IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II

IA No. 211 OF 2022

IN

Company Petition (I.B.) No. 193/IBC/MB/2019

An Interlocutory Application under Section 30 (6) r/w Section 31 of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Mr. (CA) Kshitiz Gupta
Having its registered address at:- F-52, First Floor, Centrium Mall, Lokhandwala Township, Akurli Road, Kandivali (E.), Mumbai – 400101

….. Applicant/Resolution Professional

In the matter of

Easun-MR Tap Changers Private Limited

Temple Tower, 6th Floor, 672,

Anna Salainandanam, Madras – 600035.

….. Petitioner/Operational Creditor

Versus

M/s Aditya Vidyut Appliances Limited

Survey No. 168, Hissa No. 10, Sonale Village, Bhiwandi Bypass Road, NH-3, Bhiwandi – 421 302.

….. Respondent/Corporate Debtor

Order Delivered on :- 12.08.2024

Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Applicant : Adv. Shyam Kapadia
i/b Adv. Ajinkya Kurdukar

ORDER

Per: -* Mr. Kuldip Kumar Kareer*, Member (Judicial)

1. This present Interlocutory Application is filed by Mr. Kshitiz Gupta, the Applicant and Resolution Professional of Aditya Vidyut Appliances Limited ('AVAL') and Aditya Fabrication Private Limited ('AFPL') (collectively the "Corporate Debtor" seeking approval of the Resolution Plan under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (the "Code") read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 submitted by consortium of SKM

Steels Limited and Mr. Shankar Sevia Pawar ('Successful Resolution Applicant') and duly approved by 83.56% of the Committee of Creditors (CoC) of the Corporate Debtor in its 11th consolidated meeting of the CoC held on 09.11.2021 and voting concluded on 12.01.2022.

2. The Applicant states that Aditya Vidyut Appliances Limited (AVAL) was admitted to the Corporate Insolvency Resolution Process under Section 9 of the Code. Pursuant to an order passed by this Tribunal vide order dated 11.09.2009, the Applicant herein was appointed as the Interim Resolution Professional ('IRP') for conducting and supervising the CIRP.

3. The Applicant issued a public announcement on 23.09.2019 for inviting claims from the creditors. Based on the claims received, the CoC was constituted on 19.10.2019 and the Applicant was confirmed as Resolution Professional ('RP').

4. Subsequently, on an application filed under Section 7 of the Code, Aditya Fabrication Private Limited ('AFPL') was also admitted to CIRP vide order of this Tribunal dated 15.05.2020, in the case of AFPL also the Applicant was initially appointed as IRP and, thereafter confirmed as RP.

5. AVAL and AFPL have almost identical/common lenders (the Members of the CoC of AFPL constitute approximately 82.85% in terms of the quantum of debt of the CoC of AVAL), the shareholding of AFPL is majorly held by AVAL, and the promotor family thereof. The registered office address of both companies remains the same. Considering the commonalty interdependence of both the companies, the lenders thought it fit to explore the possibility of a consolidated CIRP in the interest of justice to ensure the value maximization of assets and for the common resolution of the two stressed companies.

6. An interlocutory application being IA No. 78 of 2021 was preferred by the CoC of AVAL and AFPL seeking consolidation of both CIRPs which was allowed by this Tribunal vide its order dated 16.04.2021. As per the consolidation order, the assets of AVAL and AFPL were to be pooled together as if all assets belonged to a single company and there shall be a single Committee of Creditors for both the Companies. The Applicant was appointed as the Resolution Professional for running the consolidated CIRP with a fresh CIRP period of 180 days from the date of the order of consolidation.

7. In accordance with the consolidation order, consolidated CoC was constituted and the report was filed with the Tribunal on 14.05.2021.

