

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – II, CHENNAI**

IA(IBC)/Plan/02/(CHE)/2024

In

CP(IB)/244(CHE)/ 2022

*(filed under Section 30(6) of the Insolvency & Bankruptcy Code, 2016 read with Regulation
39(4) of Insolvency & Bankruptcy Board of India Regulations, 2016)*

*(In the matter of **Marappan Textiles Private Limited**)*

S.PRABHU

RP OF M/S MARAPPAN TEXTILES PVT LTD

M/S SPP INSOLVENCY PROFESSIONALS LLP,

2ND FLOOR, CODISSIA G.D. NAIDU TOWERS,

HUZUR ROAD, COIMBATORE-641018. ... Applicant/Resolution Professional

In the matter of

M/S TCP LIMITED

...Petitioner/Operational Creditor

-Versus-

M/S. MARAPPAN TEXTILES PRIVATE LIMITED

... Respondent/Corporate Debtor

Order Pronounced on 12th July 2024

CORAM

SHRI JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)

SHRI RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Appearance:

For Applicant : A.G.Sathyannarayana

ORDER

1. IA(IBC)/Plan/02/(CHE)/2024 is an application filed on 11.04.2024 by the Resolution Professional of the Corporate Debtor Viz., M/s. Marappan Textiles Private Limited under Section 30(6) of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as

("the Code")) read with Regulation 39(4) of the Insolvency & Bankruptcy Board of India Regulations, 2016 seeking reliefs as follows:

- a) To pass an order confirming the Coc decision taken in 9th Coc meeting held on 28.03.2024 in approval of resolution plan submitted by Mr M Shanmugan

2. The Corporate Debtor has been engaged in the business of manufacturing, buying, selling, importing, and exporting of cotton, silk, rayon, nylon, fibre materials and Importing, exporting, distribution of readymade garments, coverings and manufacturing of various garments. The executive summary of the Corporate Debtor is as hereunder,

<i>Name of the Corporate Debtor</i>	<i>Marappan Textiles Private Limited</i>
<i>CIN</i>	U17111TZ2014PTC020436
<i>Date of Incorporation</i>	09.05.2014

3. CORPORATE INSOLVENCY RESOLUTION PROCESS OF MARAPPAN TEXTILE PRIVATE LIMITED

The Corporate Insolvency Resolution Process in respect of the Corporate Debtor viz., ***Marappan Textiles Private Limited*** was initiated by this Adjudicating Authority vide its order dated 12.06.2023 based on an application moved by M/s TCP Limited, in the capacity of Operational creditor under Section 9 of the code in CP(IB)244/2022, Mr. Ramji Mahadevan was appointed as the 'Interim Resolution Professional'. Thereafter, based on an application moved under Section 22(3)(b) of the code, the applicant herein Mr. S.Prabhu was appointed as the Resolution Professional vide order dated 16.10.2023. The key dates and events during the

Corporate Insolvency Resolution Process period are tabulated as hereunder,

S.No.	DATE	EVENTS
1.	26.06.2023	Public Announcement regarding initiation of Corporate Insolvency Resolution Process.
2.	20.07.2023	The Committee of Creditors was constituted by the IRP based on the claims received.
3.	27.07.2023	<i>1st CoC Meeting</i> –Discussion was done about the corporate debtor’s operation.
4.	08.08.2023	<i>2nd Coc Meeting- Resolution passed for replacement of Resolution professional.</i>
5.	16.10.2023	Order appointing Mr. S.Prabhu as the RP was passed.
6.	27.10.2023	Appointment of Registered Valuers.
7.	09.12.2023	End of 180 days of Corporate Insolvency Resolution Process Period.
8.	11.12.2023	Corporate Insolvency Resolution Process Period was extended for 90 days by order of this Adjudicating Authority, until 08.03.2024.
9.	26.03.2024	A Resolution Plan was approved by the CoC and the same was filed before this Adjudicating Authority for approval.
10.	08.04.2024	Date of Filing of resolution plan with adjudicating authority.
11.	30.10.2023	Form G (Expression of Interest (EoI)) was published.
12.	31.12.2023	Last date of submission of Resolution Plan.
13.	30.12.2023	Performance Security to the tune of Rs 1 crore was deposited by the SRA.
14.	14.03.2024	CIRP Period was further extended for period of 60 days, expiring on 08.05.2024.
15.	08.05.2024	Expiry of extended CIRP Period.

