

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

**IA No.59/2023
IN CP (IB) NO.85/ALD/2020**

In the matter of

An application under Section 30(6) & 31 of Insolvency & Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with Rule 11 of NCLT Rules, 2016

In the matter of:

BHRUGESH AMIN,
Resolution Professional of
Lanco Mandakini Hydro Energy Private Limited
BDO India LLP, Level 9, The Ruby,
North-West Wing, Senapati Bapat Marg,
Dadar (W), Mumbai - 400028

.....Applicant/ Resolution Professional

And in the matter of:

AXIS BANK LIMITED

.....Financial Creditor

Versus

LANCO MANDAKINI HYDRO ENERGY PVT. LTD.

.....Corporate Debtor

Order pronounced on 23.03.2022

Coram:

Mr. Praveen Gupta : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Counsel Appeared Through Video Conferencing/ Physical Hearing (Hybrid Mode):

*For the Applicant in IA No. 59/2023: Sh. Amit Saxena Sr.
Counsel assisted by Sh. Yash Tandon, Adv*

Per: Praveen Gupta, Member (Judicial)

ORDER

Preliminary

1. The present interlocutory application bearing IA. No. 59/2023 was moved on behalf of Mr. Bhruvish Ramchandra Amin, Resolution Professional (“**RP**”) of Lanco Mandakini Hydro Energy Pvt. Ltd. (under the provisions of Sections 30(6) and 31(1) of the Insolvency & Bankruptcy Code, 2016 [hereinafter referred to as “**the Code**” or “**IBC**”] read with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”) for approval of the Resolution Plan in respect of Lanco Mandakini Hydro Energy Pvt. Ltd. (“**Corporate Debtor**”).
2. The corporate debtor is engaged in the production of electricity from hydropower.
3. The underlying Company Petition CP (IB) No.85/ALD/2020 filed by the Axis Bank Limited under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (“**CIRP**”) against the Corporate Debtor namely Lanco Mandakini Hydro Energy Pvt. Ltd. which was admitted by this Adjudicating

Authority *vide* its order dated 11.06.2020 (“**Admission Order**”). On that date, *i.e.*, 11.06.2020 (“**Insolvency Commencement Date**”) Mr. Bhrugesh Ramchandra Amin (IBBI Reg. No-IBBI/IPA-002/IP-N00353/2017-2018/11003) was appointed as IRP. Subsequently, he was appointed as the Resolution Professional in a CoC meeting dated 13.07.2020.

Collation of claims by RP

4. It is stated in Resolution Plan that the public announcement was made on 12.06.2020 in widely circulated newspapers, he called for proof of claims from the creditors of the Corporate Debtor, and informed lenders to submit their claims as envisaged under the Code.
5. The list of Financial Creditors and distribution of the voting share among them is as under:

Financial Creditors	Voting Share
Canara Bank	23.21%
Punjab National Bank	49.68%
Axis Bank	16.41%
Bank of Baroda	10.70%
Total	100%

6. The details of claims submitted are as follows:

Particulars	Amount Claimed in Cr. Rupees	Claim Admitted in Cr. Rupees
Secured Financial Creditors	1,311.51	1,311.51
Unsecured Financial Creditors	NIL	NIL
Workmen & Employees	0.15	0.15
Pre-CIRP Dues for Workmen & Employees including termination/retirement benefits	2.48	2.48
Government Dues	NIL	NIL
Operational Creditors	2.35	1.43
Total	1,314.02	1,313.09