The consolidated CoC at its meeting held on 11.05.2021 unanimously decided to publish and issue fresh Form-G thereby inviting a fresh Expression of Interest for both AVAL and AFPL undergoing consolidated CIRP to Form-G dated 28.05.2021 published by the Applicant wherein 12.06.2021 was the last date for submission of Expression of Interest.

8. The Applicant States that two valuers were reappointed for each class of assets namely, (a) Mr. Kunal Vikamsey & Mr. Sunil Apte for the valuation of Land and Building, (b) Mr. Kunal Vikamsey & Mr. Alok Gupta for the valuation of Plant & Machinery and (c) Mr. Dharmesh Trivedi & Mr. Vishnu Upadhyay for the valuation of Securities & Financial Assets.

9. In furtherance of the Form-G published as many as eight participants submitted Expression of Interest ('EIO') showing their inclination towards submitting the Resolution Plan. The Applicant conducted due diligence regarding the eligibility of the Applicant, as envisaged by the CIRP Regulations and published a final list of Prospective Resolution Applicants ('PRAs'), comprising of seven participants on 07.07.2021. The Applicant also issued the necessary information memorandum to

the PRAs together with the addendum dated 17.07.2021 to the PRAs and requested the PRAs to submit the Resolution Plans.

10. The Applicant received three Resolution Plans in response to the Request For Resolution Plan from (1) Narayan Shenvi Prabhu in consortium with Mittal House Trading LLC, (2) Rational Engineers Limited and (3) SKM Steels Limited in consortium with Mr. Shankar Sevia Pawar. All three Resolution Plans were put before the CoC in the presence of all PRAs in the third meeting held on 28.07.2021 for its preliminary consideration and deliberation.

11. The Applicants state that the Resolution Applicants were further granted an opportunity to present their respective Resolution Plans before the CoC in its meeting held on 20.08.2021 and to discuss the qualitative and quantitative aspects of all the three Resolution Plans in terms of the evolution matrix approved by it in its 2nd meeting. The CoC also deliberated and explored the feasibility and viability of the Resolution Plans. The Applicant has submitted that the Resolution Applicants revised their respective Resolution Plans owing to the concern exhibited by the CoC in the previous meeting and submitted their revisions and addendum. The Resolution Applicants were granted an opportunity to enhance the quality of the Resolution Plan and accordingly, the

Resolution Applicants revised their plans and the same were again presented before the CoC in its 7th meeting held on 30.09.2021. The revised Resolution Plans were discussed in the CoC meetings held on 12.10.2021, 25.10.2021, and 02.11.2021, and finally the revised Resolution Plans were submitted before the CoC in its 11th meeting held on 08.11.2021. The value maximization achieved in the process of negotiation and revisions is reproduced below:-

Details	**SKM Steels Limited and Mr Shankar Pawar (successful RA)**		**Metal House Trading and Mr Narayan Shenvi Prabhu**		**Rational Engineers Limited**	
	Original Plan	**Final Plan**	**Original Plan**	**Final Plan**	**Original Plan**	**Final Plan**
Resolution Plan Amount for stakeholders and CIRP Costs (*in Rs.)*	45 Crores	73.18 Crores	35 Crores	74.86 Crores	30 Crores	66.56 Crores
Upfront Payment (within 30 days) (*in Rs.)*	15 Crores	25 Crores	14 Crores	22.50 Crores	3 Crores	20 Crores
Tenure of Deferred Payments	3 years	2 years	30 months	3 years	365 days	2 years

12. All the three Resolution Plans were put to e-voting in the CoC meeting held on 08.11.2021 and the e-voting process was conducted between 09.11.2021 and 12.01.2022. On the basis of the results, the Resolution

Plan proposed by the consortium of SKM Steels Limited and Mr. Shankar Sevia Pawar was approved with 83.56/ majority and therefore, declared as the Successful Resolution Applicant.

