

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

IA(IBC)/1747/(CHE)/2023

In

IBA/895/2019

*(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 Uthara Fashion Knitwear Limited)

SHRI. CHANDRASEKHAR SAGUTOOR

Resolution Professional of Uthara Fashion Knitwear Limited

F4 & F5, 1st Floor,

No. 333/17, SVP Salma Arcade Complex,

Arcot Road,

Kodambakkam,

Chennai – 600 024

... Applicant/Resolution Professional

In the matter of

STRESSED ASSETS STABILIZATION FUND (SASF)

... Petitioner/Financial Creditor

-Versus-

M/s. UTHARA FASHION KNITWEAR LIMITED

... Respondent/Corporate Debtor

Order Pronounced on 22nd March 2024

CORAM

SHRI JYOTI KUMAR TRIPATI, MEMBER (J)

SHRI RAVICHANDRAN RAMASAMY, MEMBER (T)

Appearances:

For Applicant : Mr. Bhagavath Krihsnna PMN, Ms. Anita Suresh &
Ms. Jyotsna Sivakumar, Advocates

ORDER

1. IA(IBC)/1747/(CHE)/2023 is an application moved on 01.09.2023 by the Resolution Professional of the Corporate Debtor Viz., M/s. Uthara Fashion Knitwear 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) It is therefore prayed that this Hon’ble Tribunal be pleased to approve the Resolution Plan dated 08.08.2023 with the addendum dated 13.08.2023 submitted by Mantharasalam Palanisamy, Proprietor, M/s. Shree Veerakumar Fibre with respect to the Corporate Debtor and thus render Justice.

2. ABOUT THE CORPORATE DEBTOR

The Corporate Debtor has been engaged in the business of all kinds and descriptions of Readymade Garments, Hosiery, Knitted Garments, Fabrics, and all Textile Products. The Corporate Debtor is carrying on business since 1993 has quite good experience in the field of textiles. The executive summary of the Corporate Debtor is as hereunder,

<i>Name of the Corporate Debtor</i>	<i>Uthara Fashion Knitwear Limited</i>
<i>CIN</i>	<i>U18101TZ1993PLC004607</i>
<i>Date of Incorporation</i>	<i>23.09.1993</i>

3. CORPORATE INSOLVENCY RESOLUTION PROCESS OF UTHARA FASHION KNITWEAR LIMITED

The Corporate Insolvency Resolution Process in respect of the Corporate Debtor viz., Uthara Fashion Knitwear Limited was initiated by this Adjudicating Authority vide its order dated 01.07.2022 based on an application moved by Stressed Assets Stabilization Fund (SASF), in the capacity of a Financial Creditor under Section 7 of the code in IBA/895/2019, and one Mr. Thilagar Murugesan 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. Chandrasekhar Sagutoor was appointed as the Resolution Professional vide order dated 17.10.2022. The key dates and events during the Corporate Insolvency Resolution Process period are tabulated as hereunder,

S.No.	DATE	EVENTS
1.	09.07.2022	Public Announcement regarding initiation of Corporate Insolvency Resolution Process.
2.	25.07.2022	The Committee of Creditors was constituted by the IRP based on the claims received.
3.	30.07.2022	1 st CoC Meeting - IRP Mr. Thilagar Murugesan was replaced with Mr. Chandrasekhar Sagutoor as the RP by the CoC.
4.	17.10.2022	Order appointing Mr. Chandrasekhar Sagutoor as the RP was passed.
5.	24.08.2022	Appointment of Registered Valuers.
6.	22.12.2022	Corporate Insolvency Resolution Process Period was extended for 90 days by order of this Adjudicating Authority.
7.	28.12.2022	End of 180 days of Corporate Insolvency Resolution Process Period.
8.	01.03.2023	A Resolution Plan was approved by the CoC and the same was filed before this Adjudicating Authority for approval.
9.	28.03.2023	End of 270 days of Corporate Insolvency Resolution Process Period.
10.	30.5.2023	Order in IA(IBC)/431(CHE)/2023 resetting the Corporate Debtor to Form -G Stage with 60 days extension of Corporate Insolvency Resolution Process Period. The IA for approval of Resolution Plan was not

