

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT – 1

ITEM No. 205- IA(Plan)/15(AHM)2024 With
ITEM No. 206- IA/761(AHM)2024 in CP(IB) 717 of 2019

Order Under Section 30(6) of IBC, 2016

In the matter of - IA(Plan)/15(AHM)2024 WITH

Hiten R Abhani RP of M/s Shivshakti
Barrels Private Limited

.....Applicant

Order Under Section 12 & 60(5) & Rule 11 of NCLT Rules, 2016

In the matter of : IA/761(AHM)2024

Hiten R Abhani RP of Shivshakti Barrels
Pvt Ltd

....Applicant

Order delivered on: 16/05/2024

Coram:

Mr. Shammi Khan, Hon'ble Member (J)
Mr. Sameer Kakar, Hon'ble Member (T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order. The order is pronounced in open Court, vide separate sheet.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

SEN

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-I, AHMEDABAD**

**IA(Plan)/15(AHM)2024 with
IA/761(AHM)2024 in
CP(IB) 717 of 2019**

In the matter of **M/s Shivshakti Barrels Private Limited**

IA(Plan)/15(AHM)2024

[An application under Section 30(6) of the Insolvency and Bankruptcy Code, 2016]

HITEN R. ABHANI

RP of M/s Shivshakti Barrels Private Limited (in CIRP),
Having address at:
A/502, Ship Corporate Park,
B/H. Rajpath Club, Rajpath Rangoli Road,
Ahmedabad, Gujarat-380054.

... Applicant

IA/761(AHM)2024

[Application under Section 12 & 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rules 11, 15, 51 and 153 of NCLT Rules, 2016 r.w. Regulation 40 of IBBI (Insolvency Resolution Process for Corporate Person) Regulation, 2016]

HITEN R. ABHANI

RP of M/s Shivshakti Barrels Private Limited (in CIRP),
Having address at:
A/502, Ship Corporate Park,
B/H. Rajpath Club, Rajpath Rangoli Road,
Ahmedabad, Gujarat-380054.

....Applicant

Order Pronounced on: 16.05.2024

Appearance:

For the Applicant : Mr. Nipun Singhvi, Adv. a.w. Ms. Pragati Tiwari,
Adv.

CORAM:

SH. SHAMMI KHAN, MEMBER (JUDICIAL)
SH. SAMEER KAKAR, MEMBER (TECHNICAL)

COMMON ORDER

[PER: BENCH]

1. **IA/15(AHM)2024** is filed by the Resolution Professional (“RP”) of the Corporate Debtor – M/s Shivshakti Barrels Private Limited under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) seeking the following prayers:-

- a. *This Hon'ble Adjudicating Authority may be pleased to approve the Resolution Plan under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 submitted by Rajesh Chauhan in consortium with Jaivik Parihar and Prerit Parihar, the successful Resolution Applicant and be further pleased to order and declare that such an approved Resolution Plan is binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, the State Government, the Local Authority and other authorities, the guarantors and all other stakeholders involved in the Resolution Plan;*
- b. *Any other order that the Hon'ble NCLT may find fit in the facts and circumstances of the present case.*

2. **IA/761(AHM)2024** is filed by the RP of the Corporate Debtor under Section 12 & 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rules 11, 15, 51 and 153 of NCLT Rules, 2016 r.w. Regulation 40 of IBBI (Insolvency Resolution Process for Corporate Person) Regulation, 2016 seeking the following prayers:-

- a) *Your Lordship may be pleased to allow the present application and condone the delay of 13 days in filing of Application;*

b) Your Lordship may be pleased to pass an appropriate order under Section 12 read with Section 60(5) of the Code read with Rule 11, 15, 51 and 153 of the NCLT Rules for extension of period of 787 days from 02.03.2022 to 26.04.2024 in view of pending litigation and returned of plan approval application IA 229 of 2022 by Hon'ble AA with direction to file afresh as CIRP period expires on 01.03.2022;

And/Or/In alternative

c) Your Lordship may be pleased to exclude period of 787 days from 01.03.2022 to 26.04.2024 in view of stand-still time due to pending litigation for successful completion of CIRP of Shivshakti Barrels Private Limited;

d) Your Lordship may be please to grant any other relief as may be deem fit in the interest of justice.

Facts in IA(Plan)/15(AHM)2024

3. It is stated that:-

- I. The Corporate Debtor is an MSME and its registered office is situated at Opposite Gujarat Metal Cast Village Dunia, Halol Godhra Road, Halol GJ-389350. The Udyam registration was obtained on 17.10.2020. A Copy of the MSME certificate is placed at Annexure- C at page 44 of the application.
- II. The Operational Creditor - M/s. Korea Trade Insurance Corporation filed application under Section 9 of the Code for initiation of the CIRP against the Corporate Debtor Company. This Tribunal vide its order dated 10.03.2021 admitted the said application and appointed Mr. Hiten R. Abhani as an Interim Resolution Professional (“IRP”).

III. The applicant received the order dated 10.03.2021 passed by the Bench on 18.03.2021 and made a Public Announcement in Form A on 19.03.2021, in terms of Regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 inviting proof of claims from the creditors of the Corporate Debtor.

IV. In compliance of Section 21(1) of the IBC and Regulations made thereunder, the IRP constituted the Committee of Creditors (“CoC”) and a report certifying the constitution of the CoC was submitted to the NCLT on 24.04.2021. The CoC consists of the following members:

Sr. No.	Name of the Creditor	Status of Creditor	Amount Admitted	Voting %
1.	<i>The Federal Bank Limited</i>	<i>Secured Financial Creditor</i>	<i>4,89,68,688.16</i>	<i>95.08%</i>
2.	<i>Bajaj Finance Limited</i>	<i>Unsecured Financial Creditor</i>	<i>25,35,571.00</i>	<i>4.92%</i>
3.	<i>Korea Trade Insurance Corporation</i>	<i>Operational Creditor</i>	<i>2,55,64,620.00</i>	<i>0.00%</i>

V. The 1st CoC meeting was conveyed on 28.04.2021 in which the IRP informed the committee about the details of the claims received by him. The Applicant also informed the CoC about the pending applications filed before this Tribunal i.e., application under Section 19(2) of the Code for non-cooperation of the

management and another application under Section 66 of the Code which was yet to be heard by the Tribunal. The COC also approved the appointment of IRP as RP. Copy of minutes of 1st CoC meeting dated 28.04.2021 is annexed as Annexure-C.

