

IX

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH - I, CHENNAI**

**IA(IBC)/1593(CHE)/2022**

**IN**

**CP(IB)/85(CHE)/2022**

*(Filed under Section 30(6) & 60(5) of the Insolvency and Bankruptcy Code,  
2016)*

**IN THE MATTER OF:**

RAJESH SURESHCHANDRA SHETH  
[IBBI/IPA-002/IP-NO1021/2020-2021/13298]

*Resolution Professional of*

**Karaikal Port Private Limited**

B-55, Shatdal Society, 7<sup>th</sup> Floor,  
Azad Lane, off S.V. Road, Andheri West,  
Near Shoppers Stop,  
Mumbai City, Maharashtra – 400 058.

*... Applicant / Resolution Professional*

*Order Pronounced on 31<sup>st</sup> March, 2023*

**Along with**

**INV. P (IBC)/1(CHE)/2023 in IA(IBC)/1593(CHE)/2022**

**IN**

**CP(IB)/85(CHE)/2022**

OMKARA ASSETS RECONSTRUCTION PRIVATE LIMITED  
No.9, MP Nagar First Street,  
Kongu Nagar Extension,  
Tirupur – 641 607

*... Third Party Intervenor / Financial Creditor*

*Versus*

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RAJESH SURESHCHANDRA SHETH  
[IBBI/IPA-002/IP-NO1021/2020-2021/13298]  
*Resolution Professional of*  
**Karaikal Port Private Limited**  
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Azad Lane, off S.V. Road, Andheri West,  
Near Shoppers Stop,  
Mumbai City, Maharashtra – 400 058.

... Respondent / Applicant

**Along with**

**INV. P (IBC)/3(CHE)/2023 in IA(IBC)/1593(CHE)/2022  
IN  
CP(IB)/85(CHE)/2022**

ADANI PORTS AND SPECIAL ECONOMIC ZONE LIMITED  
Adani Corporate House, Shantigram,  
Near Vaishno Devi Circle,  
S.G. Highway, Khodiyar,  
Ahmedabad, Gujarat – 382 421

... Third Party Intervenor /  
Successful Resolution Applicant

*Versus*

RAJESH SURESHCHANDRA SHETH  
[IBBI/IPA-002/IP-NO1021/2020-2021/13298]  
*Resolution Professional of*  
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... Respondent / Applicant

Present:

*For Resolution Professional* : Gopal Jain, Senior Advocate  
E. Om Prakash, Senior Advocate  
P. Giridharan, Advocate

*For Successful Resolution Applicant* : P.S. Raman, Senior Advocate  
For Cyril Amarchand Mangaldas

*For Financial Creditor* : Satish Parasaran, Senior Advocate  
B. Dhanaraj, Advocate

CORAM

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

COMMON ORDER

INV. P(IBC)/1(CHE)/2023 is an Intervention Application filed by the Financial Creditor viz. Omkara Assets Reconstruction Private Limited seeking thereof to intervene in the approval of the Resolution Plan application filed by the RP in IA(IBC)/1593(CHE)/2022. For the reasons stated in para 5 and 6 of the Application, the Intervention Petition INV. P(IBC)/1(CHE)/2023 stands **allowed**.

2. INV. P(IBC)/3(CHE)/2023 is an Intervention Application filed by the Successful Resolution Applicant viz. Adani Ports and Special Economic Zone Limited seeking thereof to intervene in the approval of the Resolution Plan application filed by the RP in IA(IBC)/1593(CHE)/2022. For the reasons stated in para 3 to 7 of the

Application, the Intervention Petition INV. P(IBC)/3(CHE)/2023 stands **allowed**.

3. IA(IBC)/1593(CHE)/2023 is an Application filed by the Resolution Professional of the Corporate Debtor viz., **KARAIKAL PORT PRIVATE LIMITED** under Section 30(6) & 60(5) of the Insolvency and Bankruptcy Code, 2016 (in short, 'IBC, 2016') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short, 'CIRP Regulation, 2016') read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking relief as follows:

- (i) *Consider and allow the present Application;*
- (ii) *Approve the Resolution Plan marked as Annexure V in this application and the same shall be binding on all the stakeholders of the CD in respect of Karaikal Port Private Limited and thereby render justice.*
- (iii) *Pass any other Order as this Hon'ble Tribunal deem fit in the circumstances of the case in the interest of justice and equity.*

4. **CORPORATE INSOLVENCY RESOLUTION PROCESS –  
KARAIKAL PORTS PRIVATE LIMITED**

4.1. The Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor viz. Karaikal Port Private Limited was initiated by this Tribunal vide order dated 29.04.2022

passed in CP(IB)/85(CHE)/2022 filed under Section 7 of IBC, 2016 by Omkara Assets Reconstruction Private Limited and consequently, the Applicant herein was appointed as the Interim Resolution Professional.