		considered by virtue of the above directions.
11.	03.06.2023	Form G (Expression of Interest (EoI)) was published.
12.	20.07.2023	Application seeking 40 days of Corporate Insolvency Resolution Process period extension was filed.
13.	28.7.2023	13 th CoC Meeting - 12A proposal was put for discussion before the CoC and the same was not considered.
14.	08.08.2023	Last date of submission of Resolution Plan.
15.	14.08.2023	15 th CoC Meeting- Approval of Resolution Plan by the CoC by e-voting.
16.	25.08.2023	40 days extension of Corporate Insolvency Resolution Process period was allowed by this Adjudicating Authority.
17.	28.08.2023	Performance Security to the tune of Rs . 1.50 crore was deposited by the SRA.
18.	01.09.2023	The Resolution Plan submitted by the SRA was filed before this Adjudicating Authority for approval.
19.	07.09.2023	Expiry of extended CIRP Period.

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

During the 15th CoC Meeting held on 14.08.2023 deliberations were made by the members of the CoC on the Resolution Plan submitted by the SRA and decision was made to vote the same. Accordingly, the Resolution Plan was approved unanimously during the e-voting.

The resolution is as hereunder,

“Resolution No. 4:

To approve the Resolution Plan submitted by M/s. Shree Veerakumar Fibre

RESOLVED THAT pursuant to section 30(4) of the Code read with regulation 39(3) & 39(3B) of the IBBI (IRPC) Regulations, 2016,

the committee of creditors hereby approves the resolution plan submitted by M/s. Shree Veerakumar Fibre in the matter of Corporate Insolvency Resolution Process of Uthara Fashion Knitwear Limited”.

RESOLVED FURTHER THAT *pursuant to the section 30(6) of the Code read with regulation 39(4) of the IBBI (IRPC) Regulations, 2016, the RP shall submit the resolution plan approved by the committee of creditors to the Adjudicating Authority for appropriate orders in the matter of Corporate Insolvency Resolution Process of Uthara Fashion Knitwear Limited.”*

5. DETAILS OF THE SUCCESSFUL RESOLUTION APPLICANT

NAME	CATEGORY	ELIGIBILITY OF RA
Mr. Mantharasalam Palanisamy, Proprietor of Shree Veerakumar Fibre	Proprietorship	Eligible – An Affidavit & Declaration to that effect is submitted.

It is submitted that the SRA has proven footprints for years in the manufacture of coconut copra, coconut husk, coconut fibre and thus has sufficient years of experience to run a large scale business and he has proposed to establish manufacturing and trading facilities of coconut, coconut pith, coconut oil, coconut copra and coconut fibre.

6. SOURCE OF FUND

- On a perusal of page 177 of the application filed, it is seen that the net worth of the Successful Resolution Applicant as per the certificate issued by the Auditor as on 10.08.2023 is Rs. 31.28 Crore.
- On perusal of Form –H, it is seen that a performance security deposit to the tune of Rs. 1.50 Crore was received by the RP by way of RTGS.

- On perusal of clause 7 of the Resolution Plan submitted, it is seen that the source of payment to meet the obligation under the Resolution plan along with schedule for such payment is as tabulated, the same is as follows,
- Source of Funds,

S.No.	Name	Amount
1.	Mr. Mantharasalam Palanisamy	2 Crore
Unsecure Loan		
2.	Mr. Palanisamy	12.6 Crore
3.	Mr. Thambusamy	14 Crore
Total		28.6 Crore

- Application of Funds,

Source of Funds	Amount in Rs.	Application of Funds in Rs.					Total
		Utilization Towards	Within 10 days	Within 80 days	Within 110 days	Within 1 year	
Equity Share Capital	2,00,00,000/-	CIRP Cost	50,00,000/-				50,00,000/-
		Statutory Dues (Operational Creditors)	43,31,978/-				43,31,978/-
		SASF	1,06,68,022/-				1,06,68,022/-
Unsecured Loans from promoters Relatives	26,60,00,000/-	SASF	4,00,00,000/-	12,00,00,000/-	8,10,00,000/-		24,10,00,000/-
		Capital Expenditure/Working Capital				2,50,00,000/-	2,50,00,000/-
Total	28,60,00,000/-	Total utilization	6,00,00,000/-	12,00,00,000/-	8,10,00,000/-	2,50,00,000/-	28,60,00,000/-