13. The Applicant submits that the Original CIRP period was to expire on 13.10.2021 which was extended by this Tribunal vide its order dated 18.10.2021 passed in IA No. 2334 of 2024. Thus, the CIRP period now stood extended to December 13, 2021 and the Resolution Plan was approved within the CIRP period. The Resolution Plan was submitted to this Tribunal on 01.02.2022 for approval.

Brief Background of the Corporate Debtors: -

14. AVAL was incorporated on 26.06.1959 as repairers of distribution transformers and became a significant player in this segment. The products offered by AVAL include Power Transformers, Furnace Transformers, Rectifier Transformers, Railway Transformers, Distribution Transformers, Wind Mill Transformers and Special Application Transformers And Rectifiers.

(a) The reasons for defaults, as stated by the Resolution Applicant, are as under:-

- External factors led to a significant reduction in revenue and the company incurred cash losses
- Overexposure relating to Bank guarantees given to customers and other parties
- Irregularity in the recovery/non-recovery of customers receivable
- Blockage in significant working capital and fund exposure in the manufacturing division as compared to the repairing/ maintenance division

15. AFPL was incorporated on 24.11.2003 to be engaged in the business of buying, selling, and fabricating transformers and other electrical goods. AFPL was mainly floated to act as an extended arm of AVAL for whom AFPL was undertaking job work and the major revenue of AFPL was from job work and lease rents from AVAL.

16. The reasons for the defaults of AFPL, as stated by the Resolution Applicant are as under :-

- Group entity (AVAL is under CIRP since 11.09.2019)
- The business operation where mainly dependent on AVAL to whom it provided support service in relation to repairing and manufacturing of transformers

- Since the last few years, major revenues of AFPL from leasing to AVAL was not received

Brief Background of the Resolution Applicant:

17. The Resolution Applicant, SKM Steels Limited is a flagship company of SKM Group and is managed by Mr Chirag Shah and Mr Amit Shah. The Company is an authorized distributor of Tata Steel in Maharashtra, Madhya Pradesh, Gujarat, and Goa. The Company has presence in the international market through exports. The Company achieved a turnover of around Rs. 1500 Crore in FY2020.

18. The Resolution Applicant considers that the Corporate Debtor can be revived by taking the following major steps;

- Focus on orders with high margins coupled with low conversion time thereby leading to efficient working capital management
- Monetization of non-core assets
- Maintain existing business relationships and rebuild trust
- Infusion of funds for working capital

Salient Features of the Approved Resolution Plan

A. Financial outlay of the plans

The Resolution Applicant proposes a total financial outlay of 102.47 Cr. Out of the aforesaid payable amount of Rs. 102.47 Crores, an amount of Rs. 73.18 Cr. shall be distributed, in tranches amongst the creditors and other stakeholders of the Corporate Debtors in full and final settlement of their claims against the Corporate Debtor. Rs. 21.65 Crore shall be used by the Corporate Debtor towards capital expenditure and the balance of Rs. 7.64 Crore shall be utilized by the Corporate Debtor for working capital. The proposed distribution of the amounts aggregating to Rs. 73.18 Crore amongst all the creditors and stakeholders of the Corporate Debtor is as follows:

Sr. No.	Category of Claims	Verified Amount	Proposed Payment	Upfront amount within 30 days from Effective Date	Deferred – Within 2 yrs (24 months) Deferred Payment Period
A	**Payments towards claims**				
1.	Secured Financial Creditors	180.42	66.47	18.29	48.18
2.	Unsecured Financial Creditors	1.01	0.10	0.10	-
3.	Operational Creditors	121.21	1.21	1.21	-
4.	Workmen Dues	4.80	2.40	2.40	-
5.	Employees Dues	5.94	-	-	-
6.	Statutory Stakeholders	22.97#	-	-	-
7.	Other Creditors	89.88	-	-	-
8.	Contingent Fund	N.A.	1.00	1.00	-
B	**Insolvency and Resolution Process Cost**				
	Estimated CIRP Cost	--	2.00*	2.00*	-
	Total	**426.23**	**73.18**	**25.00**	**48.18**

