XI) in favour of the Lead Member. The said amount of Rs.35 Crores (Indian Rupees Thirty Five Cores only) payable against assignment of debt along with all the rights, and security interest in the assets collateralized by the sureties, shall be over and above the Resolution Amount of Rs.353.5 Crores (Indian Rupees Three Hundred and Fifty Three Crores and Fifty Lacs Only) as mentioned above. Against the settlement of balance claims of Financial Creditors amounting to Rs. 2021.08 Crores (Indian Rupees Two Hundred and Twenty One Crores and Eight lacs only) a sum of Rs.317 Crores (Indian Rupees Three Hundred and Seventeen Crores Only) committed to be returned by the Resolution Applicant in terms of this Resolution Plan (including the bank guarantee amounting to Rs.135 Crores (Indian Rupees One and Hundred and Thirty Five Crores Only) committed to be returned by the Resolution Applicant in terms of this Resolution Plan. Provided that the amount proposed to be paid to the Financial Creditors who do not vote in favour of the Resolution Plan **("Dissenting Financial Creditors")**, shall not be less than the amount to be paid to such creditors in accordance with the provision of section 53 of the Code in the event of liquidation of the Corporate Debtor. It is clarified that the amount payable to the Dissenting Financial Creditors shall be distributed among them in the manner as may be specified by the Insolvency and Bankruptcy Board of India.

SCHEDULE – XI

Detail of Financial Creditors to whom Assignment Consideration shall be paid

S. No.	Name of Financial Creditor	Total Admitted Claim (INR in Crores)	Admitted claim Against invocation of Corporate Guarantee	Admitted claim excluding CG invoke for group companies	% share in Total Admitted Claim	Share in Resolution Amount of INR 35 Crores
1	State Bank of India, Chennai	657.14	--	657.14	35.88%	12.56
2	Punjab National Bank	379.89	59.15	320.74	17.51%	6.13
3	IDBI Bank	243.34	--	243.34	13.29%	4.65
4	Bank of Baroda (formerly Vijaya Bank	242.89	--	242.89	13.26%	4.64
5	Bank of Maharashtra	111.04	--	111.04	6.06%	2.12
6	Canara Bank	71.66	55.01	16.65	0.91%	0.32
7	Axis Bank	59.04	--	59.04	3.22%	1.13
8	Bank of India	58.53	29.97	28.56	1.56%	0.55
9	Tamilnad Mercantile Bank	41.16	--	41.16	2.25%	0.79
10	Allahabad Bank	16.26	--	16.26	0.89%	0.31
11	ICICI Bank	24.97	--	24.97	1.36%	0.48
12	Lakshmi Vilas Bank	24.00	--	24.00	1.31%	0.46
13	Reliance Capital Ltd.	20.29	--	20.29	1.11%	0.39
14	Federai Bank	25.40	--	25.40	1.39%	0.49
		1975.6	**144.12**	**1831.50**	**100.00%**	**35.00**

ii) Details of the infusion of funds by the Resolution Applicant are mentioned herein below:

(Rs. In Crores)

S. No	Type of the Capital	Amount
1	Equity Infusion by Resolution Applicant in SPV prior to amalgamation of SPV with and into the Corporate Debtor	10.00
2	Debt infusion by Resolution Applicant in SPV prior to the Amalgamation of SPV with into the Corporate Debtor	21.50
3	Debt infusion by way of optionally convertible debentures to be subscribed by Resolution Applicant in Corporate Debtor as set out in Clause 3.2 of section 1 of part B and Schedule VII	17.00
4	Debt infusion by way of optionally convertible debentures to be subscribed by Resolution Applicant in Corporate Debtor as set out in Clause 3.3 of section 1 of part B and Schedule VII	50.00
	Total	**98.50**

iii) Break-up of the Resolution Fund: Sources of Resolution Fund include the follows

(Rs. In Crores)

Particulars	Year 1			
	Upfront Payment	Balance within 10 months	Year 2	Total
A. Equity Capital	10	-		10
B. Subordinate Deb (Non-Convertible Debenture)	21.5	-		21.5
C. Subordinate Debt (Optionally Convertible Debenture)	-	17	50	67
D. Sale of SPV (GVR Ahoka Chennai ORR Limited	-	50	-	50

