

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

IA(IBC)/288(CHE)/2022 in CA/1/IB/2017

(Filed under Sec. 30(6) & 31 of the Insolvency & Bankruptcy Code, 2016)

IN THE MATTER OF:

S. Rajendran
Resolution Professional of
Vasan Health Care Private Limited
No.71/1, McNichols Road, Hari Krupa,
2nd Floor, Chetpet, Chennai – 600 031

... Applicant

Present:

For RP : Krishnan Venugopal, Senior Advocate
Savitha Devi, Advocate

For Resolution Applicant : MS Krishnan, Senior Advocate
S. Kaushik Ramasamy, Advocate

CORAM:

Chief Justice (Retd.) RAMALINGAM SUDHAKAR, PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)

Order Pronounced on 3rd February 2023

ORDER

Per: Chief Justice (Retd.) RAMALINGAM SUDHAKAR, PRESIDENT

IA(IBC)/288(CHE)/2022 is an Application which is moved by the
Resolution Professional of the Corporate Debtor viz., **Vasan Health
Care Private Limited** on 03.03.2022 under Section 30(6) & 31 of the

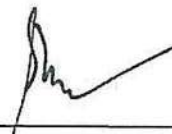


Insolvency and Bankruptcy Code, 2016 (in short 'IBC, 2016') read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short, 'CIRP Regulation, 2016') seeking relief as follows;

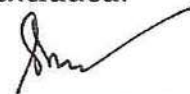
- A. *Allow the present application approving the resolution plan dated 02.02.2022 submitted by ASG Hospital Private Limited, which has been approved by the CoC with 97.90% voting share on 21.02.2022;*
- B. *Pass orders granting such reliefs and concessions as prayed for in the resolution plan dated 02.02.2022 submitted by ASG Hospital Private Limited, Jodhpur which has been approved by the CoC with 97.90% voting share on 21.02.2022;*
- C. *Pass such other orders as the Hon'ble Tribunal deems fit and proper in the circumstances of the case and thus render justice;*

**A. CORPORATE INSOLVENCY RESOLUTION PROCESS –
VASAN HEALTH CARE PRIVATE LIMITED**

2.1. The Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor viz. Vasan Health Care Private Limited was initiated by this Tribunal in an Application filed by an Operational Creditor under Section 9 of IBC, 2016 in CA/1/IB/2017 vide its order dated 21.04.2017, and one Mr. V. Mahesh was appointed as the 'Interim Resolution Professional' (IRP).



- 2.2. In the meantime, pursuant to a Company Petition filed before the Hon'ble High Court of Madras, an order of stay of CIRP proceedings was granted on 04.05.2017. Thereafter, on 05.09.2019 the Hon'ble High Court of Madras vacated the aforesaid order of stay and observed that the proceedings under IBC can continue against the Corporate Debtor.
- 2.3. Thereafter, the IRP filed an Application before the NCLT, Chennai seeking continuation of the CIRP of the Corporate Debtor and permission to make public announcement afresh, as the earlier time period for announcement lapsed due to the stay order dated 04.05.2017 as aforesaid. This Tribunal allowed the said Application, pursuant to which the CIRP for the Corporate Debtor was revived on 03.10.2019.
- 2.4. In view of Covid – 19 pandemic the erstwhile IRP filed an application in IA/515/1B/2020 seeking extension of time under Section 12(2) of the I&B Code and for exclusion of the time lost due to Covid-19 for a period of 150 days, pursuant to a resolution passed in the 5th CoC meeting held on 24.03.2020. The said Application was allowed by this Tribunal vide its order dated 06.08.2020 and the period of 150 days was ordered to be excluded.



2.5 Thereafter, another application in IA/56/1B/2021 was filed by the erstwhile IRP seeking exclusion of another 150 days, as resolved in the 10th meeting of the Committee of Creditors held on 12.12.2020 as the Covid nation-wide lockdown was continuing and several States had imposed restrictions on the movement of men and materials, which disrupted the CIRP of the corporate debtor to a great extent as they were in the business of providing eye care facilities. The said Application was allowed by this Tribunal vide its order dated 26.02.2021 by excluding a period of 150 days till 31.05.2021, with an observation that, if a resolution could not be arrived at on or before 31.05.2021 an order under Section 33 of the IBC Code, may be passed.

2.6. In the 11th meeting of the Committee of Creditors held on 12.03.2021, a resolution was passed appointing the Applicant herein as the 'Resolution Professional' replacing the Interim Resolution Professional and the said resolution was passed with 90% of the CoC voting in favour. Pursuant to which, an application under Section 22(3) of the IBC, 2016 was filed by the CoC. The said application was allowed on 23.04.2021 and the applicant herein took charge as the Resolution Professional of the Corporate Debtor.



- 2.7. In the same CoC meeting, it was submitted that a Resolution Plan from Dr. Agarwal's Health Care Limited was considered. However, the said Resolution plan was rejected with 89.04% voting of the CoC.
- 2.8. In the 12th meeting of the Committee of Creditors held on 21.05.2021 the CoC members expressed that the Resolution Plan submitted by Dr. Agarwal's was rejected by them as the same was not a feasible plan in the health care sector of the Corporate Debtor, considering the brand value, dedicated staff, footfall in various branches despite the litigations and the pandemic. The CoC was of the view that the previous round of expression of interest did not yield the desired results due to various reasons and that the resolution applicant reportedly did not have adequate information to offer an acceptable/viable resolution plan.
- 2.9. The CoC after taking note of the pending matters that require completion, such as carrying out compliances, revising the Information Memorandum, floating of Expression of Interest, process of issuing Request for Resolution Plan, obtaining a Resolution Plan, holding negotiations with bidders, identifying and approving a viable and feasible resolution plan, decided that at least a minimum of 6 months was required with effect from 01.06.2021 taking into consideration the timelines

prescribed under the Regulations. A resolution came to be passed with 13 members of the Committee of Creditors constituting 88.02% voting in favour of resolution seeking exclusion / extension of 180 days from the CIRP of the Corporate Debtor. Further, the CoC in the same meeting approved floating of a fresh Expression of Interest (EoI).

- 2.10. Thereafter, an application seeking extension / exclusion of 180 days till 30.11.2021 was filed in IA/510/IB/2021. Also, fresh EoI was floated on 28.06.2021. It was submitted that eight bidders expressed interest to submit a resolution plan out of which 7 of them were shortlisted after scrutiny and placed before the CoC in the 14th meeting held on 29.07.2021. The following were the shortlisted Resolution Applicants;

S. No.	NAME OF THE EOI APPLICANTS
1	ASG Hospital Private Limited, Jodhpur, Rajasthan
2	iLabs India Special Situations Fund (Sub-Scheme of iLabs Investment Trust – Category II AIF), Hyderabad
3	Mr. M.K. Rajagopalan, Chennai
4	Dr. Agarwal's Health Care Limited, Chennai
5	Maxivision Eye Hospital Pvt. Ltd., Chennai
6	GVPR Engineers Limited, Hyderabad
7	Consortium of UV Stressed Assets Management Pvt. Ltd., New Delhi with Suruchi Foods Pvt. Ltd., New Delhi

- 2.11. It was submitted that the Information Memorandum (IM) and Request for Resolution Plan (RFRP) were shared with

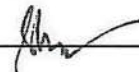


the shortlisted resolution applicants after obtaining confidentiality undertaking. As per the terms of the RFRP, the last dated for submission of the resolution plan was 13.09.2021.

- 2.12. On the last date for the submission of the Resolution plan, i.e. 13.09.2021, the following Resolution Applicants submitted Resolution Plans as per the RFRP issued;

S. NO.	NAME OF THE RESOLUTION APPLICANTS
1	ASG Hospital Private Limited, Jodhpur, Rajasthan
2	iLabs India Special Situations Fund (Sub-Scheme of iLabs Investment Trust – Category II AIF), Hyderabad
3	Mr. M.K. Rajagopalan, Chennai
4	Dr. Agarwal's Health Care Limited, Chennai
5	Maxivision Eye Hospital Pvt. Ltd., Chennai

- 2.13. On 29.11.2021, the 16th meeting of the CoC was called for and the resolution plans submitted by the Resolution Applicants in password protected pen – drive and sealed cover were opened and discussed in detail by the CoC. The Resolution applicants submitted their bid security deposit of Rs. 5 Crores along with the resolution plan. The Resolution Applicants were invited and given an opportunity to present their respective resolution plans, Resolution Applicants interacted with the CoC members and clarified the doubts of the creditors. They further expressed their willingness to negotiate the proposal submitted. It was decided that the evaluation of the



resolution plans received and examination of the terms of the plans would take a week, the next meeting of the CoC was scheduled on 20.12.2021. During the interactions with the Resolution Applicants in the COC when they were presenting their resolution plans references were made to the amendment dated 30thSeptember 2021 to IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 which stipulates that the modification to the resolution plan can be made only once. The Resolution Applicants were requesting whether a challenge mechanism, if any, was planned to be used to enable the applicants to improve their plan. RP responded that no challenge mechanism was proposed in the RFRP, as it was issued much earlier to the above-stated amendment and that the resolution plans were submitted by 13thSeptember 2021 prior to the amendment.

2.14. In the 17th CoC meeting held on 20.12.2021, detailed discussion on the resolution plans were held by the CoC members and the resolution applicants sought time to submit their improved resolution plans. The COC therefore decided to grant time until 04.01.2022 to the RA's to submit improved resolution plans. Details of operations of the corporate debtor, performance of the corporate debtor, bank account balances, appointment of professionals for internal audit, accounts finalization, GST

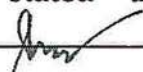
filings, ESI, EPF and TDS compliance, updated list of creditors as on 30.11.2021, legal issues, pending cases, CIRP costs, avoidance transactions, etc., were also discussed in the said meeting.

