

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

IA(IBC)/1450(CHE)/2022 in IBA/1437/2019

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

IN THE MATTER OF:

Gopalsamy Ganesh Babu
Resolution Professional of
Vaasan Medical Center (India) Private Limited

... Applicant

Present:

For RP : E. Om Prakash, Senior Advocate
A. Karthikeyan, Advocate

CORAM:

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

Order Pronounced on 25th August 2023

ORDER

(hearing conducted through physical mode)

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

IA(IBC)/1450(CHE)/2022 is an Application which is moved by the Resolution Professional of the Corporate Debtor viz., Vaasan Medical Center (India) Private Limited on 30.11.2022 under Section 30(6) & 31 of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC, 2016') read with Regulation 39 of the Insolvency and Bankruptcy Board of India

(Insolvency Resolution Process for Corporate Persons) Regulations,
2016 (in short, 'CIRP Regulation, 2016') seeking relief as follows;

- (a). *It is humbly prayed that this Hon'ble Tribunal may be pleased for approving the Resolution Plan of M/s. IBL Healthcare Limited and pass such other order / orders direction / directions as may deem just and proper in pursuant with Section 31(1) of Insolvency and Bankruptcy Code, 2016 and grant relief as prayed.*
- (b). *It is humbly prayed that the monitoring committee for implementation of Resolution plan consisting of one representative each of the secured Financial Creditors City Union bank, Canara Bank and Union Bank of India, on representative of the Resolution Applicant and chaired by the present Resolution Professional be approved.*
- (c). *Composition of monitoring committee for the recovery under Section 66 / 43 of the IBC consisting of one representative each of secured Financial Creditors City Union bank, Canara Bank and Union Bank of India be approved and recovered amount be distributed as per the Resolution Plan in the same proportion.*
- (d). *The Applicant further prayed that leave may be granted to add or modify any of the relief.*
- (e). *pass other order or orders that may be deemed fit and necessary in the circumstances of the case and render justice and for this act of kindness, the Petitioner shall as in duty bound ever pray.*

**2. CORPORATE INSOLVENCY RESOLUTION PROCESS –
VAASAN MEDICAL CENTER (INDIA) PRIVATE LIMITED**

- 2.1. In an Application filed under Section '7' of the IBC, 2016, by the Financial Creditor, the CIRP in respect of the Corporate Debtor was ordered by this Tribunal vide order dated



01.11.2021 and one Mr. Kedarram Ramratan Laddha was appointed as the IRP. The IRP has caused paper publication on 12.11.2021 in accordance with under Section 15 of IBC, 2016 r/w Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in Indian Express (English) and Dinamani (Tamil).

- 2.2 In response to the claims received, the IRP has constituted the Committee of Creditors with (i) Canara Bank at 31.97% voting share, (ii) City Union Bank with 56.35% voting share, (iii) Union Bank of India with 11.65% of voting share and RSK Housing (India) Pvt. Ltd., whose claim was under verification.
- 2.3 In the 1st CoC meeting held on 14.12.2021, the IRP expressed his concern that due to his occupation in other assignments, he may not be available to carry out the assignment as Resolution Professional and since no written consent in Form AA has been given by the IRP, in the 2nd CoC meeting held on 31.12.2021, the members of the CoC has resolved with 99.66% voting share to appoint the Applicant herein as the Resolution Professional in respect of the Corporate Debtor. Accordingly, in an application moved by the CoC in IA(IBC)/82(CHE)/2022, this Tribunal vide its order dated 15.02.2022 appointed the Applicant herein as the

'Resolution Professional' in respect of the Corporate Debtor.

2.4. It is stated that the RP has issued letters to two Valuers separately for Plant & Machineries including Fixtures and furniture and a separate Valuation of Securities and Financial Assets (Including Inventories) of Vaasan Medical Center (India) Private Limited (Under CIRP) as per Regulation 27 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It is stated that the Land and Building valuation were not undertaken as there is no land and building owned by the Corporate Debtor.

2.5. In the meantime, the 180 days CIRP period came to an end by 30.04.2022. Accordingly, the RP moved an Application seeking extension of CIRP by 90 days and the same was allowed by this Tribunal and as such the CIRP period of the Corporate Debtor was extended till 29.07.2022.

2.6. In the 5th CoC meeting, Form – G was approved and accordingly, the RP published Form – G (Invitation for Expression of Interest) in all Tamil Nadu Editions of Business Standard (English) and Dinamalar (Tamil) on 29.04.2022.

