

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

**IA No. 2573/2021**

**In**

**CP (IB) 4367/MB/ of 2018**

Under Section 60 (5) r/w section 30 and 31 of the  
Insolvency and Bankruptcy Code, 2016

**Small Industrial Development Bank of India  
(SIDBI)**

Jeevan Shree Building, Ground Floor, S. No.  
1109, Plot No. 488, Pune University Road, Near  
Pune Central, Pune – 411 016.

**... Applicant/CoC Member**

V/s

**Harshad Deshpande**

403, Kumar Millennium, Shivatirtha Nagar  
Kaman, Opp Krishna Hospital, Paud Road,  
Kothrud, Pune, Maharashtra – 411 038.

**... Respondent No. 1**

**Bank of India**

Star House, C 54 Block, Bandra Kurla  
Complex, Mumbai – 400 051.

**... Respondent No. 2**

**IN THE MATTER OF**

**Altair Industrial Technologies Private Limited**

**... Corporate Debtor**

**Order delivered on :- 25/10/2024**

**Coram:**

**Anil Raj Chellan**  
**Member (Technical)**

**Kuldip Kumar Kareer**  
**Member (Judicial)**

**Appearances:**

**For the Applicant** : Counsel, Priyank Jadav a/w Ayush Rajani, Mitali Bhatt  
**For the Respondent No. 1/RP:** Counsel, Avinash R Khanolkar a/w Khushbu Bhanushali  
**For the Respondent No. 2 :** Counsel, Rakesh Gupta  
**For the Resolution Applicant:** Counsel, Nausher Kohli a/w Dikshat Mehra and H. Chandani

**ORDER**

***Per: - Anil Raj Chellan, Member (Technical)***

1. The present application is filed by the Applicant under Section 60(5) read with Sections 30 and 31 of the Insolvency and Bankruptcy Code, 2016 ('the Code') seeking the following reliefs:
  - (a) To pass necessary orders declaring the act of Respondents in accepting unsolicited resolution plans more than once as it is against the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2021 notified on 30.09.2021 and effective from 01.10.2021.
  - (b) Direct Respondent No. 1 to not accept a resolution plan from the proposed prospective Resolution Applicant, being the suspended Director, where "personal guarantees" stand to be extinguished which is a settled law that a resolution plan acceptance does not absolve the personal guarantor from their liabilities.

- (c) Declare the proposed Resolution Plan dated 18.10.2021 is in violation of the provision of section 30 of the Code since it is “conditional in nature”.
- (d) Pass necessary orders directing that the decision of Respondent No. 2 on the resolution plan having the requisite voting rights in excess of 66% in so far as compelling the Applicant to extinguish its legal rights to pursue appropriate action against the personal guarantors shall not be binding on the Applicant.

**Facts of the case as submitted by the Applicant:**

2. On an application filed under Section 10 of the Code, Altair Industrial Technologies Private Limited (‘the Corporate Debtor’) was admitted to the Corporate Insolvency Resolution Process (‘CIRP’) vide order dated 26.02.2019 passed by this Tribunal and Mr. Sunil Gajanan Nanal was appointed as the Interim Resolution Professional. Subsequently, Mr. Harshad S. Deshpande, the Respondent No. 1 herein was appointed, as Resolution Professional by an order dated 23.07.2019.
3. The Applicant is a member of the Committee of Creditors (CoC) with an admitted claim of Rs. 3,14,01,973/- and has a voting share of 8.05%. Respondent No. 2 is the other member of the CoC with 91.95% of the voting share.
4. The Applicant states that Respondent No.2 has agreed to consider the

Resolution Plan submitted by the suspended director which is not compliant with the provisions of the Code and directed the RP/ Respondent No.1 to place the resolution plan for e-voting. Accordingly, the Resolution Plan submitted by the suspended Director was voted upon and the voting would conclude on 25.10.2021.

5. The Applicant states that Respondent No.1 has failed to perform his duties as required under the Code with regard to ensuring that only IBC-compliant resolution plans are to be placed before the CoC for its consideration.
6. The Applicant submits that the resolution plan submitted by the suspended Director proposes the extinguishment of liabilities under the personal guarantees which is bad in law and against the settled position. Part III of the Code has been notified specifically for initiating the resolution process against personal guarantors of the corporate debtor and under no circumstances does the Code envisage that upon approval of the resolution plan, the personal guarantees shall stand absolved. It is a settled law that the assets of the personal guarantors are not covered as part of the corporate debtor's assets during CIRP.
7. As against the Applicant's admitted claim of Rs.3,14,01,973/- (Rupees 3.15 crore) the proposed resolution plan is offering a mere Rs.10 lakh in

case of voting in favour of the resolution plan and just Rs.1 lakh in case of voting against the resolution plan and also provides for absolving their liabilities even under personal guarantees. At the same time, Respondent No.2 has been offered Rs.8.05 crores against their debt. This is nothing else but a clear differentiation of similarly placed secured financial creditors which is nothing but an abuse of the process under the Code.

8. IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2021 notified on 30.09.2021 restricted the number of submissions and revisions of a given resolution plan to not more than once w.e.f. 01.10.2021. However, Respondent No.1 has allowed the suspended Director to submit multiple revisions even after the effective date of the aforesaid amendment by accepting an unsolicited revised Resolution Plan dated 14.10.2021 and then again, the revised Resolution Plan dated 18.10.2021.
9. The Applicant further submits that Respondent No.1 has failed in his duties in so far as it relates to filing the appropriate application before this Tribunal under Sections 43, 45 and 66 as applicable considering the fact that there are adverse findings in the transaction audit report against the conduct of the suspended Director. Respondent No.1 deliberately

withheld and refrained from filing a suitable avoidance applications before the Tribunal to avoid disqualification under 29A of the Code.

10. Respondent No.1 has also deliberately misrecorded the proceedings of the CoC meeting held on 18.10.2021 by not recording the Applicant's objections.
11. On the above grounds, the Applicant objects to the approval of the resolution plan submitted by the suspended Director.

**Submissions of Respondent No. 1:**

12. Respondent No.1, the RP has denied the contentions of the Applicant and has submitted that the application is not maintainable.
13. Respondent No.1 states that the Resolution Plan submitted for approval is in adherence to the provisions of the Code which can be seen from the compliance certificate in Form H filed as per Regulation 39 (4) of the CIRP Regulations.
14. Respondent No.1 submits that the extinguishment of personal guarantee falls within the commercial wisdom of CoC and there is no provision in the Code which restricts such extinguishment.
15. Respondent No.1 submits that the initial resolution plan submitted by

the suspended director, when placed for the consideration of the CoC, was rejected by 91.95% of the voting and resolved for the liquidation of the Corporate Debtor. Accordingly, the Respondent filed an application (M.A. No. 3932 of 2019) seeking liquidation of the Corporate Debtor. During the pendency of the said application, the Resolution Applicant/suspended director moved an application (I.A. No. 963 of 2020) seeking appropriate directions for submission of the Resolution Plan and extension of the CIRP period which was allowed vide order dated 29.07.2021. Accordingly, the resolution plan was placed again before the CoC.

16. Respondent No.1 states that he has filed an application (IA. No. 124 of 2020) under the provisions of Section 66 of the Code and the same is still pending for adjudication. The pendency of such application does not bar the Resolution Applicant under Section 29A of the Code.
17. Respondent No.1 further states that as per the valuation report, the market value of the Corporate Debtor is Rs. 35,20,750/- and the liquidation value is Rs.20,04,590/- which is significantly below the resolution amount of Rs.11,43,23,000/-, as proposed by the Resolution Applicant. In the event of liquidation of the Corporate Debtor, the Applicant is not likely to get any amount as it holds only subservient

charge over the movable and immovable assets of the Corporate Debtor

18. In view of the facts and circumstances, the CoC in its wisdom has taken a decision to approve the only resolution plan.

**Submissions of the Respondent No. 2:**

19. The Respondent No. 2 has filed its reply affidavit denying the contentions of the Applicant. Respondent No.2 is a secured financial creditor of the Corporate Debtor with an admitted debt of Rs. 35,87,50,098/-constituting a voting share of 91.95%. Respondent No.2 has the first charge on the assets of the Corporate Debtor and also on the assets of the personal guarantors of the Corporate Debtor.
20. It is submitted that the 1<sup>st</sup> Resolution Plan offered Rs. 9,06,98,000/- as the resolution amount for the resolution of the Corporate Debtor to be paid over a period of 270 days from the date of passing the approval order and the last revised plan, as submitted on 18.10.2021, offered an amount of Rs. 11,42,23,000/- to be paid with a period of 180 days from the approval date. The final Resolution Plan dated 18.10.2021 was considered by the CoC in its meeting held on 22.10.2021 which was approved by Respondent No.2 and rejected by Applicant.
21. The Resolution Plan was considered by the CoC as per the provisions

of the Code. Since no other Resolution Plan was available and considering the fact that the CIRP was expiring on 27.10.2021 and the plan value was above the liquidation value, the resolution Plan was approved. The object of the Code is to maximize the value of the Corporate Debtor and the lead banker has time and again acted fairly in the best interest of all the Stakeholders of the Corporate Debtor including the operational creditors.

22. The contentions raised by the Applicant are not sustainable under law. The provisions of the Resolution Plan including the release of the personal guarantor are in accordance with the Code and the resolution plan provides for payment in accordance with the security interest held by each person.
23. The process envisaged under the Code is not a recovery proceeding and the Applicant is attempting to make the same look like one. This application is filed with the sole intent to derail the resolution which is not as per the Applicant's expectation in terms of recovery in complete disregard to the interest of the Corporate Debtor.
24. Respondent No.2 further submits that the objections of the Applicant cannot be sustained under law and the application is liable to be dismissed.