4.2. The Applicant in terms of Section 15 of IBC, 2016 has caused a Public announcement in Financial Express Business Standard and Daily Thanthi (English) as well as in Makkal Kural and Dinamani (Tamil) on 02.05.2022 inviting claims in relation to the Corporate Debtor. Based upon the claims submitted by the stakeholders, the Applicant constituted the Committee of Creditors (COC) comprising of two Financial Creditors, namely, (i) Omkara Assets Reconstruction Private Limited & (ii) Phoenix ARC Private Limited. The initial list of Financial Creditor and the amount of claims admitted as well as the voting share of the CoC is as follows;

S. No.	PARTICULARS OF THE CLAIMANT	AMOUNT CLAIMED (INR)	AMOUNT ADMITTED (INR)	VOTING SHARE
1	Omkara Assets Reconstruction Private Limited	28,64,72,70,079	15,63,77,36,620	96.60%
2	Phoenix ARC Private Limited	99,12,01,518	55,00,06,000	3.40%
	<b>Total</b>	<b>29,63,84,71,597</b>	<b>16,18,77,96,620</b>	<b>100%</b>

4.3. On 26.05.2022, the COC during its 1<sup>st</sup> meeting, by a majority of 96.60 % in voting share, confirmed the appointment of the IRP as the Resolution Professional (RP). Thereafter, one of the two Financial Creditors i.e., Phoenix ARC Private Limited holding 3.4 % voting share of the COC proceeded to assign its debt to the Omkara Assets Reconstruction Private Limited, and as a result, **Omkara Assets Reconstruction Private Limited** became the sole member of COC with **100%** of voting rights.

4.4. The Information Memorandum (IM) prepared by the RP in terms of Section 29 of IBC, 2016 was approved by the COC in its 2<sup>nd</sup> meeting held on 22.06.2022. During the said meeting, eligible criteria with respect to net worth and consortiums proposal in relation to the Corporate Debtor were deliberated and as fixed as below:

- I. In relation to net worth of Rs. 500 Crores at individual level and in case of body corporate, networth of Rs. 500 Crores in the immediate preceding financial year for which audited financials are available not earlier than the financial for which the audited financials are available not earlier than the financial years 31.03.2021 and for Financial Institutions / PE Funds/ Asset Reconstruction Companies having asset under management of atleast Rs. 2,000 Crores as on 31.03.2022 or committed funds available for investment /deployment in Indian Companies or Indian assets of atleast Rs. 300 Crores as on 31.03.2022.

- ii. In relation to consortiums, the eligibility criteria was fixed at weighted average net worth of Rs. 500 Crores at consortium levels in the case of body corporate or individuals. In the case if the consortium is a financial institution / PE Funds / NBFCs / ARCs AIF the minimum weighted average of Rs. 1,000 Crores as on 31.03.2022 or weighted average committed funds available for investment / deployment in Indian Companies or assets of atleast Rs. 300 Crores as on 31.03.2022.

4.5. The Resolution Professional proceeded with the issuance of 'Form – G' calling for Expression of Interest (EOI) in relation to the Corporate Debtor on 23.06.2022 in five newspapers namely; Business Standard, Financial Express (English Daily), Dina Mani, Dina Thanthi & Makkal Kural (Tamil Daily). Subsequently, the Resolution Professional published a revised 'Form – G' dated 09.07.2022 in the abovementioned newspaper inviting PRAs to submit their Eoi for participation in the CIRP of the Corporate Debtor followed by submission of the Resolution Plan. Pursuant to the same, the Resolution Professional had received five (5) EOIs. The Resolution Professional after carrying out due diligence prescribed under the Regulations submitted the final list of the eligible Prospective Resolution Applicants (PRAs) to the COC by way of an email dated 17.08.2022 and uploaded the same on the website of the Corporate Debtor.



4.6. The Evaluation Matrix i.e., the evaluation criteria which were to be incorporated in the Request for Resolution Plan (RFRP) was approved by the COC during its 3<sup>rd</sup> meeting held on 01.08.2022. The Resolution Professional proceeded to issue the RFRP to Prospective Resolution Applicants along with the Information Memorandum which was uploaded on a 'Virtual Data Room' by which documents, data and information in relation to the Corporate Debtor could be accessed by the PRAs for their due diligence. On request by the PRAs, the COC during its 4<sup>th</sup> and 5<sup>th</sup> meeting extended the last date for the submission of the Resolution Plan.

4.7. The Resolution Professional had finally received two Resolution Plans from **(i) Adani Port and SEZ Limited & (ii) Vedanta Limited** on the last date for submission of Resolution Plan and the same were placed before the COC on its 6<sup>th</sup> meeting which was held on 03.10.2022. In the said meeting, the Resolution Applicants were invited to brief and to make their presentation of their respective Resolution Plan to the COC. After several discussions and deliberations during the 7<sup>th</sup> & 8<sup>th</sup> COC meetings, the Resolution Professional vide email dated 19.10.2022 and 20.10.2022 requested the PRAs to submit a revised plan



addressing the deficiencies indicated by the Resolution Professional and his agents. Revised Resolution Plans from the two PRAs were received and the Resolution Professional had undertaken to carryout a final compliance check.

4.8. In the meantime, this Tribunal vide order dated 01.12.2022 in the application IA(IBC)/1313(CHE)/2022 filed by the Resolution Professional extended the CIRP in relation the Corporate Debtor by a period of 60 days.