2.7. In response to the Expression of Interest, it is stated that five Prospective Applicants have expressed their desire for submission of Resolution Plan in respect of the Corporate Debtor. The RP has prepared the Provisional lists of Prospective Resolution Applicants and communicated the same to the committee and to all prospective resolution applicants who submitted the expression of interest through mail on 16.05.2022 as detailed below:

- (i) **Dharun Medicals**, 14-A, Ram Nagar, Thillai Nagar East, Trichy-620 018.
- (ii) **IBL Health Care Ltd.**, Block No.1, Module 27, 2nd Floor, SIDCO Electronic Complex, Thiru-Vi-Ka Industrial Estate, Guindy, Chennai-600 032.
- (iii) **Sherisha Technologies Pvt Ltd.**, Old Mahabalipuram Road, Thiruporur- 603 110, Chengalpattu Dist.
- (iv) **Karthik Enterprises**, #10/46-B, Avinashi Road, Gold Wins, Coimbatore - 641 014.
- (v) **Noblecure Pharma Pvt Ltd.**, #6, Srinivasapuram, 1stMain Road, Thiruvannamiyur, Chennai-600 041.

2.8. It is stated that the RP shared the Information Memorandum to the Prospective Resolution Applicants after obtaining an undertaking u/S.29 of the Insolvency and Bankruptcy Code 2016 read with Regulation 36(4) of the Insolvency and Bankruptcy Board Of India (Insolvency

Resolution Process for Corporate Persons) Regulations, 2016 to maintain Confidentiality.

2.9. It is stated that in the 6th CoC meeting on 27.05.2022, the CoC members present and having 99.66% voting unanimously agreed and approved the Final list of Prospective Resolution Applicants for submission of Resolution Plan in respect of Vaasan Medical Center (India) Private Limited and requested the RP to proceed further for issuing Request for Resolution Plan (RFRP) to them.

2.10. It is stated that RP issued the Request for Resolution Plan (RFRP) along with the Evaluation Matrix to the Final list of Prospective Resolution Applicants for submission of Resolution Plan in respect of Vaasan Medical Center (India) Private Limited.

2.11. It is stated that the RP has received Three (3) Resolution Plans till the last date and time of 28.06.2022 @ 17.00 Hrs as mentioned in the Request for Resolution Plan (RFRP). It is stated that the RP convened the 7th CoC meeting on 30.06.2022 in order to submit the all the three Resolution Plans received along with the Valuers Reports before the CoC members. It is stated that the RP submitted the Resolution Plan received in a sealed cover and opened all the three before the CoC members as detailed below:-

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- (i) **Dharun Medicals**, 14-A, Ram Nagar, Thillai Nagar East, Trichy-620 018.
- (ii) **IBL Health Care Ltd.**, Block No.1, Module 27, 2nd Floor, SIDCO Electronic Complex, Thiru-Vi-Ka Industrial Estate, Guindy, Chennai-600 032.
- (iii) **Sherisha Technologies Pvt Ltd.**, Old Mahabalipuram Road, Thiruporur- 603 110, Chengalpattu Dist.

2.12. It is stated that the RP convened the 8th CoC on 11.07.2022 in order to approve and finalize the Resolution Plan. Further, it is stated that the RP informed to the CoC members that all the Resolution Applicants have submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan and the same are in order. Further the RP informed to the CoC members present that all the Resolution Plans submitted satisfy the condition as specified under Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the Insolvency and Bankruptcy code, 2016.

2.13. The e-voting was scheduled between 12.07.2022 at 4:00 PM till 20.07.2022 at 11:30 PM. It is stated that at the conclusion of the e-voting, **the Resolution Plan of IBL Healthcare Limited was approved by the members of CoC with 88%**

voting share casted in favour by the Financial Creditors
after considering its feasibility and viability.

3. ABOUT THE RESOLUTION PLAN

3.1. The Resolution Plan value is Rs.11,30,00,000/- (Rupees Eleven Crores Thirty lakhs only). The Details of the Resolution Plan / Payment Schedule are set out herein below