7. The RP submits that a total of 32 CoC meetings have been held during the whole CIRP period.

Evaluation and voting

8. It is stated in the Resolution plan that the First Request for Resolution plan (**First RFRP**) was issued by the Resolution professional in consultation with the CoC and pursuant to its approval vide voting dated 19.11.2020. Subsequently the First RFRP was amended thrice on 27.01.2021, 23.03.2021 and 07.04.2021 respectively (collectively referred to as “**Amendments**”). The First RFRP and its Amendments were presented to potential Resolution Applicants who submitted their respective resolution plans for consideration by the CoC. However, the CoC exercised its commercial wisdom and rejected all the plans, leading the Resolution Professional to initiate liquidation proceedings as per the IBC provisions. The Resolution Professional then filed a liquidation application before this Tribunal. Meanwhile, a prospective Resolution Applicant filed an application before the Tribunal seeking permission to submit a resolution plan and participate in the CIRP of the Company. The Tribunal allowed the application vide order dated October 20, 2021, and directed the Resolution Professional to issue the RFRP, inviting resolution plans from Resolution Applicants and setting out timelines for completing the resolution process. The Tribunal modified some of the timelines and extended the time for completing the resolution process of the Company vide an order dated October 26, 2021. Accordingly, invitations for Expression of Interest (EoIs) in Form-G were published firstly on 23.10.2021 and then on 30.10.2021.
9. In pursuance thereto, the resolution professional received the Nine EoIs for submission of the Resolution plan. The PRAs who have

submitted EoIs are given under:-

Sl. No.	Name
1	AMPYR Renewable Energy Resources Ten Private Limited
2	Anirudh Agro Farms Limited
3	Kundan Care Products Limited
4	Manikaran Power Limited
5	ReNew Power Services Private Limited
6	Scatec Solar Netherlands BV
7	Shanti G.D. Ispat & Power Private Limited
8	StatKraft IH Holding AS
9	THDC India Limited

Two Resolution Applicants viz, *Statkraft IH Holding AS* and *Scatec Solar Netherlands BV* submitted their Resolution Plans. However, the Resolution Plan of Scatec Solar Netherlands BV was not considered by the CoC on account of commercial wisdom of the CoC Members

10. Resolution Applicant submitted addendum to resolution plan on January 27, 2022 (“Addendum” which has to be read with the Plan”)

11. After due discussions and deliberations on various occasions, in the 26th COC meeting dated 29.02.2022, to consider the Original Plan read with the First Addendum submitted by Statkraft IH Holding AS for voting purpose. The CoC also deliberated in

accordance with Section 30(4) and 30(6) of the Code read with CIRP Regulations, 2016. The e- voting on the compliant resolution plan commenced at 06:00 PM on 31.01.2022 and concluded on 25.02.2022.

12.The Resolution Plan submitted by the Successful Resolution Applicant i.e. Statkraft IH Holding AS was approved by a majority of 100% voting share by the CoC in the 26th COC meeting dated 29.02.2022. The 26th COC meeting was conducted on 29.02.2022. Minutes of the 26th CoC meetings have been reproduced hereunder;

“RESOLVED THAT Pursuant to Section 30(4) of Insolvency and Bankruptcy Code, 2016 read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and in accordance with any other provisions, rules and regulations made thereunder, approval of the members of the Committee of Creditors of Lanco Mandakini Hydro Energy Private Limited be and is hereby accorded to the Resolution Plan received on January 03, 2022 read with addendum to the resolution plan received on January 28, 2022 submitted by Statkraft IH Holding AS for Lanco Mandakini Hydro Energy Private Limited.

RESOLVED FURTHER THAT the Committee of Creditors hereby approves the distribution as stipulated in resolution plan submitted by Statkraft IH Holding AS for Lanco Mandakini Hydro Energy Private Limited as mentioned in **Annexure A.**

RESOLVED FURTHER THAT the Resolution Professional of Lanco Mandakini Hydro Energy Private Limited be and is hereby authorized to take such steps as may be necessary in relation to the above, if required and to settle all matters arising out of an incidental thereto and sign and execute all documents and writings that may be required and generally to do all acts, deeds, make payment and things that may be necessary, proper, expedient or incidental for the purpose of giving effect to the aforesaid resolution including filing necessary applications/affidavits with the Hon'ble NCLT for the same.”