*Analysis:-*

25. We have heard the Counsel for the parties and have gone through the records.
26. It is noticed that CIRP was initiated on 26.02.2019 against the Corporate Debtor on a petition under Section 10 of the Code and the initial resolution plan submitted by the suspended directors of the Corporate Debtor was rejected by the CoC consisting of Applicant and Respondent No.2. The CoC at its meeting held on 19.11.2019 approved initiation of liquidation of Corporate Debtor and accordingly the Respondent No.1 filed an application (M.A. No. 3932 of 2019) for liquidation of the Corporate Debtor. During the pendency of the said application, the unsuccessful resolution applicant has filed another application (IA No. 963 of 2020) seeking an appropriate order for submission of the Resolution Plan and extension of the CIRP period. The said application stood allowed vide an order dated 29.07.2021.
27. Thereafter, the unsuccessful resolution applicant filed a revised resolution plan dated 18.10.2021 which was approved by the CoC at its meeting held on 18.10.2021(e-voting commenced on 22.10.2021 and concluded on 28.10.2021) with 91.95 voting in favour and the Applicant voting against the resolution plan. The Applicant immediately filed the

present application on 01.11.2021 raising certain objections to the resolution plan which was heard along with the application (IA No. 170 of 2022) filed by Respondent No.1 for approval of the resolution plan.

28. The Applicant submits that the resolution plan submitted by the suspended Director proposes to extinguish the liabilities under the personal guarantees which is bad in law and against the settled position. In support of the above contention, the Applicant points out that it is a settled position of law that the assets of the personal guarantors are not covered as part of the corporate debtor's assets during CIRP. Furthermore, the notification specifically for initiating the resolution process against personal guarantors of the corporate debtor under Part III of the Code establishes that under no circumstances does the Code envisage the release of personal guarantees upon approval of the resolution plan.
29. Per contra, the Respondents argued that the resolution plan containing a clause for the extinguishment of personal guarantees furnished by promoters as security for the financial assistance granted to the Corporate Debtor is not violative of the provisions of the Code. Further, giving effect to Part III of the Code allowing the initiation of the resolution process against the personal guarantors of the corporate

debtor has nothing to do with the approval of the resolution plan.

30. In SVA Family Welfare Trust & Anr v. Ujjas Energy Ltd & Ors (Company Appeal (AT) (Ins) 266 of 2023), the Hon'ble NCLAT upheld the commercial decision of CoC for extinguishing the personal guarantees of the financial creditors as part of the resolution plan. The appeal filed against the order before the Hon'ble Supreme Court was also dismissed vide its order dated 06.11.2023.

31. The present is a case where the promoters of the Corporate Debtor have submitted the resolution plan as permitted under Section 240A of the Code which deals with both the security interest of the Corporate Debtor and the personal guarantees of promoters. In addition, the personal properties of the personal guarantors are also forming part of the security created in favour of the financial creditors. In the circumstances, there are justifiable reasons for the expectation of composite resolution of debt of the Corporate Debtor. On the basis of the decision referred to above and the facts of the present case, we hold that the conscious decision of the CoC to extinguish the personal guarantees given to financial creditors including dissenting financial creditors does not contravene any of the provisions of the Code nor the same is justiciable.

32. As regards the contention that Respondent No.1 has violated the

provisions of Regulation 36A of the CIRP Regulations, it is observed that there was no revision in the invitation for expression of interest, but this Tribunal vide its order dated 29.07.2021 permitted the Respondent No.1 to place the Resolution Plan before the CoC and also granted the extension of the CIRP period. The Applicant, after having participated in four subsequent meetings of the CoC without challenging the order dated 29.07.2021 before the Appellate forum, cannot now raise a valid objection that the same is not in accordance with the provisions of the Code.

33. Another contention raised by the Applicant is with regard to the distribution of amounts among the financial creditors under the proposed Resolution Plan. It is submitted that as against the Applicant's admitted claim of Rs.3,14,01,973/- (Rupees 3.15 crore apprx.), the proposed resolution plan is offering a mere Rs.10 lakh in case it votes in favour of the resolution plan and just Rs.1 lakh in case it votes against the resolution plan. At the same time, Respondent No.2 has been offered Rs.8.05 crores against their debt of Rs. 35,87,50,098/-. According to the Applicant, this is nothing but a clear case of differential treatment being given to similarly placed creditors and amounts to gross abuse of the process under the Code.

34. In this regard, it is pertinent to notice the security interest and voting share of the two financial creditors. Respondent No.2 enjoys the first charge and mortgage on all the assets of the Corporate Debtor, the first charge on the personal assets of the promoters, and the personal guarantee of promoters. The voting share of Respondent No.2 is 91.95%. The Applicant, however, enjoys only residual/subservient charge on all movable assets of the Corporate Debtor and promoters' personal guarantee. The voting share of the Applicant is 8.05 %. As per the settled position of law, the subservient charge holder can recover/realize its dues only after the full satisfaction of the first charge. In the circumstances, although both Applicant and Respondent No.2 are secured financial creditors, by no stretch of the imagination can they be considered as equally placed with regard to the security interest.
35. The Applicant submits that the proposed resolution plan has offered a mere Rs.10 lakh in case of voting in favour of the resolution plan and just Rs.1 lakh in case of voting against the resolution plan. During the course of the argument, it has been brought to the notice of the Bench that the Applicant has voted against the Resolution Plan and hence, in the event of approval of the Resolution Plan by the Tribunal, it would be paid just Rs.1 lakh. The extent of the minimum amount receivable by a dissenting financial creditor is provided in Section 30(2)(b) of the

Code as per which it shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor. It is submitted that in the event of liquidation of the Corporate Debtor, the amount receivable as per the above security provision is Nil as the Applicant holds only subservient charge over the assets of the Corporate Debtor.