Sl. No.	Category of Stakeholder	Amount Claimed**	Amount Admitted**	Settlement Amount #	Settlement Percentage	Remarks
1	Secured Financial Creditors	1,39,14,13,280	1,39,14,13,280	4,73,08,052	3.40%	
2	Unsecured Financial Creditors	20,57,52,389	46,72,603	14,018	0.30%	
3	Operational Creditors (Government)	1,70,34,63,775	1,03,74,56,845	0	0.50%	This is IT claim. Earnings not by Resolution Applicant
	Operational Creditors (Other than workmen / Employees)	16,82,20,205	14,36,55,848	4,31,068	0.30%	
	Grand Total	3,47,23,59,653	2,57,72,38,576	4,77,53,157		
4	CIRP Expenses (Estimated)		1,49,91,050	1,49,91,080	100%	Shall be paid on Actuals
5	PF Dues until CIRP End (Estimated)		2,49,22,514	2,49,22,514	100%	Dues payable in 24 months without any penalty and interest
6	Working Capital and Restart Expenses			2,53,33,349		
	Resolution Plan Value			11,30,00,000		

** Amount claimed and Amount admitted are as per the Information Memorandum. Claims, other than the ones which are verified and admitted, are not considered under this plan.

Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.

The resolution plan value is Fixed, Full and FINAL.




3.2. The Schedule of payments is summarized as below:

S. No.	CATEGORY OF STAKEHOLDERS	SETTLEMENT AMOUNT	SCHEDULE FROM TRANSFER DATE		
			31 days (20%)	92 days (40%)	183 days (40%)
1	Secured Financial Creditor	4,73,08,052	94,61,610	1,89,23,221	1,89,23,221
2	Unsecured Financial Creditor	14,018	2,804	5,607	5,607
3	Operational Creditors (Govt.)	-	-	-	-
4	Operational Creditors (Others)	4,31,088	86,218	1,72,435	1,72,435
5	CIRP Expenses (estimated)	1,49,91,080	1,49,91,080		
	Total	6,27,44,237	2,45,41,712	1,91,01,263	1,91,01,263

4. SOURCE OF FUND

4.1. It is stated that the parent company of the Resolution Applicant viz. Indrayani Biotech Limited, is a BSE listed company and shall invest in the Corporate Debtor through the resolution applicant which is its fully owned subsidiary.

4.2. It is stated that the balance sheet of the parent company is strong enough to take care of the funding needs of the Corporate Debtor. Based on the need, the Parent company has the capability and shall source the fund required through any or a combination of the below channels based on the situation and in the best interests of revival of the corporate debtor.

- From internal reserves and surplus.
- Loan from Directors
- Equity funding in the parent company through a preferential, rights issue or follow-on public offer.
- Debt funding through institutional investors, banks and financial institutes.

4.3. It is stated that the Parent Company recently executed a preferential issue raising Rs.23 Crores from the investors. The current assets in the balance sheet of the Company is more than sufficient to meet the needs of the investment committed in the Resolution Plan.

5. IMPLEMENTATION AND SUPERVISION OF THE RESOLUTION PLAN

5.1. It is stated that immediately after the Transfer date, the Company shall be operated and managed by the existing Resolution Professional who shall exercise all such powers as generally vested on the Board of Directors of the Company.

5.2. It is stated that the powers of the suspended board of directors of the Company under section 17 (1) (b) of the Insolvency and Bankruptcy Code, 2016 shall continue to remain suspended until the New Board of Directors of the Company is constituted by the Resolution Applicant as on the date of handover of management to the successful resolution applicant.

5.3. During the said period, the Resolution Applicant shall supervise the implementation of the Plan and shall do all such acts, deeds, matters and things as may be necessary, desirable or expedient in order to implement and give effect to this Resolution Plan in accordance with its terms and shall act under the supervision of the monitoring committee formed on the transfer date.

6. MANAGEMENT OF CORPORATE DEBTOR :-

6.1. The operations of the Corporate Debtor shall be managed and conducted in ordinary course and on a going concern basis, by the Resolution Professional, who shall keep the Resolution Applicant informed of all the happenings about the company on a regular basis.

6.2. The current management team of the Company shall undertake all such actions and shall do all such acts, deeds and things including executing any and all documents as may be required by the Resolution Professional to ensure that the operations of the Company continue on a going concern basis.

6.3. The Resolution Professional shall ensure that the office and shops of the Company is open, customers are able to shop

for medicine, connect with the management, vendors and suppliers of medicine and other essentials continue to render their supplies and/or services to the Company.