- VI. The RP conducted the **2nd CoC** meeting on 15.05.2021 wherein the appointment of Transaction Auditor, Manager at Project and Valuers was finalised. The Applicant was authorised to make a Public Announcement in Form-G and to finalise the Expression Interest (“EoI”), Request for Resolution Plan (“RFRP”) and Information Memorandum (“IM”) for inviting the Resolution Plan in accordance with Regulation 36A of the Code and issue of RFRP on 24.05.2021. The CoC further authorised the Applicant to fix the minimum criteria for proposed resolution applicant.
- VII. The applicant made a Public Announcement in Form-G for an invitation of expression of interest to submit resolution plan for Corporate Debtor on 24.05.2021.
- VIII. The **3rd CoC** meeting was held on 22.06.2021 wherein the RP informed the CoC about the details of claims received by the RP following the date of Public Announcement in Form A. The RP further informed about the list of parties from whom EoI enquiries were received, the CoC approved two PRAs and authorised RP to

issue Information Memorandum and RFRP to both the PRAs. The Committee further resolved to authorise RP to file an application with the NCLT for granting approval of the extension of 90 days in the CIRP period beyond 180 days under Section 12(1) and Regulation 40 of IBC, 2016.

- IX. The applicant filed an interlocutory application under Section 12(2) of the Code bearing IA No. 354 of 2021 with the prayer to extend period of CIRP beyond 180 days. This Adjudicating Authority vide its order dated 20.10.2021 allowed the said application and further extended the CIR period of the Corporate Debtor for 90 days beyond 180 days from the date of the extension order i.e., 20.10.2021.
- X. The Applicant in terms of Regulation 36A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 published an Invitation for submission of Expression of Interest ("EoI") in prescribed Form-G on 02.11.2021 and the last date for submission of the EoI by the Prospective Resolution Applicants was 17.11.2021.
- XI. The 8th CoC meeting was conducted on 03.01.2022 wherein Resolution Plan received from Prospective Resolution Applicant Mr. Jaivik Samaratsingh Parihar and others was put for discussion

before the CoC members and CoC members resolved to consider the Resolution Plan received from Mr. Jaivik Parihar in Consortium with Mr. Rajesh Chauhan and Prerit Parihar subject to Compliance Report under Section 29A and other Sections and Regulations of IBC, 2016 of CIRP and in accordance with RFRP requirements. Further, CoC members resolved to seek further extension of 30 days beyond 270 days and directed Applicant RP to file appropriate application before NCLT for such extension.

XII. In view of the resolution passed by CoC members with requisite majority in the 8th CoC meeting dated 03.01.2022, Applicant filed an application bearing IA No. 40 of 2022 before this Tribunal seeking exclusion of period of 30 days from the CIRP period of Corporate Debtor. This Tribunal vide its order dated 17.01.2022 allowed the application and extended the period of CIRP till 01.03.2022.

XIII. The 10th COC meeting was conducted on 22.02.2022 applicant RP had requested the Successful Resolution Applicant (“SRA”) to deliberate and present the Resolution Plan before the CoC. After discussion on the plan, the CoC members allowed SRA to submit the final version of the Resolution Plan as mutually agreed with CoC members, in the time specified and requested Applicant RP to

call the meeting on 25.02.2022 at 4:00 pm for discussion and finalized the plan by voting in the same meeting to adhere the timeline and completion of CIRP by 01.03.2022.

XIV. The 11th CoC meeting was conducted on 24.02.2022 wherein the Applicant requested the authorised person of SRA to present their modified final version of the Resolution Plan to the CoC Members. Mr. Jaivik Parihar, the authorised person of the SRA has presented their modified final version of the Resolution Plan and requested CoC members to waive the condition for submission of Performance Guarantee of Rs. 2.50 crore as part of the resolution plan as per RFRP conditions. The same was accepted by Federal Bank Limited and the condition for submission of the Performance Guarantee of Rs. 2.50 crore as part of the resolution plan as per RFRP conditions was also waived. After detailed deliberation, the Applicant/RP requested CoC members to vote for approval/against the Resolution Plan. The CoC members approved the Resolution Plan of SRA by 95.08% Voting Share in favour of the proposed plan.

XV. Pursuant to the approval of the Resolution Plan by the CoC in 11th CoC meeting, the Applicant filed an application bearing IA No.

229 of 2022 seeking approval of the Resolution Plan before this Adjudicating Authority on 04.03.2022.

- XVI. On 27.06.2023, an application bearing no. IA/835(AHM)2021 for restoration of avoidance transaction was listed and Suspended Management submitted that they are ready to enhance the plan value in lieu of certain preferential transactions as detailed in IA/835(AHM)2021 and in view of this RP took permission to conduct a meeting of the CoC to confer the further proposal given by the Suspended Management.
- XVII. The RP/Applicant herein duly conducted the **12th CoC** meeting on 11.08.2023 wherein it was discussed the revised Resolution Plan submitted by PRA by enhancing the value of plan in compliance of the order dated 27.06.2023 in IA/835(AHM)2021. Upon discussion, the RP apprised of the addendum in plan value from the submitted Resolution Plan and revised Resolution Plan.
- XVIII. The Applicant conveyed the **13th CoC** meeting on 28.08.2023. The RP informed the members that the legal agency vetted the Resolution Plan which is circulated amongst CoC members and discussed revised Resolution Plan submitted by PRA. The CoC members resolved with voting share of 100% to approve the proposed Revised Resolution Plan submitted by PRA and

authorized RP to submit before this Adjudicating Authority for direction.