36. In the case of India Resurgence ARC Pvt. Ltd vs. Amit Metaliks Ltd & Another (Civil Appeal No.1700 of 2021), the Hon'ble Supreme Court observed;

*“ 11. It needs hardly any elaboration that financial proposal in the resolution plan forms the core of the business decision of Committee of Creditors. Once it is found that all the mandatory requirements have been duly complied with and taken care of, the process of judicial review cannot be stretched to carry out quantitative analysis qua a particular creditor or any stakeholder, who may carry his own dissatisfaction. In other words, in the scheme of IBC, every dissatisfaction does not partake the character of a legal grievance and cannot be taken up as a ground of appeal.*

37. In the circumstances, the dissatisfaction expressed by the Applicant with regard to the amount provided under the Resolution Plan cannot be a

valid ground to reject a resolution plan which was approved by the CoC in its commercial wisdom by the requisite majority.

38. Yet another contention raised by the Applicant is that the Resolution Applicant is not eligible to be a resolution applicant on account of the pendency of the application filed under Section 66 of the Code. With respect to the above, there is a catena of judgements delivered by the Hon'ble NCLAT more particularly in the matter of *Namdev Hindurao Patil Vs. Virendra Kumar Jain, Liquidator of Warana Dairy and Agro Industries Limited and other (Company Appeal)(AT) (Ins.) No. 858 of 2023 and IA No. 2925 of 2024* whereby it was held that the ineligibility for submission of the Resolution Plan would be determined by the date on which the Resolution Applicant submits his plan. Thus, it is evident that there was no disqualification on the date of submission of the Resolution Plan. Even otherwise, it is worth mentioning that this Tribunal disposed of the pending IA No. 124 of 2020 directing Mr. Anoop Anand, the suspended director to pay an amount of Rs. 1.99 crores to the Corporate Debtor under Section 66(1) of the Code which has been duly complied with by the said suspended director. Taking the above into account, we hold that the disqualification on account of the pendency of the avoidance application will not be attracted to Mr. Anoop Anand who is part of the Successful Resolution Applicant.

39. We thus are fully satisfied that the clause in the resolution plan for extinguishing the personal guarantees of promoters furnished in favour of all financial creditors or the commercial decision of the CoC to approve such release of personal guarantees, including guarantees executed in favour of descending financial creditors, will not contravene any provisions of the Code. Further, the dissatisfaction of a creditor in respect of payment under the Resolution Plan is of no consequence unless it violates any of the provisions of the Code.
40. In view of the foregoing discussions, we do not find any merits in the objections raised by the Applicant. Thus, **IA No. 2573 of 2021 stands dismissed**. No order as to costs.

**Sd/-**  
**Anil Raj Chellan**  
**Member (Technical)**

//SALAM//

**Sd/-**  
**Kuldip Kumar Kareer**  
**Member (Judicial)**

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

**IA. No. 170/2022**

**In  
CP(IB)No. 4367/MB/C-II/2018**

**Application filed under section 30(6), r/w  
Section 31(1) of the Insolvency & Bankruptcy  
Code,2016 read with Regulation 39(4) of the  
IBBI (Insolvency Resolution Process for  
Corporate Persons) Regulations, 2016,**

Filed by

**Mr. Harshad S. Deshpande,  
Resolution Professional**

M/s Altair Industrial Technologies Private  
Limited,

O/at Shop No. 2, Sumedha Apartments,  
Shivtirtha Nagar, Paud Road, Kothrud, Pune -  
411 029.

**...Applicant**

*In the matter of*

**M/s. Altair Industrial Technologies Private  
Limited**

**...Original Applicant/Corporate Debtor**

**Order Pronounced on: - 25.10.2024**

***Coram:***

**Anil Raj Chellan  
Member (Technical)**

**Kuldip Kumar Kareer  
Member (Judicial)**

***Appearances -***

**For the Resolution Professional/ Applicant**

**: Counsel, Avinash R  
Khanolkar a/w Surekha  
and Khushbu Bhanushali**

**For the Resolution Applicant :**

Counsel, Nausher Kohli  
a/w Dikshat Mehra and H.  
Chandani

**ORDER**

*Per: Anil Raj Chellan, Member (Technical)*

1. The present Interlocutory application is filed by **Mr. Harshad S. Deshpande**, the Applicant and Resolution Professional of **M/s. Altair Industrial Technologies Private Limited** (“the Corporate Debtor”) seeking approval of the resolution plan under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (“the Code”) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”) submitted by Sethi Funds Management Pvt. Ltd & its Affiliate Companies along with Mr. Anil Anand and Mr. Anoop Anand (“Successful Resolution Applicant”) and duly approved by 91.95% of the Committee of Creditors (“CoC”) of the Corporate Debtor in its 14<sup>th</sup> CoC meeting held on 18.04.2021.
2. The Applicant submits that the Corporate Debtor, Altair Industrial Technologies Private Limited., filed an application under Section 10 of the Code for initiating the Corporate Insolvency Resolution process (“CIRP”). Vide Order of this Tribunal dated 26.02.2019, CIRP against

the Corporate Debtor was initiated and Mr. Sunil G. Nanal was appointed as Interim Resolution Professional (“IRP”).