Explanation:
** To be paid at actuals within 30 days of Effective Date*
** As per mail dated 16th September, 2021 from Resolution Professional, Claim of INR 5.39 Crs. From Commissioner of Customs was not included in the IM, the same has been considered in the Resolution Plan.*

a. The Resolution Applicant proposes to make a payment of Rs. 66.57 Crore to the Secured and Unsecured Financial Creditors, out of which an amount of Rs. 18.29 Crore shall be paid within 30 days from the effective date.

i. Deferred funds shall be paid out of funds to be infused by the Resolution Applicants in the form of capital/unsecured loans, proceeds from the sale of identified non-core assets of the Corporate Debtor and the cash accruals generated from the operations of the Corporate Debtor.

ii. In case of any deficit in cash accruals, the Resolution Applicant will arrange to infuse requisite funds in order to ensure that there is no shortfall for repayment of the Deferred Payment Amount by the Corporate Debtor as per the Resolution Plan. In addition, Mr Shankar Sevia Pawar shall provide personal guarantee for the Deferred Payment Amount.

iii. The Deferred payment of Rs. 48.18 Crore shall be paid within a period of 2 years (24 months commencing from the effective date) as under:-

No.	Deferred Payment Schedule Commencing from the Effective Date	Amount (INR Cr.)
Year 1	Payment at the end of 6th month from the Effective Date (1st Installment)	10.00
Year 2	Payment at the end of 12th month from the Effective Date (2nd Installment)	10.00
Year 2	Payment at the end of 18th month from the Effective Date (3rd Installment)	15.00
Year 3	Payment at the end of 24th month from the Effective Date (4th Installment)	13.18
	Total	**48.18**

iv. On payment of the upfront amount of Rs. 25.00 Crore within 30 days from the Effective Date, Unit I shall be released for sale. The proceeds from the sale of Unit I shall be directly paid to the Financial Creditors and shall be adjusted towards the payment of the 1st Installment.

v. On payment of Deferred payment of Rs. 10 Crore (1st Installment) Banquet Hall of AVAL shall be released for sale. The proceeds of sale from the assets of Unit I and Banquet Hall shall be directly deposited with the lenders.

vi. The Resolution Applicant, however, shall have the right not to sell any or all the non-core assets, if it considers

that any such asset may be useful for the operation of the Corporate Debtor.

B. Payment Under Plan:

i. CIRP Costs:

The CIRP Costs are estimated up to Rs. 2 Crore. The Resolution Applicant shall pay the CIRP costs at actual within 30 days from the Effective Date. In case, any amount out of the allocated amount for CIRP Costs remains unutilized, such unutilized amount shall be made available for the Secured Financial Creditors, over and above, the payout proposed under the Resolution Plan.

ii. Payments to Operational Creditors (Other than Workmen and Employees Dues)

It is proposed that an amount of Rs. 1.21 Crore would be paid out, in priority over Financial Creditor against the admitted amount of Operational Creditors provided the same has not been paid till the Effective date. If on the Effective Date, any amount payable under this category has already been paid prior to the Effective Date, then such paid amount would be additionally payable to the Financial Creditors. The entire payment of Rs. 1.21 Crore shall be made within 30 days from the Effective Date on a *pro rata* basis amongst all the Operational

Creditors whose claims have been admitted on or prior to the Effective Date in priority over the Financial Creditors. However, no amount shall be paid to any related party, of the Corporate Debtor. In the event, the admitted claims include any amount payable to the related party such amounts shall additionally be paid to the Financial Creditors. No payment is proposed to be made against the current liabilities, deferred liabilities, liabilities towards subsidies whether or not appearing in the books of account of the Corporate Debtor.