4. DELIBERATION OF THE COC ON THE FEASIBILITY OF THE PLAN

During the 9th CoC Meeting held on 26.03.2024 deliberations were made by the members of the CoC on the Resolution Plan submitted by the SRA. Accordingly, the Resolution Plan was approved unanimously by ballot sheet voting. The resolution is as hereunder,

"RESOLVED THAT

The Final Revised Resolution Plan dt: 01.03.2024 submitted by M.Shanmugham for acquisition of assets of the Corporate Debtor is hereby approved and confirmed by this committee u/s. 30(4) of the Insolvency and Bankruptcy Code, 2016 and the RP is directed to take necessary steps for obtaining the approval of the Adjudicating Authority under the provisions of IBC."

5. DETAILS OF THE SUCCESSFUL RESOLUTION APPLICANT

NAME	CATEGORY
Mr. M. Shanmugham Promoter Director of Corporate Debtor	Individual

It is submitted that the corporate debtor is MSME which is within the meaning of MSME act 2006, in view of section 240A amendment to the code, existing promoter/ principal shareholders are entitle to participate as "Resolution Applicant", On such participation the SRA is eligible to be "Resolution applicant". It is submitted that the RA has not been declared as "wilful defaulter" as per law. Affidavit is submitted to the effect of section 29A is filed in pages 646-648 of the Application. It is submitted that son of

SRA Mr. Prithivraj is software engineer worked in multinationals and gained administration skill for past 20 years. He also has exposure in textile field for almost 10 years. He will join with the promoter for effective implementation.

6. SOURCE OF FUND

6.1 On a perusal of page 780-784 of the application filed, the Successful Resolution Applicant has Bank Guarantee for 1,40,00,000/- and Rs 5,00,000/- deposited as cash to CD's account.

6.2 On perusal of the application Letter of consent from *Ramalingam Constructuion company* for financial assistance of Rs 2.0 crores on approval of plan is found in page 654 of the application.

6.3 It is submitted that *P&C Projects* ltd has undertaken to invest Rs 3.0 crores letter of consent for that effect is filed in Page 679 of the application.

6.4 It is submitted that *Ultra Readymix Concrete Private limited* is interested to extend financial assistance to extent of 2.0 crores the letter of consent is filed in page 701 of the application.

6.5 Promoter *Mr M.Shanmugham* has undertaken to invest Rs 1.0 crore for the period of two years letter of comfort is filed in page 731 of the application.

6.6 *Mr S pushparaj* has agreed to provide financial assistance for Rs 1 core against allotment of share the letter of consent is placed in page 733 of the application.

6.7 On perusal of Resolution Plan, clause 5.6 of the plan sets out details of source of fund to meet the obligation under the Resolution plan along with schedule for such payment is as tabulated, the same is as follows,

6.8 Source of Fund,

<i>S.No.</i>	<i>Name</i>	<i>Amount</i>
1.	Own Source by Resolution applicant	2.90 Crore
<i>Unsecure Loan</i>		
2.	Friends and relatives	70 Lakhs
3.	Investment by Sai Textile	2 crores
4.	Loans from Financial institution	8.90 crores
<i>Total</i>		14.50 crores

Vide order dated 28.06.2024 this tribunal had sought for detailing the source of funds, the compliance is filed and clarified on source of funds as

<i>S.No.s</i>	<i>source</i>	<i>Committed Amount</i>
1	Ramalingam Construction Company Ltd	2.00 Crores
2	P&C Projects Pvt Ltd	3.00 Crores
3	Ultra Ready mix Concrete Private Limited	2.00 Crores
4	Damodharan Gurumoorthy	1.00 Crores
5	S. Pushparaj	1.00 Crores
6	A.Arulsamy	Amount not specified

