

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

IA(IBC)/2064(CHE)/2023 in CP(IB)/139(CHE)/2021
(Filed under Sec. 30(6) & 31 of the Insolvency & Bankruptcy Code, 2016)

In the matter of M/s. Ezhil Chemical Private Limited

D. Ebenezar Inbaraj
Resolution Professional of
M/s. Ezhil Chemicals Private Limited
#397, Precision Plaza, III Floor,
Teynampet, Anna Salai,
Chennaiu – 600 018

... Applicant

Present:

For Applicant : *B. Thilak Narayanan, Advocate*

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Order Pronounced on 19th February 2024

ORDER

(hearing conducted physical mode)

IA(IBC)/2064(CHE)/2023 is an Application filed by the Resolution Professional of the Corporate Debtor viz., **Ezhil Chemicals Private Limited** (hereinafter referred to as 'Corporate Debtor') under Section 30(6) & 31 of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC, 2016') read with Regulation 39 of the Insolvency and Bankruptcy Board of

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

- (i) *That this Hon'ble Adjudicating Authority may be pleased to pass an Order approving the Resolution Plan submitted by Sillicate India Private Limited, as approved by the CoC in its 10th CoC meeting held on 06.10.2023 as per the Code; and*
- (ii) *Pass such other orders and further reliefs as the nature and circumstances of the case may require.*

**2. CORPORATE INSOLVENCY RESOLUTION PROCESS –
EZHIL CHEMICALS PRIVATE LIMITED**

2.1. In an Application filed under Section 7 of the IBC, 2016, by the Financial Creditor, the CIRP in respect of the Corporate Debtor was initiated by this Tribunal vide order dated 20.09.2022 and one Mr. T.R. Ravichandran was appointed as the IRP. The IRP caused paper publication on 25.09.2022 in accordance with under Section 15 of IBC, 2016 r/w Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in "Indian Express" (English) and "Dinamani" (Tamil).

2.2. It is stated that the 1st meeting of the CoC was convened on 05.11.2022 where the discussion were made for appointment of the "Resolution Professional". In the said

meeting of the CoC, it was resolved to appoint the Applicant herein as the Resolution Professional (RP). This Tribunal vide its order dated 29.11.2022 passed in IA(IBC)/1338(CHE)/2022 appointed the Applicant herein as the Resolution Professional in respect of the Corporate Debtor.

- 2.3. It is stated that the suspended Directors of the Corporate Debtor had not furnished the Books of Accounts or any documents relating to the Corporate Debtor and hence the Applicant moved IA(IBC)/323(CHE)/2023 before this Tribunal under Section 19(2) of IBC, 2016.
- 2.4. It is stated that the 2nd CoC Meeting was conducted on 06.01.2023, where the CoC fixed minimum eligibility criteria of Rs.15 lakhs as net worth condition for prospective Resolution Applicant and authorized the Applicant to issue FORM- G inviting Expression of Interest from the interested parties. The Applicant on 08.01.2023, published the Form – G in New Dailies, 'Indian Express' and 'Dinamani' on 13.01.2023.
- 2.5. It is stated that though the Applicant received several enquiries, however only one EOI from M/s. Rajalakshmi Wind Energy Private Limited was received on 25.01.2023. The aforesaid development was deliberated and discussed

by the Applicant in the 3rd CoC Meeting conducted on 30.01.2023. The fact that that the Suspended Directors of the Corporate Debtor sent mails requesting for allowing them to participate in the Resolution Process claiming that the Unit is a MSME Unit was also deliberated in the CoC Meeting.

- 2.6. It is stated that after discussion, CoC decided to re-issue FORM- G in order to invite further Participants instead of going with one Resolution Applicant. Further in order to re-issue FORM- G, considering the fact that the CIRP period of 180 days was expiring on 22.03.2023, the COC passed a resolution for extension of CIRP time line for a further period of 90 days from 22.03.2023.
- 2.7. It is stated that thereafter, on 14.02.2023 and 23.02.2023, the 4th CoC Meeting was conducted. In the said Meeting, all the developments were deliberated and discussed and after detailed discussions, the resolutions were passed by CoC with 69.20% voting that the Successful Resolution Applicant shall submit a Performance Security of 10% of the total Resolution amount in terms of Regulation 36B(4A) of the IBBI (Corporate Insolvency Resolution Process of Corporate Persons) Regulation, 2016 in the form of Deposit or Bank Guarantee.