XIX. The Applicant filed IA No. 229 of 2022 on 04.03.2022 before this Adjudicating Authority seeking approval of the Resolution Plan. This Adjudicating Authority vide its order dated 08.01.2024 adjudicated the application and directed the Applicant to file fresh Resolution Plan in view of pending litigation. The following observations were made by this Adjudicating Authority:-

"...IA/229(AHM)2022 is an application filed under Section 30(6) of IBC, 2016 for the approval of Resolution Plan and was filed on 07.03.2022. The RA in this matter has provided with the Revised Resolution Plan in which it is stated that the amount mentioned in IA/835(AHM)2021 is included in the amount payable under the Resolution Plan which is stated as Rs.28,84,769/- (100% of the alleged amount in IA/835(AHM)2021) which is nowhere near to the amount as mentioned in IA/835(AHM)2021. The multiple filings have been made under the Resolution Plan and Form H was filed later on creating much confusion in order preparation. In view of the above, all three matters stand de-reserved. The RP is directed to file plan approval application for fresh considering all the revisions have been done in the plan. IA/229(AHM)2022 is hereby returned to the Applicant. RP transaction auditor and advocate on record in IA/835(AHM)2021 are directed to remain present physically in the Court during the next date of hearing. At the requests of learned counsel for the RP, IA/835(AHM)2021 is listed for hearing on 31.01.2024 along with IA/568(AHM)2022. Learned counsel for the RP states that let IA/835(AHM)2021 decided first, thereafter, only we will in a position to file application seeking approval of the resolution plan which is taken on record."

XX. The Applicant received an affidavit for remittance by SRA for sum of Rs.28,84,779/- to the Bank account of the Corporate Debtor and

email by SRA was sent to RP with request to the same. Adjudicating Authority vide its order dated 05.03.2024 recorded the following observations:-

“An affidavit has been filed by Respondent No. 1 stating there in that an amount of Rs. 28,84,779/- has been credited in the account of the corporate debtor, i.e., M/s. Shivshakti Barrels Pvt. Ltd., on 04.03.2024 and details were also issued to the applicant / RP, which was confirmed by the applicant / RP through an email annexed to Annexure A of the affidavit. In view of the above, the RP is directed to proceed in CIRP as per law in the matter”.

XXI. The Applicant/RP herein duly conveyed the 16th CoC meeting on 28.03.2024. The RP informed the members of the CoC that IA/835(AHM)2021 (Avoidance Transaction Application) was filed by the RP and Suspended Management without prejudice and accepting allegations, Mr. Jaivik Parihar deposited an amount of Rs.28,84,769/- on 04.03.2024 in the account of the Corporate Debtor and filed the affidavit in this regard with NCLT. The said amount received is converted into Fixed Deposit (“FD”) of Rs.14,42,384/- and one FD of Rs.14,42,385/- on instruction received from Federal Bank. Both CoC members having 100% voting rights have decided that as the Corporate Debtor is a going concern and the said amount is the current assets of the Corporate Debtor, it will remain the current asset of the Corporate Debtor even after the approval of the Resolution Plan.

- XXII. Further, the Applicant has opened the Sealed Envelope during the meeting in the presence of the CoC members, and representative of Suspended Management and RA Mr. Jaivik Parihar and after that the RP shared the Revised Resolution Plan with the CoC members.
- XXIII. Mr. Jaivik Parihar representing RA requested the CoC members for a waiver of the RFRP condition of Performance Bank Guarantee of Rs.2.50 crore as the same was also waived during the previous plans also. After discussion on the same, the CoC members agreed to it and decided to put the same for voting of CoC members for their approval. The members of the CoC upon perusal and discussion on Revised Resolution Plan dated 19.03.2024 approved the same with 100% voting in favour of approval of the Revised Resolution Plan submitted by PRA/Suspended Board.
- XXIV. In 16th CoC meeting conducted on 28.03.2024, the CoC members passed the resolution as per Regulation 39B, 39C & 39D of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and CoC approved the Resolution Plan of Mr. Jaivik Parihar through voting i.e., plan was approved by the CoC members on 30.03.2024. The Resolution Plan submitted by the SRA was approved by the Cc with requisite majority.

Total claim of operational creditors (excluding workmen & Employee)- Rs. 3,08,11,836/- Rs. 6,88,974/- to operational creditors as amount payable to them as per Section 53 of the Code upon liquidation of assets of company is zero.				Format VA clause (a)(iv) at page no. 132 of the Resolution Plan dt. 23.02.2022
Payment towards the Govt. Dues Total admitted claim of Govt Dues- Rs 26,963/-	Rs 26,963/-	Within 14 days from the approval of plan by Adjudicating Authority	100	Clause 5.1.3.5
Payment toward Employees and workmen) Total claim of workmen and employee- Rs. 90,878/- Resolution applicant proposed to pay full amount of Rs. 90,878/- to workmen and employee as	Rs. 90,878/-	Within 14 days from the approval of plan by Adjudicating Authority	100	Clause 5.1.3.5
TOTAL BID AMOUNT	Rs. 5,39,11,741/- (Rs Five crore Thirty Nine Lakh Eleven Thousands and Seven Hundred and Forty One Only)-	-	64.19 %	-

Copy of resolution plan along with letter of intent is attached hereto and marked as Annexure-S (Colly.).

5. It is submitted that as stated under Clause 5.1.2 (page. 18 of plan), the Source of Fund brought by the RA is from promoter and family, finance tie-up with existing financial creditors and adjustment of EMD as per RFRP condition. Clause 5.1.2 is as under:-

5.1.2 Sources of funds

The Sources of Funds for the Resolution Plan and their likely inflows have been identified in the table below.