6.9 Application of Funds,

S.no:	Payment schedule	Payment allocation	Amount (In Lakhs)	Total
1	At the time of submitting Binding Resolution Plan	Earnest Deposit Money. The amount has to be adjusted on NCLT Approval to secured financial creditor	1,45,00,000	1,45,00,000
2	Within 30 days from the date of Approval of the Resolution Plan by COC	Performance Guarantee, The amount has to be adjusted NCLT Approval.		1,45,00,000
3	Within 30 days from the date of Approval of the Resolution Plan by adjudicating authority	The Following amount has to be adjusted from performance guarantee of Rs.1,45,00,000 on NCLT Approval <ul style="list-style-type: none"> ➤ Payment of CIRP Cost 15,00,000 ➤ Payment of Operational Creditors in priority as per code and to unsecured financial creditor. 46,50,000 ➤ Payment of Secured Financial Creditor 75,00,000 ➤ Working Capital, Contingency provision and Restart Expenses 8,50,000 		
4	Within 75 days from the date of Approval of the Resolution Plan by Adjudicating Authority		2,70,00,000	2,70,00,000
5	Within 90 days or 120 days (90 days without interest + 30 days with Interest) from the date of Approval of the Resolution by	Payment of Balance amount to secured financial creditor as per the Plan	8,90,00,000	8,90,00,000

	Adjudicating Authority			
		TOTAL	14,50,00,000	14,50,00,000

Note:

*CIRP Costs are estimated and may vary based on actuals.

** The Amount required for Capital expenditure and Working Capital shall be brought in by the Resolution Applicant through Unsecured Loans and as and when required.

7. SALIENT FEATURES OF THE RESOLUTION PLAN

The SRA contends that they can run the unit by infusing additional working capital of Rs 20 lakhs and aim to reconstitute the management team and major investors nominees and RA would become director of the company.

Rs 25,00,000/- is expected to be generated out the operations of Corporate Debtor, as Corporate Debtor is still operating and all the CIRP expenses is being met by the revenue generated by CD, In case internal generation does not materialize resolution applicant has undertaken to get funds from his own source.

8. PAY-OUT TO STAKEHOLDERS AS PROPOSED IN THE PLAN

Sl.No	Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under Plan	Amount Provided to the Amount Claimed %
1	Secured Financial Creditors				
	Indian Overseas Bank	25,33,14,794	25,33,14,794	13,80,00,000	54.47 %
	Total	25,33,14,794	25,33,14,794	13,80,00,000	
2	Unsecured Financial Creditor				
	Goseree Finance Limited	64,53,988	64,53,988	3,22,700	5 %
	IndusInd Bank Limited	2,01,17,464	2,01,17,464	10,05,800	5%
	Total	2,65,71,452	2,65,71,452	13,28,500	

3	Operational Creditors				
	TCP Limited	3,39,14,042	3,39,14,042	16,97,247	5%
	Navin Cotex	10,00,000	10,00,000	50,000	5%
	Sai Textiles Coimbatore	1,44,71,204	1,44,71,204	7,23,560	5%
	Sun Enterprises Diwaraka Papers Coimbatore	3,85,125	3,85,125	19,256	5%
	Unicone, Sanakaran Koil	8,74,697	8,74,697	43,735	5%
	Venkateswara Cone	48,116	48,116	2,406	5%
	Mahabali Cotton, Georai	48,11,586	48,11,586	2,40,579	5%
	Sunshine Impex, Raichure	9,30,471	9,30,471	46,524	5%
	Shree Vedanth Marketing Raichur	8,47,742	8,47,742	42,387	5%
	PNP Eneterprises-Nishanth Dalal	24,10,458	21,06,160	1,05,308	5%
	PNP Cotton-Nishanth Dalal	25,51,905	25,51,905	1,27,595	5%
	Sri Siddeshwar Ginning and Pressing Pvt Ltd	52,83,043	44,58,046	2,22,902	5%
	Total	6,75,28,389	6,63,99,094	33,21,500	
4	Other debts and dues	NIL	NIL	NIL	
	Grand Total	34,73,14,635	34,62,85,340	14,26,50,000	
5	Towards Expenses				
	Restart Expenses			8,50,000	
	CIRP Cost			15,00,000	
	Grand Total			14,50,00,000	

9. IMPLEMENTATION & MONITORING COMMITTEE (IMC)

9.1 Implementation & Monitoring Committee shall be constituted to monitor the implementation of the Plan. The members shall comprise –

The Resolution Professional (Chairman of the Committee)
One Representative of the CoC
One Representative of the Resolution Applicant

9.2 The IMC shall continue till all payments under the Resolution plan are made.

9.3 The Monitoring Committee shall be responsible for monitoring the implementation and execution of the Plan including smooth transition of the Management of the Corporate Debtor. The Monitoring Committee shall also handover to the Resolution Applicant, the original/duly certified copies of title deeds of the land owned by the Corporate Debtor on payment of the final instalment of the final instalment of the Resolution Amount.