4.9. During the 9<sup>th</sup> COC meeting held on 19.11.2022, the COC and the Resolution Profession on being satisfied that the Resolution Plan(s) were compliant in terms of Section 30(2) of IBC, 2016 proceeded to place the same for voting by way of e-voting line. The said e-voting on the Resolution Plan(s) commenced on 22.11.2022 and concluded on 30.11.2022. The CoC had evaluated both the plans from a commercial perspective and a discussion on the evaluation of both the plans in accordance with RFRP was undertaken in the 9<sup>th</sup> CoC meeting and the scores were accorded to the Resolution Plan by the CoC members based on Quantitative and Qualitative parameters included in the Evaluation Matrix as follows;

S. No.	CATEGORY	APSEZL	VEDANTA LTD.
1	Quantitative Score	57.36	3.10
2	Qualitative Score	19.00	17.00
	<b>Total</b>	<b>76.36</b>	<b>20.10</b>

4.10. Thereafter, the e-voting on the Resolution plan commenced on 22.11.2022 and the e-voting concluded on 30.11.2022 and consequently, the CoC voted 100% in favour of the Resolution Plan submitted by **M/s. Adani Ports and SEZ Limited**. The e-voting result is appended as “Annexure – U”.

4.11. The Summary of the claims admitted by the RP for the various classes of creditors is given below;

PARTICULARS OF CLAIMANT	NO. OF CLAIMS	AMOUNT ADMITTED (RS)
Financial Creditor	1	2959,29,25,467
Operational Creditor	140	17,50,90,757
Statutory Authorities and Government Body	4	45,392
Employees and Workmen	95	92,47,965
<b>Total</b>	<b>240</b>	<b>2977,73,09,581</b>

5. **ABOUT RESOLUTION APPLICANT– ADANI PORTS AND SEZ LIMITED:**

5.1. Adani Port and Special Economic Zone Limited is stated to be the largest commercial ports operator in India accounting for nearly one-fourth of the cargo movement in the

country. The SRAs presence is stated to be wide spread across 12 domestic ports in seven maritime states of Gujarat, Maharashtra, Goa, Kerala, Andhra Pradesh, Tamil Nadu and Odisha. The port facilities are equipped with the latest cargo handling infrastructure which are the best in class and capable of handling the largest vessels at the Indian shore.

5.2. The SRAs has a net worth of Rs. 26,219.08 Crores as per the audited financial statements of the financial year ended 31.03.2022. The SRA is stated to have promoters and management who have a strong track record of accomplishment of acquisition and turnaround of distressed companies post acquisitions and track record of executing several large and complex projects.

**6. DETAILS OF THE RESOLUTION PLAN:**

6.1. As per the Resolution Plan approved by the COC, the SRAs intends to acquire the Corporate Debtor as an ongoing concern and upon approval of the Resolution Plan by this Tribunal, the SRA undertakes to settle the admitted claims by the Resolution Professional in accordance with the terms and timelines contained under the Resolution Plan.



- a. The SRA proposes to acquire the complete control of the ownership of the Corporate Debtor on the 'Effective Date' (60<sup>th</sup> day from the date of this order in terms of Clause 9.3.2 of the Resolution Plan. The SRA on the 'Effective Date' would infuse an amount of Rs. 1,485 Crores as an upfront infusion amount along with utilization of Rs. 95 Crores of the available cash balance of the Corporate Debtor for payment towards the settlement of the claims of the financial creditors.
- b. Further, the SRA will also utilise the available cash balance of the Corporate Debtor for settlement of the CIRP costs and Interim Period Costs (as defined under the Resolution Plan) and the claims of the Operational Creditors to the extent of Rs. 3.06 Crores. The SRA proposes to acquire the complete control of ownership of the Corporate Debtor on the effective date and further undertakes to infuse additional funds to the tune of Rs. 153 Crores as and when required in order to facilitate the Corporate Debtor as an ongoing concern.

**7. FINANCIAL PROPOSAL UNDER THE RESOLUTION PLAN:**

7.1. The SRA under the Resolution Plan commits to make a payment of Rs.1583,06,53,357/- towards discharge of all the claims of the creditors against the Corporate Debtor prior to the effective date as per the list of creditors dated 08.11.2022 and undertakes to pay the CIRP costs and the Interim Period Costs at

actuals. The payment agreed under the Resolution Plan is tabulated under the application as under:

S No.	CLASS OF CREDITOR	ADMITTED AMOUNT	AMOUNT PROVIDED IN THE RESOLUTION PLAN (IN Rs.)
1.	CIRP Costs	To be determined	To be paid at actuals
2.	Interim Period Costs	To be determined	To be paid at actuals
3.	Financial Creditors	2959,29,25,467	1580,00,00,000
4.	Employees and Workmen	92,47,965	92,47,965
5.	Statutory Authorities and Government Body	45,392	45,392
6.	Operation Creditors (Other than Government, Employees and Workmen)	17,50,90,757	2,13,60,000
7.	Other Creditors	NIL	NIL
	<b>Total</b>	2977,73,09,581 Plus CIRP	1583,06,53,357 Plus CIRP

## 7.2. CIRP Cost:

Section 3.1.1(a) of the Resolution Plan provides that the available cash balance of the Corporate Debtor shall be utilised towards the payment of CIRP costs and to the extent there is any shortfall in settling the CIRP costs from the available funds, then the same will be paid out of the contingent funds. Further, Section 3.1.2 of the Resolution Plan provides that any cost incurred during the interim period from the NCLT approval date of the Successful Resolution plan till the Effective Date ("Interim Period Costs") shall also be paid from the available cash balance of the Corporate Debtor and in case the same is insufficient then the same shall be paid out of the contingent funds.