7. MONITORING COMMITTEE OF CORPORATE DEBTOR :-

7.1. The Resolution Plan does not propose any Monitoring Committee. However, the RP in the prayer has sought for constitution of a Monitoring Committee to supervise and implement the Resolution Plan. Accordingly, the Monitoring Committee of the Corporate Debtor shall consist of:

- (i) Resolution Professional - Chairman
- (ii) One representative each of the secured Financial Creditors viz. (a) City Union bank, (b) Canara Bank and (c) Union Bank of India,
- (ii) One representative of the Resolution Applicant

7.2. As sought for in the prayer, the above Monitoring Committee shall prosecute the pending Section 43 and 66 Applications filed against the suspended Directors / promoters of the Corporate Debtor and the proceeds of the same, if any, is recovered shall be distributed to the Financial Creditors, as per the Resolution Plan in the same proportion.

8. EXISTING SHAREHOLDERS:-

8.1. It is stated that the interest of the existing Shareholders have been altered by the Resolution Plan as under:-

Sl. No	Category of Share Holder	No. of Shares held before CIRP @Rs. 100 each	No. of Shares held after the CIRP @Rs. 100 each	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity	37,71,000	0	100	0

8.2. It is stated that the existing shares of the shareholders of the Corporate Debtor shall be extinguished fully. The funds brought in by the Resolution Applicant shall be treated as investment in equity of the Corporate Debtor and the shares shall be issued to the Resolution Applicant based on the investment done.

8.3. It is stated that the Corporate Debtor shall become a wholly owned subsidiary of the Resolution Applicant.

9. PERFORMANCE GUARANTEE:-

9.1. The RP has placed on record the Performance Bank Guarantee issued by Karur Vysya Bank on 26.07.2022 for a sum of Rs.1,13,00,000/- (Rupees One Crore and Thirteen lakhs Only). The said Performance Bank Guarantee was lastly renewed on 25.07.2023 and is valid till 25.10.2023.

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10. TABULATION OF VARIOUS COMPLIANCES REQUIRED UNDER THE PROVISIONS OF IBC, 2016

10.1. The Applicant has submitted the details of various compliances as envisaged within the provisions of IBC, 2016 and CIRP Regulations, which requires a Resolution Plan to adhere to, which is reproduced hereunder:

CLAUSE OF S.30(2)	REQUIREMENT	HOW DEALT WITH IN THE PLAN
(a)	Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	Para 3.2 & 3.3 of the Resolution Plan.
(b)	(i) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53; or (ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall be not less than amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher and (iii) provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such manner as may be specified by the Board.	(i) Para 3.2 at Pg. 5 and 6 (ii) Para 3.2 at Pg. 5 and 6 (iii) Para 3.2 at Pg. 5 and 6 of the Resolution Plan

(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Para 5 at Pg. 13 and 14 of the Resolution Plan
(d)	Implementation and Supervision.	Para 5 at Pg. 13 and 14 of the Resolution Plan
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Para 3.2 at Pg. 5 and 6 of the Resolution Plan
(f)	Conforms to such other requirements as may be specified by the Board.	Para 3 and 4 at Pg. 7 of the Resolution Plan.

11. MEASURES REQUIRED FOR IMPLEMENTATION OF THE RESOLUTION PLAN IN TERMS OF REGULATION 37 OF CIRP REGULATIONS

PARTICULARS	RELEVANT PAGE OF THE RESOLUTION PLAN DEALING AFORESAID COMPLIANCE WITH REGULATION
<i>A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximisation of value of its assets, including but not limited to the following: -</i>	
(a) transfer of all or part of the assets of the corporate debtor to one or more persons;	Not proposed by the Resolution Applicant
(b) sale of all or part of the assets whether subject to any security interest or not;	Not proposed by the Resolution Applicant
(c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	Para 9 at Pg. 8 of the Resolution Plan
(d) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation	Para 6.2 at Pg. 15 of the Resolution Plan

of the corporate debtor with one or more persons;	
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	Para 6.2 at Pg. 15 of the Resolution Plan
(f) satisfaction or modification of any security interest;	Para 9 at Pg. 20 of the Resolution Plan
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Para 9 at Pg. 17 to 20 of the Resolution Plan
(h) reduction in the amount payable to the creditors;	Para 3.2 at Pg. 5 and 6 of the Resolution Plan
(i) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	Not proposed by the Resolution Applicant
(j) amendment of the constitutional documents of the corporate debtor;	Para 6.2 at Pg. 15 and 16 of the Resolution Plan
(k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Not Proposed by the Resolution Applicant
(l) change in portfolio of goods or services produced or rendered by the corporate debtor;	Not Proposed by the Resolution Applicant
(m) change in technology used by the corporate debtor; and	Not Proposed by the Resolution Applicant