9.4 The Monitoring Committee shall further be responsible for the distribution of the proceeds received from the Resolution Applicant under the Plan. For the said purpose, the Chairman of the Monitoring Committee shall be paid a fee of Rs.2,00,000/- (Rupees Two lakhs Only) plus applicable GST per month along with out-of-pocket expenses on actuals from the date of approval of the Resolution Plan to till the period Monitoring Committee dissolves.

10. MANAGEMENT OF THE CORPORATE DEBTOR

10.1 Board of Directors and Management team:

The board of directors of the Corporate Debtor on approval of the proposed Resolution Plan as mentioned in clause 5.4 of the Resolution Plan states suspended board has Resolution applicant as the only director and new board will be constituted along with nominees, shareholders and directors. It is submitted that Mr Arulsamy an executive director of National Textiles Corporation Private Limited will be joining the company on full time basis to revive the company.

10.2 As per clause 5.61 capital structure of The company is restructured as follows,

CAPITAL STRUCTURE	EXISTING	% HOLDING	AFTER PLAN IMPLEMENTATION	HOLDING %
PROMOTERS	3,49,400	76.06%	10,000	2.14%
M.S WINDMILL	48,960	10.66%	NIL	NIL
OTHERS	61,040	13.29%	49,400	10.76%
FRESH ISSUE TO INVESTORS			4,00,000	87.07%
TOTAL	4,59,400	100.00%	4,59,400	100.00%

11. MANDATORY COMPLIANCE UNDER IBC & REGULATIONS

From the averments made in the application as well as on perusal of Form -H, as filed by the Resolution Professional in relation to the procedural aspects, the same seems to have been duly complied with for which the Resolution Professional has issued a certificate and it is not necessary for this Authority to go into the same. However, this Authority is duty bound to examine the Resolution Plan within the contours of Section 30 (2) of the IBC, 2016.

MANDATORY COMPLIANCE UNDER IBC, 2016	COMPLIANCE UNDER RESOLUTION PLAN
S. 30(1) - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	Resolution Applicant filed an Undertaking at page 646 of the application
S.30(2)(a) - Payment of Insolvency and Resolution cost in the manner specified by the Board	Clause 5.5.1 A of the Resolution Plan provides for the payment of CIRP costs in priority.
S.30(2)(b) -Payment of debts of Operational Creditors in such manner as may be specified by the Board, which shall not be less than the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under Sec. 53.	Clause 5.5.1 B of the Resolution Plan provides for the discharge of Operational Creditor claims.
S. 30(2)(c) - Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause 6.26 of the Resolution Plan provides for Management and control of the operations of the Corporate Debtor.
S.30(2)(d) - Implementation and Supervision of the Resolution Plan.	Clause 6.2 of the Plan provides for implementation & supervision of the plan.
S. 30(2)(e) - The plan does not contravene any of the provisions of the law for the time being in force.	Clause 6.2 of the plan expresses that the plan does not contravene any provisions of the law for the time being in force.
S.30(4) - Committee of Creditors approve the Resolution Plan by not less than 66% of the voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by the Board	The CoC, in its 9 TH meeting, has unanimously approved the Resolution Plan.

A Comparison vis-à-vis with the Mandatory compliance under the IBC and the Compliance made under the Resolution Plan.