E. Sale of Company owned No-Core Assets	-	-	30	30
F. Cash flows of the company from operations and from award of claims under arbitration	-	5	35	40
G. Amount of live bank Guarantees committed to be returned in terms of this Resolution Plan	-	65	70	135
TOTAL	**31.5**	**137**	**185**	**353.5**

32. In relation to the Bank Guarantees, the total outstanding bank guarantees amount to Rs.392.19 Crores (Indian Rupees Three Hundred and Ninety Two Crores and Nineteen Lacs Only). Further, out of the total outstanding bank guarantees of Rs. 392.19 Crore, bank guarantees worth Rs.160.15 Crores (Indian Rupees One Hundred and Sixty Crores and Fifteen Lacs Only) are specified in Schedule – X. Out of the bank guarantees worth Rs. 160.15 Crores (Indian Rupees One Hundred and Sixty Crores and Fifteen Lacs), the Resolution Applicant commits that the outstanding bank guarantees worth Rs.135 Crores (Indian Rupees One Hundred and Thirty Five Crores Only) shall be returned to the respective financial creditors in the manner provided under this Resolution Plan.

33. In relation to utilization of the Upfront Payment Out of the total Bid Amount, the Resolution Applicant shall make an Upfront Payment

of Rs. 31.5 Crores (Indian Rupees Thirty One Crores and Fifty Lacs Only) out of the internal accruals of the Resolution Applicant, which shall be infused, by way of equity share capital and debt infusion, in to a Special Purpose Vehicle (In short **"SPV"**) wholly owned and controlled by the Resolution Applicant, which shall be amalgamated with and into the Corporate Debtor on and from the date on which amount of Upfront Payment is infused in the SPV.

34. The Resolution Professional has filed Form – H compliance and from that the Fair Value and the Liquidation value is found to be as follows;

Fair Value	**Liquidation Value**
₹387.80 Crores	₹155 Crores

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

MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS	COMPLIANCE UNDER RESOLUTION PLAN
S. 30(1) - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	The Affidavit of the Resolution Applicant (RA) is placed on record and the RP in Form H has certified that the RA has submitted an affidavit and the said affidavit is in order.
S. 30(2)(a) - Payment of Insolvency and Resolution cost in the manner specified by the Board	Clause 5 (ii) of Section 1 of Part B of the Resolution Plan provides for the payment of CIRP costs and the same would be paid within 60 days from the Effective date.
S. 30(2)(b) - Payment of debts of Operational Creditors in such manner as may be specified by the Board, which shall not be less than that of the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under Sec. 53	Resolution Applicant has stated in Clause 7A(ii) of Section 1 of part B of the Resolution Plan that an amount of Rs.3 Crores to be paid to the Operational Creditor. However, the Liquidation value of the Operational Creditor is not known to the Resolution Applicant, it has been stated that the Operational Creditor would be paid a sum of Rs.3 Crores or proportionate liquidation value, whichever is higher and the same would be paid within 60 days from the Effective date.
Reg. 38(1A) - Resolution Plan shall include a statement as to how it has dealt with the interest of all the stakeholders, including financial creditors and operational creditors of the Corporate Debtor	Clause 8 of Section 1 of Part B of the Resolution Plan provides for payments to be made to all the stakeholders of the Corporate Debtor and the same shall be paid within 60 days from the Effective date.
S. 30(2)(c) - Management of the affairs of the Corporate Debtor after approval of the Resolution Plan	Clause 2B of Section 4 of part A of the Resolution Plan deals with the Management and Control of the Corporate Debtor after the approval of the Resolution Plan.
S. 30(2)(d) - Implementation and	Clause 2A of Section 4 of part A of the

