

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

(Video Conference) Virtual Hearing

CORAM: DR.VENKATA RAMAKRISHNA BADARINATH NANDULA – HON’BLE MEMBER (J)

CORAM: SHRI SATYA RANJAN PRASAD- HON’BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 24.04.2023 AT 4:00 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/598/2021 in CP (IB) No.518/7/HDB/2018
NAME OF THE COMPANY	Lanco Solar Energy Pvt Ltd
NAME OF THE PETITIONER(S)	Andhra Bank
NAME OF THE RESPONDENT(S)	Lanco Solar Energy Pvt Ltd
UNDER SECTION	7 of IBC

ORDER

Orders in IA 598/2021 pronounced, recorded vide separate sheets. In the result, the Resolution Plan of the Corporate Debtor is hereby approved, application is allowed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

Syamala

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II**

**I.A. No.598 OF 2021
in
CP(IB) NO. 518/7/HDB/2018**

[U/s. 31(1) of the I&B Code, 2016]

**In the matter of Andhra Bank vs.M/s. Lanco Solar Energy
Private Limited**

Mr.Parveen Bansal
Resolution Professional of
M/s.Lanco Solar Energy Private Limited

.... Applicant /
Resolution Professional

Date of Order: 24.04.2023

Coram:

**Hon'ble Dr. Nandula Venkata Ramakrishna Badarinath, Member (Judicial)
Hon'ble Shri Satya Ranjan Prasad, Member (Technical)**

Parties / Counsels Present:

For the Applicant : Mr.Vimal Varma Vasi Reddy
Mr.K.V.Raman Manav, Advocates

[PER : BENCH]

ORDER

1. The instant Application bearing IA No. 598/2021 is filed by the Resolution Professional of M/s. Lanco Solar Energy Private Limited, for short 'Corporate Debtor' under Section 31(1) of the Insolvency & Bankruptcy Code, 2016, r/w regulation 39(4) of the IBBI (Insolvency Resolution Process

for Corporate Persons) Regulations, 2016, seeking approval of the Resolution Plan dated 30.07.2021 submitted jointly by Mr.Jitender Vir Singh and Derit Infrastructure Private Limited for short 'Resolution Applicant' as duly approved by the Committee of Creditors with 95.62% voting share.

2. The Company Petition CP(IB) No. 518/7/HDB/2018 filed by Andhra Bank u/s. 7 of IBC, 2016 was admitted by this Adjudicating Authority, vide Order dated 14.06.2019 and ordered commencement of CIRP against the Corporate Debtor/M/s. Lanco Solar Energy Private Limited by appointing the Applicant herein as the Interim Resolution Professional (IRP). Later, in the 1st COC Meeting held on 15.07.2019, Mr.Parveen Bansal/the Applicant herein was appointed as Resolution Professional, for short 'RP'.
3. On receipt of claims from the Creditors pursuant to public announcement in Form-A dated 21.06.2019, the RP constituted the Committee of Creditors, for short 'COC'. The RP conducted a total of 27 meetings of the COC during the CIRP.
4. The Applicant issued Form-G on 28.08.2019 and 03.10.2019. In response, Expression of Interests were received from two Prospective Resolution Applicants. The same were opened in the 6th COC Meeting held on 13-12-

2019 and was circulated to members of COC. Subsequently, COC discussed and negotiated with PRAs in the next four meetings of COC with respect to commercial offer, period of payment, release of charge, protection of performance bank guarantees.

5. The Successful Resolution Applicant submitted EOI on 24-07-2020 through e-mail. As the last date for submission of resolution plans had already expired and resolution plans were under consideration of COC, considering complexity of the matter and stage of discussions already took place, COC rejected the same and decided to issue Form-G afresh. Accordingly, the Successful Resolution Applicant was communicated about the decision of the COC, vide email dated 04-08-2020.
6. The Applicant had filed an IA 789 of 2020 against the decision of the COC for rejection of the EOI, the Adjudicating Authority vide order dated 09-11-2020 disposed of this IA with an observation, as follows:

“Para 11. Taking into account the peculiar circumstances prevailing since 23.03.2020 in view of lockdown imposed throughout the country in the wake of Covid-19 pandemic and on the strength of the decisions rendered by various NCLTS and Hon'ble NCLAT mentioned supra, this Adjudicating Authority is of the opinion that it would be appropriate on part of CoC and RP to publish fresh Form-G and to explore possibility of getting proposals not only from the Applicant herein but also from the other potential

Resolution Applicants, which may result in receiving of better bids/plans paving way for value maximization of the Assets of the Corporate Debtor. Further, this Adjudicating Authority is of the view that if such recourse is taken, it would not cause any harm or prejudice to any person, but would enhance competition amongst the prospective Resolution Applicants, resulting in maximization of value of Corporate Debtor as also balancing the interest of all the stakeholders, which is stated objective of the Code.

Para 12. In view of the above discussions, the CoC may evaluate the option of issuing fresh EoI. Further, the Resolution Professional may also file appropriate Application for exclusion/extension of the period of CIRP taking into account the Covid-19 pandemic and precious time spent in litigation, including the time elapsed in filing the present Application, if the stage of the CIRP so warrants.”

7. In accordance with the opinion of this Hon’ble Adjudicating Authority, fresh Form G was published on 05-12-2020 (Round 3). In response, Resolution Plans were submitted by three prospective resolution applicants, the details of which are as follows:
 - i. Manikaran Power Limited (“RA 1 – Manikaran Power”)
 - ii. Jitender Vir Singh and Derit Infrastructure Private Limited (“RA 2 – JVS Consortium”)
 - iii. Jindal Holidays Private Limited and Sun N Wind Infra Energy Private Limited. (“RA 3 – Jindal consortium”)

8. The Resolution Plans submitted by all the three Resolution Applicants were opened in the 15th meeting of COC held on 16-02-2021 and the COC was presented with the summary of commercial proposals and terms & Conditions of all the Resolution Plans.
9. There were multiple rounds of discussions with prospective resolution applicants for improvement of resolution amount.
10. There was submission of unsolicited resolution plan by RA 3 – Jindal consortium. All the resolution plans were considered by COC in the 23rd COC Meeting held on 31-07-2021 and e-voting platform was opened for recording of votes by members of the Committee of Creditors.
11. Meanwhile, RA-3 Jindal consortium submitted revised resolution plan with higher resolution amount. Considering the prevailing conditions, COC decided to terminate e-voting process and decided to re-open the process for submission of revised resolution plan. On failure of RA-3 Jindal consortium to share the password protected resolution plan, in the 26th COC meeting held on 19.08.2021, the COC decided to restart the voting on resolution plans placed for e-voting in the 23rd meeting of COC.

- 12.The CoC evaluated the Resolution Plan submitted by the Prospective Resolution Applicants as per the Evaluation Matrix and Section 29A of the Code. After evaluating in terms of both qualitative and quantitative criteria and aggregate the revised resolution plans submitted by the three prospective Resolution Applicants, were put for e-voting.
- 13.That COC approved the resolution plan submitted by R2-JVS consortium with majority voting share of 95.62% and passed the following resolutions:

“RESOLVED THAT, *Committee of Creditors hereby approves the Resolution Plan dated 30-07-2021 submitted by joint resolution applicants namely Jitendra Vir Singh & Derit Infrastructure Private Limited for resolution of Lanco Solar Energy Private Limited, the Corporate Debtor after considering its feasibility and viability in terms of section 30(4) of Insolvency and Bankruptcy Code, 2016 (“Insolvency Code”) and has provisions in compliance of section 30(2) of IBC Code, 2016 and regulation 37, 38 and 39(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) regulations, 2016 and confirms that it has provisions for effective implementation.”*

That Committee of Creditors had also approved the following resolution for authorisation to resolution professional for submission of resolution plan with majority vote share of 95.62%:

“RESOLVED THAT, *the resolution amount allocated by the Resolution Applicant for distribution shall be allocated among financial creditors taking into the order of priority*

amongst creditors as laid down in section 53 (1) of IBC Code, 2016, including the priority and value of the security interest of a secured creditor.