### **7.3. Workmen and Employee:**

As per Section 3.2.8 of the Successful Resolution Plan, the SRA has assessed the liquidation value of the Corporate Debtor to be insufficient to even satisfy the claims of Financial Creditors and hence NIL amount is required to be paid as per Section 30(2)(b) of the Code to Employees. However, the Resolution Applicant has proposed to pay Rs. 92,47,965/- out of the available cash balance of the Corporate Debtor towards settlement of all the claims of the Employees against the Corporate Debtor.

### **7.4. Operational Creditors (Other than Government, Workmen and Employee)**

As per Section 3.2.5 of the Resolution Plan, the SRA has assessed the liquidation value of the Corporate Debtor to be insufficient to even satisfy the claims of financial creditors and hence NIL amount is required to be paid as per Section 30(2)(b) of the Code to Operational Creditors (Other than Government, Workmen and Employee). However, the Resolution Applicant has proposed to pay Rs.2,13,60,000/- out of the available cash balance of the Corporate Debtor towards full and final settlement of the claims of the Operational Creditors (Other than Government, Workmen and Employee).

### **7.5. For claims of Government Authorities:**

As per Section 3.2.9 of the Resolution Plan, the SRA has assessed the liquidation value of the Corporate Debtor to be insufficient to even satisfy the claims of financial creditors and hence NIL



amount is required to be paid as per Section 30(2)(b) of the Code to Governmental authorities. However, the SRA has proposed to pay Rs. 45,392/- out of the available cash balance.

Section 3.2.4 of the Resolution Plan provides that in case the amount payable to any Operational Creditor under Section 30(2)(b) of the Code is more than the amount provided under this Successful Resolution Plan to such Operational Creditor (after applying Section 53 of the Code) as per applicable law then such Operational Creditor shall be paid from the available cash balance with the Corporate Debtor on the Effective Date and in the event that the cash balances of the Corporate Debtor are insufficient to pay whole or part of such amounts then such unpaid amount will be paid from contingent funds.

#### **7.6. Approving Financial Creditors:**

The Resolution Plan provides that after payment of dissenting financial creditors (if any) and excluding the admitted financial creditors debt constituting necessary bank guarantees (as defined under Section 3.2 of the Successful Resolution Plan), the SRA proposes to pay Rs. 1,485 Crores to the approving financial creditors as upfront infusion amount on the effective date towards full and final settlement of the admitted financial creditors debt.

Additionally, the Resolution Plan also proposes to provide for payment of amount not exceeding Rs.95,00,00,000 to the approving financial creditors from the available cash balance of

the Corporate Debtor on the effective date. In case the available cash balance of the Corporate Debtor is not sufficient to pay Rs.95,00,00,000 to the approving financial creditors, in such case the SRA shall pay the same from the 'Contingent Funds' as provided under Section 2.7 of the Resolution plan.

**8. ACQUISITION OF THE CORPORATE DEBTOR AS A GOING CONCERN**

8.1. On the Effective Date, the Resolution Applicant and/or its Affiliates/Nominee (which entity shall be eligible under Section 29A of the Code) shall subscribe to 10,00,000 equity shares of the Corporate Debtor of INR 10 each aggregating to INR 1,00,00,000/- (Indian Rupees One Crore only) ("Upfront Equity Infusion") such that the Resolution Applicant and/or its Affiliates/Nominee (which entity shall be eligible under Section 29A of the Code) will hold 100% of the share capital of the Corporate Debtor and following the Capital Reduction (as set out below), acquire control of the Corporate Debtor. The Resolution Applicant agrees to hold and maintain 51% or more of the shares and voting rights of the Corporate Debtor and control the management and affairs of the Corporate Debtor, till the implementation of the Resolution Plan. Provided that the Resolution Applicant can transfer the shares of the Corporate Debtor to its Affiliate.



8.2. The detailed steps involved in the Acquisition and implementation of the Resolution Plan following issue of the Implementation Notice are as follows, which shall occur on or before the Effective Date:

- (a) *The authorised share capital of the Corporate Debtor shall stand increased to INR 3500,00,00,000 (comprising of 300,00,00,000 equity shares of INR 10 each and 50,00,00,000 preference shares of INR 10 each), if required, and the articles of association and/or memorandum of association of the Corporate Debtor shall stand altered as may be required for such increase in authorised share capital;*
- (b) *Requisite amendments shall be made to the articles of association of the Corporate Debtor in relation to the transactions contemplated herein (if required) subject to compliance with the Applicable Law;*
- (c) *The Balance Admitted Financial Creditor Debt, Balance Admitted Other Operational Creditors Debt, Balance Admitted Governmental Authority Debt, Balance Admitted Employees Debt, and Claims of Other Creditors shall stand converted into equity shares of the Corporate Debtor and shall be simultaneously subjected to Capital Reduction, without any further action or deed required from the Corporate Debtor. No Operational Creditor shall have any Claims, Debt liability or obligation of any nature whatsoever in relation to such Admitted Other Operational Creditor Debt, Admitted Governmental Authority Debt, and Admitted Employees Debt as the case may be.*