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 Resolution Plan has dealt with the interests of all the stakeholders of the Corporate Debtor and 100% of the statutory dues and CIRP costs are being paid in full.
- The Resolution Applicant has a healthy balance sheet and net worth that allows him to implement a Resolution Plan effectively and efficiently. The Resolution Applicant is interested in reviving the

Corporate by taking over its assets and extinguishing its liabilities entirely. Upon takeover of the Corporate Debtor, the Resolution Applicant shall run the Corporate Debtor on a going concern basis or otherwise, in accordance with section 5(26) of the Code. The Resolution Applicant shall also take a commercial decision thereafter on whether the business of the Corporate Debtor would be merged with the existing businesses of the Resolution Applicant only after payment of final instalment.

- The Resolution Plan is also feasible and viable to all the stakeholders of the Corporate Debtor including the Corporate Debtor itself.
- The Resolution Plan does not contravene any provisions of law for the time being in force, is in strict compliance with the various provisions of the Code and Regulations, RFRP and conforms to all requirements as specified by the Insolvency & Bankruptcy Board of India

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

Sl No.	Creditors or Class of Creditors	Amount as per Audited Books as on 31.03.2013	Amount Claimed	Amount Admitted	Amount Proposed under the Resolution Plan
1.	Financial Creditors				
	SASF	326,89,786/-	133,43,41,439/-	133,43,41,439/-	25,16,68,022/-
2.	Operational Creditors				
	Government Dues Office of the Central tax, central excise, customs and service tax	Nil	44,25,956/-	43,31,978/-	43,31,978/-
3.	Short term borrowings from Directors & Members	9,82,500/-	Nil	Nil	Nil
4.	Trade Payables	10,79,228/-	Nil	Nil	Nil
5.	Short Term Provisions	55,000/-	Nil	Nil	Nil
6.	Share Application money Pending allotment	1,30,00,000/-	Nil	Nil	Nil
7.	Share Capital of existing members	7,52,42,8000	Nil	Nil	Nil
	Total		1,33,87,67,395/-	133,86,73,417/-	25,60,00,000/-

9. IMPLEMENTATION & MONITORING COMMITTEE (IMC)

- Implementation & Monitoring Committee shall be constituted to monitor the implementation of the Plan.

The members shall comprise -

1. *The Resolution Professional (Chairman of the Committee)*
 2. *One Representative of the CoC*
 3. *One Representative of the Resolution Applicant*
- The IMC shall continue till all payments under the Resolution plan are made.
 - The Monitoring Committee shall be responsible for monitoring the implementation and execution of the Plan including smooth transition of the Management and shareholding 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.
 - 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

➤ *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 6 (viii) of the Resolution Plan is as follows,

<i>Sl No.</i>	<i>Name of the Proposed Directors</i>
1	Mr. Manthrasalam Palanisamy
2	Ms. Sobiga T
3	Mr. Palanisamy K

➤ *Equity Restructuring of the Corporate Debtor:*

On perusal of the Resolution plan it is seen that all the existing shares of the Corporate Debtor shall stand cancelled and fresh equity shares will be issued. The existing shareholders are not entitled to any payment and all their rights shall stand extinguished as on date of Approval of the Resolution plan. It is seen that 20,00,000 fresh equity shares at a face value of Rs. 10/- each of the Corporate Debtor shall be issued to the Resolution Applicant.