(n) obtaining necessary approvals from the Central and State Governments and other authorities.	Para 9 at Pg. 17 to 20 of the Resolution Plan
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12. MANDATORY CONTENTS OF THE RESOLUTION PLAN IN TERMS OF REGULATION 38 OF THE CIRP REGULATIONS:-

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Resolution Plan</i>
38(1)	The amount due to the Operational Creditors under a Resolution Plan shall be given priority in payment over Financial Creditor.	Para 3.2 at pg. 5 and 6 of the Resolution 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	Para 3.2, 3.3 and 3.4 at pg. 5, 6 and 7 of the Resolution 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.	Enclosed with the Plan at Page No. 25 of Volume – II
38(2)	A Resolution Plan shall provide (a) the term of the plan and its implementation schedule	Para 5 at pg. 13 and 14 of the Resolution Plan.
	(b) the management and control of the business of the Corporate Debtor during its terms; and	Para 5 & 6 at pg. 13 to 17 of the Resolution Plan
	(c) adequate means for supervising its implementation	Para 5 & 6 at pg. 13 to 17 of the Resolution Plan
38(3)	A Resolution Plan shall demonstrate that (a) It addressed the cause of default;	Para 4 at pg. 9 to 13 of the Resolution Plan

Reference to relevant Regulation	Requirement	How dealt with in the Resolution Plan
	(b) It is feasible and viable;	Para 4 at Pg. 9 to 13 of the Resolution Plan.
	(c) it has provisions for its effective implementation;	Para 4 at Pg. 9 to 13 of the Resolution Plan.
	(d) it has provisions for approvals required and the timeline for the same; and	Para 4 at Pg. 9 to 13 of the Resolution Plan.
	(e) the Resolution Applicant has the capability to implement the Resolution Plan	Para 4 at Pg. 9 to 13 of the Resolution Plan.

13. The successful Resolution Applicant has submitted a Certificate of Eligibility under Section 29A of IBC, 2016 to submit a Resolution Plan under the provisions of IBC, 2016 and the same is appended as Annexure to the Resolution Plan at Volume – II to the typed set filed along with the Application.

14. RELIEFS AND CONCESSIONS

SL. NO	RELIEF AND/OR CONCESSIONS AND APPROVAL SOUGHT BY RESOLUTION APPLICANT	ORDERS THEREON
1	In the interest of keeping the Corporate Debtor as a going concern and to take care of the existing employees at the same time, the resolution applicant intends that all workmen and employees in the rolls of the corporate debtor as on transfer date shall continue in the rolls of the CD under the new management. The resolution applicant seeks	Granted

	relief to consider the transfer date to be deemed to be the joining date of the employees for the purpose of gratuity payable as per applicable laws.	
2	There is a huge backlog of dues to be paid to the EPFO towards employee PF accounts. However, in the interest of maintaining the CD as a going concern, the resolution applicant needs relief from payment of interest, penalty, etc and shall need relief in terms of time to pay the dues. The resolution applicant seeks approval for complete relief from any penalty and interest claimed by EPFO and also to allow the resolution applicant to pay the dues for the period until transfer date within a period of 24 months from the transfer date in order to take care of impact on the employees.	Granted, subject to the order passed in IA(IBC)/27(CHE)/ 2023
3	Most of the consents, agreements (including rental agreements), licences, approvals, rights, entitlements, benefits, and privileges under applicable law, contract, lease, granted in favour of the corporate debtor are not in force or shall be lapsing on or before the transfer date. In the interest of continuing the CD as a going concern and to avoid sudden adverse impact to the CD due to removal of moratorium on transfer date, the resolution applicant seeks the following relief in terms of time to negotiate and renew all of them. All consents, agreements (including rental agreements), licences, approvals, rights, entitlements, benefits, and privileges under applicable law, contract, lease, granted in favour of the corporate debtor or to which the corporate debtor is entitled or accustomed to, shall notwithstanding that they may have already lapsed or expired due to non-compliance or efflux of time, be deemed to continue without disruption for the benefit of corporate debtor and the	The Resolution Applicant shall obtain necessary approval in terms of Section 31(4) of IBC, 2016