- (d) *Unless otherwise specified in the Resolution Plan, any Financial Debt, Operational Debt and other Debt in relation to which a Claim has been filed thereto, which has not been admitted by the Resolution Professional as mentioned under the head Claims Admitted in the table mentioned in Section 1.1 (Admitted Debt) of this Resolution Plan, in relation to any period till the Effective Date shall stand converted into equity shares of the Corporate Debtor and shall simultaneously and permanently stand cancelled and extinguished pursuant to the Capital Reduction on and with effect from the NCLT Approval Date, without any further action or deed required from the Corporate Debtor. No Financial Creditor, Operational Creditor or Other Creditor shall have any Claims, Debt, liability or obligation of any nature whatsoever in relation to such debt.*
- (e) *The pre-CIRP issued share capital (including equity shares, the preference share capital of the Corporate Debtor on the CIRP Commencement Date) of the Corporate Debtor existing as on the NCLT Approval Date together with the equity shares that are issued pursuant to conversion of any convertible instruments held by shareholders of the Corporate Debtor, and the converted shares pertaining to Balance Admitted Financial Creditor Debt, Balance Admitted Other Operational Creditors Debt, Balance Admitted Governmental Authority Debt, Balance Admitted Employees Debt, Claims of Other Creditors and conversion of the debt specified in step (d) above shall be entirely cancelled and extinguished ("Capital Reduction"), for NIL consideration. It is clarified that no consent shall be required from such creditor. There shall be no requirement to add "and reduced" in the name of the Corporate Debtor.*



- (f) *For the avoidance of doubt, the conversion into equity shares and Capital Reduction shall be effective from the Effective Date and the approval of the NCLT (pursuant to Section 31 of the Code) to the Resolution Plan shall constitute approval of the conversion of the Balance Admitted Financial Creditor Debt, Balance Admitted Other Operational Creditors Debt, Balance Admitted Governmental Authority Debt, Balance Admitted Employees Debt Claims of Other Creditors and conversion of the debt specified in step (d) above and simultaneous Capital Reduction of share capital and the same shall be binding on the Corporate Debtor and its stakeholders (including its creditors and shareholders) and no further action or deed, subject to Section 4.3 below, shall be required to be undertaken by the Corporate Debtor.*
- (g) *The Capital Reduction shall not require any payment by the Corporate Debtor or the Resolution Applicant to any existing shareholders of the Corporate Debtor*
- (h) *The Capital Reduction shall not require the consents of any of the creditors of the Corporate Debtor or approval of any of the shareholders of the Corporate Debtor, or any other Person having security interest over such shares and the approval of the NCLT (pursuant to Section 31 of the Code) to the Resolution Plan shall constitute approval of the reduction of share capital and shall be binding on the Corporate Debtor and its stakeholders (including its creditors and shareholders).*
- (i) *The Corporate Debtor shall record reduction in the issued equity share capital of the Corporate Debtor by way of cancellation of all of its existing issued share capital (together with the equity shares that are issued pursuant to conversion of the Balance Admitted Financial Debt and the Balance Admitted*

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*Other Operational Creditors Debt, Balance Admitted Governmental Authority Debt, Balance Admitted Employee Debt, Claims of Other Creditors and conversion of the debt specified in step (d) above) and the amount of such cancelled equity share capital pursuant to capital reduction shall be credited to 'other equity in accordance with the applicable Indian Accounting Standards.*

- (j) The Resolution Applicant and/or its Affiliates/Nominees (which entity shall be eligible under Section 29A of the Code) shall fund the Upfront Equity Infusion, and the Corporate Debtor shall issue equity shares for such Upfront Equity Infusion such that the Resolution Applicant and/or its Affiliates/Nominees hold 100% of the equity shares in the Corporate Debtor;*
- (k) Pursuant to the above, the Resolution Applicant (along with Affiliates and/or Nominees) shall hold 100% (one hundred per cent) of the share capital of the Corporate Debtor and acquire control of the Corporate Debtor ("Acquisition").*

*All actions set out in this Sub-Section 4.2 above shall take effect simultaneously except step (a) and (b) as set out hereinabove and the Effective Date shall not occur unless all such actions are consummated.*

8.3. A query was posted to the Learned Senior Counsel for the SRA in relation to the issuance of equity shares in respect of any Financial Debt, Operational Debt and other debts which was not admitted by the Resolution Professional and simultaneous cancellation and extinguishment of the said shares. This process is



done without following the due process contemplated under Section 66 of Companies Act, 2013. In response to the same, the SRA has submitted that they are willing to give up the clause which pertains to the reduction of share capital and has also filed a memo to the said effect. The said statement made by the SRA was also recorded in the daily proceedings dated 28.03.2023. Further, the Counsel for the CoC also on instructions from CoC has stated that they approve the said stand taken by the SRA.