Supervision of the Resolution Plan	Resolution Plan deals with the Implementation of the Resolution Plan in a time bound manner
<u>Reg. 38(2)</u> – 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 Plan.	Part B of Schedule I, Clause 2B of Section 4 of part A and Section 4 of Part A of the Resolution Plan deals with the Term, Implementation Schedule and Monitoring of the Resolution Plan
<u>Reg. 38(3)</u> - Resolution Plan shall demonstrate: a) it address the cause of default b) it is feasible and viable c) it has provisions for effective implementation d) it has provisions for approval required and the timeline for the same e) the resolution applicant has the capability to implement the resolution plan	Clause A of Section 3 of Part A, Clause 2A of Section 4 of Part A, Clause 12 of Section 4 of Part B of the Resolution Plan deals with the causes of default of the Corporate Debtor and the operational Viability of the project by the Resolution Applicant and its capability to implement the Resolution plan
<u>S. 30(2)(e)</u> - Does not contravene any of the provisions of the law for the time being in force	Clause 9 of Section 1 of Part-B of the Resolution plan is an Undertaking by the Resolution Applicant states that the Resolution Plan is not in contravention with the provisions of any Applicable Laws.
<u>S. 30(4)</u> - 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	The CoC, in its 16th meeting has approved the Resolution Plan with 67.97%.

36. 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 Judgment of the Supreme Court in the matter of **K. Sashidhar –Vs– Indian Overseas Bank** *2019 SCC Online SC 257,* wherein in para 19 and 62 it is held as follows;

> "19.......In the present case, however, our focus must be on the dispensation governing the process of approval or rejection of resolution plan by the CoC. The CoC is called upon to consider the resolution plan under Section 30(4) of the I&B Code after it is verified and vetted by the resolution professional as being compliant with all the statutory requirements specified in Section 30(2).
>
> 62. ....In the present case, however, we are concerned with the provisions of I&B Code dealing with the resolution process. The dispensation provided in the I&B Code is entirely different. In terms of Section 30 of the I&B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC and they express their opinion on the proposed resolution plan in the form of votes, as per their voting share. In the meeting of the CoC, the proposed resolution plan is placed for discussion and after full interaction in the presence of all concerned and the Resolution Professional, the constituents of the CoC finally proceed to exercise their option (business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, non-recording of reasons would not per-se vitiate the collective decision of the financial creditors. The legislature has not envisaged challenge to the "commercial/business decision" of the financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count."

37. Further, the Hon'ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steels –Vs– Satish Kumar**

Gupta & Ors. in *Civil Appeal No. 8766 – 67 of 2019*at para 42 has held as follows;

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

38. This Authority has in the light of the above noted judgements and thereby giving credence to the commercial decision of the COC in approving the Resolution Plan has perused the Resolution Plan in light of the same. Further, it is seen that the Resolution Applicant has sought for Relief and Concessions in the Resolution Plan. The Liquidation Value of the Corporate Debtor as per Form H filed by the Resolution Professional is arrived at ₹155 Crores and the Resolution Plan provides for an amount of ₹368.50 Crores payable to all the stakeholders (excluding Rs.0.50 Crores of CIRP costs), which is much more than the Liquidation value.

39. The Resolution Applicant has sought for various Reliefs, Concessions and Dispensations in relation to the Resolution Plan, however, taking into consideration the Judgments of the Hon'ble NCLAT, and more particularly the decision of the Hon'ble Supreme Court of India in the matter of **Embassy Property Developments Pvt. Ltd. –Vs- State of Karnataka &Ors.** in *Civil Appeal No. 9170*

of 2019, we direct the Resolution Applicant to file necessary application before the necessary forum / authority in order to avail the necessary Relief and Concessions, if it is in accordance with law.

40. As to the determination of the issue of clause 3 and Schedule 3 of the resolution in relation to "carry forward its accumulated business losses" of the 'Corporate Debtor', on 09.01.2020, this bench has directed the applicant to take notice of the application to the Income Tax Department within one week and thereafter directed the Income Tax department to respond within a period of 10 days. However, in this regard, the Income Tax Department has not filed any reply nor any objection has been raised by the said Department in relation to the same, despite sufficient time granted and till the date of pronouncement of the Order.