13. The application for approval of the resolution plan by this Adjudicating Authority was filed by the RP by way of IA No.83/2022. However, vide order dated 23.11.2022, this Adjudicating Authority observed that certain provision of the Successful Resolution Plan were not in accordance with the objectives of the Code and hence, sent the Successful Resolution

Plan back to CoC for reconsideration on the points mentioned in the order and to check the overall viability and feasibility of the Plan. Subsequent, to this various meetings were held between the CoC of the Corporate Debtor and the Resolution Applicant. Consequent to the deliberation between the parties, the Applicant submitted a clarificatory letter to the Successful Resolution Plan dated 10.01.2023. This letter addressed all the concerns raised by this Adjudicating Authority in its order dated 23.11.2022. Thus, the Successful Resolution Plan has now entailed the Plan, addendum, letter and clarificatory letter. Pursuant to this in the 32nd CoC meeting dated 13.01.2023, the Successful Resolution Plan was put to vote and was approved with a 100% majority. The relevant portion of the 32nd COC meeting dated 13.01.2023 is reproduced hereunder:-

Resolution

TO CONSIDER AND APPROVE THE AFFIDAVIT ALONG WITH THE CLARIFICATORY LETTER DATED JANUARY 10, 2023, FOR REVISION TO THE RESOLUTION PLAN SUBMITTED BY STATKRAFT IH HOLDING FOR LANCO MANDAKINI HYDRO ENERGY PRIVATE LIMITED.

“**RESOLVED THAT** Pursuant to Section 30(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for

Corporate Persons) Regulations, 2016 and in accordance with any other provisions, rules and regulations made thereunder, approval of the members of the Committee of Creditors of Lanco Mandakini Hydro Energy Private Limited be and is hereby accorded to the Affidavit including clarificatory letter dated January 10, 2023. A copy of the executed affidavit including clarificatory letter dated January 10, 2023, is hereto and marked as **Annexure A.**

RESOLVED FURTHER THAT the Committee of Creditors hereby approves the distribution as stipulated in resolution plan submitted by Statkraft IH Holding AS for Lanco Mandakini Hydro Energy Private Limited as mentioned in **Annexure B.**

RESOLVED FURTHER THAT the Resolution Professional of Lanco Mandakini Hydro Energy Private Limited be and is hereby authorized to take such steps as may be necessary in relation to the above, if required and to settle all matters arising out of an incidental thereto and sign and execute all documents and writings that may be required

and generally to do all acts, deeds, make payment and things that may be necessary, proper, expedient or incidental for the purpose of giving effect to the aforesaid resolution including filing necessary applications/affidavits with the Hon'ble NCLT for the same.”

<i>Particulars of Votes Cast</i>			<i>Result Declared for the above resolution (Resolution No.1)</i>
<i>Particulars</i>	<i>Voting Share¹ (In Rs.)</i>	<i>Voting Share (In %)</i>	
<i>Votes Cast in favour</i>	<i>13,11,51,29,323</i>	<i>100%</i>	<i>Approved with requisite majority</i>
<i>Votes Cast against</i>	<i>-</i>	<i>-</i>	
<i>Votes Abstained</i>	<i>-</i>	<i>-</i>	
<i>Total</i>	<i>13,11,51,29,323</i>	<i>100%</i>	

14.A compliance Certificate in terms of prescribed Form H under regulation 39 (4) of the CIRP Regulations was filed before this tribunal.