- 2.8. It is stated that the Applicant re-issued Form-G inviting Expression of Interest (EOI) on 08.03.2023 and the same was also published in New Dailies, 'New Indian Express' and 'Dinamani' on 09.03.2023. The last date for submission of EoI was 06.04.2023. In the meantime, the Applicant also filed an Application seeking extension of CIRP period by 90 days in IA/(IBC)/441/(CHE)/2023 and the same was allowed by this Tribunal on 20.03.2023.
- 2.9. It is stated that pursuant to the re-issue of Form-G, the Applicant received 6 Expression of Interest. On 08.04.2023, the Applicant prepared a Provisional List of eligible prospective Resolution Applicants. The final list of Prospective Resolution Applicants was issued on 14.04.2023. The Applicant intimated to the Prospective Resolution Applicants that the last date for submission of Resolution Plan was fixed on 15.05.2023.
- 2.10. Pursuant thereto, the Applicant received 2 Resolution Plans viz., one from Sillicate India Private Limited and another from Mr.Rakesh Kumar Jain, Suspended Director of the Corporate Debtor. In the meanwhile, the original CoC Members, State Bank of India and IDBI assigned their debts in favour of ARCIL. In the said situation, ARCIL was replaced as Financial Creditor in the place of State Bank of India and IDBI.

- 2.11. It is stated that the 5th COC Meeting was conducted on 26.05.2023, where discussions were carried out on the Resolution Plans received which were already shared with the Members of the CoC. The need for seeking exclusion of timeline from 05.11.2022 to 08.12.2022 or seeking CIRP time extension of 60 days was also discussed.
- 2.12. It is stated that the 6th COC Meeting was conducted on 19.06.2023. After discussing all the above developments, the COC decided to approach this Tribunal for extension of CIRP time line Accordingly, an Application was filed by the Applicant, seeking further extension of CIRP period In IA/(IBC)/1104/(CHE)/2023. This Tribunal vide its order dated 14.07.2023 granted extension of CIRP for 90 days from 21.06.2023.
- 2.13. It is stated that the 7th COC Meeting was conducted on 04.08.2023, where discussions were carried out on the 2 Resolution Plans received. The terms of repayment under the said Plans and the Compliance Report of the SRA under Section 29A of the IB Code, 2016 was obtained. After the said discussions, the Members of CoC requested the Applicant to seek for increase the offer for payment under the Resolution Plan by the Prospective Resolution Applicants.

2.14. It is stated that in the 9th CoC meeting that took place on 18.09.2023, the Members of the CoC requested further time to get mandate for voting from the respective Authority on the Resolution Plan. In the 10th CoC meeting conducted on 06.10.2023, the Applicant apprised to the Members of the COC of the salient features of both the Resolution Plans viz., payment proposal, terms of repayment. The Applicant also Informed the CoC that he has also reviewed the eligibility criteria of the Resolution Applications under Section 29A of IBC, 2016 and that both the plans provide for the re-payment of the Corporate Insolvency Resolution Cost as approved by the COC in priority and that the Plans are compliant under Section 30 and Regulation 38 of the IB Code. The Applicant informed the CoC that the eligibility criteria as per the provisions of IBC, 2016 set by the CoC is examined by him and the same was satisfied and that to the best of available information, all the applicable Law and Regulations have been taken into consideration and the Resolution Plans do not contravene any of the provisions of the Law.

2.15. It is stated that the Applicant proposed the CoC to take up both the Resolution Plans for voting through Voting sheet after detailed deliberations of all the elements of the Resolution Plan.

2.16. It is stated that the CoC evaluated both the Resolution Plans, based on the approved Evaluation Matrix and awarded marks to the each of the Plans on qualitative and quantitative parameters. It is stated that the amount proposed by Silicate India Private Limited, is above the liquidation value of the Corporate Debtor. Finally the Resolution Plan of Silicate India Private Limited was awarded 17.80 marks and the Resolution Plan of Mr.Rakesh Jain and Mrs.Bhavna Jain was awarded 11.30 marks respectively. Therefore the COC resolved that the Resolution Applicant, Silicate India Private Limited as H1.