2.15. On 04.01.2022, the following three (3) Resolution Applicants submitted their revised / improved resolution plan.

S. No.	NAME OF THE RESOLUTION APPLICANTS
1	ASG Hospital Private Limited, Jodhpur, Rajasthan
2	Mr. M.K. Rajagopalan, Chennai
3	Dr. Agarwal's Health Care Limited, Chennai

It was submitted that iLabs India Special Situations Fund, Hyderabad did not submit their revised or Improved resolution plan, however they stated that the resolution plan submitted by them on 13.09.2021 was still valid and the CoC may consider it. Another resolution applicant i.e., Maxivision Eye Hospitals Private Limited sent a letter on 03.01.2022 intimating that they were withdrawing from the resolution process of the corporate debtor and sought return of their bank guarantees submitted for process participation deposit and bid security deposit.

2.16. In the 18th CoC meeting held on 07.01.2022, the CoC discussed each of the four resolution plans with the respective resolution applicants. It is stated that



substantial improvement in the resolution plan amounts were made by the resolution applicants (except iLabs India Special Situations Fund).

2.17. Evaluation Matrix and a Synopsis of the improved resolution plans were shared with all CoC members and the director of the corporate debtor after scrutiny under Section 29A of the Code and other applicable laws. Clarifications with regard to the terms of the resolution plans were discussed in detail with the Resolution Applicants in the 19th CoC meeting held on 28.01.2022.

2.18. After discussion with each of the resolution applicants, the CoC members present in the meeting deliberated on the possibility of further maximization of value of the Corporate Debtor and by a majority of 51.03% of voting share decided in favour of giving all the resolution applicants a final chance to improve upon their plans and to submit the final and improved resolution plans incorporating all the mutually agreed modifications. The Resolution Applicants were thereafter informed that they have a final chance to further improve their resolution plans. All RA's except Labs India Special Situations Fund agreed to submit their improved resolution plan by 02.02.2022 as agreed with the CoC.



2.19. Three Resolution Applicants, viz., Dr. Agarwal's Health Care Limited, Mr. M.K. Rajagopalan and ASG Hospital Private Limited submitted their revised and final resolution plans in the said meeting. The request of Maxivision Eye Hospitals Private Limited to withdraw their resolution plan was put for e-voting and the request was approved by the CoC with 96.63% voting.

2.20. At this juncture one of the Resolution Applicants viz. Mr. M.K. Rajagopalan filed IA(IBC)/507(CHE)/2022 before this Tribunal with a plea to reject the Resolution Plan submitted by M/s ASG Hospitals Private Limited alleging that it is in flagrant violation of the provisions of IBC, 2016. The said IA was heard extensively by this Tribunal and was disposed of by its order dated 28.09.2022 holding that there is no violation of the Code or Regulations as alleged in the Resolution Plan submitted by ASG Hospitals Private Limited.

2.21. In the 20th meeting of the CoC held on 08.02.2022, all aspects of the improved and final resolution plans were deliberated in detail. CoC decided to put to vote the Resolution Plan after the applicant herein confirmed that all four resolution plans were compliant with Section 30(2)(b) of the Code and Regulation 38 of the IBBI (Insolvency Resolution Process for Corporate Persons)



Regulations, 2016 and that none of the RAs were ineligible as per Section 29A of the Code. The Resolution Plans of the following applicants were put to vote through e-voting process:

S. No.	NAME OF THE RESOLUTION APPLICANTS
1	ASG Hospital Private Limited, Jodhpur, (Resolution Plan dated 02.02.2022)
2	Mr. M.K. Rajagopalan, Chennai (Resolution Plan dated 02.02.2022)
3	Dr. Agarwal's Health Care Limited, Chennai (Resolution Plan dated 02.02.2022)
4	iLabs India Special Situation Fund, Hyderabad ((Resolution Plan dated 13.09.2021)

It was recorded that the e-voting process commenced on 11.02.2022 at 10AM and ended on 21.02.2022 at 6PM. The e-voting results were announced by the RP after the closure of the e-voting window.


2.22. ASG Hospital Private Limited, Jodhpur emerged as a Successful Resolution Applicant whose Resolution Plan was approved by the CoC with 97.90% voting share on 21.02.2022. The result of the e-voting was shared with the CoC on the same day. A Letter of Intent (LoI) was issued by the RP to the Successful Resolution Applicant on 22.02.2022. the LoI was accepted by ASG Hospital Private Limited on 24.02.2022. Further, it was submitted that the Performance Bank Guarantee dated 25.02.2022 for a sum of Rs.25 Crore was submitted to the RP within the stipulated period.



2.23. It is seen that the successful Resolution Applicant has filed IA(IBC)/489(CHE)/2022 before this Tribunal seeking to implead in the present Application. The said IA(IBC)/489(CHE)/2022 came to be allowed by this Tribunal vide its order dated 25.11.2022. The Successful Resolution Applicant has filed certain Affidavits in IA(IBC)/489(CHE)/2022 and the same will be dealt with in the later portion of this order.

2.24. The Applicant has filed a Compliance Certificate in the prescribed form i.e. Form 'H' in terms of Regulation 39(4) of the CIRP Regulations, 2016. A brief snapshot of the Resolution Plan submitted by the Successful Resolution Applicant, is as follows;

S. No.	PARTICULARS	ADMITTED CLAIMS RS. CRORE	RESOLUTION PLAN AMOUNT (RS. IN CRORE)
1	CIRP Cost	NA	42.07
2	Payment to Operational Creditors	709.07	8.93
3	Payment to Financial Creditors (other than dissenting Financial Creditors)	1368.91	343.00
	Plan amount for Creditors	2077.98	394.00
4	Working Capital and Capex Infusion Amount	NA	126.00
	Total Resolution Plan Amount		520.00
	<i>Additional Contingency Fund</i>	NA	<i>Rs.6 Crore provided towards escalation in CIRP costs.</i>



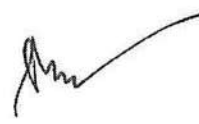
3. The Summary of the Resolution Plan submitted by ASG Hospital

Private Limited is as under:

S. NO.	DETAILS	AMOUNT AS PER RESOLUTION PLAN
1	Total Resolution Plan Amount and payment terms	INR 520.00 Crore Out of this Rs. 394.00 Crores will be paid to various creditors within 30 days from the date of NCLT approvals. 126.00 Crores will be infused towards Cape and working capital requirements within a period of 1 year.
1a.	Additional contingency fund	INR 6.00 Crores To cover any additional CIRP cost, if any, from the existing estimates
2	Initial Infusion Amount into the Corporate Debtor	INR 385.07 Crores to be Infused into the Corporate Debtor through a Special Purpose Vehicle (SPV) to be formed by the Resolution Applicant in the form of: a) Equity of INR 54 Crores b) Quasi – equity (debt which is junior to existing FCs holder of which shall be SPV) of INR 331.07 Crores
3	CIRP Costs	Outstanding amounts to be paid on actuals from the Initial Infusion Amount into the Corporate Debtor , provisionally included at INR 42.07 Crores , as per data shared by Resolution Professional. Further, the Resolution Applicant have created a contingency fund of additional INR 6 Crores in order to cover any additional CIRP cost, if any from the existing estimates. In case the actual CIRP costs are less than estimate of INR 42.07 crore then such savings shall be added to recovery of Financial Creditors.
4	Payment to Operational Creditors	INR 8.93 crores (OC Payment) to be paid directly by the SPV towards assignment of debt, as against and in settlement and discharge of their Claims (admitted or not), within 30 days of the NCLT Approval Date, in priority to payment to the Financial Creditors. Such payment from SPV shall be divided into:

		<p>(a) Payment to Operational Creditors (other than Workmen and Employees, Doctors): INR 2 Crores</p> <p>(b) Payment of INR 5.93 Crores to Workmen, Employees and Doctors</p> <p>(c) Payment of INR 1 Crore to Statutory Authorities</p>
	Payment to Dissenting Financial Creditors	Subject to the Code and CIRP Regulations, the CoC shall be free to decide the manner of distribution of the FC payment amongst various financial creditors. Provided that if any Financial Creditors do not vote in favour of this Resolution Plan, then, in accordance with Section 30(2)(b) of the Code, the amount payable to such creditor in terms of Section 53 of the Code, attributable to such creditors shall be paid out of the FC Payment amount in priority to payment to the other Financial Creditors (without changing the overall amount of timeline of FC payment)
	Payment to Financial Creditors (other than dissenting Financial Creditors)	Financial creditors shall be paid INR 343 Crores from the Initial Infusion Amount into the Corporate Debtor through the SPV. The FC Payment shall be paid within 30 days of the NCLT Approval Date after payment of CIRP Cost.
	Working Capital and Capex Infusion amount	<p>INR 126 crore towards capex for Year 1 and Working Capital requirements. 50% of the proposed amount shall be infused within 6 months and balance 50% in 6-12 months.</p> <p>The said amount of INR 126 crore is proposed to be infused by SPV from its own funds into the corporate debtor in form of equity of INR 6crore and balance in the form of quasi equity loan. The terms of the quasi-equity loan shall be junior to financial creditors till such time financial creditor pay-out is completed.</p>
8	Payment for Other Creditors (under Regulation 9A)	NIL
	Payment to Related Parties Creditors	NIL