15.Thus, as per the registered valuers report., the fair value of the corporate debtor is **Rs. 187.72/- Crores** and the liquidation value is **Rs. 123.60/- Crores**

Details of Resolution Plan/Payment Schedule

16. The successful Resolution Applicant i.e. Statkraft IH Holding AS is a company engaged in the engaged in the production of electricity from hydropower. The Resolution Applicant, i.e. Statkraft IH Holding AS is a 100% (one hundred percent) fully

owned subsidiary of Statkraft AS of Norway (i.e. the ultimate parent company), a leading company in hydropower internationally and largest renewable energy player of Europe. Statkraft AS is wholly owned by the Norwegian state, through the Ministry of Trade, Industries and Fisheries. The business activity of Statkraft AS through participation in or cooperation with other companies is to plan, build, construct, operate and own energy plants, buy and sell energy, and run operations that are naturally connected to these activities.

17. The amount proposed in the Resolution Plan are tabulated below:

Rupees in Crores

Sl. No.	Types of debts	Resolution Amount (In Crores)	Payment Term
1.	CIRP Cost	27.8	Within 90 days from the date of approval.
2.	Financial Creditors	1,311.51	Within 90 days from the date of approval.
3.	Operational Creditors (Trade payables)	NIL	NIL

Sl. No.	Types of debts	Resolution Amount (In Crores)	Payment Term
4.	Workmen/ Employees	0.15	Within 90 days from the date of approval.
5.	Pre-CIRP Dues for Workmen & Employees including termination/retirement benefits	2.48	Within 90 days from the date of approval.
6.	IBBI Statutory Fees	0.65	Within 90 days from the date of approval.
7.	Contingent Liabilities (Non Statutory)	NIL	NIL
8.	Statutory Dues as per Information Memorandum	NIL	NIL
9.	Infusion of funds for Capex	As per the wish of RA	As per the wish of RA

Estimated Total Amount Proposed to be brought in the

Corporate Debtor for the turnaround of the Corporate Debtor:-

Sl. No.	Particular	Rs. (In Crores)
A	CIRP Cost	27.8
B	Financial Creditors	1,311.51
C	Workmen & Employee /due/ claim retirement benefit	0.15
D	Operational Creditor	NIL
E	Other Creditor	NIL
F	Payment to outside party (A+B+C+D+E)	
G	Repairs/Refurbishment	
H	Working capital margin	
I	Total Fund Required (F+G+H)	

Sources of Funds

18. The Resolution Applicant proposes to invest the Upfront Capital Contribution, i.e. an amount of INR 180,00,00,000 in the Company, within 90 (ninety) days of approval of this Resolution Plan by the Adjudicating Authority for meeting the payment towards CIRP Costs, Outstanding Workmen and Employee Dues, upfront payment to the Financial Creditors and other stakeholders. Equity shares and/or quasi equity instruments will be issued by the Company to the Resolution Applicant against the investment of the Upfront Capital Contribution in accordance with Applicable Laws as per the Implementation Steps set forth in Annexure XV (Implementation Steps). An undertaking from the Resolution Applicant to the effect that it has the necessary financial resources available for supporting the Resolution Plan and for any further infusion/ contribution of funds into the Corporate Debtor is set forth in Annexure V.I (Undertaking on Source of Funds).

Compliance of the successful Resolution Plan with various provisions of the Code:

19. The Applicant has submitted the details of various compliances as envisaged by the Code and the CIRP Regulations which a Resolution Plan is required to adhere to, as follows:

Section/ Regulation as per IBC	Requirement	Resolution Plan Reference
<i>Under IBC</i>		
Section 29A	The Resolution Applicant to provide a confirmation that the Resolution Applicant is not disqualified from	Annexure IIIA