FURTHER RESOLVED THAT, CA Parveen Bansal, Resolution Professional of the Corporate Debtor is authorized for submission of application before Hon'ble National Company Law Tribunal, Hyderabad for approval of the resolution plan approved by Committee of Creditors along with manner of distribution by Adjudicating Authority in accordance with section 31(1) of IBC Code, 2016”

14.The Applicant had filed applications before the Adjudicating Authority seeking extension of CIRP period from time to time.

15.Considering the pending activities required to be closed for resolution of the Corporate Debtor, COC approved for extension of 30 days from the scheduled date for completion of corporate insolvency resolution process in 24th meeting of Committee of Creditors held on 07-08-2021. The Applicant had filed an IA 479 of 2021 seeking extension of 30 days before the Adjudicating Authority, wherein it was held that -

“This IA is filed for extension of 30 days since CIRP period of 330 days are already over. We cannot extend the time in view of the recent Supreme Court Judgement. However, Learned Counsel for applicant submitted that COC has approved one plan. We give liberty to COC and RP to produce for approval of the pan. Hence, IA 479/2021 stands disposed of.”

A copy of the Resolution Plan along with its annexures is filed as **Annexure – R7** at page nos.71 to 108 of the application.

16.The synopsis of the Resolution Plan is as follows:

- i. Any CIRP Cost outstanding on the Closing Date, on actual basis;
- ii. Rs. 20 Lakhs towards full and final settlement of all Claims of Operational Creditors (“Total OC Payment”);
- iii. Rs. 83.04 Crore Less outstanding CIRP Cost towards full and final settlement of all Claims of all Financial Creditors (“**Total FC Payment**”).

17.In addition to the Consideration Amount, the RA will earmark an amount of Rs.20 lakhs as litigation costs for the sole purpose of pursuing litigations for protection of the bank guarantees (“**BGs**”) issued by the Central Bank of India on behalf of the Corporate Debtor. This amount will be over and above the Consideration Amount. Further, in respect of BGs issued by the Andhra Bank, the RA has given undertaking that in case the BGs devolve, the RA shall pay the invoked amount to Andhra Bank.

18.B. Rattan & Associates, Chartered Accountants were engaged as transaction cum forensic auditor and the draft Audit Report submitted by the Auditor was circulated to members of Committee of Creditors.

19.The applicant had engaged Registered Valuers for determination of fair market value and liquidation and the Registered Valuers have submitted their reports. The Average fair market value and liquidation value of assets of the Corporate Debtor has been assessed at Rs.99.47 Crores and Rs.47.31 crores respectively. Summary of valuation reports is filed as **Annexure R-17 at page nos.167 to 168 of the application.**

20.The SRA remitted Rs.8,30,40,000/- vide Bank Guarantee bearing No. 2451NDDG00087722, dated 17.09.2021, amended on 06.09.2022, which was valid upto 16.09.2023.

21. Contour of the Resolution Plan:

- i. Mr.Jitendra Vir Singh (“JVS”) is a Mechanical Engineer and MBA from Indian School of Business and has been associated with Power Sector for the last 16 years. JVS is Promotor and CEO of Derit Infrastructure Pvt Ltd (“Derit”) which is into manufacturing and trading of power sector equipment. Derit also owns and operates Solar Power plants in Gujarat with aggregate capacity of 30MW via its majority owned subsidiary company. JVS has extensive experience in acquisition, restructuring and turnaround of stressed assets. Noted below are two examples of acquisition,

restructuring and turn-around of stressed assets by JVS and Derit over the last 5 years:

JVS and Derit acquired a steel structure plant which was into manufacturing of power equipment such as transmission towers, heavy steel angles and module mounting structures in 2018 with a capacity of 50,000 m.t. per year. The plant was making losses and was acquired from a subsidiary of Abangoa S.A. (Spanish MNC). JVS led the turnaround of the plant over a period of 2 years culminating in successful investment in the plant by a leading NYSE listed MNC thereby securing jobs and maximizing recovery for investors.