3. The IRP made a Public Announcement for inviting claims from creditors and based on the claims received, the Committee of Creditors (‘CoC’) was constituted on 20.03.2019, which included two financial creditors i.e., Bank of India (BoI) with 91.95% voting share and Small Industries Development Bank of India (SIDBI) with 8.05% voting share. Subsequently, the Applicant herein was appointed as Resolution Professional by an order of this Tribunal dated 23.07.2019.
4. The Applicant and CoC had undertaken the process for the revival of the Corporate Debtor. The initial Resolution Plan submitted by the suspended Director, when placed for the consideration of the CoC, was rejected by 91.95% of the voting and the CoC proposed liquidation of the Corporate Debtor. Accordingly, the Applicant filed an application bearing no. MA 3932/2019 seeking liquidation of the Corporate Debtor under section 33 (1) (a) of the Code.
5. However, during the interregnum period, one Resolution applicant namely Shri Anoop Anand jointly with Shri Anil Anand, both suspended directors of the Corporate Debtor filed an application bearing

IA No. 963/2023 seeking an extension of the CIRP period and for submission of Resolution Plan for the Corporate Debtor. This Tribunal vide order dated 29.07.2021 allowed the said Application and further directed to complete the CIRP within 60 days from 29.07.2021.

6. The Applicant received the revised Resolution Plan from M/s. Sethi Funds Management Private Limited & its affiliated companies, along with Shri Anil Anand and Shri Anoop Anand (collectively referred to as the "Resolution Applicant") on 02.09.2021. The Corporate Debtor being a registered Micro, Small, and Medium Enterprise (MSME), disqualifications prescribed under Section 29A of the Code are not applicable in accordance with the provisions of Section 240A of the Code.
7. The Applicant reviewed the revised Resolution Plan submitted by the Resolution Applicant under Section 30 of the Code and relevant regulations and placed the same before the CoC for its consideration. The CoC discussed the said Resolution Plan in its meetings held on 14.08.2021, 09.09.2021, 18.09.2021, and 24.09.2021, and several changes were communicated to the Resolution Applicant. Accordingly, the Resolution Applicant submitted the final revised Resolution Plan which was placed before the CoC.

8. The revised Resolution Plan together with the addendum was placed before the CoC held on 18.10.2021 upon which e-voting started on 22.10.2021 and ended on 28.10.2021. It is submitted that the revised Resolution Plan was approved by the CoC by a voting share of 91.95%. The Resolution Applicant made a deposit of Earnest Money Deposit (EMD) amount of Rs. 48,00,000/- with the Bank of India as per the undertaking given in the Resolution Plan. In view of the EMD deposit, the Resolution Applicant has not given any performance guarantee.

9. The Applicant, therefore, filed the present application seeking the approval of the Tribunal for the Resolution Plan voted upon by the CoC.

10. **Brief Background of the Corporate Debtor**

a. The Corporate Debtor is engaged, inter alia, in the business of design, engineering, and execution of innovative products and solutions for the petrochemical, telecom, power, defence, and fertilizer sectors. The Corporate Debtor was managed by the Promoters- Mr. Anil Anand and Mr. Anoop Anand.

b. The Corporate Debtor has three product lines as follows:

**Mobile Shelters** which encompass manufacturing pre-fabricated

mobile shelters to provide all weather protection from rain and harsh sun. The mobile shelters serve as a good alternative to fixed-type, pre-fabricated buildings.

**Rapil Erect Shelters** the Corporate Debtor introduced the concept of lightweight, relocatable rapid erect pre-fabricated shelters to the Indian Air Force and key customers of the Corporate Debtor including the Indian Air Force and Indian Navy.

**Fire Retardant Coatings:** The Corporate Debtor distributes a fire-retardant coating which at room temperature, behaves like ordinary paint. However, in the event of fire, the coating expands up to 100 times its ordinary thickness and in the process of doing so, can provide protection against fires up to temperatures of 1200C for a period of up to 2 hours.

c) The main reasons for the current financial distress of the Corporate Debtor, as assessed by the Resolution Applicant, are as follows:

**Project Delays:** The primary reason for distress was on account of project delays and consequent cash flow problems due to non-payment and delays in the release of payments from government customers. These project delays resulted in an increase in material

costs, and finance costs resulting in overall cost overruns.

**Sectoral delays:** The Corporate Debtor operates in the defense products and service sector, the major demand of which comes from the Ministry of Defense.