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	resolution applicant, for a period of 12 months from the transfer date or until the period mentioned in such licenses, consents, agreements or approvals, whichever is later	
4	A moratorium of 12 months from compliance with the provisions of the Companies Act, 2013 (including Section 128 and Section 129 of the Companies Act, 2013) in order for the Resolution Applicant to rectify any errors or inconsistencies in any returns, filings, and/or the audited statements of the Company for any of the financial years including till the financial year containing the Resolution Plan transfer date;	Not Granted.
5	Approval for amendment of the constitutional documents of the Corporate Debtor.	Granted
6	Approval for fresh authorized paid up share capital of the Corporate Debtor, Extinguishment of existing authorized and paid-up capital and Exemption from compliance to clauses related to reduction increase of share capital.	Granted
7	Approval for merger of the CD with either IBL Healthcare Limited or its parent Indrayani Biotech Limited and exemption from compliance to guidelines related to merger.	Not Granted, since no Scheme proposed in the Resolution Plan
8	The resolution applicant needs relief in terms of ability to raise funds for meeting the financial commitments and turning around the operations of the CD. In this regard, the resolution applicant seeks relief with approval for automatic listing with BSE / NSE or other stock exchanges in India. Upon approval of this resolution plan by NCLT, it shall be deemed that all necessary approvals required under SEBI act regulations or under the procedures of BSE / NSE or other stock exchanges of India, stands automatically approved. This automatic listing for approval shall enable the	Granted. However, procedure before BSE / NSE shall not automatically approved.

	resolution applicant to submit applications with SEBI, BSE, NSE or any other stock exchange which shall be considered automatically approved and shall enable the resolution applicant to raise necessary funds from public.	
9	Approval for issue of preferential shares, debentures or such financial instruments and Exemption from compliance to clauses related to preferential allotment guidelines	Granted, subject to compliance of Companies Act, 2013
10	Approval / waiver, under Section 131 of the Companies Act, 2013, if any revisions are required to be made in the audited statements of the Company for any of the financial years prior to the transfer date.	Not Granted. However, requisite Application to be moved before NCLT
11	Approval for revocation of all power of attorneys provided to any person by the Corporate Debtor as on the transfer date.	Granted
12	Approval for termination without liability, all outstanding negotiable instruments issued by the Corporate Debtor or any other person on behalf of Corporate Debtor.	Granted
13	Exemption from tax under any provisions of the Income Tax Act, 1961, on the portion of the liability/outstanding not remitted to the Banks / Financial Institutions Creditors/government agencies/others and consequently written off or on account of modification of book of accounts as a result of implementation of this plan.	Granted, subject to the provisions of Income Tax Act, 1961
14	Exemption from any other tax liability, stamp duty liability, levy of any duty, charges, fee or by whatsoever name called arising due to the implementation of the Resolution Plan or change in ownership structure of the Corporate Debtor.	Not Granted during course of implementation.

15	Approval to carry forward accumulated losses and unabsorbed depreciation under Section 79 & 32 of the income tax act and minimum alternate tax and to utilize such amounts to set off future tax obligations.	This is for the appropriate authorities to consider
16	Any action, with regard to the assets / claims / rights/ accumulated losses / sundry debtors etc., as mentioned in the Balance Sheet as well as off balance sheet items of the Corporate Debtor as on transfer date shall be the assets/ claims/rights/accumulated losses / sundry debtors of the Resolution Applicant and shall be dealt with at its sole discretion.	Granted
17	All the amounts shall be paid after proper reconciliation and without prejudice to legal remedies available to the Corporate Debtor.	Not Granted. To be paid as per the timelines stipulated under the Resolution Plan
18	Extinguish all liabilities in relation to corporate guarantees, indemnities etc., provided on securities of the Corporate Debtor as on the transfer date.	Granted
19	All claims, rights of promoter/promoter group against the Corporate Debtor, unless covered in the Resolution Plan, shall stand irrevocably and unconditionally extinguished	Granted
20	All claims of government authorities, in relation to all taxes, liabilities, penalties, interest etc., for period pertaining prior to transfer date shall stand fully extinguished irrespective of the stage of assessment of these periods.	Granted, in view of the clean slate principle envisaged under IBC, 2016
21	All right, title, interest and property in respect of intellectual property of the corporate debtor including trademarks, copyright, knowhow, domain names, etc shall remain with the corporate debtor.	Granted