III. <u>Payments of Workmen and Employees</u>:-

i. The dues payable to Employees and Workmen accruing during the CIRP period has been treaded as Operational Creditors and not as CIRP Costs as the Corporate Debtor is currently not in operations. It is proposed to pay a maximum amount of Rs. 2.40 Crore as against the admitted claim of Rs. 4.80 Crore (50% of admitted claims) to settle the workmen dues pertaining to the period prior to the CIRP commencing date, provided the same has not been paid till the Effective Date. If, on the Effective Date, any amount payable to workmen is found to have been already paid prior to the Effective Date, such paid amount shall be deducted from the pay dues and would be additionally paid

to the Financial Creditors. The aforesaid maximum amount of Rs. 2.40 Crore to the employees shall be paid within 30 days from the Effective Date, on *pro rata* basis, amongst all the workmen whose claims have been admitted on or prior to the approval of the plan.

ii. The Plan proposes under payment to settle the employee dues pertaining to the period prior to the CIRP commencement date.

iii. The Corporate Debtor has large number of employees and workmen on its pay roll who are not being paid salaries/wages since long as the Corporate Debtor has not been in operations, as their services are not required for day to day business of the Corporate Debtor. The Applicant has not accounted for the salaries and other benefits to such employees and workmen (estimated approx. Rs. 14.66 Crore as of June, 2021) as CIRP costs of the Corporate Debtor.

IV. <u>Term to the Claims of the Operational Creditor (Other than Workmen and Employees)</u>

The Resolution Applicant proposes to pay Rs. 1.21 Crore as against the admitted claim of Rs. 121.21 Crore towards their outstanding dues.

V. <u>Term of Statutory Creditors</u>

As per the Information Memorandum, the outstanding liability of statutory stakeholders is Rs. 22.97 Crore. The Resolution Applicant is not proposing any payment to the Statutory Creditors.

C. Formation of Monitoring Committee:-

For implementation of the plan, a Monitoring Committee shall be constituted consisting of 2 Members. One member shall be nominated by the CoC and one member authorized by the Resolution Applicant. The tenure of the Monitoring Committee shall continue from the Effective Date till the last Deferred Payment is made by the Resolution Applicant. The Resolution Plan provides for the functioning, roles and responsibilities of the Monitoring Committee, inter alia, in matters of transfers of control to the New Management/Board of Directors, meetings of the Monitoring Committee, appointment, constitution and functioning of a Monitoring Agency, roles and responsibilities of the Monitoring Agency and also its role post transfer of control to new management.

D. Proposed Timelines for Implementation of the Resolution Plan:-

The Resolution Plan proposes for the execution of the Application within the timelines as follows:-

a. Approvals from the Ministry of Corporate Affairs to be secured within 60 days of the approval of the Resolution Plan by the Adjudicating Authority.

b. Payment of CIRP costs to be made within 30 days from the Effective Date.

c. Upfront payment of Creditors and Stakeholders to be made within 30 days from the Effective Date.

d. Full and final settlement of Financial Creditors of the deferred payment amount to be made within 2 years (24 months) commencing from the Effective Date.

E. <u>Performance Bank Guarantee:-</u>

The successful Resolution Applicant has provided a Performance Bank Guarantee of Rs. 7,31,80,000/- (Rupees Seven Crore Thirty One Lakh Eighty Thousand Only) dated 19.01.2022 issued by Axis Bank Limited on behalf of Shri Shankar Sevia Pawar and the same is with the Applicant. As per the Resolution Plan, the Performance Bank Guarantee shall extinguish on payment of the 4th Installment of Rs. 13,18,00,000/- (Rupees Thirteen Crore Eighteen Lakh Only).

F. <u>Recoveries From Avoidance Transactions:-</u>

The Applicant has filed an Interlocutory Application under Section 66 of the Code before this Tribunal being IA No. 1465 of 2021 which

is pending for disposal. Any benefits arising out of such Application shall accrue to the CoC and the CoC shall be the beneficiary of any favourable outcome and the cost for pursuing such application shall also be borne by the CoC without any liability on the Resolution Applicant.