Sn	Particulars	Amount in Rs.	Remarks
1)	Promoter and Family Contribution	9892450.00	The same be brought in by the Resolution Applicant and Families in the form infusion as New Equity Capital or Quasi Equity Capital.
2)	Restructured/ Finance Tie-ups with existing Financial Creditors	41019291.00	As per Financial Projection Attached as Annexure-
3)	Adjustment of Earnest Money Deposit as per RFRP conditions.	3000000.00	We request CoC members to utilize Earnest Money Deposit as per RFRP conditions to make payment as per resolution Plan. The same will be converted to share capital.
	TOTAL	53911741.00	

6. It is stated that the Monitoring Committee as stated under Clause 5.2.3 at page nos. 29 to 31 of the revised plan dated 19.03.2024 shall consist of:-

A. For 3 months from the approval of resolution plan by AA-

- 1) Resolution Professional,
- 2) One authorised person of secured creditor
- 3) One authorised person of RA

B. After 3 months from the approval of resolution plan by AA, till term of resolution plan-

- 1) Representative of FC-Federal Bank,
- 2) Representative of FC-Bajaj Finance and
- 3) Representative of PRA

Tenure of Monitoring committee would be equal to repayment term of Resolution Plan.

7. It is stated that the RA has complied with mandatory requirements under Regulation 38 of CIRP Regulations, and has made a statement for payment to Operational Creditors, interest of all Stakeholders, manner of supervision, proposal for takeover.

8. It is further stated that the Resolution Plan of SRA complies with Section 30(2) of the Code and Regulation 38(1A) of the CIRP Regulations. The liquidation value of the Corporate Debtor amounts to Rs.4,89,64,000/-.
9. This Adjudicating Authority vide its order dated 30.04.2024 had directed to provide priorities regards the fund infusion of various outlays, resolution approving the feasibility and viability and conduct one more CoC and file necessary resolutions. The order dated 30.04.2024 is reproduced as under:-
- “It is directed to provide priorities regards the fund infusion of various outlays as are provided in the plan which are to be given by in table form. The applicant is directed to provide necessary resolution of the CoC approving the feasibility and viability of this Plan and in case the same has not been obtained so far, applicant is directed conduct one more CoC and file necessary resolution before this Tribunal”.*
10. In compliance with the order dated 30.04.2024, the Applicant filed the First Affidavit under inward no. D3998 dated 10.05.2024 on behalf of RP along with the 17th CoC meeting held on 06.05.2024, Form-H and table of periodic payments. Perusal of Form-H reveals that the Fair Value and Liquidation Value is Rs.566.81 Lakh (Avg. value) and Rs.489.64 Lakh (Avg. value) respectively.
11. As per Form-H, the amounts provided for the Stakeholders under the Resolution Plan is as under:-

7. The amounts provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rs. Lakhs)

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claims admitted. (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under subsection (2) of section 21	NA	NA	NA	NA

		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan	NA	NA	NA	NA
		(ii) who voted in favour of the resolution plan (Federal Bank Ltd)	489.69	489.69	424.09	86.60%
		Total[(a) + (b)]	489.69	489.69	424.09	86.60%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under subsection (2) of section 21	NA	NA	NA	NA
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (Bajaj Finance Limited)	NA	NA	NA	NA
		(ii) who voted in favour of the resolution plan	63.16	25.36	21.96	86.60%
		Total[(a) + (b)]	63.16	25.36	21.96	86.60%
3	Operational Creditors	(a) Related Party of Corporate Debtor				
		(b) Other than (a) above: (i) Government	1.44	0.27	0.27	100.00%
		(ii) Workmen (iii) Employees	8.42	0.91	0.91	100.00%
		(iv) Other Operational Creditors	363.82	308.12	6.89	2.24%
		Total[(a) + (b)]	373.68	309.30	8.07	2.61%
4	Other debts and dues		NA	NA	NA	NA
Grand Total			926.53	824.35	454.12	55.09%


*If there are sub-categories in a category, please add rows for each sub-category.

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

12. The compliances of the Resolution Plan are stated to be as under:-

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	As per FORMAT -I, Clause 4	YES
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	As per FORMAT III-A separate undertaking obtained U/s. 29A (Copy Attached)	YES
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	As per FORMAT III-A separate undertaking obtained U/s. 29A (Copy Attached)	YES
Section 30(2)	Whether the Resolution Plan-		
	(a) provides for the payment of insolvency resolution process costs?	FORMAT VA, Resolution Plan - The same has been provided for. Kindly refer to Clause 5.1.2.2 of the Plan . The CIRP costs will be paid in full and on priority to the payment of the other debts of the Corporate Debtor.	YES
	(b) provides for the payment to the operational creditors?	FORMAT VA, Resolution Plan - Kindly refer Clause 5.1.3.2 of the Plan	YES
	(c) provides for the payment to the financial creditors who did not vote in favour of the	FORMAT VA, Resolution Plan	NA



	resolution plan?		
	(d) provides for the management of the affairs of the corporate debtor?	FORMAT VA – Resolution Plan, In Clause 5.2.2 of the plan , this aspect has been discussed.	YES
	(e) provides for the implementation and supervision of the resolution plan?	<p>FORMAT VA, Resolution Plan - In Clause 5.2.3 of the plan, this aspect has been discussed.</p> <p>On 27.10.2023 during the course of hearing Hon'ble NCLT, Ahmedabad raised query regarding the constitution of monitoring committee during the term of implementation of resolution plan and therefore RP sought some time to take instructions from CoC.</p> <p>That Applicant conducted 15th CoC meeting on 06.11.2023 wherein deliberations were done regarding constitution of monitoring committee for the term of seven years. Resolution Applicant proposed following:</p> <p>A. That for the first three months constitution of monitoring committee will be same as per resolution plan i.e.</p> <ol style="list-style-type: none"> 1. RP – (With existing terms and conditions during CIRP) 2. Representative of FC – Federal Bank and 3. Representative of RA <p>B. After three months till term of resolution plan, new monitoring committee will be re-constituted with following members:</p> <ol style="list-style-type: none"> 1. Representative of FC – Federal Bank 2. Representative of FC – Bajaj Finance Ltd 3. Representative of RA 	YES