JVS and Derit successfully acquired 2 distress solar power plants with an aggregate capacity of 30MW from IDBI bank in 2020. The plants were acquired in partnership with a global debt investor via an open auction process run by IDBI Bank. Post-acquisition, JVS and Derit led a financial and operational restructuring of the company leading to substantial improvements in operational and financial performance of the plants in a short span of time. Given JVS experience in managing stressed assets, well known US Funds in distressed asset markets are interested to work with him on acquisition of stressed assets in India.

22.The Successful Resolution Applicant proposes to distribute the Resolution Plan amount of Rs.83.24 crores to different stakeholders in the following manner:

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount in Rs. Crores			Amount Provided to the Amount Claimed (%)
			Amount Claimed	Amount Admitted	Amount Provided under the Plan	
1	Financial creditors	Secured	286.51	286.51	62.00	21.6
2	Financial creditors	Unsecured*	2857.76	215.41	21.04	9.7
			3144.27	501.92	83.04	
3	Operational Creditors	Related Parties	126.51	126.51	0.00	0.00
4	Operational Creditors	Non related parties	249.55	8.77	0.20	2.28
					0.20	
Grand Total					83.24	
*Does not include claim of Corporation Bank / Union Bank of India (Claimed amount – Rs. 97.44 crores; Verified amount – Rs.12.53 crores) submitted on 08-09-2021.						

23.The Applicant confirmed that the Successful Resolution Plan is in compliance with the provisions of Section 30 (2). The Applicant further submits that all the requirements envisaged under the Code and Rules/Regulations made there-under have been met. **A copy of the Resolution Plan along**

with its annexures are filed as Annexure – A15 at page nos. 155 to 247 of the application.

24. Compliance of mandatory contents of Resolution Plan under the Code and CIRP Regulations:-

The Applicant has conducted a thorough compliance check of the Resolution Plan in terms of the Code as well as Regulations 38 & 39 of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016, for short 'Regulations' and has submitted Form-H under Regulation 39 (4). **A copy of Form-H is filed as Annexure-R18 at page nos. 169 to 180 of the application.** It is submitted that the Resolution Applicant has filed Certificate of Compliance under Section 29A and 30 of the Code confirming that they are eligible to submit the Plan under Section 29A of the Code and that the contents of the said Certificate are in order. The fair value and Liquidation value as submitted in Form-H is Rs.99.47 crores and Rs.47.31 crores respectively.

25. In the above backdrop, we heard Mr. Vimal Varma Vasi Reddy, Learned Counsel for RP. He submits that the Resolution Plan meets the requirement of Section 30 (2), Regulations 38 and 39 of the Code, as under:-

Section 30(2)(a) - Payment of Corporate Insolvency Resolution Process Cost (CIRP Cost):

The Resolution Applicant make the payment of the outstanding Insolvency Resolution Process Cost (“**CIRP Cost**”). The outstanding CIRP Cost shall be paid in priority to any other debts of the Corporate Debtor. Total CIRP Cost as on the date of approval of the Resolution Plan by the Adjudicating Authority (“**NCLT Approval Date**”) shall be certified by the Resolution Professional (“**RP**”) and provided to the Resolution Applicant on the Closing Date Upon payment of the CIRP Cost, all liabilities and claims in respect of the CIRP period would stand discharged and/or settled. It is clarified that CIRP Cost shall include all costs and liabilities incurred by the Corporate Debtor from insolvency commencement date till the NCLT Approval Date. Hence, except for payment of CIRP Costs, any other liability/ obligations that may arise or accrue or be deemed to be continued during the CIRP period shall stand extinguished and the RA shall not be responsible for the same.

Section 30(2)(b) - Payment to the Operational Creditors

Resolution Applicant proposes to settle the Claims and dues of Operational Creditors (including workmen and employees and any Central or State Government or local government or statutory authorities) by making a total payment of Rs. 20 Lakhs from the

Consideration Amount, in priority to payment to the Financial Creditors but after payment of CIRP Costs, which is as follows:

- i. An amount of Rs.10 lakhs be paid to the Operational Creditors of the Corporate Debtor whose claims have been admitted by the Resolution Professional on a pro rata basis of the admitted amount; and
- ii. An amount of Rs.10 lakhs be paid to the Operational Creditors, who filed their claims but whose claims have not been admitted on account of pending disputes, pro-rata to claimed amount.