	Other unverified or unclaimed liabilities	NIL
	Reduction of Share Capital	<p>The Resolution Applicant proposes cancellation of all existing share capital including any shares allotted to any creditor pursuant to the resolution plan, Compulsory Convertible Preference Shares, Share Application Money pending allotment and options and warrants granted under any scheme/arrangement including Equity Settled ESOP Scheme 2012 of the Corporate Debtor.</p> <p>The liquidation value due to all existing share capital, Compulsory Convertible Preference Shares, Share Application Money pending allotment and options granted under Equity Settled ESOP Scheme 2012 in terms of the Code is NIL.</p> <p>Simultaneous after cancellation of the existing share capital of the Corporate Debtor, the Resolution Applicant shall infuse share application money of INR 54 Crores and shall be allotted 0.54 crore New Equity Shares (Face Value INR 100 per share) of the Corporate Debtor such that the Resolution Applicant and its nominees are the sole shareholders of the Corporate Debtor</p>
12	Interest rate / Coupon and frequency of payment	All upfront payments, to be made within 30 days of the NCLT Approval Date.
13	Corporate Guarantee or additional collateral / security being offered by the Resolution Applicant	The existing security shall continue till payment of FC Payment Amount. Post payments of amounts due to FCs, all securities/ charges/ pledges/ mortgages of Corporate Debtor (except personal guarantees and securities of parties other than corporate debtor and its subsidiaries) shall deemed to have been released. In addition, a Performance Bank Guarantee will be provided in accordance with the RFRP



B. SOURCE OF FUND

- 4.1. As per the Resolution Plan, the Resolution Applicant shall set up a Special Purpose Vehicle (SPV) which will be wholly owned by the Resolution Applicant. The SPV will infuse INR 385.07 Crores (Initial Infusion amount') into the corporate debtor as a mix of equity INR 54 Crores and quasi-equity INR 331.07 Crores. Further, the SPV will pay INR 8.93 Crores directly to the Operational Creditors of the corporate debtor towards assignment of debt. The Initial Infusion amount and OC settlement amount together forms Rs. 394 Crores being the resolution plan amount for distribution to various creditors.
- 4.2. As per the plan, the Resolution Applicant along with the SPV, intends to fund the acquisition from a mix of their internal accruals, existing banking facilities and their anchor investor, Foundation Holding. The Resolution Applicant has cash and bank balances of INR 56.7 Crores as on 31st December 2021. INR 126 Crores is proposed to be infused for capital expenditure for year one and working capital. The committed funds are stated to be infused into the corporate debtor within the timelines as stipulated in Resolution Plan. Further, Foundation Holdings has submitted a commitment letter dated 03.02.2022 to Resolution Professional for supporting fund infusion to honor commitments under this resolution plan. Further a letter dated 10.02.2022 by Ajman Bank, UAE, informing approved lines of credit in place to



Foundation Corporation Holdings for a sum of USD 75 Millions, has been submitted by the Successful Resolution Applicant in support of their Resolution Plan.

C. TREATMENT OF SUBSIDIARIES

5.1. Details of investment in subsidiaries as per audited financial statements as of 31st March 2020

PARTICULARS	NOS.	% HOLDING	AMOUNT
Vasan Dental Hospitals Private Limited	8,000	100	8,00,000
Ramakrishna Eye Care and Research Private Limited	50,000	100	30,00,00,000
North Bengal Eye Centre Private Limited	96,000	100	9,75,00,000
Vasan Healthcare International Pte. Ltd.	2	Control through Board	82
Advance towards equity shares of Vasan Healthcare International Pte. Ltd. (including stepdown investees in Sri Lanka & UAE)	NA		37,79,36,919
Total			77,62,37,001

5.2. As per the Resolution Plan, the Resolution Applicant intends to continue to hold ownership of the subsidiary and be the beneficial owner of the assets/proceeds from the subsidiary from the date of approval of the Resolution Plan. As per the Resolution Plan, the CoC may continue to proceed with any PUFEE transaction application under the Code and the RA may choose to support the CoC without any additional cost. The Corporate Guarantees in respect of Vasan Dental Hospitals Private Limited shall stand dissolved and the RA or any of its directors or the CD shall not be liable for any sum due by Vasan



Dental Hospitals Private Limited. Corporate Guarantees given by the CD in respect of debts of group companies / SPV / subsidiaries/ trust shall stand waived and such creditors in this respect shall have no claim whatsoever against the CD.

5.3. In respect of Vasan Healthcare International Pte. Ltd., proceedings under FEMA in respect of the issue transfer of shares as FDI, and in respect of remittances towards setting up of a subsidiary company outside India (ODI), proceedings before Directorate of Enforcement and ED under PMLA are pending as on date. RA, its directors, or the CD shall not be held liable for any liability/non-compliance / past malfeasance / legal action in respect of any of the subsidiaries of the CD. RA however undertakes to fully cooperate with all Government Agencies in their investigations and further action to the extent possible.

5.4. In respect of all other matters, it will be at the discretion of RA or any of its directors or the CD to exercise its rights in respect of any subsidiaries as per applicable laws and agreements.

D. DETAILS ON MANAGEMENT / IMPLEMENTATION AND RELIEFS AS PER THE RESOLUTION PLAN

6. The Resolution Plan provides for –

- a) *Management of the Company after resolution in clause 9 at page 106 to 107 of the Resolution plan.*



- b) Term of the resolution plan in 30 days from NCLT approval date as specified in clause 7 of the resolution plan; and*
- c) Measures for implementation and Supervision of the resolution plan are provided in clause 7 of the resolution plan.*

E. MONITORING COMMITTEE

- 7.1. It is seen that on the approval of the Resolution Plan by NCLT, a Monitoring Committee is proposed to be constituted which shall comprise (a) Resolution Professional as its Chairman, (b) two representatives appointed by the Resolution Applicant; and (c) two representatives of the Financial Creditors.
- 7.2. The monitoring committee shall supervise the Implementation of the Resolution Plan and ensure that it is implemented without any deviations, ensure timely disbursement of funds, facilitate approvals to the extent required, bring to the notice of Adjudicating Authority any deviation / violation of the Resolution Plan by any person, provide regular updates to the AA as and when required and control the management of the CD from the date of approval of Resolution Plan till the implementation is complete. Monitoring Committee shall have the powers and functions of the Board of Directors. The monitoring committee shall stand disbanded and the reconstituted board of the RA shall take control of the



management of the CD upon payment to all creditors on the closing date.

- 7.3. Upon approval of Resolution Plan by NCLT, the existing Board shall stand dissolved and vacated the office and the Resolution Professional under the supervision of the monitoring committee shall have absolute control to do all necessary things to give effect to the Resolution Plan in pith and substance.
- 7.4. After payout of its consideration to Financial Creditor's or upon deposit of the Resolution Plan amount in the escrow account, the Resolution professional shall handover the control of the Board and operations of the Corporate Debtor to the Resolution Applicant. The following key managerial personnel will be appointed to the Board of Directors, subject to the supervision of the monitoring committee;

#	NAME	DESIGNATION	DIN No.
1	Dr. Arun Singhvi	Director	01674228
2	Mr. Aakash Sachdev	Director	05292079

F. DETAILS OF THE SCHEME OF MERGER BETWEEN SPECIAL PURPOSE VEHICLE (SPV) AND THE CORPORATE DEBTOR.

- 8.1. The Resolution Plan envisages, payments towards the settlement/discharge of claims of the creditors of the Corporate Debtor in the following manner.



- 8.2. A Special Purpose Vehicle (SPV) viz. **ASG Eye Hospital Ventures Private Limited** has already been incorporated on 10.05.2022 having its registered office situated at Plot No.1, Shyam Nagar, ASG Hospital Private Limited, Jodhpur Shyam Nagar Pal, Link Road, Jodhpur, Rajasthan – 342 008.
- 8.3. The Resolution Applicant would infuse INR 394 crores into the SPV within 21 to 28 days from the date of approval of the Resolution Plan by this Tribunal. Thereafter, the SPV will infuse INR 385.07 crores (out of INR 394 crores) ("Initial Infusion") into the Corporate Debtor as equity of INR 54 crores and quasi-equity (debt junior to existing Financial Creditors), INR 331.07 crores.
- 8.4. In order to infuse the said equity of INR 54 crores, the Resolution Plan provides reduction/cancellation/extinguishment of the existing share capital of the Corporate Debtor, pursuant to approval of the Resolution Plan. Post such reduction/consolidation of the existing share capital of the Corporate Debtor, the RA proposed to infuse INR 54 crores (through SPV) into the Corporate Debtor as consideration towards acquiring 0.54 crore equity shares which would be issued to the SPV at the issue price of INR 100/- share. In lieu of the consideration to the above share capital, the SPV shall become 100% shareholder of the Corporate Debtor, as follows:



PARTICULARS	NEW ISSUE OF SHARES	SHARE CAPITAL @ 100 FACE VALUE (54 LAKH X 100)	SHAREHOLDING %
SPV	54,00,000	54,00,00,000	100%
Total	54,00,000	54,00,00,000	100%

- 8.5. Post infusion of funds from Resolution Applicant to SPV and thereafter from SPV to Corporate Debtor as indicated in the points above, the equity share capital held by Resolution Applicant into SPV and SPV into Corporate Debtor will be INR 54 crores each at 100% shareholding.
- 8.6. This Initial Infusion by SPV into the Corporate Debtor of INR 385.07crores, would be utilised towards settlement of outstanding CIRP cost of INR 42.07 crores and Financial Creditor's claim at INR 343 crores.
- 8.7. In addition to the above and upon satisfaction of the above indicative steps, the Resolution Plan proposes merger of the SPV with the Corporate Debtor, on the closing date i.e., after the payment of dues to all the creditors of the Corporate Debtor. In addition, after the merger, the authorized share capital of the SPV, as the transferor company, will be merged with the authorized share capital of the Corporate Debtor, as the transferee company. Accordingly, the authorized share capital of the Corporate Debtor, as the transferee company, will stand increased and reclassified into equity shares/preference shares/quasi equity etc. The new equity shares of the Corporate Debtor which were held by SPV as part of the issuance of new

shares and infusion of capital will be cancelled without any consideration.