**MANDATORY CONTENTS OF THE RESOLUTION PLAN IN TERMS OF
REGULATION 38 OF CIRP REGULATIONS.**

	MANDATORY COMPLIANCE UNDER CIRP REGULATION	COMPLIANCE UNDER RESOLUTION PLAN
38(1)	The amount due to the Operational Creditor under Resolution Plan shall be given priority in payment over Financial Creditor.	Clause 5.5.1 B of the 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 5.5.1B of the 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 5.9 of the Plan
38(2)	a) term of the plan and its implementation schedule	Clause 6.2 of the Plan
	b) management and control of the business of the Corporate Debtor during its term;	Clause 6.2.6 of the Plan
	c) adequate means for supervising its implementation	Clause 6.2.6 of the Plan
38(3)	a) it address the cause of default;	Clause 3.4 of the Plan
	b) it is feasible and viable	Clause 4 of the plan
	c) it has provisions for effective implementation	Clause 6 of the Plan
	d) it has provisions for approval required and the timeline for the same; and	Clause 9 of the plan
	e) the resolution applicant has the capability to implement the Resolution Plan.	Clause 4 of the Plan

12. JUDICIAL PRONOUNCEMENTS OF THE HON'BLE SUPREME COURT IN RELATION TO APPROVAL OF A RESOLUTION PLAN

12.1 In so far as the approval of the Resolution Plan is concerned, this Authority is not sitting in appeal against the decision of the Committee of Creditors and this Authority is duty bound to follow the Judgment of the Hon'ble Supreme Court in the matter of **K. Sashidhar –Vs– Indian Overseas Bank** (2019) 12 SCC 150, decided on 05.02.2019 wherein in para 19 and 62 it is held as under;

“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.”

12.2 Further the Hon'ble Supreme Court in the matter of **K. Sashidhar v. Indian Overseas Bank and Ors.** (2019) 12 SCC 150 decided on 05.02.2019 has lucidly delineated the scope

and interference of the Adjudicating Authority in the process of approval of the Resolution Plan and held as under;

“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)

12.3 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** decided on 15.11.2019 at para 42 has held as under;

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).

12.4 Also the Hon’ble 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** decided on 15.11.2019 after referring to the decision in **K. Sashidhar (supra)** has held as under;

“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 maximizing 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)

12.5 The Hon'ble Supreme Court in its recent decision in **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. –Vs- NBCC (India) Ltd. & Ors** in *Civil Appeal no. 3395 of 2020* decided 24.03.2021 has held as under;

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 maximization 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 maximization 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 maximization 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.

12.6 The Hon'ble Supreme Court in its recent decision in **Paschimanchal Vidyut Vitran Nigam Ltd. Verus Raman Ispat Private Limited & Ors.** *In Civil Appeal no. 7976 of 2029* decided 17.07.2023 has held as under;

49. Rainbow Papers (Supra) did not notice the 'waterfall mechanism' under Section 53 – the provision had not been adverted to or extracted in the Judgement. Furthermore, Rainbow Papers (Supra) was in the context of a resolution process and not during liquidation. Section 53, as held earlier, enacts the waterfall mechanism providing for the hierarchy or priority of claims of various classes of creditors. The careful design of Section 53, locates amounts payable to secured creditors and workmen at the second place, after the costs & expenses of the liquidator payable during the liquidation proceedings. However, the dues payable to the government are placed much below those of secured creditors and even unsecured creditors. This design was either not brought to the notice of the Court in Rainbow Papers (supra) or was missed altogether. In any event, the Judgment has not taken note of the provisions of the IBC which treat the dues payable to secured creditors at a higher footing than dues payable to central or state Government.

(emphasis supplied)

12.7 Thus, from the catena of judgments rendered by the Hon'ble Supreme Court on the scope of approval of the Resolution Plan, it is crystal 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. RELIEF & CONCESSIONS:

The Resolution Applicant has sought for various waivers and Concessions in Clause 9 of the Resolution Plan, which are as follows,

SL. No.	RELIEF / CONCESSIONS SOUGHT FROM FINANCIAL CREDITORS	ORDERS THEREON
1.	On receipt of the payment of their entire dues as per this plan, the banks shall release their charge over all the assets of corporate debtor as forming part of Plan, which have been provided as security against the facilities availed from the financial lenders and no amount of any nature shall be payable either by the Resolution Applicants or by the corporate debtor, having new management / directors, except as provided for in the resolution plan.	Granted, subject to the provisions of IBC, 2016 and other Applicable laws
2.	The Financial Creditors shall withdraw any suits/ applications related to recovery or any other nature filed against corporate debtor whatsoever pending in any court of law and any effect of suits/applications decided thereafter and related to past events (pre CIRP date) will stand infructuous after the approval of the plan.	Granted subject to HC case and provisions of IBC and other applicable laws
3.	The Resolution Applicant will have the option to pre pay the dues of the Financial Creditors, without any additional levies	Appropriate authorities to consider keeping in view the object of IBC, 2016.
4.	After the approval of the Resolution Plan, all fixed assets and current assets as specifically provided for in the plan or any other asset having ownership of the corporate debtor will solely remain under the ownership and right of corporate debtor and no other person will have right on these assets in future	Appropriate authorities to consider keeping in view the object of IBC, 2016.
5.	Financial Creditors will issue No Objection	Appropriate