8.4. The above said statements are taken on record. The clause which pertains to issuance of equity shares in respect of any Financial Debt, Operational Debt and other debts which was not admitted by the Resolution Professional and simultaneous cancellation and extinguishment of the said shares, **shall not be given effect to in the Resolution Plan.**

9. **MONITORING COMMITTEE & CONTROL OF THE CORPORATE DEBTOR**

9.1. Upon the occurrence of the NCLT Approval Date, a committee shall be constituted which shall comprise of one nominee each of the Resolution Professional, the Resolution Applicant and the Approving Financial Creditors ("Implementation

and Monitoring Committee"). On and from the NCLT Approval Date and till the Effective Date, the management and affairs of the Corporate Debtor shall be managed by the Implementation and Monitoring Committee. The Implementation and Monitoring Committee shall stand dissolved on and from the Effective Date without any further action or deed required from the Corporate Debtor. No financial liability shall arise on the Resolution Professional or the Approving Financial Creditors on account of their nominee members of the Implementation and the Monitoring Committee.

9.2. On the Effective Date, the suspended Board of Directors of the Corporate Debtor shall be dissolved and all directors of the suspended Board of Directors of the Corporate Debtor shall be deemed to have resigned without any further act or deed from any other person, and the Resolution Applicant shall reconstitute the Board of the Corporate Debtor on such date and appoint key managerial personnel, which may include certain existing key managerial personnel of the Corporate Debtor, Independent Directors and representatives proposed by the Resolution Applicant, in accordance with the Applicable Law.



**10. MANDATORY COMPLIANCES FOR A RESOLUTION PLAN UNDER THE IBC, 2016**

10.1. From the averments made in the application as well as the Compliance Certificate in 'Form – H' filed by the Resolution Professional, mandatory compliances prescribed under IBC, 2016 have been duly complied with. Nonetheless, this Adjudicating Authority is duty bound to examine the Resolution Plan within the contours of Section 30(2) of the IBC, 2016. A comparative tabulation of the compliance prescribed under IBC, 2016 and the compliance under the Resolution Plan is tabulated as under:

REFERENCE TO RELEVANT REGULATION	REQUIREMENT	HOW DEALT WITH IN THE RESOLUTION PLAN
38(1)	The amount due to the Operational Creditors under a Resolution Plan shall be given priority in payment over Financial Creditor.	Clause 3.2.4 of Part II 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	Clause 3.11 of Part II 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.	Clause 1.6.2 of Part I of the Resolution Plan
38(2)	A Resolution Plan shall provide (a) the term of the plan and its implementation schedule	Clause 1.5.1 of Part I of the Resolution Plan.

REFERENCE TO RELEVANT REGULATION	REQUIREMENT	HOW DEALT WITH IN THE RESOLUTION PLAN
	(b) the management and control of the business of the Corporate Debtor during its terms; and	Clause 7.1.1, 7.1.2 and 7.1.3 of Part VI of the Resolution Plan.
	(c) adequate means for supervising its implementation	Clause 8.1, 8.2 and 8.3 of Part VI of the Resolution Plan.
38(3)	A Resolution Plan shall demonstrate that	Specified in the Business Plan
	(a) It addressed the cause of default;	Specified in the Business Plan
	(b) It is feasible and viable;	Specified in the Business Plan
	(c) it has provisions for its effective implementation;	Clause 8 of Part IV of the Resolution Plan.
	(d) it has provisions for approvals required and the timeline for the same; and	Clauses 9.1 and 9.2 of Part VII of the Resolution Plan.
	(e) the Resolution Applicant has the capability to implement the Resolution Plan	Specified in the Business Plan Plan.
39(4)	Provide details of the Performance security received, as referred to in sub-regulation (4A) of Regulation 36B	Performance Security for a sum of Rs.50 Crore has been provided by the Resolution Applicant on 07.12.2022,

10.2. It is also seen from Form – H that the RP has filed Applications under Section 43, 45, 50 and 66 of IBC, 2016 before this Tribunal on 18.10.2022. Subsequently, the RP submitted that the Transaction review auditor has not highlighted any transactions falling within the ambit of Section 43, 45, 49 and 66 of IBC, 2016





and accordingly these Applications were disposed off by this Tribunal vide its order dated 03.11.2022.

**11. RELIEF AND WAIVER UNDER THE RESOLUTION PLAN:**

11.1. The Resolution Applicant under the Resolution Plan has sought for the 8 reliefs and waivers from this Adjudicating Authority and after due consideration of the same, we deem it fit to order as under:

S No.	RELIEF AND WAIVER SOUGHT FOR BY THE SRA	ORDERS THEREON
1.	On and from the NCLT Approval Date, by order of the NCLT sanctioning the Resolution Plan, a restraint on and prohibition of all Adverse Actions shall be deemed to be declared until the Effective date:	<b>Granted</b>
2.	Given that the Resolution Applicant will acquire control of the affairs of the Corporate Debtor on the Effective Date, all Governmental Authorities (as they are Operational Creditors) to waive any financial penalties, or any other financial liabilities that may arise from any defaults and non-compliances by the Corporate Debtor prior to the Effective Date of the Applicable Law, including but not limited to the provisions of the Companies Act, 2013, Foreign Exchange Management Act, 1999, Contract Labour (Regulation and Abolition) Act, 1970, the relevant stamp acts of the different states of India and relevant environmental laws.	<b>Granted, in terms of Section 32A of IBC, 2016</b>
3.	Any stamp duty liabilities or Tax liability arising pursuant to the transactions contemplated under the Resolution Plan shall be exempted or waived off.	<b>This is for the appropriate authorities to consider keeping in view the object of IBC, 2016</b>