- 8.8. As part of the accounting treatment, the merger will be accounted in accordance with the "purchase method" prescribed under the Accounting Standard 14 (Accounting of Amalgamations)/ under requirements of Ind-AS 103 Business Combinations (principles of reverse merger) as may be. Further, the assets, liabilities, rights and obligations of the Corporate Debtor, as the transferee company along with assets and liabilities of SPV will be vested in the merged Corporate Debtor upon the merger, and will become the assets, liabilities and obligations of the Corporate Debtor. The new equity shares of the Corporate Debtor which were held by the SPV would be cancelled without any consideration. The effective date for the merger will be the closing date, and on such effective date, ASG becomes 100% shareholder of the Corporate Debtor holding an equity share capital of INR 54 Crore in the Corporate Debtor.

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

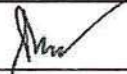
- 9.1. The Applicant has submitted the details of various compliances as envisaged within the provisions of IBC, 2016 and CIRP Regulations, which requires a Resolution Plan to adhere to, which is reproduced hereunder:



CLAUSE OFS.30(2)	REQUIREMENT	HOW DEALT WITHIN 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 6.1 at Page 68 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)ofsection53,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.	Clause 6.3 at Pages 71 to 77 of the Resolution Plan. Clause 6.2 at page 69 of the Resolution Plan.
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause 9at Pages 106 to 107 of the Resolution Plan.
(d)	Implementation and Supervision.	Clause 9 at Pages 90 to 102 of the Resolution Plan.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Clause 12 at Pages 124 to 125 of the Resolution Plan.
(f)	Conforms to such other requirements as may be specified by the Board.	Clause 12 at Pages 124 to 125 of the Resolution Plan.

**G. MEASURES REQUIRED FOR IMPLEMENTATION OF THE
RESOLUTION PLAN IN TERMS OF REGULATION 37 OF CIRP
REGULATIONS**

PARTICULARS	RELEVANT PAGE OF THE RESOLUTION PLAN DEALING AFORESAID COMPLIANCE WITH REGULATION
<i>A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximisation of value of its assets, including but not limited to the following:-</i>	
(a)transfer of all or part of the assets of the corporate debtor to one or more persons;	Not Applicable
(b)sale of all or part of the assets whether subject to any security interest or not;	Not Applicable
(c)restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	Clause 7 at Pages 90 to 102 of the Resolution Plan.
(d)the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	Clause 7 at Pages 90 to 102 of the Resolution Plan.
(e)cancellation or delisting of any shares of the corporate debtor, if applicable;	Clause 7 at Pages 90 to 102 of the Resolution Plan.
(f)satisfaction or modification of any security interest;	Clause 6.2 at Page 70 of the Resolution Plan.
(g)curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Clauses 6.2, 6.3 and 6.4 at Pages 68 to 77oftheResolutionPlan.
(h)reduction in the amount payable to the creditors;	Clause 6 at Pages 68 to 77 of the Resolution Plan.



(i) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	Not Applicable
(j) amendment of the constitutional documents of the corporate debtor;	Clause 7.5 at pages 99 to 100 of the Resolution Plan.
(k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Not Applicable
(l) change in portfolio of goods or services produced or rendered by the corporate debtor;	Not Applicable
(m) change in technology used by the corporate debtor; and	Not Applicable
(n) obtaining necessary approvals from the Central and State Governments and other authorities.	Clause 7.5 and 8.3 at Pages 99 to 100 and 104 of the Resolution Plan.

H. 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.	Clause 6.3 at Page 71 of the Resolution Plan.
38(1A)	A Resolution Plan shall include a statements as to how it has dealt with the interest of all stakeholders, including Financial Creditors and Operational Creditors of the Corporate Debtor	Clause 6.13 at Page 89 of the Resolution Plan.

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Resolution Plan</i>
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 12(e) at Page 124 of the Resolution Plan.
38(2)	A Resolution Plan shall provide (a) the term of the plan and its implementation schedule	Clause 7 at Pages 90 to 102 of the Resolution Plan.
	(b) the management and control of the business of the Corporate Debtor during its terms; and	Clause 9 at Pages 106 to 107 of the Resolution Plan.
	(c) adequate means for supervising its implementation	Clause 7.6 at Pages 101 to 102 of the Resolution Plan.
38(3)	A Resolution Plan shall demonstrate that (a) It addressed the cause of default;	Clause 2.4 at Pages 46 to 50 of the Resolution Plan.
	(b) It is feasible and viable;	Clauses 3.3 and 3.4 at Pages 57 to 63 of the Resolution Plan.
	(c) it has provisions for its effective implementation;	Clause 7 at Pages 90 to 102 of the Resolution Plan.
	(d) it has provisions for approvals required and the timeline for the same; and	Clauses 7.5 and 8.3 at Pages 99 to 100 and 104 of the Resolution Plan.
	(e) the Resolution Applicant has the capability to implement the Resolution Plan	Clause 1 at Pages 17 to 35 of the Resolution Plan.

9. The Applicant has submitted the certificate of proof of eligibility under section 29A of the Code of successful Resolution Applicant, vide memo dated 27.07.2022.

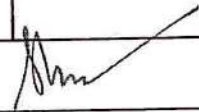


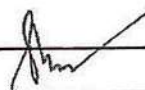
10. The relevant information with regard to the amount claimed, amount admitted and the amount proposed to be paid by the Resolution Applicant, i.e., ASG Hospital Private Limited under the said Resolution Plan which is tabulated as under:

Sl. No	Category of Creditor	Amount Of Claim	Claim Admitted	Amount provided in the Plan	% of claim Admitted
		(Rs.in Crores)			
1.	Insolvency Resolution Process Cost	Actual	42.07	42.07*	100%
2.	Operational Creditors (Statutory Liabilities)	615.31	139.88	1.00	0.71%
3.	Operational Creditors: Suppliers	743.48	467.53	1.72	0.37%
	Landlords	127.02	75.40	0.28	0.37%
4.	Operational Creditors – Doctors	26.48	20.86	4.71	22.59%
5.	Operational Creditors: Workmen/Employees	20.00	5.40	1.22	22.59%
5.	Financial Creditors	1783.08	1368.91	343.00	25.06%
	Sub-Total			394.00	
6.	*Contingency fund to meet CIRP cost in excess of the amount proposed – Rs. 42.07 Crs. Any further excess CIRP cost shall be paid at actuals but reduced from payout to Financial Creditors.	---	---	6.00	---
7.	Capex& Working Capital (within 12 months)	---	---	126.00	---
	Total	---	---	526.00	---


I. RELINQUISHMENT/WAIVER OF LIABILITIES AND APPROVALS

SL. NO	RELIEF AND/OR CONCESSIONS AND APPROVAL SOUGHT BY RESOLUTION APPLICANT (CLAUSE 10 OF RESOLUTION PLAN)	ORDERS THEREON
1	<p><u>Cancellation and extinguishment of Share Capital:</u> The approval of the Adjudicating Authority shall constitute adequate approval for cancellation and extinguishment of the existing issued, subscribed and paid-up capital share capital of the Company (both equity and preference shares) in full for NIL consideration and accordingly, no further approval/consent shall be necessary from any other Person / Governmental Authority in relation to either of these actions under any agreement, the constitutional documents or under any applicable Law. The Order of Adjudicating Authority approving this Resolution Plan shall be deemed to be an order under Section 66 of the Companies Act 2013 and other applicable Law confirming the reduction of share capital of the Corporate Debtor and no separate sanction or approval or compliance under Section 66 of the Companies Act, 2013, the NCLT (Procedure for Reduction of Share Capital), Rules 2016 or any other provisions of the applicable Law shall be necessary.</p>	<p>Granted, subject to the provisions of the Companies Act, 2013.</p>
2	<p><u>Cancellation and extinguishment of all convertible instruments:</u> All Share application money pending allotment, options granted under Equity Settled ESOP Schemes, and convertible instruments issued by the Corporate Debtor either to the promoters, shareholders, employees or any third party shall stand extinguished and cancelled for NIL payment, pursuant to approval of this Resolution Plan by the Adjudicating Authority and no separate sanction/approval / consent shall be necessary from any other Person / Governmental Authority in relation to either of these actions under any agreement, the constitutional documents or under any applicable Law.</p>	<p>Granted, subject to the provisions of the Companies Act, 2013.</p>