	Certificate to the Resolution Applicants at their request, to the effect that Resolution Applicants may sell the assets acquired (if required) by the resolution Applicants after the term of the proposed resolution plan, having met with all the payment obligations under this resolution plan.	authorities to consider keeping in view the object of IBC, 2016.
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SL. No.	RELIEF / CONCESSIONS SOUGHT FROM CENTRAL BOARD OF DIRECT TAXES	ORDERS THEREON
1.	All pending litigation, notices, past and ongoing assessments, past and ongoing investigations, tax demands under all Direct and Indirect tax statues towards the company would be treated as closed and no further action would be taken for any action/ transaction carried out before the effective date	Appropriate authorities to consider keeping in view the object of IBC, 2016.
2.	To not levy any Tax (including minimum alternate tax) arising because of giving effect to, or otherwise in relation to, the Plan, in the hands of CD or the RA. The Central Board of Excise and Customs not to void or take any other actions with respect to the transactions contemplated under this Plan (including the sale of Collateral or any other act) and not to impose any successor liability on the Resolution Applicant and the CD Company shall be entitled to carry forward the accumulated input tax credit balances under the Indirect Tax Laws and to utilized such amounts to set off against tax liability arising in future in accordance with the applicable laws.	Appropriate authorities to consider keeping in view the object of IBC, 2016.
3	All benefits, exemptions, deductions, rebates, reliefs, credits etc. under any tax laws in India available to the Company shall not lapse pursuant to the Resolution Plan and shall be available post implementation date	Appropriate authorities to consider keeping in view the object of IBC, 2016.

SL. No.	RELIEF / CONCESSIONS SOUGHT UNDER COMPANIES ACT 2013	ORDERS THEREON
1	The Registrar of Companies to take on record upon approval of Resolution Plan from Hon'ble NCLT, without further compliances	Granted, subject to the provisions of IBC, 2016 and other Applicable laws
2	Waiver/Approval for any past liabilities, penalties, and any form of payment by way of Late Fees, damages, prosecution etc. which occurred or become due because of any non-compliance related to Companies Act and Rules till effective date. Waiver to maintain/reconstruct past records of the Corporate Debtor, if any, till the approval of plan by NCLT	Granted, subject to the provisions of IBC, 2016 and other Applicable laws

SL. No.	RELIEF / CONCESSIONS SOUGHT FROM STATE GOVERNMENT	ORDERS THEREON
1	Liberty to change the name of the company and the approval of the State/Centre Government without any tax implications.	Appropriate authorities to consider keeping in view the object of IBC, 2016.
2	Coverage under the incentives offered by State Government for sick industrial units or any other incentives	Appropriate authorities to consider keeping in view the object of IBC, 2016
3	Time period of twelve months from the effective date to ensure compliance in relation to non-compliance of Applicable laws by the Corporate Debtor to any period up to effective date without any additional interest and penalty.	Appropriate authorities to consider keeping in view the object of IBC, 2016
4	The relevant Government/ Statutory authorities shall not initiate any investigation, action or proceeding against the Resolution Applicant or the new management (upon acquisition of	Appropriate authorities to consider keeping in

	Corporate Debtor) including the Board of Directors, in relation to any non-compliance with Applicable laws by the Corporate Debtor pertaining to any period up to effective date.	view the object of IBC, 2016
5	All Government authorities that have issued or granted business permits to provide reasonable time of at least twelve months after the effective date to the Resolution Applicant to assess the status of business permits and applicable laws without initiating any investigation, action or proceeding in relation to non-compliance, and to permit the Resolution Applicant to continue to operate the business of the corporate debtor as carried out prior to effective date.	Appropriate authorities to consider keeping in view the object of IBC, 2016
6.	No amount shall be payable for any liability of the Corporate Debtor towards any creditor other than as already provided under the Resolution Plan	Appropriate authorities to consider keeping in view the object of IBC, 2016
7.	All concerned revenue or stamp authorities to waive penalties for non-registration and inadequate or non-stamping of documents executed by the Company up to the effective date.	Appropriate authorities to consider keeping in view the object of IBC, 2016