G. Eligibility of the Resolution Applicant under Section 29(A) of the Code:-

The Resolution Applicant has provided an affidavit conforming the eligibility under Section 29(A) of the Code to submit the Resolution Plan.

H. Reliefs and Concessions:-

The successful Resolution Applicant has sought various reliefs and concessions based on the law laid down by the Hon'ble Supreme Court in various judgments, which are necessary to keep the Corporate Debtor as a going concern and to save it from all liabilities/proceedings, disputes, and complaints pending prior to the approval date in addition of certain other reliefs.

Observations of the Adjudicating Authority:

17. We have heard the Counsel for the Applicant and perused the Resolution Plan and related documents submitted along with the Application.

18. It has been observed that in the resolution plan, the Resolution Applicant has proposed that all past dues towards salaries and other benefits such as PF dues, leave encashment, retirement benefits, notice pay, termination dues of the employees and workmen for the period after the CIRP commencement date and until the effective date/or retirement benefits accruing to the benefits which have arisen after the CIRP commencement date shall also stand extinguished and the liability of the Resolution Applicant/Corporate Debtor shall be limited to the amount payable to the employees and workmen as provided in Clause 7 (b) (ii) of this resolution plan. However, this is not in consonance with the law laid down in ***Jet Aircraft Maintenance Engineers Welfare Association vs. Ashish Chhawchharia (RP) and Ors. (2022) ibclaw.in 861 NCLAT*** whereby it has been held that PF and gratuity dues as on CIRP commencement date has to be paid mandatorily. Therefore, it is clarified that the Successful Resolution Applicant shall be under a bounden duty to pay the Provident Fund and gratuity dues payable to the employees as on the law laid down in ***Jet Aircraft Maintenance Engineers Welfare Association vs. Ashish Chhawchharia (RP) and Ors. (Supra)***.

19. As referred to in the above summary of the Resolution Plan, we are satisfied that all the requirements of Section 30(2) are fulfilled and no

provision of law for the time being in force appears to have been contravened.

20. Section 30(4) of the Code reads as follows:

"(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty six percent of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in subsection (1) of Section 53, including the priority and value of the security interest of a secured creditor and such other requirement or may be specified by the Board."

21. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan, as approved by the CoC to the Adjudicating Authority. Section 31 of the Code deals with the approval of the Resolution Plan by the Authority if it is satisfied that the Resolution Plan as approved by the CoC under section 30(4) meets the requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan as approved by the CoC meets the above requirements.

22. In ***Sunil Kumar Jain and others vs. Sundaresh Bhatt and others; 2022 LiveLaw (SC) 382***, the Hon'ble Apex Court held that the wages/salaries of the workmen/employees of the Corporate Debtor for the period

during CIRP could be included in the CIRP costs provided it is established and proved that the Interim Resolution Professional/Resolution Professional managed the operations of the corporate debtor as a going concern during the CIRP and that the concerned workmen/employees of the corporate debtor actually worked during the CIRP and in such an eventuality, the wages/salaries of those workmen/employees, who actually worked during the CIRP period when the resolution professional managed the operations of the corporate debtor as a going concern, shall be paid treating it and/or considering it as part of CIRP costs and the same shall be payable in full as per Section 53(1)(a) of the IB Code. However, in the present case, the dues payable to Employees and Workmen accruing during the CIRP period has been treated as Operational Creditors and not as CIRP Costs which is justified as the Corporate Debtor is currently not in operations as held in the afore-cited case.

23. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:

1. Payment of CIRP cost as specified under Section 30(2)(a) of the Code;
2. Payment of debts of the Operational Creditors as specified under Section 30(2) (b) of the Code;

3. For the management of the affairs of the Corporate Debtor after approval of the Resolution Plan; and
4. The implementation and supervision of the Resolution Plan by the RP and the CoC as specified under Section 30(2) (d) of the Code.