22	All the debts of other creditors other than those whose claims have been admitted by the Resolution Professional as per the Information Memorandum shall be written off and such creditors including government and/or statutory department shall have no claim whatsoever against the Corporate Debtor and/or Resolution Applicant. All legal proceedings and other contingent liabilities, are to be considered settled irrevocably and unconditionally other than those explicitly covered in the Resolution plan. No other person shall be eligible to receive any amount from the Corporate Debtor, either on account of transactions before transfer date, unverified claims, legal proceedings etc.	Granted
23	All inquiries, investigations, proceedings, whether civil or criminal, notices, causes of action, suits, claims, disputes, litigation, arbitration, or other judicial, regulatory or administrative proceedings against or in relation to or in connection with the corporate debtor, pending or threatened, present or future, in relation to any period prior to transfer date or arising on account of the transaction herein shall stand withdrawn and dismissed and all liabilities or obligations thereto, whether or not set out in the books of the corporate debtor, shall be deemed to have written off in full and permanently extinguished and the corporate debtor or the resolution applicant shall, at no point of time, be directly or indirectly, held responsible or liable in relation thereto notwithstanding any adverse order that may have been passed in respect of the same by any relevant authority	Granted
24	Indemnity to the resolution applicant against all acts, deeds, matters and things done before the transfer date either by the corporate debtor or any other individuals, groups, agencies, companies	Granted
25	Provide immunity to the corporate debtor, resolution applicant, new directors and management personal from any actions and penalties (of any nature whatsoever) under any	Granted in terms of Section 32A of IBC, 2016

	applicable laws for any non-compliance of applicable laws or breach of contractual obligations in relation to or by the corporate debtor for any period up to the transfer date	
26	Canara Bank has declared the CD as a willful defaulter. On approval of the plan by Hon'ble NCLT, Canara Bank shall withdraw or reverse or revoke or nullify this declaration/listing with RBI as applicable to enable smooth operations of the CD and its parent companies	Granted
27	On approval of the plan by Hon'ble NCLT, any adverse remarks or ratings by the secured creditors based on their relationship with previous management / promoters shall be nullified or reversed in all the government and banking records, as applicable, to be fair to the resolution applicant and allow the new management to start with a fresh slate.	This is for the Banks to consider, keeping in view of the principles of 'clean slate' enshrined under IBC, 2016
28	The secured creditors, upon payment of the settlement amounts mentioned in the Resolution Plan shall release their respective charges (if any) over the assets of the CD. They shall execute appropriate Receipts and also file necessary forms for satisfaction of charge with the Registrar of Companies..	Granted

15. ANALYSIS AND FINDINGS OF THIS TRIBUNAL

15.1. It is seen from Form – H that the Liquidation value of the Corporate Debtor is arrived at Rs.1,34,30,284/- and the corresponding Fair value is arrived at Rs.2,06,17,180/-.

15.2. Further, it is seen from Form – H, that the RP has filed Applications under Section 43 and 66 of IBC, 2016 has been filed by the RP in the present matter. The said Applications shall be continued by the Monitoring Committee and the proceeds of the same, if any, is recovered shall be distributed as per the Resolution Plan in the same proportion to the members of the CoC.

15.3. In so far as the approval of the Resolution Plan is concerned, this Authority is convinced on the decision of the Committee of Creditors, following the much-celebrated Judgment of the Supreme Court in the matter of **K. Sashidhar – Vs– Indian Overseas Bank (2019) 12 SCC 150**, wherein in para 19 and 62 it is held as follows;

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

62.In the present case, however, we are concerned with the provisions of I&B Code dealing with the resolution process. The dispensation provided in the I&B Code is entirely different. In terms of Section 30 of the I&B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC and they express their opinion on the proposed resolution plan in the form of votes, as per their voting share. In the meeting of the CoC, the proposed resolution plan is placed for discussion and after full interaction in the presence of all concerned and the Resolution Professional,

the constituents of the CoC finally proceed to exercise their option (business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, non-recording of reasons would not per-se vitiate the collective decision of the financial creditors. The legislature has not envisaged challenge to the "commercial/business decision" of the financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count."

15.4. 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)*.

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

"55. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite per cent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference

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

58. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with Section 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters "other than" enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B



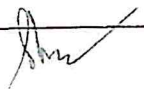
Code and not to act as a court of equity or exercise plenary powers.”

(emphasis supplied)

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

“73. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or sub-class of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal.”

(emphasis supplied)

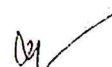


15.7. The Supreme Court in its recent decision in **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Ltd. & Ors.** in *Civil Appeal no. 3395 of 2020* dated 24.03.2021 has held as follows;

76. The expositions aforesaid make it clear that the decision as to whether corporate debtor should continue as a going concern or should be liquidated is essentially a business decision; and in the scheme of IBC, this decision has been left to the Committee of Creditors, comprising of the financial creditors. Differently put, in regard to the insolvency resolution, the decision as to whether a particular resolution plan is to be accepted or not is ultimately in the hands of the Committee of Creditors; and even in such a decision making process, a resolution plan cannot be taken as approved if the same is not approved by votes of at least 66% of the voting share of financial creditors. Thus, broadly put, a resolution plan is approved only when the collective commercial wisdom of the financial creditors, having at least 2/3rd majority of voting share in the Committee of Creditors, stands in its favour.