		<p>That tenure of this monitoring committee would be equal to the repayment term of the Resolution Plan.</p> <p>That COC members representing 100% voting rights have accepted and voted in favor of the proposed resolution by Resolution Applicant.</p>	
	(i) (f) contravenes any of the provisions of the law for the time being in force?	As mentioned at FORMAT VA – Resolution Plan - To the best of the knowledge and understanding of the RA, the Resolution Plan adheres to the provisions of law.	YES
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	The Resolution Plan was approved by CoC member with 100% voting rights.	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	<p>The monitoring committee have been appointed for 90 days as mentioned in the Format VA-Resolution Plan.</p> <p>On 27.10.2023 during the course of hearing Hon'ble NCLT, Ahmedabad raised query regarding the constitution of monitoring committee during the term of implementation of resolution plan and therefore RP sought some time to take instructions from CoC.</p> <p>That Applicant conducted 15th CoC meeting on 06.11.2023 wherein deliberations were done regarding constitution of monitoring committee for the term of seven years. Resolution Applicant proposed following:</p> <p>A. That for the first three months constitution of monitoring</p>	YES



		<p>committee will be same as per resolution plan i.e.</p> <ol style="list-style-type: none"> 1. RP - (With existing terms and conditions during CIRP) 2. Representative of FC - Federal Bank and 3. Representative of RA <p>B. After three months till term of resolution plan, new monitoring committee will be re-constituted with following members:</p> <ol style="list-style-type: none"> 1. Representative of FC - Federal Bank 2. Representative of FC - Bajaj Finance Ltd 3. Representative of RA <p>That tenure of this monitoring committee would be equal to the repayment term of the Resolution Plan.</p> <p>That COC members representing 100% voting rights have accepted and voted in favor of the proposed resolution by Resolution Applicant.</p>	
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	<p>IA No. 835(AHM)/2021 has been filed on 24.11.2021 with Hon'ble NCLT, Ahmedabad and further resolution plan with revised amount was filed on 04.10.2023 and affidavit dated 24.10.2023 with respect to treatment of IA 835 of 2021 was filed by RP and order was reserved by Hon'ble NCLT on 29.11.2023.</p> <p>On 08.01.2024 the Order was dereserved by the Hon'ble NCLT seeking clarifications and due to pending litigations.</p> <p>On 04.03.2024 PRA/SM submitted payment of Rs 28,84,769/- to account of CD in view of IA 835 of 2021, without prejudice and accepting allegations.</p> <p>On 30.04.2024 the</p>	YES



		Hon'ble NCLT disposed of IA 835 of 2021 accordingly be rendered infructuous.	
Regulation 38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	FORMAT VA, Resolution Plan Please refer to the comments under clause 5.1.3.2	YES
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	FORMAT VA, Resolution Plan - This Resolution Plan aims at being fair and just to all the stakeholders in accordance with the spirit of the IBC. This has been explained in detail above in the Section on Usage of funds and rehabilitation of the CD.	Yes
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?	NA	NA
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (i) (c) adequate means for supervising its implementation?	FORMAT VA- Resolution Plan - The details are provided above in Sections - 5.2.2, 5.2.3, 5.2.4, 5.2.5, 5.2.6 of the Plan	YES YES YES
38(3)	Whether the resolution plan demonstrates that – (A) it addresses the cause of default? (b) it is feasible and viable?	FORMAT VA- Resolution Plan - The details are provided above in	YES



	(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?	<u>Sections - 5.2.2, 5.2.3, 5.2.4, 5.2.5, 5.2.6</u>	
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	<p>Yes,</p> <p>(1) IA No. 835(AHM)/2021 has been filed on 24.11.2021 with Hon'ble NCLT, Ahmedabad and further resolution plan with revised amount was filed on 04.10.2023 and affidavit dated 24.10.2023 with respect to treatment of IA 835 of 2021 was filed by RP and order was reserved by Hon'ble NCLT on 29.11.2023.</p> <p>On 08.01.2024 Hon'ble AA de-reserved the order of IA no. 229 of 2022 and directed Applicant to file afresh in view of pending litigation of IA 835 of 2021 and multiple filing have been made under Resolution Plan and Form- H was filed later on creating much confusion in order preparation.</p> <p>On 04.03.2024 PRA/SM submitted payment of Rs 28,84,769/- to account of CD in view of IA 835 of 202, without prejudice and accepting allegations.</p> <p>On 30.04.2024 the Hon'ble NCLT disposed of IA 835 of 2021 accordingly be rendered infructuous.</p> <p>(2) Another application under section 66 IA 282 dated 31.03.2021 related to refund the payments made by suspended board of directors after CIRP commencement date and</p>	YES



		the same is Rejected by NCLT.	
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	RFRP Condition for submission of performance guarantee of Rs. 2.50 crore as part of the resolution plan has been waived by the CoC.	Yes