Section 30(2)(b) of the Code - the Resolution Applicant is required to pay to the Operational Creditors of the Corporate Debtor an amount not less than the (i) amount to be paid to such creditors in the event of a liquidation of the Corporate Debtor under Section 53 of the Code; or (ii) the amount that would have been paid to such creditors, if the amount to be distributed under this Resolution Plan had been distributed in accordance with the order of priority in sub-section (1) of Section 53 of the Code, whichever is higher.

- b. In case of the Minimum Amount due to the Operational Creditors is more than Rs.20 Lakhs, the Minimum Amount will be paid to the Operational Creditors out of the Consideration Amount in priority to the payment to

Financial Creditors but after payment of the CIRP Payout, without increasing the total Consideration Amount.

- c. If any further claims of Operational Creditors relating to the period prior to the insolvency commencement date are verified and/or are admitted and/or ordered by the NCLT to be verified/admitted, then the OC Payout shall be re-distributed pro rata (in accordance with principle set out in para a above) to include such further claims, without increasing the total amount of Rs. 20 lakhs allocated to Operational Creditors.

Section 30(2)(c) - Payment to the Financial Creditors who did not vote in favour of the Resolution Plan?

Payment of Liquidation Value equivalent to Liquidation Value in accordance with Section 53(1) of the Insolvency and Bankruptcy Code, 2016 assuming the liquidation of the Corporate Debtor (“Allocated Liquidation Value”) to financial creditors, who do not vote in favour of the resolution plan (“Dissenting Creditors”).

Section 30(2)(d) - Management of the affairs of the Corporate Debtor?

The management and control of the Corporate Debtor will get transferred to reconstituted Board of Directors on the Deposit

Date. The entire share capital of the Corporate Debtor shall stand cancelled on the Closing Date and the Corporate Debtor will issue and allot equity shares to SPV and its nominees against share application money of Rs. 10 lakhs.

Section 30(2)(e) - The implementation and supervision of the Resolution Plan?

- i. The implementation of the Resolution Plan would be completed on the Closing Date, however, the Monitoring Committee and Monitoring Agency shall continue for a further period of 30 days from the Closing Date to ensure completion of all statutory filings and processes relating to the implementation of the Resolution Plan.
- ii. The implementation of the Resolution Plan will be supervised and monitored by the Monitoring Committee as mentioned in Clause S of this Resolution Plan. The term of the Resolution Plan shall be till the Discharge Date (i.e. 30 days from expiry of the Closing Date, unless extended mutually by the Monitoring Committee and the Resolution Applicant).
- iii. The Resolution Plan shall be implemented upon approval of the Committee of Creditors (**CoC**) and thereafter by the Hon'ble NCLT in the following manner.

Section 30(2)(f) – Contravenes any of the provisions of the law for the time being in force?

The Resolution Applicant undertakes that the provisions of this Resolution Plan do not contravene with any provision of the law for the time being in force.

Regulation 38(1) – The amount due to the Operational Creditors under the Resolution Plan has been given priority in payment over Financial Creditors?

- a. Resolution Applicant proposes to settle the Claims and dues of Operational Creditors (including workmen and employees and any Central or State Government or local government or statutory authorities) by making a total payment of Rs.20 Lakhs from the Consideration Amount, in priority to payment to the Financial Creditors but after payment of CIRP Costs (“**OC Payout**”) as per the following:
 - i. An amount of Rs. 10 lakhs be paid to the Operational Creditors of the Corporate Debtor whose claims have been admitted by the Resolution Professional on a pro rata basis of the admitted amount; and
 - ii. An amount of Rs. 10 lakhs be paid to the Operational Creditors, who filed their claims but whose claims have not been admitted on account of pending disputes, pro-rata to claimed amount.

Regulation 38(1A) – The Resolution Plan includes a Statement as to how it has dealt with the interests of all stakeholders?