24. In ***K Sashidhar vs. Indian Overseas Bank and Ors. (Civil Appeal No. 10673/2018 decided on 05.02.2019) (2019)*** the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by the requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority. On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan, as approved by the CoC, meets the requirements specified in Section 30(2). The Hon'ble Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to the scrutiny of the Resolution Plan 'as approved' by the requisite percentage of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is with reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements. The legislature, consciously, has not provided any ground to challenge the commercial wisdom of the

individual financial creditors or their collective decision before the Adjudicating Authority.

25. In CoC of ***Essar Steel India Limited vs. Satish Kumar Gupta and Ors (2020) 8 SCC 531*** the Hon'ble Apex Court has clearly held that the Adjudicating Authority would not have the power to modify the Resolution Plan which the CoC in their commercial wisdom has approved. In para 42, the Hon'ble Court observed as under:

'*Thus, it is clear that the limited judicial review available which can in no circumstances 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, in so far 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).'*

26. The Hon'ble Supreme Court in the matter of Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited, (Civil Appeal No. 8129 of 2019 decided on 13.04.2021 has held that on the date of the approval of the Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of the Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the Resolution Plan.

27. In view of the discussions and the law thus settled, we are of the considered view that the instant Resolution Plan meets the requirements of Section 30(2) of the Code and the Regulations 37, 38, 38(1A), and 39(4) of the CIRP Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. We, therefore, allow the Application in the following terms:

ORDER

28. The Application **IA No. 211 of 2022 in C.P.(IB) No. 193/IBC/MB/2019 is allowed** and the Resolution Plan submitted by the applicant is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, and creditors including the Central Government, any State Government, or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

29. Accordingly, no person or authority will be entitled to initiate or continue any proceedings with respect to a claim prior to the approval of the Resolution Plan which is not a part of the Resolution Plan.

30. The approval of the Resolution Plan shall not be construed as a waiver of any future statutory obligations/liabilities of the Corporate Debtor and shall be dealt with by the appropriate authorities in accordance with law. Any waiver sought in the Resolution Plan relating to the period after the date of this order, more particularly licenses and approvals for keeping the Corporate Debtor as a going concern, shall be subject to approval by the Authorities concerned and this Tribunal will not deter such Authorities from dealing with any of the issues arising after the approval of the Resolution Plan. This Tribunal, however, recommends due consideration of the revival of the Corporate Debtor. The Corporate Debtor may obtain necessary approval required under any law for the time being in force from the Appropriate Authority within a period of one year from the date of approval of the Resolution Plan.

31. If any application(s) relating to preferential/fraudulent transactions under Sections 43 and 66 of the Code is pending before the Tribunal, the Financial Creditors, as mentioned in the Resolution Plan, shall

have exclusive right over such recoveries through those proceedings. The expenses of pursuing such applications shall also be borne by the CoC.

32. All the equity shares and preference shares of the Corporate Debtor would stand extinguished by way of a reduction in the capital of the Company without any payment to the shareholders holding such shares without the requirement of writing the words 'and reduced'. Such reduction of share capital shall not require any further approval, act, or action as required under the Companies Act, 2013 including Section 66 of the Companies Act, 2013 and such cancellation shall not require the consent of any of the creditors or shareholders of the Corporate Debtor.

33. The Monitoring Committee, as proposed in Resolution Plan, shall be constituted to supervise and implement the Resolution Plan.

34. Other reliefs and concessions not covered in the aforesaid paragraphs including exemption from levy of stamp duty, fees, and registration charges that may be applicable in relation to this Resolution Plan and its implementation are not granted.

35. The moratorium declared under Section 14 of the Code shall cease to have effect from this date.

36. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with a copy of this order for information.

37. The Applicant shall forthwith send a certified copy of this order to the CoC and the Resolution Applicant respectively for necessary compliance.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)