13. The interest of existing shareholders have been altered by the Resolution Plan as under:-

Sr. No	Category of Share Holder	Name of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity Shares	Jaivik Parihar	571550.00	309419.00	35.72%	24.00%
		Prerit Parihar	685665.00	309419.00	42.85%	24.00%
		Rajesh Chauhan	80000.00	670407.00	5.00%	52.00%
		Anil Nandlal Desai	6800.00	0.00	0.43%	0.00%
		Deepak Ramesh Desai	14520.00	0.00	0.91%	0.00%
		Hetal Mayank Parihar	10000.00	0.00	0.63%	0.00%
		Jayna Nilesh Parihar	17545.00	0.00	1.10%	0.00%
		Mayank Natwarsinh Parihar	25150.00	0.00	1.57%	0.00%
		Nilesh Natwarsinh Parihar	28275.00	0.00	1.77%	0.00%
		Pragnesh Harshad Mehta	21250.00	0.00	1.33%	0.00%
		Praveensinh Balubha Jadeja	5500.00	0.00	0.34%	0.00%
		Suresh Atma Ram Patel	7500.00	0.00	0.47%	0.00%
		Vaneshree Samaratsinh Parihar	40345.00	0.00	2.52%	0.00%
		Devendra Sinh Rana	4500.00	0.00	0.28%	0.00%
		Lomesh Anil Desai	4200.00	0.00	0.26%	0.00%
		Kashyap Ray	4700.00	0.00	0.29%	0.00%
		Nandlal Desai	4300.00	0.00	0.27%	0.00%
		Ramesh K Shah	4200.00	0.00	0.26%	0.00%
		Hiral Parihar	8800.00	0.00	0.55%	0.00%
		Pritam Sinh Parmar	4800.00	0.00	0.30%	0.00%
		Dipti Mehta	4000.00	0.00	0.25%	0.00%
		Palak Mehta	4000.00	0.00	0.25%	0.00%
		Urvashi Mehta	4000.00	0.00	0.25%	0.00%
		Hetal Soni	4800.00	0.00	0.30%	0.00%
		Aabha Parihar	6500.00	0.00	0.41%	0.00%
		Banarashi Thakur	4000.00	0.00	0.25%	0.00%
		Pathik B Joshi	8000.00	0.00	0.50%	0.00%
Parag Mehta	4000.00	0.00	0.25%	0.00%		
Sonal P Mehta	4000.00	0.00	0.25%	0.00%		
Swati Arora	3500.00	0.00	0.22%	0.00%		
Suraj Arora	3600.00	0.00	0.23%	0.00%		
		TOTAL	1600000.00	1289245.00	100%	100%
2	Preference	NA	NA	NA	NA	NA
3	Any Other Instruments	NA	NA	NA	NA	NA

It is proposed to cancel the existing shares in totality and issue new Shares of face value of Rs. 10.00 each as follows:

	New Capital Structure of the CD	As on
1)	Authorised Share Capital	
	12,89,245.00 Equity shares of Rs. 10 each	12,89,2450.00
2)	Issued and subscribed equity share capital	
	12,89,245.00 Equity shares of Rs. 10 each	12,89,2450.00



14. Relief and Concession

Sr. No.	Concessions / Reliefs / Directions sought	Orders thereon
1	<i>The Adjudicating Authority to pass necessary orders/ give appropriate directions to give effect to reorganization of capital structure of the Corporate Debtor.</i>	Granted
2	<i>Upon approval of the Resolution Plan, moratorium shall be deemed to have been granted to the Corporate Debtor from any actions / penalties under any laws for any non-compliance, which existed on or prior to the Effective Date.</i>	Granted
3	<i>The Ministry of Corporate Affairs; shall exempt the Resolution Applicant/ Corporate Debtor, from levy of stamp duty and fees, if any applicable in relation to this Resolution Plan and its implementation.</i>	Applicant to approach concerned authorities who may decide the issue keeping in view the provisions of IBC, 2016.
4	<i>Any approvals that may be</i>	Applicant to approach

	<p><i>required from Governmental Authorities (including Tax Authorities) in connection with the implementation of the Resolution Plan including on account change in ownership / control of the Corporate Debtor shall be deemed to have been granted upon approval of the Resolution Plan by the Adjudicating Authority. There shall be no requirement to seek separate approvals/permissions/consents from tribunal, government authorities, stakeholders etc. for implementation of this resolution plan.</i></p>	<p>concerned authorities who may decide the issue keeping in view the provisions of IBC, 2016.</p>
5	<p><i>Any and all Claims or demands in connection with or against the Corporate Debtor (including any demand for any losses or damages or in connection with any Third Party Claims or any investigations by any governmental bodies or authorities by or to any other stakeholder (including any other actual or potential creditor, if any or any counter-party, including any subsidiary, joint venture or associate) whether under Applicable Law, equity or</i></p>	<p>Granted in terms of Ghanshyam Mishra and Sons vs. Edelweiss Asset Reconstruction Company Limited.</p>

	<i>contract, whether admitted on not, due or contingent, crystallized or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor.</i>	
6	<i>All the debts/claims of all the lenders / financial creditors / operational creditors any other creditors, be it due and pending on any account, shall get fully and finally satisfied and extinguished, in terms of this Resolution Plan and their remains nothing to be recovered out of such dues either from the Resolution Applicant or Corporate Debtor or its personnel/management. Resolution Applicant prays to the Adjudicating Authority to pass necessary orders / give appropriate directions for the same.</i>	Granted.
7	<i>All liabilities, shall be settled at NIL, value and shall be completely waived off and extinguished. Approval of the</i>	All liabilities to be dealt according to the Plan.

	<i>Adjudicating Authority shall be sufficient cause to give effect to the same.</i>	
8	<i>The Resolution Applicant and / or Corporate Debtor will not be liable for any claim, liability, obligations, undertakings, guaranties, warranties etc. of any nature which are not disclosed and claimed by any person under the Information Memorandum and for anything beyond the amount contemplated to be paid under the express provisions of the Resolution Plan.</i>	Granted.
9	<i>Adjudicating Authority to pass necessary orders / give appropriate directions for waiver of any past liabilities in relation to any water dues of the Corporate Debtor to any state government or central government department prior to the Effective Date.</i>	Granted.
10	<i>Adjudicating Authority to pass necessary orders / give appropriate directions for waiver of any past liabilities in relation to electricity dues of the Corporate Debtor to the electrical supplier including any state government or central government department prior to the Effective</i>	Granted.