S No.	RELIEF AND WAIVER SOUGHT FOR BY THE SRA	ORDERS THEREON
4.	Without prejudice to anything set out in the Resolution Plan, by way of the implementation of the Resolution Plan, or as a result of any related matter, the Resolution Applicant or the Corporate Debtor or any of their connected persons shall not be treated as ineligible to be Resolution Applicant(s) or participate in any liquidation proceedings under with the Code.	<b>Granted, subject to Section 29A of IBC, 2016</b>
5.	Except for any specific arrangement (including any contracts or leases relating to lease of land in favour of the Corporate Debtor) that may be required to be continued with related parties of the Corporate Debtor under this Resolution Plan (or as may be identified by the Resolution Applicant), all other related party contractual arrangements 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) which shall be terminated by the Implementation and Monitoring Committee, then such termination shall be deemed to be effective on and from the NCLT Approval Date. Any claims or financial liabilities arising as a consequence of any termination of such contracts till the effective date shall be cancelled and written-off on and with effect from the NCLT approval date and shall be permanently extinguished and written-off on and with effect from the NCLT Approval date.	<b>Granted in terms of the judgment of the Hon'ble Supreme Court in</b>  <b><i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i></b>  <i>2021 SCC Online SC 313</i>
6.	Other than as specifically addressed in accordance with the provisions of this Resolution Plan, any and all other claims, rights and entitlements of any person, including any actual and potential creditors of the Corporate Debtor (including but not limited to all Financial Creditors, operational Creditors, other Creditors	<b>Granted in terms of the judgment of the Hon'ble Supreme Court in</b>  <b><i>Ghanashyam Mishra</i></b>

S No.	RELIEF AND WAIVER SOUGHT FOR BY THE SRA	ORDERS THEREON
	<p>and Governmental Authorities and any person who may claim to be a creditor by way of exercise of rights under Applicable laws or equity), whether or not such claims, rights or entitlements (including any demand for any losses or damages, principal, interest, compound interest, penal interest, liquidated damages, and other charges already accrued/accruing or in connection with any third party claims) have been filed before the Resolution Professional or not, whether admitted by the Resolution Professional or not, whether or not set out in the Information Memorandum, the Virtual data room, the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor, being due or contingent. asserted or unasserted, crystallized or uncrystallized, known or unknown, disputed or undisputed, present or future, shall be deemed to be written off and permanently extinguished on the effective date. on and with effect from the NCLT Approval date, in the following manner:</p> <p>(i) for such claims, rights and entitlements (as mentioned above) relating to the period upto the CIRP Commencement Date, the same shall stand extinguished by virtue of the order of the NCLT approving this Resolution Plan and (i) for such claims, rights and entitlements (as mentioned above) relating to the period commencing from the CIRP commencement date till effective date, the same shall stand extinguished and settled in full by virtue of the payment of the CIRP Costs and Interim Period Costs as well as by deemed agreement herewith of all claimants and other stakeholders of the Corporate Debtor pursuant to the terms of the Resolution Plan and on account of its binding effect on all such stakeholders. The Corporate Debtor or the Resolution Applicant shall at no</p>	<p><b><i>and Sons v. Edelweiss Asset Reconstruction Company Limited.</i></b></p> <p><i>2021 SCC Online SC 313</i></p>

S No.	RELIEF AND WAIVER SOUGHT FOR BY THE SRA	ORDERS THEREON
	point of time, directly or indirectly, have an obligation, liability or duty in relation thereto.	
7.	Extinguishment and write-off of any financial liabilities against the Corporate Debtor or the Resolution Applicant, including as result of the termination of any agreements by the Debtor.	<b>Granted</b>
8.	Such further or other reliefs as the Hon'ble NCLT may deem fit and proper to the facts and circumstances of the case and in the interest of the insolvency of the Corporate Debtor.	<b>NA</b>

## 12. QUERIES OF THIS TRIBUNAL

12.1. This Tribunal vide its order dated 02.02.2023 has directed the Resolution Professional and the Resolution Applicant to provide necessary explanation for the Clause 9.3.1, 9.3.2 and 10.7.1 in the Resolution Plan, which is as follows;

### **9.3. Indicative Timeline of Events for Implementation of Proposed Resolution Plan**

9.3.1. Unless expressly waived (where permissible under Applicable Law) by the Resolution Applicant by way of a written notice to the COC, the consummation and completion of the Resolution Plan is contingent on the following conditions ("Conditions Precedent") having been fulfilled:

- (a) Pronouncement of the NCLT Approval and uploading of the written copy of the NCLT Approval on the NCLT website (and there being no order of stay on implementation of the Resolution Plan passed by any court of competent jurisdiction);

- (b) Such other specific approval(s) as may be directed by the NCLT to be obtained by the Resolution Applicant for completing the Acquisition, having been obtained, and
- (c) Signing of Definitive Documents as may be required (the terms of which shall be in accordance with the framework envisaged in this Resolution Plan) with lenders For the sake of clarity, at this stage, the Resolution Applicant does not envisage any Definitive Document to be executed with the Financial Creditors for the purposes of the implementation of the Resolution Plan. However, in case any Definitive Document is required to give effect to the implementation of the Resolution Plan, the same may be entered into, subject to mutual agreement between the parties to such Definitive Documents.