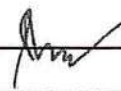



3	<p><u>Fresh Issue of Shares:</u></p> <p>The approval of this Resolution Plan by the Adjudicating Authority shall be deemed to have waived all the procedural requirements in terms of Section 42 and Section 62(1)(c) of the Companies Act, 2013 and applicable Rules for issuance of fresh equity shares to the Resolution Applicant pursuant to this Resolution Plan.</p>	<p>Granted, subject to the provisions of the Companies Act, 2013.</p>
4	<p><u>Merger:</u></p> <p>Upon approval of this Resolution Plan, no further procedural compliances will be required under any Applicable Laws and all requirements shall have been deemed to have been complied with on the approval of the resolution plan by NCLT. Further the NCLT approval of the Resolution Plan shall represent that all approvals necessary for effecting the Merger of Vasan and SPV including but not limited to NCLT approval on merger, approval from ROC, shareholders, any creditors or any other stakeholders shall be deemed to be provided.</p>	<p>Granted, subject to the provisions of the Companies Act, 2013.</p>
5	<p><u>Amendment to Constitutional Documents:</u></p> <p>The approval of this Resolution Plan by the Adjudicating Authority shall be deemed to have waived all the procedural requirements for amending the constitutional documents of the Corporate Debtor. Accordingly, the amendment to the constitutional documents (viz., Memorandum of Association and Articles of Association), including change in registered office address, shall be allowed with the Order of the Adjudicating Authority and no shareholder or board approval shall be required for such amendment.</p>	<p>Granted, subject to Companies Act, 2013. However, no shifting of Registered office beyond the State of Tamil Nadu is permissible till the implementation of the Resolution Plan.</p>
6	<p><u>Re-constitution of the Board:</u></p> <p>Approval of this plan shall be deemed approval for automatic vacation of Office by the existing Directors from the record of the Company and from the records of the Ministry of Corporate Affairs by Registrar of Companies and appointment of new directors nominated by the Resolution</p>	<p>Granted</p> 

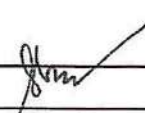
	Applicant. Certified copy of the Order approving Resolution Plan shall be a direction on such statutory authorities to do the needful.	
7	Regularize any non-registration, non-compliances under applicable Law (including waiver of penalties non-registration, inadequate or non-stamping of documents as required under Applicable Law) existing prior to the Closing Date.	Granted
8	All licenses, consents and approvals held by the Company, shall continue in favour of the Company. As far as the licenses, consents and approvals which expire prior to the date of approval of this Resolution Plan or within a period of 6(six) months thereafter, shall be renewed / extended by the relevant Governmental Authorities, and the Company shall be permitted to continue its business and assets in the manner operated prior to submission this plan until the renewal / extension of such licenses and approvals. Governmental authorities to provide reasonable time period for the Resolution Applicant to assess the status of these licenses, consents and approvals and to ensure that the company is compliant with them without initiating any investigations, actions or proceedings in relation to such non-compliances.	Granted
9	All claims or demands made by, or liabilities or obligations owed or payable to (including any demand for any losses or damages, or interest, back wages, compensation, penal interest, liquidated damages already accrued/ accruing or in connection with any claims) any present or past, direct or indirect, permanent or temporary employee and/or workman of the Company, whether claimed or unclaimed, admitted or not, due or contingent, asserted or unasserted, crystallised or not, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the provisional balance sheet, the balance sheets of the Company or the profit and loss account statements of the Company or the list of creditors, in relation to any period prior to the Implementation Date, shall be deemed to be permanently extinguished with effect from the NCLT Approval Date by	Granted, subject to the various terms contained in this order.

	<p>virtue of the order of the NCLT approving this Resolution Plan and the Company or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable (whether in the capacity of a principal employer or otherwise) in relation thereto. However, legally applicable retirement/ terminal benefits of employees/ workmen continuing after NCLT approval date shall be paid.</p>	
10	<p>The Order of the Adjudicating Authority approving this Resolution Plan shall constitute adequate approval for extinguishment of all monetary liabilities or obligations of the Company, towards –</p> <p>(a) any investigation, inquiry or show-cause, whether civil or criminal;</p> <p>(b) any non-compliance of provisions of any laws, rules, regulations, directions, notifications, circulars, guidelines, policies, licenses, approvals, consents or permits;</p> <p>(c) change of control, transfer charges, compensation, or any other such liability whatsoever under any contract, agreement, lease, license, approval, consent or permission to which the Company or its subsidiaries, joint ventures or associates are entitled;</p> <p>(d) any leasehold rights or freehold rights to movable or immovable properties in the possession of the Company; and</p> <p>(e) any contracts, agreements or commitments made by the Company, in each of the foregoing cases whether claimed or unclaimed, admitted or not, due or contingent, asserted or unasserted, crystallised or not, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the provisional balance sheet, the balance sheets of the Company or the profit and loss account statements of the Company or the list of creditors, in relation to any period prior to the Implementation Date, will be written off in full and will be deemed to be permanently extinguished with effect from the NCLT Approval Date by virtue of the order of the NCLT approving this Resolution Plan, and all consequential liabilities, if any, that may arise in the</p>	<p>Granted, subject to the various terms contained in this order.</p> 

	future on account of the aforesaid (including but not limited to any duties, penalties, interest, fines or fees) shall stand extinguished and the Company or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.	
11	Any and all other dues including claims or demands which have been or could have been made by or liabilities or obligations owed or payable to (including any demand for any losses or damages, principal, interest, compound interest, penal interest, liquidated damages and other charges already accrued/ accruing or in connection with any third party claims) any actual or potential creditors of the Company or in connection with any debt of the Company (including those debts arising out of any letters of credit, letters of undertaking, guarantees, counter guarantees, bank guarantees, performance guarantees or indemnities provided by the Company, whether claimed or unclaimed, admitted or not, due or contingent, asserted or unasserted, crystallised or not, known or unknown, disputed or undisputed, present or future, whether or not set out in the provisional balance sheet, the balance sheets of the Company or the profit and loss account statements of the Company or the list of creditors, in relation to any period prior to the Implementation Date, shall to the extent not assigned/ novated/ transferred/ converted in accordance with this Resolution Plan be deemed to be permanently extinguished with effect from the NCLT Approval Date by virtue of the order of the NCLT approving this Resolution Plan and the Company or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.	Granted, subject to the various terms contained in this order.
12	All security, indemnity, pledge, charge, encumbrance, or any other form of collateral (whether over movable assets, immovable assets, fixed deposits, margin money, cash collateral or any other rights (including but not limited to privileges and including, without limitation, any indemnity, security, letter of credit or pledge over the equity shares of the Company) that was created / granted / arranged by the Company in connection with any debt or obligation of the	Granted, subject to the various terms contained in this order.

	<p>Company, or which was created by the Company in connection with the debt or other obligations of any other entity (including any invocation or other enforcement action already undertaken against assets of the Company), in relation to any period prior to the Implementation Date (whether in favour of or for the benefit of a person appearing in the list of creditors or not), shall to the extent not assigned/ novated/ transferred/ converted in accordance with this Resolution Plan automatically fall away and be permanently extinguished, unless these were adjusted prior to CIRP to extent permitted by respective contracts and only if such adjustment was in accordance with respective contracts and applicable laws. All title deeds and other documents held by the creditors of the Company or on their behalf relating to any security, charge, encumbrance, or any other form of collateral (over immovable assets or any other rights) shall to the extent not assigned/ novated/ transferred/ converted in accordance with this Resolution Plan, be immediately returned to the Company by the relevant persons and the relevant security trustee/agent.</p>	
13	<p>Indemnity obligations of the Company in relation to assignment transactions, whether general or specific, claimed or unclaimed, due or contingent, asserted or unasserted, crystallised or not, known or unknown, disputed or undisputed, shall be deemed to be permanently extinguished with effect from the NCLT Approval Date by virtue of the order of the NCLT approving this Resolution Plan and the Company or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto. Further, any indemnity obligations of the Company which have occurred prior to the Implementation Date (whether in favour of or for the benefit of a person appearing in the List of Creditors or not) whether claimed or unclaimed, admitted or not, due or contingent, asserted or unasserted, known or unknown, disputed or undisputed, discovered prior to Implementation Date or after the Implementation Date, shall be deemed to be permanently extinguished with effect from the NCLT Approval Date by virtue of the order of the NCLT approving</p>	<p>Granted, subject to the various terms contained in this order.</p> 

	this Resolution Plan and the Company or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.	
14	All claims or demands in connection with or against the Company and all liabilities or obligations of the Company (including any demand for any losses or damages or in connection with any third party claims or any investigations by any Governmental Agencies) both present and future (accruing in relation to any event prior to the Implementation Date) by or to any other stakeholder (who is entitled to receive any amounts under Section 53 of the Code including those under Section 53(1)(f) of the Code) or any other actual or potential creditor, any counter party, any subsidiary, joint venture or associate company or related party of the Company or a shareholder of the Company or the holder of any other securities of the Company prior to the Implementation Date, whether under law, equity or contract, whether claimed or unclaimed, admitted or not, due or contingent, crystallised or not, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the provisional balance sheet, the balance sheets of the Company or the profit and loss account statements of the Company or the list of creditors, and all inquiries, investigations or proceedings in relation to the foregoing, whether civil or criminal in relation to any period prior to the Implementation Date, shall to the extent not assigned/ novated/ transferred/ converted in accordance with this Resolution Plan, be written off in full and will be deemed to be permanently extinguished with effect from the NCLT Approval Date by virtue of the order of the NCLT approving this Resolution Plan and all the investigations, inquiries or show-cause, whether civil or criminal in relation to the foregoing shall be disposed of and the Company or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.	Granted, subject to the various terms contained in this order.
15	Corporate Debtor shall: (i) be treated as a widely held company for the purposes of section 79 read with sections 2(18) of the Income Tax Act 1961, and the change in	This is for the CBDT and other 