## 11. **Brief Background of the Successful Resolution Applicant**

### **Overview of Mr. Vinod Sethi, Director of Funds Management Pvt. Ltd.**

11.1 Mr. Vinod Sethi is the Chairman of KCP Sugar and Industries Ltd. and is associated with several group affiliate companies, including Sethi Fund Management Pvt. Ltd. He served as the Managing Director of Morgan Stanley Investment Management Inc. until February 2001, and held the position of Chief Investment Officer and Portfolio Manager for 12 years. Mr. Sethi has been a Non-Executive & Independent Director of L&T Ltd since January 30, 2006.

11.2 Mr. Sethi is acquiring a stake in the Corporate Debtor, driven by his confidence in the prospects of the Corporate Debtor within India's emerging defense sector. He holds a Bachelor's degree in Chemical Engineering and a B. Tech degree from the IIT Bombay, as well as an MBA in Finance from the Stern School of Business, New York University.

### **Overview of Mr. Anil Anand, promoter of the Corporate Debtor**

11.3 Mr. Anil Anand is a gold medalist in Economics from Bombay University with more than 20 years of international experience prior to commencing the Corporate Debtor and his responsibilities include overall business strategy.

**Overview of Mr. Anoop Anand, promoter of the Corporate Debtor**

11.4 Mr. Anil Anand and Mr. Anoop Anand have been in the industry of Corporate Debtor for the past 30 years and commenced the Company as a trading and distribution company. They have developed specialized engineering and technology engaged in the design, engineering and execution of innovative products and solutions for the petrochemical, telecom, power, defense and fertilizer sectors.

**12. SALIENT FEATURES OF THE APPROVED RESOLUTION**

A. The Resolution Applicant has proposed a total resolution amount of Rs. 11,43,23,000/- (Rupees Eight Crores Seventy-Two Only) which is segregated into the following categories:

a) Rs. 8,72,00,000/- (Rupees Eight Crores Seventy-Two only) towards payments to CIRP cost, Financial Creditors, Operational Creditors, and other Creditors.

b) Rs. 2,71,23,000/- (Rupees Two Crores and Seventy-One Lakhs and Twenty-Three Thousand only) as an infusion of capital by the Resolution Applicant for rehabilitation of the Corporate Debtor, as more particularly **described below:**

**(Amount in Rs.)**

Lakh)

Sr. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Admitted (%)
1.	Mandatory Payment	CIRP Cost	46.25	46.25	100%
2.	Secured Financial Creditors	Bank of India	3587.50	805.75	22.45%
		SIDBI	680.00	10.00	1.47%
3.	Operational Creditors		78.29	10.00	12.77%
4.	Workmen				
			4305.27	872.00	20.25%

**(B) Infusion of Capital for Rehabilitation of the Corporate Debtor**

Sr. No.	Particulars	Amount (In INR)	Source of Funds
1.	Working capital requirements of the Corporate Debtor	120.0 Lakhs	Infusion by the Financial Sponsor to restart operations on an as-needed basis during the Term of the Resolution Plan
2.	Security for the continuance of Bank Guarantees provided by Bank of India for	151.23 Lakhs	Infusion by the financial sponsor by way of fixed deposit with Bank of India but refundable to the

	which the claim period will expire in November 2021		financial sponsor upon expiry of the claim period in case no claim is made under the Bank Guarantee No. 0512IPEBG160037
<b>Total</b>		<b>271.23 Lakhs</b>	

### C. CIRP Cost

The total amount provided by the SRA towards CIRP cost is INR 46.25 Lakhs which will be paid within 7 days from the Effective Date from the cash balance of the Corporate Debtor. The CIRP cost, to the extent of any shortfall, shall first be paid from the Corporate Debtor's available funds and distributable cash.

### D. Treatment of Financial Creditors

The Secured Financial Creditors are proposed to be paid based on their security as under:

#### 1. *Bank of India*

(i) An amount of INR 6,80,00,000 (Rupees Six Crore and Eighty Lakhs Only) is proposed to be paid to the Bank of India, and this amount shall be infused by the Resolution Applicant. Notwithstanding the foregoing, the Resolution Applicant shall have the option to utilize the cash flows generated from the operations of the Corporate Debtor, subsequent to the Approval Date, for the payment of the aforementioned sum.

(ii) The Source of funds and timelines for payment to BoI is as under:

<b>S. N.</b>	<b>Amount</b>	<b>Payment timeline</b>	<b>Source of Funds</b>
1.	680.0 Lakhs	Rs. 48.0 Lakhs as Earnest Money Deposit within 7 days from the Approval Date. The said amount will be appropriated by Bank of India 7 days after the Effective Date. If the Adjudicating Authority does not approve the Resolution Plan, the said amount will be refunded to the Financial Sponsor within 7 days of the Adjudicating Authority refusing to approve the Resolution Plan.	Infusion by the Financial Sponsor of the Resolution Applicant with an option to utilize the cashflows generated from the business activities of the Corporate Debtor.
		Rs. 192.0 Lakhs within 30 days from the Effective Date.	
		Rs. 60.0 Lakhs within 90 days from the Effective Date.	
		Rs. 60.0 Lakhs within 180 days from the Effective	

		Date.	
		Rs. 60.0 Lakhs within 210 days from the Effective Date.	
		Rs. 60.0 Lakhs within 270 days from the Effective Date.	
		Rs. 60.0 Lakhs within 300 days from the Effective Date.	
		Rs. 60.0 Lakhs within 330 days from the Effective Date.	
		Rs. 80.0 Lakhs within 364 days from the Effective Date.	