9.32. Implementation of the Resolution Plan shall commence from the NCLT Approval Date, and upon the satisfaction, or waiver by the Resolution Applicant, of the Conditions Precedent (which is likely to be satisfied on or before 30 days from the NCLT Approval Date). The Resolution Applicant shall promptly, and within 15 days from the fulfilment of the Condition Precedent, issue a notice ("Implementation Notice") to the erstwhile COC in writing confirming the date on which it proposes to complete the steps set out in Section 4 (Acquisition as a Going Concern) of this Resolution Plan which shall not be a date later than 30 days from the satisfaction of the Conditions Precedent and by which date the payments, as proposed under this Resolution Plan, would have been made by the Resolution Applicant ("Effective Date"). In light of the above, the Effective Date is likely to be achieved by 60 day from NCLT Approval Date.

## **10.7. Termination and Consequences**

10.7.1 Notwithstanding anything contained in the RFRP or any other document, and unless otherwise agreed to by the Resolution Applicant, this Resolution Plan shall not be

considered as enforceable and binding on the Resolution Applicant if there is an order resulting into (1) increase in liability of the Resolution Applicant or (ii) any other such material modification in the contents of the Resolution Plan ("Termination").

12.2. In relation to the query raised by this Tribunal, the Resolution Applicant has filed a detailed Affidavit dated 13.02.2023 in INV.P(IBC)/3(CHE)/2023 wherein in respect of Clause 9.3.1 it has been stated that there is no requirement of execution of Definitive Documents for the purpose of implementation of the Resolution Plan and the same is not a condition precedent *per se*.

12.3. In relation to Clause 9.3.2 it has been stated that within 15 (fifteen) days from the receipt of the approval of this Tribunal, the Resolution Applicant is bound to issue the Implementation Notice and to conclude the implementation of the Resolution Plan within 30 (thirty) days from the date of Implementation Notice. Further, it is also stated that post approval of the Resolution Plan by this Tribunal the Resolution Applicant would forthwith initiate the implementation of the Resolution Plan in accordance with the framework as envisaged thereunder without any contingency and delay.

12.4. In relation Clause 10.7.1, it is stated in the affidavit that Clause 10.7.1 does not in any manner dilute the binding nature of the Resolution Plan on the Applicant. Further, it is stated that once the Resolution Plan is approved by this Tribunal it shall be binding on the Resolution Applicant who shall forthwith commence the implementation.

12.5. The aforesaid affidavit dated 13.02.2023 filed by the Resolution Applicant is taken on record.

### **13. ANALYSIS AND FINDINGS OF THIS TRIBUNAL**

13.1. It is seen Form – H that the Fair value of the Corporate Debtor is arrived at Rs.1215,88,27,500/- and the Liquidation value of the Corporate Debtor is arrived at Rs.822,18,01,500/-. The present Resolution Plan submitted by the Resolution Applicant is for a value of **Rs.1583,06,53,357/-**.

13.2. 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.”

13.3. 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).

13.4. 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)*

13.5. 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)*

13.6. 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.

13.7. 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.


13.8. On hearing the submissions made by the Ld. Senior 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,

13.9. 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.

13.10. In case of non-compliance with this order or withdrawal of the Resolution Plan by the Successful Resolution Applicant, or the Resolution Applicant fails to pay the Resolution Plan amount within the a period of 60 days from the date of this order, the Monitoring Committee, the RP or the CoC, as the case may be, shall forfeit the entire amount received as on the said date (including the Performance Bank Guarantee amount), without any

 recourse to this Tribunal.

13.11. Subject to the observations made in this order, the Resolution Plan is hereby **Approved** by this Adjudicating Authority. The Resolution Plan shall form part of this Order. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that the revival of the Debtor Company shall come into force with immediate effect. The Moratorium imposed under section 14 shall cease to have effect from the date of this Order.

13.12. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters. The Resolution Professional is further directed to hand over all records, premises/factories/documents to the Resolution Applicant to finalize the further line of action required for starting the operation of the Corporate Debtor under the control of the Resolution Applicant

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



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

13.15. A copy of this Order is to be submitted to the Office of the Registrar of Companies, Chennai.

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

13.17. The Regional Director (Southern Region), Ministry of Corporate Affairs is hereby directed to look into the possibility of allotting a new CIN number to the successful Resolution Applicant in order to create a fresh start, easing all its practical difficulties.

14. IA(IBC)/1593(CHE)/2022 shall stand **disposed of** accordingly.

15. 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.

- Sd -

**SAMEER KAKAR**  
MEMBER (TECHNICAL)

- Sd -

**Justice RAMALINGAM SUDHAKAR**  
PRESIDENT

*Raymond*