2.17. It is stated that thereafter, the COC considering the feasibility and viability of the both the Resolution Plans, with **100% voting** approved the Resolution Plan submitted by **Silicate India Private Limited** and rejected the Resolution Plan of Mr.Rakesh Kumar Jain and Mrs.Bhavana Jain. It is stated that the CoC unanimously approved the Applicant to move before this Tribunal for approval of Resolution Plan. It is stated that the Applicant has certified in Form-H the CIRP Regulations 39(4) of the Code and the same has been filed herewith as "Annexure No.22". The Resolution passed by the CoC is extracted hereunder;

Resolution 1:

"RESOLVED THAT the Resolution plan submitted by Silicate India Private Limited is hereby approved by this committee as per Section 30(4) of Insolvency and Bankruptcy Code 2016."

Result of Voting:

S.No.	Name of the Financial Creditors	% of Vote in COC	Assent	Dissent
1.	ARCIL	71.40	YES	
2.	Axis Bank	28.60	YES	
	Total	100		

2.18. It is stated that pursuant to the approval of the Resolution Plan by the CoC, the Applicant issued a Letter of Intent to the Successful Resolution Applicant on 10.10.2023, duly informing the decision of the COC to approve its Resolution Plan *inter-alia* reiterating the Implementation of Resolution Plan as per the terms thereunder and further required the Successful Resolution Applicant to unconditionally accept the LOI by countersigning the same and returning to the Applicant and demanding the Successful Resolution Applicant to arrange for 10% of the amount payable as per the Resolution Plan viz., Rs.5 lakhs, by way of Performance Bank Guarantee (PBD). Thereafter, on 13.10.2023, the Successful Resolution Applicant issued a Letter to the Applicant conveying acceptance to the Letter of Intent and the countersigned LOI. Further, the Successful Resolution Applicant requested the Applicant to treat the Bank Guarantee issued by it for a sum of Rs.20 lakhs while

submitting the Resolution Plan as Performance Guarantee and agreed to revalidate and extend the Bank Guarantee before the same expires.

3. ABOUT THE RESOLUTION PLAN

3.1. The Financial outlay of the Resolution Plan submitted by the Successful Resolution Applicant, viz. **Silicate India Private Limited** is as follows:

The Resolution Applicant proposes a total financial outlay of INR 50 lakhs. Out of the aforesaid payable amount of INR 50 lakhs, whole amount of INR 50 lakhs shall be distributed after adjusting for estimated CIRP Expenses amongst the stakeholders of the Corporate Debtor in full and final settlement of their Claims against the Corporate Debtor and Guarantors.

Summarized bifurcation of the proposed amount is as under:

(INR in Lakhs.)

S.No	Particulars	Amount
1.	Payment towards CIRP, operational creditors, financial creditors and Workmen within 30 days from the Effective Date of the Resolution Plan as follows ("Upfront Amount"):	
	a) Estimated CIRP Cost*	17
	b) Towards payment of Operational Creditors – Others	-
	c) Towards payment of Operational Creditors – Govt Dues	-
	d) Towards upfront payment of Financial Creditors	33
	Sub- Total	
2.	Working Capital Infusion as and when required for the Business of the Corporate Debtor	10
3.	Capital Expenditure for Business improvement	5
	Total Plan value (1+2+3)	65

Explanation:

*CIRP expenses is based on the estimates and will paid at actuals subject to maximum of Rs.17 lakhs. Any excess CIRP Cost, over and above 17 lakhs, will be deducted from payment to financial creditors proportionately and will be paid within 30 days from the Effective Date. Any surplus on account of reduction in CIRP cost will be used for Working Capital of the Corporate Debtor.

3.2. The Resolution Plan provides for payment of the CIRP Costs on actual basis and on priority to any other creditors of the Corporate Debtor. The unpaid CIRP costs has been estimated at INR 17.00 lakh.

3.3 The payment proposed to the Creditor of the Corporate Debtor is as follows;

(INR lakhs)				
Sr. No	Category of Claims	Verified Amount	Proposed Payment	Upfront amount Within 30 days from Effective Date
A Payment towards claims				
1	Financial Creditors	21447	33	33
2	Operational Creditors - Employees	-	-	-
3	Operational Creditors - Others	-	-	-
4	Operational Creditors - Govt Dues	-	-	-
	Sub- Total	21447	33	33
B Insolvency and Resolution Process Cost				
	Estimated CIRP Cost	-	17	17
	Total	21447	50	50

4. SOURCE OF FUND

4.1. The Successful Resolution Applicant in Clause 4 of the Resolution Plan has detailed about the source of funds, which is as follows;

- (a) RA has Net Worth exceeding Rs.60 lakhs as on 31st March 2023.
- (b) It is having a cash and Bank balance of Rs.20 lakhs as on 31st March 2023.
- (c) It has availability of additional resources in case of need.