	<i>Date.</i>	
11	<i>The requirement of obtaining a no objection certificate under section 281 of the Income Tax Act, 1961 and the provisions of taking over its predecessor's tax liability under section 170 of the Income Tax Act shall not be applicable. Further, the transaction shall not be treated as void under section 281 of the Income Tax Act, 1961 for any claims in respect of tax or any other sum payable by the Corporate Debtor. Similarly, any requirements to obtain waivers from any Tax Authorities including in terms of Section 79 and Section 115B of the Income Tax Act, 1961 is deemed to have been granted upon approval of this Resolution Plan by the Adjudicating Authority.</i>	Applicant to approach concerned authorities who may decide the issue keeping in view the provisions of IBC, 2016.
12	<i>The change in shareholding of the Corporate Debtor pursuant to the Resolution Plan shall not lead to lapse of any brought forward losses of the Corporate Debtor and provisions of Section 79 of the Income Tax Act, 1961 are not applicable. The Corporate Debtor shall be entitled to carry forward</i>	Applicant to approach concerned authorities who may decide the issue keeping in view the provisions of IBC, 2016.

	<i>and set off all the brought forward book losses and unabsorbed depreciation as shown in the books of account and considered in the returns filed under the Income-tax Act, 1961. The Corporate Debtor shall also be entitled to carry forward and set off all the accumulated Tax losses and unabsorbed depreciation of the Corporate Debtor in accordance with the returns of income filed under the Income tax Act, 1961.</i>	
13	<i>All potential direct/ indirect tax liability (including but not limited to any Potential MAT liability, potential liability under section 56 and 50CA of Income Tax Act, 1961) as may be incidental to the Transaction shall be waived.</i>	Applicant to approach concerned authorities who may decide the issue keeping in view the provisions of IBC, 2016.
14	<i>Credit in respect of minimum alternate tax paid by the Corporate Debtor before the Effective Date shall continue with the Corporate Debtor on a going concern basis and shall not be revoked on account of change of management and control on the completion of the Transaction.</i>	Granted.
15	<i>On account of implementation of the resolution plan there may be</i>	Applicant to approach concerned authorities who may decide the

	<i>notional book profit without any income; hence such notional book profits shall not be subject to Tax.</i>	issue keeping in view the provisions of IBC, 2016.
16	<i>Any income arising due to waiver of all liabilities should not be treated as income and no tax on the same should be levied.</i>	Applicant to approach concerned authorities who may decide the issue keeping in view the provisions of IBC, 2016.
17	All past direct and indirect tax liabilities, including claims/demands by any direct tax/indirect tax authorities or any other authority whatsoever, including interest and penalty charges on any past direct tax or indirect tax liabilities accrued till Effective Date shall be waived.	Granted.
18	Adjudicating Authority to pass necessary orders / give appropriate directions to the Ministry of Corporate affairs, Government of India, Provident Fund Authorities, Sales Tax Authorities, Services Tax Authorities, GST Council, Income Tax, Fringe Benefit Tax, etc. to waive interest and penal charges for past dues on settlement of dues as per the Resolution Plan.	Granted.
19	All contractual arrangements (except for any contracts that	Granted.

	<p>vest property rights in the Corporate Debtor) entered into by the Corporate Debtor (including any contracts of employment or consultancy with, and any benefits, fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages or any policy of providing such benefits, fees, commissions, perquisites or profits extended by the Corporate Debtor) may be modified, amended, suspended and/or terminated by the Resolution Applicant/Corporate Debtor, as deemed fit.</p>	
20	<p>Any non - compliances, financial or other penalties that may arise due to any non-compliances by the Corporate Debtor prior to the Effective Date, of all applicable laws including but not limiting to the Companies Act, 2013, Electricity Act 2003, Contract Labor (Regulation and Abolition) Act, 1970, all relevant and applicable Direct and Indirect tax laws, relevant environmental laws and any other government instrumentality in force to be waived off and completely</p>	Granted.

	extinguished.	
21	The Corporate Debtor is being acquired by the Resolution Applicant on a 'going concern' basis. Hence, all contracts, consents, licenses, approvals, clearances, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to, shall continue to remain valid, notwithstanding any provision to the contrary in their terms, and provided that in case of consents, licenses, approvals, rights, entitlements, benefits and privileges that have expired or lapsed, notwithstanding that they may have already lapsed or expired due to any breach, non-compliance or efflux of time, be deemed to continue without disruption for the benefit of the Corporate Debtor, for a period of at least 12 (twelve) months from the Effective Date or the actual expiry of such consents, licenses, approvals, rights, entitlements, benefits and	Granted for 6 Months.

	<p>privileges, whichever is later. Adjudicating Authority to pass appropriate order / give appropriate directions to ensure that no government authority / statutory body cancels any arrangement with the Corporate Debtor on account of change of management.</p>	
22	<p>As a result of the proceedings of the IBC, there shall incur a change of management of the Corporate Debtor. Such a change shall not be cause for the central and state governments to forfeit / cancel any subsidy / grant / approvals / licenses /contracts given to the Corporate Debtor prior to Effective Date. The relevant governmental authority shall continue to grant State and other incentives / approvals / licenses / contracts to the Corporate Debtor. All benefits and incentives, including but not limited to, under all such incentive schemes, subsidy schemes and policies that the Corporate Debtor is entitled under, and all such benefits shall remain vested in the Corporate Debtor with effect from the</p>	Granted.

	Effective Date. Adjudicating Authority to pass necessary orders / give appropriate directions to give effect to the same.	
23	Resolution Applicant and / or the Corporate Debtor shall have a right to continue pursuing any litigation or claim being pursued by the Corporate Debtor and any recovery made by the Corporate Debtor shall be utilized by the Corporate Debtor in any manner at the discretion of the Resolution Applicant or the Corporate Debtor.	Granted.
24	Each and every account held by the Corporate Debtor shall itself stand automatically regularized. The asset classification of the Corporate Debtor shall be reclassified from 'NPA' to 'standard' or 'not an NPA'.	Lenders to follow the RBI guidelines in this behalf.