	<p>shareholding of the Corporate Debtor pursuant to this Resolution Plan shall not lead to lapse of brought forward losses of the Corporate Debtor; (ii) be provided waiver from all Tax dues including any interest and penalties; (iii) be provided relief from all past litigations pending at different levels; and (iv) be allowed write-offs of assets (if any) as a tax deduction in the year of such write-off.</p> <p>All MAT credit of the Company will continue with the Company (on a going concern basis) and will be available for the benefit of the Corporate Debtor.</p>	<p>appropriate authorities to consider keeping in view the object of IBC, 2016</p>
16	<p>The Resolution Applicant shall be exempt from income / gain / profits, if any, arising as a result of giving effect to the Resolution Plan from being subjected to tax under the provisions of the Income Tax Act, 1961. The Corporate Debtor and / or the Resolution Applicant shall not be liable to pay any minimum alternative tax under the relevant provisions of the Income-tax Act, 1961 arising as a result of the actions taken on the steps as set out in the Resolution Plan which is approved by the NCLT. To carry forward its accumulated Tax losses, the Corporate Debtor shall be permitted recourse to the third proviso to Section 79(2)(c) of the IT Act. It is further expressly clarified that any procedural or other regulatory non-compliance by the Corporate Debtor, including but not limited to belated filing of any tax return, etc., shall not in any manner affect its entitlement to claim carry forward and set off of accumulated Tax losses and/ or unabsorbed depreciation.</p>	<p>This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016</p>
17	<p>Commissioner of Income Tax having jurisdiction over the Corporate Debtor to provide such Principal Commissioner or Commissioner of Income Tax with an opportunity of being heard (Section 79 Notice). If no representation is received from the Principal Commissioner or Commissioner of Income Tax within 30 (thirty) days of issuance of the Section 79 Notice or the Approval Date, whichever is earlier, it shall be deemed that the Principal Commissioner or Commissioner of Income Tax has no objections to the Corporate Debtor carrying forward its accumulated Tax losses and such notice shall be treated as accorded a</p>	<p>This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016</p> 


	reasonable opportunity of being heard to the Principal Commissioner or Commissioner of Income Tax in relation to the Resolution Plan.	
18	The transactions contemplated under this Resolution Plan (including a potential Merger) shall not be considered void under any Applicable Laws, including without limitation, Section 281 of the Income Tax Act, 1961 and Section 81 of the Central Goods and Service Tax Act, 2017.	This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016
19	Resolution Applicant shall have no liability under Applicable Laws, including pursuant to Section 170 of the Income Tax Act, 1961 and no successor liability shall be imposed on the Resolution Applicant and the Corporate Debtor.	This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016
20	Respective Governmental Authorities (including but not limited to the Central Board of Direct Taxes, Central Board of Excise and Customs / respective Value Added Tax / GST Authorities, tribunals, arbitral body, land revenue records, stamp authorities) shall provide relief from applicability of and payment of Taxes (including under the provisions of Goods and the Services Taxes) which may arise as a result of implementation of this Resolution Plan either on the Resolution Applicant or the Corporate Debtor or any other Person who is likely to be impacted due to the implementation of this Resolution Plan (including but not limited to Sections 50B, 50C, 50CA, 50D and 56 under the Income Tax Act as well as the Central Goods and Services Tax Act, 2017 and the provisions of the Indian Stamp Act, 1899 and other laws relating to payment of stamp duty applicable in any state).	This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016



21	To grant exemption from the applicability of income tax provisions (including section 41(1) or section 28 of the Income Tax Act) in respect of remission / cessation of the liability, if any, to the Company, for the purposes of implementation of this Resolution Plan.	This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016
22	<p>To provide relief to the Company from all past litigations up to the date of implementation of this Resolution Plan pending at different levels and provide waiver from all tax dues including interest, penalty & prosecution for all historic disclosed tax dues and undisclosed tax dues. All pending notices, assessment order, pending summons and pending assessments (including those set out in the table below) towards the Company would be treated as closed. Further no action would be taken for any action / transaction carried out before the Implementation Date.</p> <p>It is clarified that no tax (including interest & penalty) would be paid for any liability or claim raised or non-compliance for period up to the Implementation Date. Further, any re assessment, revision or other proceedings under the provisions of the Income Tax Act would be deemed to be barred in relation to any period prior to the Implementation Date, by virtue of the order of the NCLT approving this Resolution Plan and the Company or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.</p>	Granted, subject to the provisions of the Companies Act, 2013 and other applicable laws
23	To provide relief to the Company for any tax liability (including interest & penalty) arising on account of Return of Income for FY 2019-20 and any tax liability up to the Implementation Date (including any liability on account of IGAAP accounting being followed for the purpose of computing taxable income instead of statutorily required IND AS method of accounting).	This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016



24	All expenses claimed by the Company in the preceding eight years and returns as submitted or not submitted to be treated as assessed and all carry forward losses and depreciation to be treated as allowed.	This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016
25	All pending litigation, notices, past and on-going assessments, past and on-going investigations, tax demands under all Indirect Tax statutes (including those set out in the table below), towards the Company would be treated as closed and no further action would be taken for any action / transaction carried out before the implementation of this resolution plan. It is clarified that no tax (including interest and penalty) would be paid for any liability or claim raised for period up to the Implementation Date.	This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016
26	To provide relief to the Company for any non-compliances under all Indirect Tax statutes for the period prior to the Implementation Date.	This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016
27	To provide relief against any tax dues, along with interest and penalty (including all historic disclosed tax dues and undisclosed tax dues, whether assessed or not, whether a demand has been raised or not, whether claimed or unclaimed, admitted or not, crystallized or not, known or unknown, disputed or undisputed, present or future) under any Indirect Tax statute up to the Implementation Date. All such tax dues along with interest and penalty for the period up to the Implementation Date, shall be written off in full and will be deemed to be permanently extinguished and the Company shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto;	This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016



28	The Company shall not be liable in any manner whatsoever or otherwise prosecuted (threatened, impleaded or otherwise) as a result of, arising from or in connection with, any transaction, act, omission, commission, default, (whether identified or unidentified) of the Company or Existing Promoters, subsidiary companies and/or group companies of the Company, for the period prior to and up to the Implementation Date;	Granted
29	The Company shall not be liable in any manner whatsoever or otherwise prosecuted (threatened, impleaded or otherwise) as a result of any tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized, any contravention of any provisions of any Indirect Tax acts or the rules made thereunder as may be prescribed, by the Company or Existing Promoter, subsidiary companies and/or group companies of the Company for the period up to the Implementation Date;	This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016
30	The Company shall be entitled to carry forward the accumulated input tax credit balances under the Indirect Tax laws and to utilize such amounts to set off against tax liability arising in future in accordance with Applicable Laws;	This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016
31	All benefits, exemptions, deductions, rebates, reliefs, credits etc. under any tax laws in India available to the Company shall not lapse pursuant to the Resolution Plan and shall be available post the Implementation Date.	Not Granted



32	All proceedings, investigations, inquiries, etc. made, commenced or initiated by any person (including SEBI, ED, SFIO, ROC, CLB, CBI etc) against the Company in relation to the period prior to the Closing Date shall irrevocably and unconditionally stand abated, withdrawn, settled and/or extinguished, and the Company, Resolution Applicant shall have no liability in this regard.	Granted, in terms of Section 32A of IBC, 2016
33	All the civil and criminal litigations, investigations, enquires, proceedings, causes of action, claims, disputes or other judicial, regulatory proceedings against the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future, in relation to any period on or before the Closing Date or on account of the Resolution Applicant being in control of the Corporate Debtor pursuant to this Resolution Plan shall stand extinguished.	Granted
34	Existing Promoters, shareholders, managers, directors, officers, employees, workmen or other personnel of the Company shall continue to be liable for all the liabilities, claims, demand, obligations, penalties etc. arising out of any proceedings, inquiries, investigations, orders, show cause, notices, suits, litigation etc. (including any orders that may be passed by the NCLT pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73, 74 of the Code) post the approval of the Resolution Plan by the NCLT on account of any transactions entered into, or decisions or actions taken by, such Existing Promoters, shareholders, managers, directors, officers, employees, workmen or other personnel of the company, and the Company or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.	Granted, subject to the various terms contained in this order.
35	All present and future, claims, dues, liabilities, amounts, arrears, dividends or obligations owed or payable by the Company to the existing promoters or any subsidiary, associate company, related party, joint ventures, affiliate of the Company or any such entity or person controlled by the existing promoters (or any lenders or financial creditors of such persons) or any holder of any securities (whether	Granted in terms of the judgment of the Hon'ble Supreme Court