Section/ Regulation as per IBC	Requirement	Resolution Plan Reference
	submitting a Resolution Plan under Section 29A and other provisions of the IBC and any other Applicable Laws.	
The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan:		
Section 30(2)(a)	provides for the payment of insolvency resolution process costs in a manner specified by the IBBI in priority to the payment of other debts of the corporate debtor;	Paragraph 1 of Annexure V
Section 30(2)(b)	provides for the repayment of the debts of operational creditors in such manner as may be specified by the IBBI which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;	
Section 30(2)(c)	provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;	Section 10 and Annexure XV
Section 30(2)(d)	the implementation and supervision of the Resolution Plan;	
Section 30(2)(e)	does not contravene any of the provisions of the law for the time being in force;	Section 15
Section 30(2)(f)	conforms to such other requirements as may be specified by the IBBI.	Section 15
<i>Under Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016</i>		
Regulation 37	<p>Resolution plan shall provide for the measures, as may be necessary for insolvency resolution of the corporate debtor for maximization of value of its assets, including but not limited to:</p> <p>(a) transfer of all or part of the assets of the corporate debtor to one or more persons.</p> <p>(b) sale of all or part of the assets whether subject to any security interest or not.</p> <p>(c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger.</p>	Section 8 and Annexure V

Section/ Regulation as per IBC	Requirement	Resolution Plan Reference
	<p>(d) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;</p> <p>(e) cancellation or delisting of any shares of the corporate debtor, if applicable;</p> <p>(f) satisfaction or modification of any security interest;</p> <p>(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;</p> <p>(h) reduction in the amount payable to the creditors;</p> <p>(i) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;</p> <p>(j) amendment of the constitutional documents of the corporate debtor;</p> <p>(k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;</p> <p>(l) change in portfolio of goods or services produced or rendered by the corporate debtor;</p> <p>(m) change in technology used by the corporate debtor; and</p> <p>(n) obtaining necessary approvals from the Central and State Governments and other authorities.</p>	
A resolution plan shall identify specific sources of funds that will be used to pay the:		
Regulation 38(1)	<p>Amount payable under a resolution plan:</p> <p>(a) to the operational creditors shall be paid in priority over financial creditors; and</p> <p>(b) to the financial creditors, who have a right to vote and did not vote in favour of the resolution plan,</p>	Paragraph 1 of Annexure V and Section 8.1(e)

Section/ Regulation as per IBC	Requirement	Resolution Plan Reference
	shall be paid in priority over financial creditors who voted in favour of the plan.	Paragraph 4(k) of Annexure V and Section 8.1(f)
Regulation 38 (1A)	Resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.	Section 14
Regulation 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.	Not applicable as stated in Section 4.3 and Annexure VI
The resolution plan shall provide for:		
Regulation 38 (2) (a)	the term of the plan and its implementation schedule.	Section 11
Regulation 38 (2) (b)	the management and control of the business of the corporate debtor during its term.	Section 10
Regulation 38 (2) (c)	adequate means for supervising its implementation	Section 10
A resolution plan shall demonstrate that:		
Regulation 38(3) (a)	it addresses the cause of default.	Section 8 and Annexure V
Regulation 38(3) (b)	it is feasible and viable.	Section 8 and Annexure V
Regulation 38(3) (c)	it has provisions for its effective implementation.	Section 10
Regulation 38(3) (d)	it has provisions for approvals required and the timeline for the same.	Annexure XIX

Section/ Regulation as per IBC	Requirement	Resolution Plan Reference
Regulation 38(3) (e)	the resolution applicant has the capability to implement the resolution plan.	Section 4 and Section 5

20. The Applicant submits that the successful resolution applicant has submitted an affidavit in regard to the eligibility under section 29A of the Code, as required by Regulation 39(1)(a) of the CIRP Regulations. An undertaking has also been submitted by the successful Resolution Applicant, as mandated in terms of regulation 39(1)(c) of the CIRP Regulations. The affidavit under section 29 A is at pg no. 325 in the application which is reproduced there under:-

“ We, Statkraft IH Holding AS (“**Resolution Applicant**”), in accordance with Section 29A of the IBC, irrevocably and unconditionally declare to the Resolution Professional/CoC that the Resolution Applicant or any person acting jointly or in concert with the Resolution Applicant:

- (a) is not an undischarged insolvent;
- (b) has not been identified as wilful defaulter in accordance with the guidelines of RBI issued under the Banking Regulation Act, 1949 (the “**BR Act**”);
- (c) at the time of submission of the Resolution Plan, any of the account(s) of the Resolution Applicant or an account of the Corporate Debtor under the management

or Control of the Resolution Applicant (if any) or of whom the Resolution Applicant is a promoter, has not been classified as non-performing asset in accordance with the guidelines of the RBI issued under the BR Act, or the guidelines of a financial sector regulator issued under any other law for the time being in force, such that a period of 1 (one) year or more has lapsed from the date of such classification till the date of commencement of the CIRP of the Corporate Debtor and the Resolution Applicant has not failed in making payment of any overdue amounts with interest thereon and charges relating to non-performing asset before submission of Resolution Plan;

(d) has been convicted for any offence punishable with imprisonment –

(i) for two years or more under any Act specified under the Twelfth Schedule; or

(ii) for seven years or more under any law for the time being in force:

(e) has not been disqualified to act as a director under the Companies Act, 2013;

(f) has not been prohibited by SEBI from trading in securities or accessing the securities markets;

(g) has not been a promoter or in the management or Control of a corporate debtor in which a preferential

transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code;

(h) has not executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part; or

(i) has not been subject to any disability, corresponding to clauses (a) to (h) above, under any law in a jurisdiction outside India; and

We, Statkraft IH Holding AS, further irrevocably and unconditionally declares to the Resolution Professional/ Committee of Creditors that no person who is a connected person of the Resolution Applicant or any person acting jointly or in concert with the Resolution Applicant, i.e. (i) any Person who is a promoter or who is in management or Control of the Resolution Applicant; (ii) any Person who shall be the promoter or in management and Control of the business of the Company during the implementation of the Resolution Plan; and (iii) the holding company, subsidiary company, Associate Company or related party of any Person referred to in (i) and (ii) hereinbefore, meets any of the criteria specified in clause (a) to (i) hereinabove. A list of all

the persons acting jointly or in concert with the Resolution Applicant and Connected Persons of the Resolution Applicant and Connected Persons of the persons acting jointly or in concert with the Applicant is set out in **Annexure IIIA.1** hereto (the list set-out therein is exhaustive in all respects and the names of all the Connected Persons have been set out thereunder without any omission whatsoever).”

The Applicant has filed a Compliance Certificate in prescribed Form, i.e. Form ‘H’ in compliance with Regulation 39(4) of the CIRP Regulations. The RP has issued the Letter of Intent dated 25.02.2022 to the Successful Resolution Applicant and the Successful Resolution Applicant provided the Performance Bank Guarantee of Rs. 20,00,00,000/- (Rupees Twenty Crores Only) through Bank Guarantee dated **01.03.2022** is annexed as Annexure-G at pg no 226-230 which is required under Regulation 36B (4A) of CIRP Regulations, 2016. It is submitted by the RP that the PBG expires on **28.02.2023**.

Details of Resolution Plan/ Payment Schedule

21. The Applicant submits the relevant information about the amount claimed, the amount admitted, and the amount proposed to be paid by the Successful Resolution Applicant, *i.e.*, **StatKraft IH Holding AS**, under the said Resolution Plan which is tabulated as under:

Sl. No.	Claim Type	Amount Due / Admitted in Cr. Rupees	Treatment under proposed Resolution Plan	
			Payment Proposed in Cr. Rupees	Terms of Payment
1.	Corporate Insolvency Resolution Process Cost	27.8	27.8	Proposed to be paid in full within 90 days of NCLT approval
2.	Secured Financial Creditors	1311.51	149.61	Proposed to be paid in full within 90 days of NCLT approval
3.	Unsecured Financial Creditors (Related Parties)	NIL	NIL	NIL
4.	Operational Creditors – Trade Payables	1.43	0.0143	NIL