15. IA/835(AHM)2021 which was filed under Sections 43 and 66 of the Code was disposed of vide order of this Adjudicating Authority dated 30.04.2024 which is reproduced as under:-

“In IA/835(AHM)20215.03.2024 following order was recorded which is reproduced hereunder. Learned RP present in Court and confirm that after receipt of an amount of Rs.28,84,779/- from the Respondent No.1 this IA/835(AHM)2021 has rendered infructuous and may be disposed of accordingly. We have heard the statement of the RP and perused the record specially affidavit dated 04.03.2024 filed by Respondent No.1 giving details of the payment of aforementioned amount which have been credited in the account of the Corporate Debtor. Therefore, IA/835(AHM)2021 disposed of accordingly be rendered infructuous..”.

16. Equity infusion by the Resolution Applicant

To enable the implementation of the Resolution Plan, Applicant may incorporate/use a Special Purpose Vehicle (SPV). The SPV shall be funded by way of equity infusion by Applicant or its promoters, relatives, associates, investors (“Subscribers”) and debt raised at the SPV/Applicant level. Simultaneously, with the Capital Reduction, the Applicant will make necessary subscription for allotment of 12,89,245.00 (Twelve Lakh Eighty-Nine Thousand Two Hundred Forty-Five Only) equity shares of Rs.10 each at par aggregating to Rs.1,28,92,450.00 (One Crore Twenty-Eight Lakh Ninety-Two Thousand Four Hundred Fourty Five Only) in order to enable the company to make necessary allotment of equity shares to the subscribers.

17. Management of the affairs of the Corporate Debtor:-

Formation of Board

It is proposed that upon the Resolution Applicant taking the control over the company, the existing Board will be replaced by new board of directors constituted with adequate representation from the member of the Resolution Applicants in compliance with Applicable Laws.

Accordingly, the Board would be represented by:

Mr. Rajesh Chauhan

Mr. Jaivik Parihar

Mr. Preit Parihar

18. Implementation and Supervision of the Resolution Plan

It is hereby proposed that a Formation of Monitoring Committee to oversee the Proposed Transaction and implementation of the Resolution Plan. Existing resolution professional would be appointed as the monitoring official for supervising effective implementation of the plan, along with one authorized representative from financial creditor and one person of RA consortium in consultation with CoC or the monitoring committee (if any) formed for the purpose of implementation of the Resolution Plan for the first 3 months from the date of Approval of the Order by AA.

After three months till term of resolution plan New Monitoring Committee will be constituted with following members:

1. Representative of FC – Federal Bank,
2. Representative of FC – Bajaj Finance Ltd., and
3. Representative of PRA

The Tenure of this Monitoring Committee would be equal to the Repayment Term of the Resolution Plan.

19. **Feasibility and viability of the Resolution Plan**

As per minutes of meeting dated 06.05.2024, the CoC has stated as under:-

“that the CoC hereby acknowledges the feasibility and viability of the Revised Resolution Plan submitted by Javik Parihar in Consortium with Mr. Rajesh Chauhan, and Mr. Prerit Parihar”.

The Resolution Plan is feasible and viable as it is based on realistic assumptions taking into consideration:

- ✓ The current condition of and challenges ahead for the CD
- ✓ The challenges being faced by the MSME sector
- ✓ The deteriorated macro-economic conditions

The RA has offered his best conceivable plan duly balancing the interests of the workmen, employees, financial creditors, and the operational creditors. The Plan is a firm plan and the RA believes that it would be feasible for him to revive the operations of the CD in a gradual manner.

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

- I. **IA/761(AHM)2024** was filed seeking condonation of delay of 13 days in filing the application and for extension of period of 787 days from 02.03.2022 to 26.04.2024. In view of the pendency of the Resolution Plan wherein by an order of this Tribunal plan was

remitted back for reconsideration of the CoC, and keeping the object of the Code, we allow IA/761(AHM)2024. Accordingly, **IA/761(AHM)2024** stands disposed of.

II. **In IA(Plan)/15(AHM)2024**, it is seen from Form – H dated 06.05.2024 that the Liquidation value of the Corporate Debtor is arrived at Rs.489.81 Lakh and the corresponding Fair value is arrived at Rs.566.81 Lakh. The Resolution Plan is for an amount of Rs.539.12 Lakh approximately (including CIRP cost).

III. 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 Judgment of Hon’ble Supreme Court in the matter of **K. Sashidhar vs. Indian Overseas Bank** (2019) 12 SCC 150, wherein in para 19 and 62 it is held as 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.”

IV. Further, the Hon’ble Supreme Court in the matter of **K. Sashidhar vs. 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)

V. 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.

VI. 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)

- VII. The Hon’ble Supreme Court in the case of **Ramkrishna Forgings Limited vs. Ravindra Loonkar, Resolution Professional of ACIL Limited & Anr in Civil Appeal No. 1527 of 2022** also has reiterated that CoC wisdom is supreme.
- VIII. In consideration of all judgments of the Hon’ble Supreme Court, this Tribunal has referred the matters back to the CoC for deciding the various commercial aspects which in terms of the above judgment are the sole discretion of the CoC. The CoC in the 17th meeting also considered the feasibility and viability of of the plan.
- IX. Thus, from the catena of judgments rendered by the Hon’ble Supreme Court on the scope of approval of the Resolution Plan, it is amply 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.
- X. 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 **100%** voting share. As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, all the compliances have been 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.

XI. 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. 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.

XII. 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 Bank Guarantee, if any*) as on the said date would stand automatically forfeited, without any recourse to this Tribunal.

- XIII. Certified copy of this Order be issued upon demand to the concerned parties, upon due compliance.
- XIV. Liberty is hereby granted for moving any application if required in connection with the implementation of this Resolution Plan.
- XVI. A copy of this Order is to be submitted to the concerned Office of the Registrar of Companies.
- XVII. Accordingly, **IA(Plan)/15(AHM)2024** stands disposed of.
- XVIII. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsels for information and for taking necessary steps. Files be consigned to the record.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

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