(iii) In addition, an amount of Rs. 1,25,75,000/- (Rupees One Crore Twenty-five Lakhs Seventy-five Thousand Only) is proposed to be paid to Bank of India from the existing Cash Balance of Rs. 1,15,75,000/- (Rupees One Crore Fifteen Lakhs Seventy-Five Thousand Only) and an additional infusion of Rs. 10,00,000 (Rupees Ten Lakhs Only) by the Financial Sponsor within 30 days from the Effective Date.

## ***2. Small Industries Development Bank of India (SIDBI)***

- i) An amount of Rs. 10,00,000 (Rupees Ten Lakhs Only) is proposed to be paid to SIDBI and this amount shall be infused by the Resolution Applicant.

- ii) In the event that SIDBI becomes a dissenting Financial Creditor, SIDBI shall be paid an amount of Rs. 1,00,000 (Rupees One Lakh Only) from the amount that shall be infused by the Resolution Applicant. It is stated that in case of liquidation of the Corporate Debtor, SIDBI is unlikely to receive any monies and the amount proposed to be paid to SIDBI is higher than the amount which SIDBI would be entitled to under Section 53 of the Code.

Upon approval of the Resolution Plan by the Adjudicating Authority and upon full and final payment of all amounts under this Resolution Plan, all claims of the Financial Creditors of the Corporate Debtor including the right to proceed against guarantors of the Corporate Debtor shall stand extinguished save and except for the amounts payable under the Resolution Plan.

**E. Treatment of Operational Creditors (other than workmen and employees)**

- i) As per the Information Memorandum, the total Operational Debt of the Corporate Debtor is Rs. 78,29,442/-. In the event of liquidation of the Corporate Debtor, the Operational Debtors will not receive any payment. Hence, the Resolution Applicant proposes payment of INR 10,00,000/- to Operational Creditors (other than Workmen and Employee Dues) which shall be distributed to the Operational Creditors in proportion to their debt admitted by the RP of the Corporate Debtor.
- ii) Upon approval of the Resolution Plan by the Tribunal, all such claims shall stand extinguished save and except for the amounts payable under the Resolution Plan.

#### **F. Workmen and Employees:**

As the Corporate Debtor does not have any workmen, no payments are proposed to be made in this category.

#### **G. Existing Shareholders**

No amount is proposed to be paid to the existing shareholders of the Corporate Debtor.

#### **H. Payment of Related Party Dues**

No payments are proposed to be made toward Related Party Dues. Consequently, the Related Party Debt will be extinguished upon approval of the Resolution Plan by the Adjudicating Authority.

#### **I. Infusion towards working capital of the Corporate Debtor**

The Resolution applicant, through the financial sponsor, will provide an infusion of Rs. 1,20,00,000/- to meet the working capital requirements of the Corporate Debtor. This infusion will be made on an as-needed basis throughout the term of the Resolution Plan.

#### **J. Bank Guarantee**

A Bank Guarantee (no. 0512IPEBG160037) was issued by the Bank of India on 17.11.2017 for Rs. 1,51,23,111/- in favour of Mazgaon Dock Shipbuilders Limited. It is secured partly by a fixed deposit of Rs. 1,25,75,000/-. The guarantee is valid until 16.11.2021, or until the original document is returned to the Bank.

If the Original Bank Guarantee is not returned to Bank of India within 7 days after the Resolution Plan is approved by the Adjudicating Authority, the Financial Sponsor will arrange a third-party fixed deposit of Rs. 1,51,23,111/- in favour of Bank of India to secure its exposure. If the Original Bank Guarantee is not invoked or is returned to the bank, the bank will return the Rs. 1,51,23,111/- to the Financial Sponsor by 17.11.2021 or upon receipt of the Original Bank Guarantee, whichever is earlier. Additionally, four other expired bank guarantees totaling Rs. 1,82,60,000/- will be returned within 60 days.

**K. Formation of Implementation and Monitoring Committee (IMC).**

1. An Implementation and Monitoring Committee shall be formed for monitoring the implementation of the Resolution Plan which will include a total of 3 persons (i) a representative of the Financial Creditor(s) (ii) a representative of the Resolution Applicant and (iii) an independent insolvency professional as agreed between CoC and the Resolution Applicant.

**L. Management of the Corporate Debtor**

Upon the approval of the Resolution Plan by the Adjudicating Authority, the Resolution Applicant shall promptly constitute a new Board of Directors for the Corporate Debtor. This newly constituted Board shall take charge over the management and affairs of the Corporate Debtor and shall undertake all necessary actions for the implementation of the Resolution Plan.