The Resolution Applicant, through its Resolution Plan, has endeavoured to take care of the interest of various stakeholders based on the projected value of the business, exposure each of them has to the Company and current status thereof.

a. Stakeholder 1 – Customers of the Corporate Debtor

The Resolution Applicant has firm plan to infuse adequate capital towards restoration of the operational performance to the design levels for all the plants owned (directly or through subsidiaries) and supplying power to customers (NVVN and AAI) under long term PPAs as well as those operated and maintained for the external clients (NTPC, MAHAGENCO, Gujarat PSUs, SAIL, IRCON, Parliament House, Orissa Secretariat, PEDDA, multiple roof top projects spread over few states, etc.).

b. Stakeholder 2 – Financial Creditors of the Corporate Debtor

To settle the admitted claim of all Financial Creditors in form of one-time upfront payment.

c. Stakeholder 3 – Employees and workmen of Corporate Debtor

Provide a long term and stable working environment to the existing workmen and employees of the Corporate Debtor with adequate opportunities for their future growth in form of new businesses to be secured through business development efforts.

d. Stakeholder 4 – Operational Creditors

Pay out the minimum of either the amount as proposed in this Resolution Plan or an amount equal to the liquidation value payable towards admitted claims of the Operational Creditors and provide a long-term sustainable business opportunity to all these suppliers / service providers for ongoing as well as new projects of the Corporate Debtors.

e. Stakeholder 5 – Government and society at large

Ensure continuity of the business and timely payment of all taxes pertaining to the business operations going forward and create larger employment opportunities as well as contribute towards growth of economy through new businesses.

Our commitment to provide adequate capital for reviving the operations of the Corporate Debtor as well as its subsidiaries will create larger economic opportunities for local community and businesses.

Regulation 38(1B) – (i) Whether the Resolution Applicant or any of its related parties has failed to implement or

contributed to the failure of implementation of any resolution plan approved under the code; (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?

The Resolution Applicant confirms that neither the Resolution Applicant nor 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.

Regulation 38(2) – Whether the Resolution Plan provides – (a) the term of the plan and its implementation schedule? (b) The management and control of the business of the Corporate Debtor during its term? (c) Adequate means for supervising its implementation?

- a. The implementation of the Resolution Plan would be completed on the Closing Date, however, the Monitoring Committee and Monitoring Agency shall continue for a further period of 30 days from the Closing Date to ensure completion of all statutory filings and processes relating to the implementation of the Resolution Plan.
- b. The implementation of the Resolution Plan will be supervised and monitored by the Monitoring Committee. The term of the Resolution Plan shall be till the Discharge Date (i.e. 30 days from expiry of the Closing Date, unless extended mutually by the Monitoring Committee and the Resolution Applicant).

- c. The Resolution Plan shall be implemented upon approval of Committee of Creditors (**CoC**) and thereafter by the Hon'ble NCLT.
- d. The list of activities and the indicative timelines for implementation of the Resolution Plan are placed at page nos.27 to 29 of the Resolution Plan.

The management and control of the Corporate Debtor will get transferred to reconstituted Board of Directors on the Deposit Date. The entire share capital of the Corporate Debtor shall stand cancelled on the Closing Date and the Corporate Debtor will issue and allot equity shares to SPV and its nominees against share application money of Rs. 10 lakhs.

The existing Resolution Professional / Monitoring Professional shall act as Monitoring Agency and shall continue to provide support in relation to implementation of the Resolution Plan and shall make appropriate filings with the Ministry of Corporate Affairs to facilitate the implementation of the Resolution Plan. The existing Resolution Professional / Monitoring Professional shall be paid an amount as mutually discussed between the Resolution Applicant and the Resolution Professional / Monitoring Professional for providing such support/services. The cash balance available with the

Corporate Debtor shall be utilised for payment of expenses related to implementation. In case cash balances of the Corporate Debtor are not sufficient to pay the implementation cost, the same would be paid by the Resolution Applicant.

Regulation 38(3) – The Resolution Plan demonstrates that – (a) It addresses the cause of default? (b) It is feasible and viable? (c) It has provisions for its effective implementation? (d) It has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?