SL. No.	RELIEF / CONCESSIONS SOUGHT FROM DIRECTOR GENERAL OF FOREIGN TRADE	ORDERS THEREON
1	The Corporate Debtor M/s Marappan Textiles Private Limited had export obligation vide EPCG Authorisation Number: 320021797 dated 5.2.2015 for Rs.2,74,63,861 /-and the export obligation period expired on 5.2.2023. In this regard Director General of Foreign Trade, Ministry of Commerce and Industry, Department of Commerce, Vide public Notice No.2/2023 dated 01.04.2023 Policy Circular No.02/2023-24 dt 23.06.2023 and Public Notice No.20/2023 dt 30.06.2023 announced amnesty scheme and timeline has been extended upto 31.01.2023 to register under this scheme and	Appropriate authorities to consider keeping in view the object of IBC, 2016

	make the payment of customs duty plus interest by 31.03.2024. Since the CIRP of the CD commenced on 12.06.2023, the suspended Director could not avail the benefit of this amnesty scheme. Hence specific relief is sought for waiver of export obligation through the resolution plan	
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SL. NO.	OTHER RELIEFS	ORDERS THEREON
1	There shall be no Stamp Duty implications and any other levies for transfer of assets or otherwise and the state Government shall not object to such.	Appropriate authorities to consider keeping in view the object of IBC, 2016.
2	On approval of the Resolution Plan by the Hon'ble NCLT, all the litigations, proceedings of whatever nature, including those relating to direct or indirect taxation, or of any other nature, in respect of the issues, claims, etc., pertaining to the period prior to the date of approval of the Resolution Plan by the Adjudicating Authority, shall stand closed immediately and the Corporate Debtor and Resolution Applicants, shall not be liable for any civil or any other consequence including penalty arising therefrom.	Granted, subject to the provisions of IBC, 2016 and other Applicable laws
3	To extinguish all the contingent liability as may arise after the approval of the resolution plan and pertaining to the period prior to CIRP and which are not captured related to period before approval of Resolution Plan.	Granted, subject to the provisions of IBC, 2016 and other Applicable laws
4	The Resolution applicant shall be responsible only for the liabilities specifically mentioned and undertaken by it in the Resolution Plan. To clarify, the Applicant shall not be responsible for the liabilities not mentioned/undertaken in the Resolution Plan.	Granted, subject to the provisions of IBC, 2016 and other Applicable laws
5	Amend the constitutional documents of the corporate debtor	Granted, subject to

		the provisions of IBC, 2016 and other Applicable laws
6	Cost cutting measures including but not limited to rationalization/ optimization of manpower	Granted, subject to the provisions of IBC, 2016 and other Applicable laws
7	Liberty to change the name of the company and the State Government shall approve the same without any charges/fees	Granted, subject to the provisions of IBC, 2016 and other Applicable laws
8.	Coverage under the incentives offered by State Government for sick industrial units.	Appropriate authorities to consider keeping in view the object of IBC, 2016
9.	All obligations, liabilities (whether contingent or crystallized) claims and proceedings in relation to any corporate guarantees, indemnities and all other forms of credit support provided by the Corporate Debtor prior to the Effective Date and all contingent liabilities disclosed / undisclosed in the annual audited financial statements as well as financial statement as on CIRP Commencement Date of the Corporate Debtor and liabilities which are not in notice of Corporate Debtor or not acknowledged by the Corporate Debtor shall stand extinguished and discharged on and with effect from the Effective Date	Granted subject to HC order and provisions of IBC and other applicable laws
10.	All enquiries, investigations, notices, causes of action, suits, claims, liabilities, demand, obligations, penalties, disputes, litigations, arbitrations or other judicial, regulatory or administrative proceedings	Appropriate authorities to consider keeping in