5.	Due towards Workmen / Employees	0.15	0.15	Proposed to be paid in full within 90 days of NCLT approval
6.	Pre-CIRP Dues for Workmen & Employees including termination/retirement benefits	2.48	2.48	Proposed to be paid in full within 90 days of NCLT approval
7.	Statutory Dues as per IM	NIL	NIL	NIL
8.	Contingent Liabilities - Statutory	NIL	NIL	NIL
9.	Contingent Liabilities - Non Statutory (including Corporate Guarantees, if any)	NIL	NIL	NIL

22. The Resolution plan size is approximately ₹180 Cr (Rupees One

Hundred Eighty only). The “*Effective Date*” will be the date on which the Adjudicating Authority approves the Resolution Plan.

Details on Management and Implementation as per the Resolution Plan

23. The Resolution Plan also provides for details of management and control, implementation and supervision of the Resolution Plan and term of plan and the same is already set out in Section 10, 11 and Annexure XV *supra*.

Details on fraudulent and avoidance transaction

24. The Resolution Professional via Form H confirms that the suspended Board of Directors of the Corporate Debtor has not been engaged in the any kind of fraudulent and avoidance transaction.

Waivers, Reliefs and Exemptions

25. The SRA has sought/prayed for the reliefs, waivers and concessions as enumerated under the Resolution Plan approved by the CoC , namely, that from the plan approval date all inquiries, investigation and proceedings, whether civil or criminal, suits, claims, disputes, interests and damages in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the plan approval date, or arising on account of implementation of this Resolution Plan, shall stand withdrawn, satisfied and discharged. From the date of

approval of the ‘Resolution Plan’, the Resolution Applicant shall be legally authorized to seek appropriate orders from respective authorities/courts/tribunals for renewal of licenses/withdrawal/dismissal or abetment of the proceedings as the case may be.

26. There are certain litigation pending involving corporate debtor as mentioned in the resolution plan at page number 129 of the Resolution Plan. It may be mentioned that the said litigations would be governed by Section 32A of the Code.

27. The **Hon’ble Supreme Court** 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.”

28. 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.”

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

Analysis & Findings

29. 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 by the CoC with 100% of the members voting in favour of the Resolution Plan. As per the CoC, the Plan meets the requirement of being a viable and feasible revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Bench.

30. On perusal of the documents on record, we are 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.
31. The reliefs, concessions and waivers sought by the Successful Resolution Applicant will be dealt with strictly in accordance with the applicable laws.
32. It may be clarified that litigations wherever pending against the corporate debtor would be governed by Section 32A of the Code.
33. 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.
34. In case of non-compliance with this order or withdrawal of the Resolution Plan within the stipulated time, in addition to other consequences which follow under law, the CoC shall forfeit the EMD amount of Rs. 5 crores already paid by the Resolution Applicant as well as the Performance Bank Guarantee of Rs. 20 crores.

Orders

35. Subject to the observations made in this Order, the Resolution Plan **₹180 Cr.** (Rupees One hundred and eighty crores only) is hereby **approved. The Resolution Plan shall form part of this**

Order. The reliefs, concessions and waivers sought/prayed by the Successful Resolution Applicant will be dealt with strictly in accordance with the applicable laws.

36. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.

37. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.

38. **IA No. 59/2023** and the main Company Petition, *i.e.*, CP (IB) No.85/ALD/2020 shall stand *disposed of* accordingly.

39. Liberty is hereby granted for moving appropriate application if required in connection with implementation of this Resolution Plan.

40. A copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies

41. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.

42. The Resolution Professional is further directed to hand over all records, premises/ factories/documents available with it to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records and premises through the Resolution

Professional to finalise the further course of action required for starting of operations of the Corporate Debtor.

43.The Registry is directed to send copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

44.The registry is further directed to send the copy of the order to the IBBI also for their record.

45.Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

46.File be consigned to the record.

-Sd-

Ashish Verma
Member (Technical)

-Sd-

Praveen Gupta
Member(Judicial)