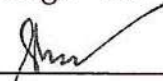
	convertible into equity shares or not) of the Company prior to the Implementation Date whether claimed or unclaimed, admitted or not, due or contingent, asserted or unasserted, crystallised or not, known or unknown, secured or unsecured, disputed or undisputed, whether or not set out in the provisional balance sheet, the balance sheets of the Company or the profit and loss account statements of the Company or the list of creditors, will be deemed to be written off in full and be permanently extinguished by virtue of the order of the NCLT approving this Resolution Plan and the Company (including its subsidiaries, associates, joint ventures or affiliates) or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.	in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i> 2021 SCC Online SC 313
36	Any person that other than as disclosed under the Information Memorandum and the list of creditors, there are no persons having the benefit of "security interest" as defined under Section 3 (31) of the Code over the assets of the Company, and if any, all such security interest over the assets of the company to the extent not assigned / novated / transferred / converted in accordance with this Resolution Plan are hereby waived and released unconditionally without any cost or liability of the Company.	Granted
37	Any person that other than the payments contemplated in this Resolution Plan, the Resolution Applicant and/or the Company shall not be liable to make any payments for any and all claims, demands, liabilities or obligations owed or payable as on the Implementation Date to any Operational Creditor, Financial Creditor, workmen, employees, Governmental Authority or to any other stakeholder of the Company in relation to any period prior to the Implementation Date, or any amounts that are due and payable on account of any ongoing litigation against the Company (including in relation to the PF Trust and Employees Trust Petition) which relates to the period prior to the Implementation Date and all such claims, demands, liabilities or obligations shall to the extent not assigned/novated/ transferred/ converted in accordance with this Resolution Plan, be deemed to be permanently extinguished/	Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i> 2021 SCC Online SC 313

	<p>waived, and neither the Company nor the Resolution Applicant shall have no liability to make any payments to such Person with respect to such liability. The Company shall not be liable to make any payments for any and all claims, demands, liabilities or obligations owed or payable by the Company, which are pending adjudication or in appeal before any administrative or judicial authority (including in relation to the PF Trust and Employees Trust Petition), and on and from the NCLT Approval Date any related claims, demands, liabilities or obligations of the Company in connection thereto shall be permanently discharged or extinguished.</p>	
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J. PAYMENT TO THE OPERATIONAL CREDITORS

11.1. In so far as the payments related to the Operational Creditors (other than Employees and Workmen) are concerned the Resolution Applicant through an SPV proposes to pay INR 2 Crores to these Operational Creditors within 30 days of NCLT approval date. Upon receipt of consideration, all the Operational Creditor's claims, whether claimed or not, shall mandatorily be deemed to be assigned / transferred / conveyed to the SPV by virtue of the NCLT approval order. The outstanding dues of such Operational Creditors shall be deemed to be assigned to SPV at NIL consideration. All material proceedings before all and any Court / legal forum shall abate on the date of Resolution Plan approval by the NCLT.

11.2. In this regard, a question was posed by this Tribunal to the RP that the Resolution Applicant has proposed to assign the



outstanding dues of the Operational Creditors to the SPV at a NIL consideration and whether the non – extinguishment of liability on the part of the Corporate Debtor after the approval of the Resolution Plan is against the provisions of IBC, 2016. In response to the same, the Resolution Applicant has filed an Affidavit dated 21.11.2022 in IA(IBC)/489(CHE)/2022, which states as follows:

a. The SPV or the RA shall further infuse INR 8.93 Crore into the Corporate Debtor in form of quasi – equity, in addition to INR 385.07 Cores. Thereafter, the Corporate Debtor will pay an amount of INR 8.93 crore towards full and final satisfaction of the claims of the Operational Creditors thereby leading to extinguishment of all their rights under law and equity as against the Corporate Debtor / the SPV / the RA and therefore, there shall not be any requirement to assign the operational debt to the SPV and this shall be treated as part of the Resolution Plan.

11.3. The above-said Affidavit dated 21.11.2022 filed by the Resolution Applicant is taken on record. The dues of the Operational Creditors shall be paid by the SPV or RA, as the case may be, however, it is made clear that there shall be **NO assignment of the dues of the Operational Creditor to the RA or the SPV.** The Affidavit dated 21.11.2022 shall be treated as an integral part of the Resolution Plan, which is the subject matter of consideration in the present Application.



11.4. In respect of the Landlords of the Corporate Debtors are concerned, it is seen that multiple applications have been filed by the Landlords seeking payment of rent and other charges which is due and payable during the CIRP period, which are pending adjudication. If any orders are passed, then the same would be a part of the CIRP costs and will become due and payable. However, in relation to the same, it is seen that Clause 6.1 of the Resolution Plan contemplates a clause that states that *"Any CIRP costs in excess of the Amount proposed and over and above the contingency fund created by the Resolution Applicant shall be borne on actuals, but will be reduced from the amount payable to the Financial Creditors."*

K. PAYMENT OF DUES OF THE STATUTORY AUTHORITIES

12.1. In so far as the dues of the Statutory authorities are concerned, it is seen that the RP has admitted the claim of the 'Statutory Authorities' to the tune of Rs.139,88,18,326/-. As against the said admitted claim amount, the Resolution Applicant intends to pay a total consideration of Rs.1 Crore to the Statutory Authorities in discharge of their claims. A statement showing the details of the claims received from the statutory authorities and the claim admitted along with break – up is extracted hereunder;



SL. NO.	STATUTORY AUTHORITIES	AMOUNT CLAIMED (RS. IN CRORE)	AMOUNT ADMITTED (RS. IN CRORE)
1	EPFO	69.15	24.39
2	ESI	15.56	10.63
3	Sales Tax / GST	23.84	20.66
4	Income Tax & TDS	506.73	84.16
5	Others	0.04	0.04
	Total	615.32	139.88

12.2. From the above table, it could be seen that the RP has admitted the claims of the Statutory authorities to the tune of Rs.139.88 Crores. As per the terms of the Resolution Plan, the Resolution Applicant has proposed to pay a lump sum of Rs.1 Crore to the 'Statutory Authorities'.

12.3. At this juncture, it is significant to refer to the Judgment of the Hon'ble NCLAT in the matter of **Jet Aircraft Maintenance Engineers Welfare Association -Vs-Ashish Chhawchharia Resolution Professional of Jet Airways (India) Ltd. and Others**; 2022 SCC OnLine NCLAT 418 wherein it has been held that non-payment of the dues of the Employees Provident Fund Organization in full would amount to breach of the provision of Section 30(2)(e) of IBC, 2016. Further, by relying upon the Judgment of the Hon'ble Supreme Court in the matter of **Maharashtra State Cooperative Bank Limited -Vs- Assistant Provident Fund Commissioner**; (2009) 10 SCC 123, it has been held by the Hon'ble NCLAT that any amount due from the employer appearing in sub-section (2) of Section 11 also covers

the amount determined under Sections 7A, 7Q, 14B and 15(2) and there cannot be any quarrel to the proposition as laid down by the Hon'ble Supreme Court in the above case. Also, by placing reliance upon Section 36(4)(a)(iii) of IBC, 2016 it was held that Provident Fund dues are not subject to distribution under Section 53(1) of IBC, 2016.

12.4. In so far as the present case is concerned, it is seen that the EPFO has claimed a sum of Rs.69.15 Crores, and the RP has admitted the claim of the EPFO to the tune of Rs.24.39 Crore. As per the Resolution Plan, the Resolution Applicant proposes to pay only a sum of Rs. 0.17 Crore to the EPFO. If the dues of the EPFO are not paid in full it goes against the dictum laid by the Hon'ble NCLAT in the matter of **Jet Aircraft Maintenance Engineers Welfare Association**(*supra*) and as such it is in violation of Section 30(2)(e) of IBC, 2016.

12.5. Further, it is also seen that the EPFO department has also filed a total of 11 IA's viz. IA/799/2022, IA/997/2022, IA/1011/2022, IA/1012/2022, IA/1024/2022, IA/1027/2022, IA/1028/2022, IA/1088/2022, IA/1208/2022, IA/1214/2022, IA/1303/2022 as against the rejection of the claim and the same is also pending adjudication before this Tribunal.

12.6. Hence, under the said circumstances, since the EPFO has claimed a sum of Rs.69.15 Crore and the RP has admitted the

claim of EPFO to the tune of Rs.24.39 Crore, in terms of the dictum laid down by the Hon'ble NCLAT in the matter of **Jet Aircraft Maintenance Engineers Welfare Association** (*supra*), the RP is directed to pay the admitted dues of the EPFO to the tune of Rs.24.39 Crore. Further, we also direct the RP to earmark a sum of **Rs.44.76 Crore** (*Rs.69.15 Crore – Rs.24.39 Crore*) i.e. the **disputed amount** to be kept in a separate **No lien** Account maintained in **IDFC First Bank, Indira Nagar, Adyar branch**, till such time final orders are being passed in the above referred 11 (eleven) IA's filed by EPFO. The remaining amount of Rs.450.85 Crore shall be distributed to the stakeholders of the Corporate Debtor in accordance with Section 53 of IBC, 2016. This we order to enable the resolution plan to go forward and adjudicate disputed issues separately. This will ensure the better implementation of the Resolution Plan.

L. ANALYSIS AND FINDINGS OF THIS TRIBUNAL

13. It is seen from Form – H that the Liquidation value of the Corporate Debtor has been arrived at Rs.115.18 Crore and the Fair value is arrived at Rs.175.12 Crore. The Resolution Applicant proposes to infuse a sum of Rs. 520 Crore into the Corporate Debtor. It is further seen from Form – H that RP has filed Applications under Section 66 of IBC, 2016, and the same is pending adjudication before this Tribunal.