The principal reason for the default by the Company has been the lack of adequate capital to undertake the existing service business, maintenance the quality of the asset owned by the Company and undertake business growth in form of new projects. The proposed Resolution Plan intends to align the capital structure of the Company with the requirements of existing business as well as enable to company to secure new projects in the growing Indian renewable market. The Resolution Applicant commits adequate capital towards these objectives.

Apart from the approval of this Hon'ble Adjudicating Authority, no other approvals are required for the Corporate Debtor, as a condition precedent, before implementation of the present resolution plan. In case any approvals are required in respect of implementation of the Resolution Plan, the Corporate

Debtor shall file applications with such authorities within 12 months from the Effective Date as per Section 31(4) of the Code.

Background of the Resolution Applicants: Mr.Jitendra Vir Singh (“**JVS**”) is a Mechanical Engineer and MBA from Indian School of Business and has been associated with Power Sector for the last 16 years. JVS is Promotor and CEO of Derit Infrastructure Pvt Ltd (“**Derit**”) which is into manufacturing and trading of power sector equipment. Derit also owns and operates Solar Power plants in Gujarat with aggregate capacity of 30MW via its majority owned subsidiary company. JVS has extensive experience in acquisition, restructuring and turnaround of stressed assets. Noted below are two examples of acquisition, restructuring and turn-around of stressed assets by JVS and Derit over the last 5 years:

JVS and Derit acquired a steel structure plant which was into manufacturing of power equipment such as transmission towers, heavy steel angles and module mounting structures in 2018 with a capacity of 50,000 m.t. per year. The plant was making losses and was acquired from a subsidiary of Abangoa S.A. (Spanish MNC). JVS led the turnaround of the plant over a period of 2 years culminating in successful investment in the plant by a leading NYSE listed MNC thereby securing jobs and maximizing recovery for investors.

JVS and Derit successfully acquired 2 distress solar power plants with an aggregate capacity of 30MW from IDBI bank in 2020. The plants were acquired in partnership with a global debt investor via an open auction process run by IDBI Bank. Post-acquisition, JVS and Derit led a financial and operational restructuring of the company leading to substantial improvements in operational and financial performance of the plants in a short span of time. Given JVS experience in managing stressed assets, well known US Funds in distressed asset markets are interested to work with him on acquisition of stressed assets in India.

Mr.Jitendra Vir Singh and Derit Infrastructure Pvt. Ltd. (collectively referred to as “the Resolution Applicant”) have the following plan to improve the operations:

- a. Strengthen the existing technical and managerial team with specific expertise in;
 - i. turnaround of operating plants / installations owned by the Corporate Debtor – both on its balance sheet as well as thru its subsidiaries
 - ii. Prepare a detailed refurbishment plan for restoring the operations of the plants to its design values factoring the aging and corresponding degradation aspect of these plants
 - iii. Deploy adequate number of engineers and technicians to carry out the refurbishment plan
- b. Get all the OEMs and third-party vendors on board to ensure their support as per timelines of the refurbishment plan
- c. Provide timely and adequate capital to achieve the objectives of the refurbishment plan

- d. O&M services in order to strengthen the existing O&M practices of the Corporate Debtor and ensure that the Corporate Debtor achieves performance obligations under all ongoing O&M services at plants owned by various external clients
- e. Set up a business development team with resources experienced in the renewable energy segment in order to secure new service and development business opportunities in entire spectrum of renewables (PV Solar, Wind and Energy Storage)

The performance of various solar plants owned and / or operated by the Corporate Debtor has suffered extensively due to deficient O&M services. These plants accordingly require infusion of adequate capital to refurbish the equipment and systems which is intended to be completed within 6 (six) months of transfer of shares of Corporate Debtor to the Resolution Applicant.

26. That Successful Resolution Applicant have declared in the resolution plan that:

- a. Resolution plan does not contravene any of the provisions of the law for the time being in force.
- b. Resolution plan has dealt with interests of all stakeholders and the resolution plan has a statement to the effect.
- c. They or any of its related parties have not failed to implement or have not contributed to the failure of

implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.