Subsequent to the constitution of the new Board of Directors, the Resolution Professional shall, without delay and in any event within seven (7) days from the date of approval of the Resolution Plan by the Adjudicating Authority, hand over all documents, records, and assets (both movable and immovable) of the Corporate Debtor, as disclosed in the Information Memorandum, to the new Board of Directors.

**M. Eligibility of Applicants under Section 29A of the Code:**

The Successful Resolution Applicant Mr. Vinod Rajindranath Sethi, Director of Sethi Funds Management Pvt. Ltd. Mr. Anil Anand & Mr. Anoop Anand provided the Resolution Professional affidavits dated 10.07.2024 and 24.09.2021 respectively, confirming their eligibility u/s. 29A of the Code.

The Applicant submits that this Tribunal vide order dated 20.03.2024 passed in IA No. 124 of 2020 has directed Shri. Anoop Anand, one of the erstwhile directors and promoters of the Corporate Debtor to pay an amount of Rs.1.99 core to the Corporate Debtor under Section 66 of the Code which has since been deposited by him. Thus, the disqualification, if any, under Section 29A (g) gets shed away or nullified.

**N. Relief and Concessions**

The Successful Resolution Applicant has sought various reliefs and concessions based on the clean slate concept laid down by the Hon'ble

Supreme Court in various judgements, reliefs which are necessary to keep the Corporate Debtor as going concern, release from any and all liabilities/proceedings, disputes and noncompliance prior to the NCLT Approval Date and extended period for renewal or revival of licenses for running the business of the Corporate Debtor.

13. This Tribunal from time to time extended the CIRP period upto 04.11.2021. The Application for approval of the Resolution Plan was filed by the Applicant on 24.11.2021.
14. The Applicant further submits that the Resolution Plan submitted is in compliance **with Section 30 (2) of the Code and Regulation 38 (A) of the CIRP Regulations**. The RP has also provided a compliance certificate in “**FORM H**” as mandated under the Code for seeking approval of the Resolution Plan from this Tribunal.

#### **Observations of the Adjudicating Authority.**

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

16. As referred to in the above summary of the Resolution Plan, we are satisfied that all the requirements of Section 30 (2) of the Code are fulfilled and no provision of the law appears to have been contravened.

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

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

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

19. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:
- a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
  - b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
  - c) For management of the affairs of the Corporate Debtor, after the approval of the Resolution Plan, as specified u/s 30(2)(c) of the Code.
  - d) The implementation and supervision of the Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.
20. The Resolution Plan has been approved by the CoC in its 14<sup>th</sup> meeting with 91.95% votes in terms of Section 30(4) of the Code.
21. In *K Sashidhar v. Indian Overseas Bank & Others (in Civil Appeal No.10673/2018 decided on 05.02.2019)* the Hon'ble Apex Court held that if the CoC has approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan, as approved by CoC, meets the requirements specified in Section 30(2). The Hon'ble Apex Court further observed that the role of the NCLT is 'no

more and no less'. The Hon'ble Apex Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent 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.

22. In *CoC of Essar Steel* (Civil Appeal No. 8766-67 of 2019 decided on 15.11.2019) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority does not have the power to modify the Resolution Plan which the CoC in their commercial wisdom has approved. In para 42 Hon'ble Court observed as under:

*"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)."*

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

**ORDER**

24. **The Application IA No. 170 of 2022 in CP (IB) No. 4367/2018 is allowed.** The Resolution Plan submitted by Sethi Funds Management Pvt. Ltd & its Affiliate Companies along with Mr. Anil Anand and Mr. Anoop Anand and passed by the CoC with the requisite majority is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, and creditors, including the Central Government, any State Government, or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

25. The Hon'ble Supreme Court in the matter of **Ghanshyam Mishra and**

**Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited, (*Civil Appeal No. 8129 of 2019 decided on 13.04.2021*)** held that on the date of the approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of the Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the Resolution Plan. Accordingly, no person or authority will be entitled to initiate or continue any proceedings with respect to a claim prior to the approval of the Resolution Plan which is not a part of the Resolution Plan.

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

27. The Monitoring Committee, as proposed in Clause 7.2 of the Resolution Plan, shall be constituted for supervising the effective implementation of the Resolution Plan.
28. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the concerned Registrar of Companies (RoC), for information and record. The Resolution Applicant, for effective implementation of the Resolution Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed. However, if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the Resolution Plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.
29. The concessions sought in relation to the stamp duty, taxes, registration charges, etc., for implementation of the approved Resolution Plan are not granted. However, the Resolution Applicant is at liberty to approach the competent authorities for the exemptions, if permitted under the law.
30. The moratorium declared under Section 14 of the Code shall cease to have effect from this date.
31. The Applicant shall forward all records relating to the conduct of the

CIRP and the Resolution Plan to the IBBI along with a copy of this Order for information.

32. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Successful Resolution Applicant, respectively for necessary compliance.

**Sd/-**  
**ANIL RAJ CHELLAN**  
**MEMBER (TECHNICAL)**

//CHANDRIKA SARKAR//

**Sd/-**  
**KULDIP KUMAR KAREER**  
**MEMBER (JUDICIAL)**