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

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 362 of the application
S.30(2)(a) - Payment of Insolvency and Resolution cost in the manner specified by the Board	Clause 6 (iii), 7 & 8 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 6 (v, vi), 7 & 8 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 (viii) 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 & 8 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 10.4 of the plan expresses that the plan does not contravene any provisions of the law for the time being in force.
S.30(2)(f) - Conforms to such other requirements as may be specified.	Clause 10.4 of the plan provides for the same.
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 15 th meeting, has unanimously approved 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 6 (v, vi) 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 6 (ix) & 11 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 2.3 of the Plan
38(2)	a) term of the plan and its implementation schedule	Clause 8 of the Plan
	b) management and control of the business of the Corporate Debtor during its term;	Clause 6 (viii) of the Plan
	c) adequate means for supervising its implementation	Clause 6 (xix) & 7 of the Plan
38(3)	a) it address the cause of default;	Clause 2.2 of the Plan
	b) it is feasible and viable	Clause 2.2 of the Plan
	c) it has provisions for effective implementation	Clause 2.2, 7 of the Plan
	d) it has provisions for approval required and the timeline for the same; and	The CD was not in operation since its inception and the RA shall take necessary approvals for running the business.

	e) the resolution applicant has the capability to implement the Resolution Plan.	Clause 7 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 FOR	ORDERS THEREON
1.	The Resolution Applicant be permitted to reorganize the capital structure of the Corporate Debtor	Granted, subject to the provisions of IBC, 2016 and other Applicable laws
2.	The AA may pass appropriate orders/ directions to the RoC to provide complete co-operation for implementation of the Resolution Plan without any fee penalty for non-compliances by the past management of the Corporate Debtor	Appropriate authorities to consider keeping in view the object of IBC, 2016.
3.	The Adjudicating Authority may pass directions to the Income Tax, GST, Commercial Taxes authorities to provide necessary registrations and waiver of penalties if any non-compliances of the past management of the Corporate Debtor.	Appropriate authorities to consider keeping in view the object of IBC, 2016.
4.	The Adjudicating Authority may pass appropriate order for waiver of any penalties under any laws for any non-compliances of the past management prior to the approval of the Resolution Plan by the AA.	Appropriate authorities to consider keeping in view the object of IBC, 2016.
5.	The Adjudicating Authority may pass appropriate order/ directions to permit the Corporate Debtor to file satisfaction of charges registered with the RoC in full.	Appropriate authorities to consider keeping in view the

		object of IBC, 2016.
6.	The Adjudicating Authority may pass appropriate order to the ROC/MCA for waiver of penalties/ late fees on filling of financial statements, forms for the period prior to approval of the Resolution Plan by the AA.	Appropriate authorities to consider keeping in view the object of IBC, 2016.
7.	The Adjudicating Authority may pass appropriate order to permit the Corporate Debtor to setoff of losses for a period of next 8 years and to permit the Corporate Debtor to adjust unabsorbed depreciation permitted under the provisions of the Income Tax Act.	Appropriate authorities to consider keeping in view the object of IBC, 2016.
8.	The Adjudicating Authority may pass necessary order and appropriate directions for waiver of any past liabilities/ claims prior to the date of approval of the Resolution Plan irrespective of whether claimed or unclaimed from any authority including statutory authorities, land revenue authorities, Labour law authorities viz IT, GST, TDS, VAT, Sales Tax, GST, PF, ESI etc.	The Resolution Applicant is at liberty to approach this Adjudicating Authority as and when required in this regard subject to the provisions of IBC, 2016.
9.	The Adjudicating Authority may pass appropriate orders to support the Resolution Applicant for successful implementation of Resolution Plan from all the stakeholders concerned viz erstwhile Directors and other stakeholders in the process.	Granted, subject to the provisions of IBC, 2016 and other Applicable laws
10.	The Adjudicating Authority may pass appropriate orders to land revenue authorities, registration authorities, central government, state government and local authorities for issuing approvals for building plans, demolishing the existing structures etc for make use of the assets of the corporate debtor	Appropriate authorities to consider keeping in view the object of IBC, 2016.

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. 16.28 Crore
2.	<i>Liquidation Value</i>	Rs. 11.69 Crore
3.	<i>Plan Value</i>	Rs. 25.60 Crore

15. It is seen from Form-H, that there is an application in IA(IBC)479(CHE)/2023 filed under Section 66 of the code and the same is under adjudication. It is directed that the pending application shall be pursued by the Resolution professional at such cost involved subject to the necessary approval of the CoC. It is further directed that any such proceeds as an outcome of the said application shall be distributed in accordance to the provisions of the code.

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 along with the addendum to 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)/1747/CHE/2023** 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 TRIPATI
MEMBER (JUDICIAL)