41. As to clause XVIII of the resolution, the Resolution Applicant prays that all liabilities/claims in relation to the projects being implemented under Corporate Debtor or through "Joint Ventures" "Subsidiaries" or "Associates", including but not limited to any claims for liquidated damages liquidated damages, maintenance cost, maintenance liabilities under defect liability period, and/or any other claims for damages, penal charges etc. in terms of the project agreements, in relation to any period prior to the Closing Date or thereafter shall stand settled, waived off and extinguished upon

approval of this Resolution Plan by the Adjudicating Authority and the Corporate Debtor or the Resolution Applicant or the SPV shall at no point of time, directly or indirectly, be held responsible or liable in relation thereto. In this regard, this Authority is guided by the decision of the Hon'ble NCLAT in the matter of **JSW Steel Limited -Vs- Ashok Kumar Gulla & Ors.** in *Company Appeal (AT) Insolvency No. 467 of 2019 dated 04.12.2019*, wherein it has been held that once the "Successful Resolution Applicant" takes over the "Corporate Debtor", it is for the "Corporate Debtor" to decide whether they will continue with such right over the "Subsidiaries" or "Associate Companies" or "Joint Ventures" and others. For such right, the Adjudicating Authority is not required to make any such suggestion nor can lay down any condition.

42. As to the 'Monitoring Committee', is concerned, as stated in the Resolution Plan, the Monitoring Committee shall consist of the following members;

(a) Two Representatives of the Financial Creditor's

(b) A Monitoring Agent; i.e. the RP viz. Vandana Garg

43. Since *prima facie*, we do not find inconsistency in relation to the Resolution plan *vis-a-vis* the provisions of section 30(2) of IBC, 2016 in light of the discussions above, the Resolution Plan is hereby **approved** and it shall be binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall

come into force with immediate effect and the "Moratorium" imposed under section 14 of IBC, 2016 at the time of initiation of CIRP shall not have any effect henceforth. The Resolution Professional shall submit the records collected during the commencement of the Proceedings to the Insolvency & Bankruptcy Board of India for their record and also return thereafter to the Resolution Applicant or New Promoters. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance. Liberty is hereby granted for moving any Miscellaneous Application, if required, in connection with implementation of this Resolution Plan. That in respect of stepping by the New Promoters/Resolution Applicant into the shoes of the erstwhile Company and taking over the business, the provisions of Companies Act, 2013 shall be applicable and because of this reason a copy of this Order is to be submitted in the Office of the Registrar of Companies, Chennai along with the appropriate form, if any prescribed.

44. The Resolution Professional is further directed to handover all records, premises/documents to Resolution Applicant to finalise the further line of action required for starting of the operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access to all the records premises/documents through

Resolution Professional to finalise the further line of action required for starting of the operation.

45. In relation to the **MA/99/2020**, it is an application filed by IIFCL, Mutual Funds, who is one of the member of the CoC and has a voting right of 3.94%. The applicant in the MA/99/2020 is aggrieved by the manner of distribution of the Resolution Fund among the similarly placed Financial Creditor. In the 16th CoC meeting, the applicant has raised an objection as to whether un-invoked Bank Guarantees can be included into the admitted claim and if so, included, the Financial Creditor is getting a higher voting share and also getting preferential treatment by way of return of their Bank Guarantee without proportionate distribution amongst all the secured creditors. However, in stark contrast to raising such an objection by way of this application it is pertinent to note that the Applicant in MA/99/2020 has voted in favour of the Resolution Plan and has given its assent for the approval of the Resolution Plan. On the one hand it is seen that the Applicant has approved the Resolution plan submitted by the Resolution Applicant before the CoC and on the other hand the Applicant is challenging the manner of distribution of the amount among the stakeholders before this Tribunal delving into the commercial aspects by the COC after deliberation and as such the Applicant is trying to approbate and reprobate at the same time. The

decision of the Hon'ble Supreme Court as made in the **K. Sasidhar's case** as well as **Committee of Creditors of Essar Steel case** and the ratio as extracted in paragraph 34 (supra) apply on all fours and in view of the same as well as the paradoxical stand of the applicant in MA/99/2020, the prayer as sought for by the Applicant is not tenable and liable to be rejected and as such the **MA/99/2020** stands **dismissed**. Thus, **MA/1433/2019** filed by the Resolution Professional for the approval of the Resolution Plan stands **allowed**.

SD

[S. VIJAYARAGHAVAN]
Member (Technical)

SD

[R. VARADHARAJAN]
Member (Judicial)

TJS