27. Monitoring Committee –

The Resolution Plan provides that Monitoring Committee will get constituted on the Effective Date for implementation of the resolution plan. The term of the Monitoring Committee will be 30 days from the Closing Date unless extended mutually by the Monitoring Committee and the Successful Resolution Applicant. Monitoring Committee will comprise of two representatives of Committee of Creditors, two representatives of resolution applicant and resolution professional. Monitoring Committee will complete all regulatory filings / processes required to be undertaken in relation to the implementation of the Resolution Plan and shall stand discharged.

That Resolution Plan provides that the management and control of the Corporate Debtor will get transferred to reconstituted Board of Directors on the Deposit Date. The entire share capital of the Corporate Debtor shall stand cancelled on the Closing Date and the Corporate Debtor will issue and allot equity shares to SPV and its nominees against share application money of Rs. 10 lakhs.

28. **Source of Funds:**

The source of funds for payment of Consideration will be fixed deposit of Rs. 30 crores available with Successful Resolution Applicant and the capital support of Rs.60 crores committed by Avenue Asia Capital Management LP. A copy of the letter dated 24-05-2021 of Avenue Asia Capital Management LP for commitment to support the resolution plan is filed as **Annexure R-8** of the application.

29. ***In K. Sashidhar v. Indian Overseas Bank & Others (in Civil Appeal No. 10673/2018) the Hon'ble Apex Court*** held that, "if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per Section 30 (6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority. On receipt of such proposal, the Adjudicating Authority (NCLT) is required to satisfy itself that the resolution plan as approved by CoC meets the requirements specified in Section 30(2). No more and no less".

30. The Hon'ble Supreme Court has further held at para 35 of the above judgement that ***the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite percent 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.

31. The Hon'ble Supreme Court in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors**, held that *"the limited judicial review available to AA has to be within the four corners of section 30(2) of the Code. Such review can in no circumstance trespass upon a business decision of the majority of the CoC. As such the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved"*.

32. The Hon'ble Supreme Court of India, in the recent ruling in re **Vallal RCK vs M/s Siva Industries and Holdings Limited & Ors**, has held as under:-

*21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in the cases of K. **Sashidhar v. Indian Overseas Bank and***

Others, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another, and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.

27. This Court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the case of ***Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another:***

“95.However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.....”

33. Therefore, the resolution plan, when tested on the touch stone of the aforesaid facts and the rulings, we are of the view that the instant resolution plan satisfies the requirements of Section 30 (2) of the Code and Regulations

37, 38, 38 (1A) and 39 (4) of the Regulations. We also found that the Resolution Applicant is eligible to submit the Resolution Plan under Section 29A of the Code.

34. We therefore, hereby approve the Resolution Plan dated 30.07.2021 submitted by Mr. Jitender Vir Singh and Derit Infrastructure Private Limited along with annexure, schedules forming part of the Resolution Applicant annexed to the Application and order as under:

- i. The Resolution Plan along with annexures and schedules forming part of the plan shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
- ii. All crystallized liabilities and unclaimed liabilities of the Corporate Debtor as on the date of this order shall stand extinguished on the approval of this Resolution Plan.

- iii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt with by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned as held by Hon'ble Supreme Court in the matter of ***Ghanashyam Mishra And Sons Private Limited Versus Edelweiss Asset Reconstruction Company Limited*** in CIVIL APPEAL NO.8129 OF 2019 dated 13.04.2021.
- iv. It is hereby ordered that the Performance Bank Guarantee furnished by the Resolution Applicant shall remain as performance Bank Guarantee till the amount proposed to be paid to the creditors under this plan is fully paid off and the plan is fully implemented.
- v. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC) Hyderabad for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.

- vi. Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to supra.
- vii. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- viii. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this order for information.
- ix. The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.
- x. The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.
- xi. The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and also forward a copy to IBBI.

35. Accordingly, **IA 598/2021 in CP(IB) No.518/7/HDB/2018** stands disposed of.

Sd/-

SATYA RANJAN PRASAD
MEMBER (TECHNICAL)

Syamala

Sd/-

DR. N.V.RAMAKRISHNA BADARINATH
MEMBER (JUDICIAL)