77. In the scheme of IBC, where approval of resolution plan is exclusively in the domain of the commercial wisdom of CoC, the scope of judicial review is correspondingly circumscribed by the provisions contained in Section 31 as regards approval of the Adjudicating Authority and in Section 32 read with Section 61 as regards the scope of appeal against the order of approval.

77.1. Such limitations on judicial review have been duly underscored by this Court in the decisions above-referred, where it has been laid down in explicit terms that the powers of the Adjudicating Authority dealing with the resolution plan do not extend to examine the correctness or otherwise of the commercial wisdom exercised by the CoC. The limited judicial review available to Adjudicating Authority lies within the four corners of Section 30(2) of the Code, which would essentially be to examine that the resolution plan does not contravene any of the provisions of law for the time being in force, it conforms to such other requirements as may be specified by the Board, and it provides for: (a) payment of insolvency resolution process costs in priority;



(b) payment of debts of operational creditors; (c) payment of debts of dissenting financial creditors; (d) for management of affairs of corporate debtor after approval of the resolution plan; and (e) implementation and supervision of the resolution plan.

77.2. The limitations on the scope of judicial review are reinforced by the limited ground provided for an appeal against an order approving a resolution plan, namely, if the plan is in contravention of the provisions of any law for the time being in force; or there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period; or the debts owed to the operational creditors have not been provided for; or the insolvency resolution process costs have not been provided for repayment in priority; or the resolution plan does not comply with any other criteria specified by the Board

77.6.1. The assessment about maximisation of the value of assets, in the scheme of the Code, would always be subjective in nature and the question, as to whether a particular resolution plan and its propositions are leading to maximisation of value of assets or not, would be the matter of enquiry and assessment of the Committee of Creditors alone. When the Committee of Creditors takes the decision in its commercial wisdom and by the requisite majority; and there is no valid reason in law to question the decision so taken by the Committee of Creditors, the adjudicatory process, whether by the Adjudicating Authority or the Appellate Authority, cannot enter into any quantitative analysis to adjudge as to whether the prescription of the resolution plan results in maximisation of the value of assets or not. The generalised submissions and objections made in relation to this aspect of value maximisation do not, by themselves, make out a case of interference in the decision taken by the Committee of Creditors in its commercial wisdom

78. To put in a nutshell, the Adjudicating Authority has limited jurisdiction in the matter of approval of a resolution plan, which is well defined and circumscribed by Sections 30(2) and 31 of the Code read with the parameters delineated by this Court in the decisions above referred. The jurisdiction of the Appellate Authority is also circumscribed by the limited grounds of appeal provided in Section 61 of the Code. In the adjudicatory process

concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by the CoC. Within its limited jurisdiction, if the Adjudicating Authority or the Appellate Authority, as the case may be, would find any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by Code and exposted by this Court.

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

15.9. On hearing the submissions made by the Ld. Counsel for the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with 88% voting share. As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Bench. On perusal of the documents on record, we are also satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of



the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016,

15.10. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.

15.11. In case of non-compliance with this order or withdrawal of the Resolution Plan by the Successful Resolution Applicant, the CoC shall forfeit the Performance Security furnished by the Resolution Applicant in the form of Performance Bank Guarantees.

15.12. The Resolution Plan in question is hereby **Approved** by this Adjudicating Authority, subject to the observations made in this order. The Resolution Plan shall form part of this Order. The Resolution Plan is binding on the Corporate Debtor and other stakeholders.

15.13. The Resolution Applicant is directed to make payment of the entire Resolution Plan amount within the time period stipulated under the Resolution Plan, failing which the entire amount paid by the Resolution Applicant (*including the*

Performance Guarantee) as on the said date would stand automatically forfeited, without any recourse to this Tribunal.

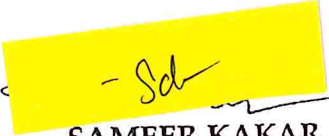
15.14. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.

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

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

16. IA(IBC)/1450/CHE/2022 shall stand **disposed of** accordingly.

17. 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. Files be consigned to the record.


SAMEER KAKAR
MEMBER (TECHNICAL)


Justice RAMALINGAM SUDHAKAR
PRESIDENT

Raymond