The manner in which the Source of Funds is to be infused by the RA is as follows;

Source of Funds:

Particulars	Instrument	Amount (INR in lakhs)
Resolution Applicant	Equity	25
	Unsecured Loans	25
Total		50

5. CAPITAL RESTRUCTURING

5.1. It is stated that based on rough assessment, fresh working capital of Rs.10 lakhs will be required for operations of Corporate Debtor, which would be met out of funding support from Resolution Applicants. Further, if there is requirement of a higher amount of funds for operations, the same would be suitably infused by the Resolution Applicants through the lenders. Providing working capital would help to ramp up the capacities significantly which can bring significant economies of scale and thereby improve the profitability margins.

5.2. It is stated that the Resolution Applicant does not foresee any major requirement of Capital Expenditure. However, it will spend Rs.5 lakhs initially to streamline operations and bring the machines to work. Additional requirement of

capital expenditure, if any, will be met through deferred credit only.

6. IMPLEMENTATION, MANAGEMENT AND SUPERVISION OF THE RESOLUTION PLAN

- 6.1. It is stated that the monitoring committee shall consist of 3 persons, representative from RP, one of the members of the CoC and a representative of the Resolution Applicant;
- 6.2. The Resolution Applicant will submit certificate from Chartered Accountant regarding infusion of Rs.5 Lakhs and Rs.10 Lakhs towards Capital Expenditure and Working Capital within 90 days from the effective date.
- 6.3. The Certificate will be submitted with Resolution Professional.
- 6.4. Any fees if charged by Resolution Profession will be paid out of working capital or cash accruals subject to maximum limit of Rs.50,000/- (Rupees Fifty Thousand Only)
- 6.5. The only purpose of non – formation of monitoring committee and payment of upfront amount within 30 days is to save costs.

6.6 However, if CoC does insist for formation of monitoring committee, Resolution Applicant will not infuse any funds for this expenditure and it will be incurred by CoC or Financial Creditors.

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

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

CLAUSE OF S.30(2)	REQUIREMENT	HOW DEALT WITH IN THE PLAN
(a)	Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	Clause 6 of the Resolution Plan.
(b)	Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53; or Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall be not less than amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher and (iii) provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such manner as may be specified by the Board.	Not Applicable since there are no Operational Creditors

(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause 8 of the Resolution Plan.
(d)	Implementation and Supervision.	Clause 8 of the Resolution Plan.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Form H Certificate by the Applicant
(f)	Conforms to such other requirements as may be specified by the Board.	Form H Certificate by the Applicant

8. MANDATORY CONTENTS OF THE RESOLUTION PLAN IN TERMS OF REGULATION 38 OF THE CIRP REGULATIONS:-

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Resolution Plan</i>
38(1)	The amount due to the Operational Creditors under a Resolution Plan shall be given priority in payment over Financial Creditor.	Not Applicable since there are no Operational Creditors
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 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.	NIL
38(2)	A Resolution Plan shall provide (a) the term of the plan and its implementation schedule	Clause 8 of the Resolution Plan.

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Resolution Plan</i>
	(b) the management and control of the business of the Corporate Debtor during its terms; and	Clause 9 of the Resolution Plan
	(c) adequate means for supervising its implementation	Clause 10 of the Resolution Plan
38(3)	A Resolution Plan shall demonstrate that (a) It addressed the cause of default;	Clause 8,9,10 and 15 of the Resolution Plan
	(b) It is feasible and viable;	Clause 8,9,10 and 15 of the Resolution Plan
	(c) it has provisions for its effective implementation;	Clause 8,9,10 and 15 of the Resolution Plan
	(d) it has provisions for approvals required and the timeline for the same; and	Clause 8,9,10 and 15 of the Resolution Plan
	(e) the Resolution Applicant has the capability to implement the Resolution Plan	Clause 8,9,10 and 15 of the Resolution Plan

9. The successful Resolution Applicant has submitted a Certificate of Eligibility under Section 29A of IBC, 2016 to submit a Resolution Plan under the provisions of IBC, 2016 and the same has been filed by way of additional document to the typed set filed along with the Application.