14. In so far as the fate of these Applications are concerned, Clause 6.5 of the Resolution Plan states as follows;

Treatment in respect of subsidiaries:

- a)
- b) *The Committee of Creditors shall however retain its rights only to the limited purpose to pursue any application for PUFEE transaction filed under the Code without any additional liability to the Corporate Debtor / Resolution Applicant. In case the Corporate Debtor / Resolution Applicant has to incur any cost in order to support the CoC with respect to such application, CoC shall bear such expenses.*

15. Further, the Division Bench of the Hon'ble High Court of Delhi in the matter of **Tata Steels BSL Limited-Vs- Venus Recruiters Private Limited & Ors.; 2023/DHC/00025** while dealing with the continuation of PUFEE transaction Applications after the completion of CIRP, has held as follows;

"89. Conclusion


- a)
- b) CIRP and avoidance applications, are, by their very nature, a separate set of proceedings wherein, the former, being objective in nature, is time bound whereas the latter requires a proper discovery of suspect transactions that are to be avoided by the Adjudicating Authority. The scheme of the IBC reinforces this difference. Accordingly, adjudication of an avoidance application is independent of the resolution of the corporate debtor and can survive CIRP
- c) The endeavour of the IBC and its rules and regulations is to ensure that all processes within the insolvency framework are

time efficient. While the law mandates a resolution plan to necessarily provide for the treatment of avoidance applications if the same are pending at the time of submission of resolution plans, it cannot be accepted that avoidance applications will be rendered infructuous in situations wherein the resolution plan could not have accounted for avoidance applications due to exigencies that delayed initiation of action in respect of avoidable transactions beyond the submission of a resolution plan before the adjudicating authority. This is because such an interpretation will render the provisions pertaining to suspect transactions otiose and let the beneficiaries of such transactions walk away, scot-free. Money borrowed from creditors is essentially public money and the same cannot be appropriated by private parties by way of suspect arrangements. Therefore, in cases such as the present one, wherein such transactions could not be accounted, the Adjudicating Authority will continue to hear the application. Such benefit cannot be given in cases where the RP had already applied for prosecution of avoidance applications and the applicant ought to have been cognizant of pending avoidance applications but did not account for the same in its resolution plan.

- d)
- e)
- f)"

Hence in the present case, the PUFEE Transactions applications shall be continued to be prosecuted by the CoC.

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

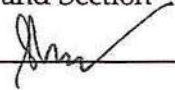


“19.....In the present case, however, our focus must be on the dispensation governing the process of approval or rejection of resolution plan by the CoC. The CoC is called upon to consider the resolution plan under Section 30(4) of the I&B Code after it is verified and vetted by the resolution professional as being compliant with all the statutory requirements specified in Section 30(2).

62.In the present case, however, we are concerned with the provisions of I&B Code dealing with the resolution process. The dispensation provided in the I&B Code is entirely different. In terms of Section 30 of the I&B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC and they express their opinion on the proposed resolution plan in the form of votes, as per their voting share. In the meeting of the CoC, the proposed resolution plan is placed for discussion and after full interaction in the presence of all concerned and the Resolution Professional, the constituents of the CoC finally proceed to exercise their option (business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, non-recording of reasons would not per-se vitiate the collective decision of the financial creditors. The legislature has not envisaged challenge to the “commercial/business decision” of the financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count.”

17. Further, the Hon’ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steels –Vs– Satish Kumar Gupta & Ors. in Civil Appeal No. 8766 – 67 of 2019** at para 42 has held as follows;

42.Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of Section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and Section



32 read with Section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra).

18. Further the Supreme Court in the matter of **K. Sashidhar v. Indian Overseas Bank and Ors.** (2019) 12 SCC 150 has lucidly delineated the scope and interference of the Adjudicating Authority in the process of approval of the Resolution Plan and held as follows;

“55. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite per cent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides: (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the

resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.

58. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with Section 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters "other than" enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers."

(emphasis supplied)

19. Also, the Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Ors.** (2020) 8 SCC 531 after referring to the decision in *K. Sashidhar (supra)* has held as follows;

"73. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or sub-class of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the

resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal."

(emphasis supplied)

20. The Supreme Court in its recent decision in **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Ltd. & Ors.** in *Civil Appeal no. 3395 of 2020* dated 24.03.2021 has held as follows;

76. The expositions aforesaid make it clear that the decision as to whether corporate debtor should continue as a going concern or should be liquidated is essentially a business decision; and in the scheme of IBC, this decision has been left to the Committee of Creditors, comprising of the financial creditors. Differently put, in regard to the insolvency resolution, the decision as to whether a particular resolution plan is to be accepted or not is ultimately in the hands of the Committee of Creditors; and even in such a

decision making process, a resolution plan cannot be taken as approved if the same is not approved by votes of at least 66% of the voting share of financial creditors. Thus, broadly put, a resolution plan is approved only when the collective commercial wisdom of the financial creditors, having at least 2/3rd majority of voting share in the Committee of Creditors, stands in its favour.

77. In the scheme of IBC, where approval of resolution plan is exclusively in the domain of the commercial wisdom of CoC, the scope of judicial review is correspondingly circumscribed by the provisions contained in Section 31 as regards approval of the Adjudicating Authority and in Section 32 read with Section 61 as regards the scope of appeal against the order of approval.

77.1. Such limitations on judicial review have been duly underscored by this Court in the decisions above-referred, where it has been laid down in explicit terms that the powers of the Adjudicating Authority dealing with the resolution plan do not extend to examine the correctness or otherwise of the commercial wisdom exercised by the CoC. The limited judicial review available to Adjudicating Authority lies within the four corners of Section 30(2) of the Code, which would essentially be to examine that the resolution plan does not contravene any of the provisions of law for the time being in force, it conforms to such other requirements as may be specified by the Board, and it provides for: (a) payment of insolvency resolution process costs in priority; (b) payment of debts of operational creditors; (c) payment of debts of dissenting financial creditors; (d) for management of affairs of corporate debtor after approval of the resolution plan; and (e) implementation and supervision of the resolution plan.

77.2. The limitations on the scope of judicial review are reinforced by the limited ground provided for an appeal against an order approving a resolution plan, namely, if the plan is in contravention of the provisions of any law for the time being in force; or there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period; or the debts owed to the operational creditors have not been provided for; or the

insolvency resolution process costs have not been provided for repayment in priority; or the resolution plan does not comply with any other criteria specified by the Board

77.6.1. The assessment about maximisation of the value of assets, in the scheme of the Code, would always be subjective in nature and the question, as to whether a particular resolution plan and its propositions are leading to maximisation of value of assets or not, would be the matter of enquiry and assessment of the Committee of Creditors alone. When the Committee of Creditors takes the decision in its commercial wisdom and by the requisite majority; and there is no valid reason in law to question the decision so taken by the Committee of Creditors, the adjudicatory process, whether by the Adjudicating Authority or the Appellate Authority, cannot enter into any quantitative analysis to adjudge as to whether the prescription of the resolution plan results in maximisation of the value of assets or not. The generalised submissions and objections made in relation to this aspect of value maximisation do not, by themselves, make out a case of interference in the decision taken by the Committee of Creditors in its commercial wisdom

78. To put in a nutshell, the Adjudicating Authority has limited jurisdiction in the matter of approval of a resolution plan, which is well defined and circumscribed by Sections 30(2) and 31 of the Code read with the parameters delineated by this Court in the decisions above referred. The jurisdiction of the Appellate Authority is also circumscribed by the limited grounds of appeal provided in Section 61 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by the CoC. Within its limited jurisdiction, if the Adjudicating Authority or the Appellate Authority, as the case may be, would find any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by Code and exposted by this Court.



21. Thus, from the catena of judgments rendered by the Supreme Court on the scope of approval of the Resolution Plan, it is amply made clear that only limited judicial review is available for the Adjudicating Authority under Section 30(2) and Section 31 of IBC, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the Committee of Creditors. We find that the CoC has taken into consideration its relevant parameters before approving the plan.

22. 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 97.90% 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 Adjudicating Authority. 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

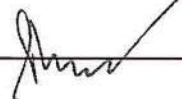


(Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Hence, there is no impediment in approving the plan.

23. 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.

24. In case of non-compliance with any part of this order or withdrawal from implementing the Resolution Plan by the Successful Resolution Applicant, the CoC shall forfeit the Performance Security furnished by the Resolution Applicant in the form of Performance Bank Guarantees and the Resolution Applicant will be subjected to such other action / actions as permissible under the law.

25. The Resolution Plan is hereby **Approved** by this Adjudicating Authority, **subject to the observations made in para 11.3 and 12.6 as above and in terms of this order.** The Resolution Plan dated 02.02.2022 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.

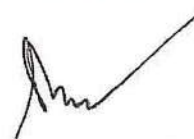


The Moratorium imposed under section 14 shall cease to have effect from the date of this Order. All authorities are bound by this Order to enable the effective implementation of this Order.

26. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and originals to be handed over to the Resolution Applicant or New Promoters. The Resolution Professional is further directed to hand over all records, premises/factories/documents to the Resolution Applicant to enable the further line of action required for starting the operation of the Corporate Debtor under the control of the Resolution Applicant and assist to get necessary changes in statutory and non-statutory records, so as to give effect to the approved Resolution Plan.

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

28. Liberty is hereby granted to the concerned and necessary party for moving any Application if required in connection with the implementation of this Resolution Plan.



29. A copy of this Order is to be submitted to the Office of the Registrar of Companies, Chennai for compliance as per law.

30. The Resolution Professional, Mr. S. Rajendran shall stand discharged from his duties with effect from the date of this Order.

31. The Regional Director (Southern Region), Ministry of Corporate Affairs is hereby directed to ensure statutory compliance like allotting a new CIN number to the successful Resolution Applicant and ensure a fresh start.

32. IA(IBC)/288/CHE/2022 is **ordered** as above.

33. The *Registry* is directed to send e-mail copies of this order forthwith to all the parties and to their Counsel if information is available. Files to be consigned to the record after following the procedure prescribed.

-Sd

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

Justice RAMALINGAM SUDHAKAR
PRESIDENT

Raymond