	<p>against the CD or the affairs of the CD, pending or threatened, present or future, (including without limitation, any investigation by Central Bureau of Investigation or the Serious Fraud Investigation Office), whether or not on account of acts or omissions in breach of Applicable Law (including but not limited to environmental laws, foreign exchange laws and regulations, labour and employment laws, and laws relating to anti-corruption and prevention of money laundering) and including but not limited to the proceedings specifically under this Plan in relation to any period prior to the Effective Date shall stand extinguished and accordingly, all such proceedings, inquires, investigations, etc. shall be disposed of and all liabilities or obligations in relation thereto, whether or not set out in the Provisional Balance Sheet, the balance sheet of the CD or the profit and loss account statements of the CD or the List of Creditors, shall, in accordance with Regulation 37 of the CIRP Regulations, be deemed to have been written off in full and permanently extinguished by virtue of the order of NCLT approving this Plan and the RA, shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto. By virtue of the order of the NCLT approving this Resolution Plan, all new inquiries, investigations, notices, suits, claims, disputes, litigations, arbitration or other judicial, regulatory or administrative proceedings will not be initiated or admitted if these relate to any period prior to the Effective Date or on account of the acquisition of control by RA over the CD pursuant to this Resolution Plan, against the CD or any of its employees or directors who are appointed or who remain in employment or directorship after the Effective Date or pursuant to the implementation of the Resolution plan</p>	<p>view the object of IBC, 2016</p>
11.	<p>Upon approval of this Plan by the NCLT, all dues under the provisions of all the indirect Taxes, including but not limited to, the Central Excise Act, 1944, the Finance Act, 1994 (service Tax), the Customs Act, 1962, the Central Sales Tax Act, 1956, the Goods and Services Tax Act, 2017, property tax, the various states' value added tax acts and any other indirect Tax laws, including Taxes, duty,</p>	<p>Appropriate authorities to consider keeping in view the object of IBC, 2016</p>

	penalties, interest, fines, charges, unpaid Tax deducted at source/ Tax collected at source (to the extent applicable), whether admitted or not, due or contingent, whether part of the above mentioned contingent liability schedule dues or not, whether claimed by the Tax authorities or not, asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the Effective Date, shall stand extinguished and the Corporate Debtor will not be liable to pay any amount against such demand	
12.	After acquisition, there may be receipts by the Resolution Applicant over and above those recorded in books. Such receipts will solely be under the right/control/ownership of resolution Applicants and others will not have any right on such receipts except that of Avoidance Applications, which shall be distributed in terms of Section 53 of IBC, 2016.	Granted, subject to the provisions of IBC, 2016 and other Applicable laws

14. The Applicant has filed Form -H in accordance with the IBBI (CIRP Regulations, 2016) along with this Application and the same is placed along with the application. Further, it is observed from Form-H that the amount proposed in the plan is much higher than the Liquidation Value of the Corporate Debtor. The fair value and the Liquidation Value as mentioned in Form-H is as hereunder,

1.	<i>Fair Value</i>	Rs. 16.95 Crore
2.	<i>Liquidation Value</i>	Rs. 13.56 Crore
3.	<i>Plan Value</i>	Rs. 14.50 Crore

15. It is submitted in from Form-H, that there are no avoidance application filed/pending against the corporate debtor.

16. It is seen 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 made by the RP and the Resolution Applicant for making the plan effective after approval by this Authority. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Section 30 & 31 of the IBC and also in compliance with regulations 38 & 39 of the IBBI (CIRP) Regulations, 2016.

17. In the light of the aforesaid, it is hereby ordered that the payment to the members of the Monitoring Committee shall be made by the Corporate Debtor on such terms and conditions agreed between the parties for the entire period of implementation as mentioned in this resolution plan.

18. In case of non-compliance/non-implementation/ failure during implementation of this order or withdrawal of the Resolution Plan by the Successful Resolution Applicant, the RP shall forfeit the EMD/Performance Guarantee or any further amount paid as per the terms of the resolution plan without any recourse to this Authority.

19. 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.

20. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for its record and also return to the Resolution Applicant. 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.

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

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

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

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

25. **IA (IBC)/Plan/02/CHE/2024** stands **disposed of** accordingly.

26. 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.

27. File be consigned to the record room.

-SD-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-SD-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)

Ramika