10. ANALYSIS AND FINDINGS OF THIS TRIBUNAL

10.1. It is seen from Form – H that the Liquidation value of the Corporate Debtor is Rs.52.55 Lakhs and the corresponding Fair value is Rs.42.12 Lakhs and the Resolution Plan value is Rs.50

Lakhs. The claim in respect of the Corporate Debtor is pertaining to the Corporate Guarantee extended to M/s. Kiran Global Chem Private Limited and there is no claims from the creditors of the Corporate Debtor. Also the Corporate Debtor does not have any assets.

10.2. Further, it is seen from Form – H, that the RP has filed an Application under Section 66 of IBC, 2016. As per Clause 5 of the Resolution Plan, it is stated that any benefits realized under PUFEE transactions will be passed to the Committee of Creditors after deducting litigation and other related expenses. Hence, in the present case, the CoC will prosecute the Application filed under Section 66 of IBC, 2016, after the approval of the Resolution Plan.

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

10.4. 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 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).

10.5. The Hon’ble 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 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)

10.6. Also, the Hon’ble Supreme Court 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)

10.7. The Hon'ble 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.

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

10.9. On hearing the submissions made by the Ld. Counsel for the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with **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,

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

10.11. The Resolution Applicant has sought for reliefs and concessions under the Resolution Plan and the same are dealt with hereunder;

SL. NO	RELIEF AND/OR CONCESSIONS AND APPROVAL SOUGHT BY RESOLUTION APPLICANT (CHAPTER 16 OF RESOLUTION PLAN)	ORDERS THEREON
1	It is prayed that the Corporate Debtor shall not be denied any benefit under any Applicable Laws, government schemes, policy, incentives including but not limited to Income Tax Act, 1961, Goods and Service Tax Act, merely on account of unavailability of supporting documents (including but not limited to purchase invoices, shipping bill of export, etc.) and all stakeholders should cooperate with the Corporate Debtor for claiming any such amount.	This is for the appropriate authorities to consider, keeping in view the clean slate principle enshrined under IBC, 2016

2	The benefit brought forward losses under Income Tax Act, 1961 will not be denied due to change of management.	This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016
3	It is prayed that all Governmental Authorities and other relevant person shall provide a cure period of 12 months after Effective Date to the Corporate Debtor for curing any Non – Compliances of the Corporate Debtor under the Applicable Law, Permit or any contract, agreement or arrangement to which the Company is party which was existing as on the Effective Date.	Granted
4	It is prayed that on and after the Effective Date, all the contracts of the Corporate Debtor which are in force on the Effective Date shall remain in existence on the same terms and conditions except to the extent the Resolution Applicant/ Corporate Debtor at its sole discretion reserves the right under such contracts to modify, change or terminate the said contracts without assigning any reasons thereof and without any penalty, charges, fees, fines, liabilities, damages in relation thereto. In relation to any contracts of the Corporate Debtor, which are expired or to be expired within a period of six months from the Effective Date, the Resolution Applicant prays that to the extent such contracts, deeds or arrangements which are necessary for or incidental to continuing or carrying on the operations and business of the Corporate Debtor, such contracts, agreements or arrangements shall be renewed/ remain in existence for smooth transition of Corporate Debtor and implementation of Resolution Plan and shall continue for a period of at least six months from the Effective Date on the same terms and conditions as applicable to the parties thereto or as may be mutually agreed upon, notwithstanding the fact that such contracts are lapsed or expired due to any Non-Compliance or efflux of time.	Granted, subject to Contract Act, 1872 and other applicable laws.

10.12. 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.

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

10.14. The Resolution Applicant is directed to make payment of the entire Resolution Plan amount within the time period stipulated under the Resolution Plan i.e. 30 days, failing which the entire amount paid by the Resolution Applicant (*including the Performance Guarantee*) as on the said date would stand automatically forfeited, without any recourse to this Tribunal.

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

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

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

11. IA(IBC)/2064/CHE/2023 shall stand **disposed of** accordingly.

12. 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-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

Raymond