IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-II, CHENNAI

IA(IBC)/460/CHE/2021 in IBA/1099/2019

(filed under Section 30(6) of the Insolvency and Bankruptcy Code, 2016)

In the matter of ***M/s. ReGen Powertech Private Limited***

Mr. Ebenezar Inbaraj,
Resolution Professional of
M/s. ReGen Powertech Private Limited,
397, Precision Plaza, No.23, 3rd Floor,
Teynampet, Anna Salai,
Chennai - 600 018.

.... *Applicant*

Along with

INV.P/6(CHE)/2021 in IBA/1099/2019

(filed under Section 25(1), 60(2) and 60(5) of the Insolvency and Bankruptcy Code, 2016)

In the matter of ***M/s. ReGen Powertech Private Limited***

Ms. Renuka Devi Rangaswamy
Interim Resolution Professional (IRP)
M/s.ReGen Infrastructure and Services Private Limited,
No.9, Arthi Illam, Jothi Nagar, 3rd Street,
Uppilipalayam,
Coimbatore – 641015.

.... *Intervenor Applicant*

-Vs-

Mr. Ebenezar Inbaraj,
Resolution Professional of
M/s. ReGen Powertech Private Limited,
397, Precision Plaza, No.23, 3rd Floor,
Teynampet, Anna Salai,
Chennai - 600 018.

.... *Respondent*

Along with

INV.P/7(CHE)/2021 in IBA/1099/2019

(filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016)

In the matter of ***M/s. ReGen Powertech Private Limited***

Renew Power Services Private Limited
Through its Authorized Signatory
Having its Registered Office at
138, Ansal Chambers II, Bhikaji Cama Place,
New Delhi.

.... *Intervenor Applicant*

Along with

INV.P/11(CHE)/2021 in IBA/1099/2019

(filed under Section 25(1), 252(2)(b), 60(2) and 60(5) of the Insolvency and Bankruptcy Code, 2016)

In the matter of ***M/s. ReGen Powertech Private Limited***

M/s. Giriraj Enterprises
1, Modibaug Commercial, Ganeshkind Road,
Shivaji Nagar,
Pune – 411 016, Maharashtra,
Represented by its CEO
Mr. Prafulla Premchand Khinvasara

.... *Intervenor Applicant*

-Vs-

Mr. Ebenezar Inbaraj,
Resolution Professional of
M/s. ReGen Powertech Private Limited,
397, Precision Plaza, No.23, 3rd Floor,
Teynampet, Anna Salai,
Chennai - 600 018.

The Committee of Creditors
M/s. Regen Powertech Private Limited
Sivanandam Building,
No.1, Pulla Avenue,
Shenoy Nagar,
Chennai – 600 030

.... *Respondent*

Along with

INV.P/13(CHE)/2021 in IBA/1099/2019

(filed under Section 25(1), 252(2)(b), 60(2) and 60(5) of the Insolvency and Bankruptcy Code, 2016)

In the matter of ***M/s. ReGen Powertech Private Limited***

S. Krishnamoorthy
Proprietor of
Thangam Engineering and Construction
1/208, Chithambalam Pirivu West,
Udumalai Road, Venkittapuram (po),
Palladam – 641 664
Tirupur District

.... *Intervenor Applicant*

-Vs-

Mr. Ebenezar Inbaraj,
Resolution Professional of
M/s. ReGen Powertech Private Limited,
397, Precision Plaza, No.23, 3rd Floor,
Teynampet, Anna Salai,
Chennai - 600 018.

The Committee of Creditors
M/s. Regen Powertech Private Limited
Sivanandam Building,
No.1, Pulla Avenue,
Shenoy Nagar,
Chennai – 600 030

.... *Respondent*

Along with

INV.P/14(CHE)/2021 in IBA/1099/2019

(filed under Section 25(1), 252(2)(b), 60(2) and 60(5) of the Insolvency and Bankruptcy Code, 2016)

In the matter of ***M/s. ReGen Powertech Private Limited***

Gazala Tausif Ahmed
Proprietor of
Titam Engineering Solution
Shop No. 26, Building No.3/A,
Taximen Colony, LBS MARG,
Kurla West, Mumbai Suburban,
Maharastra – 400 070

.... Intervenor Applicant

-Vs-

Mr. Ebenezar Inbaraj,
Resolution Professional of
M/s. ReGen Powertech Private Limited,
397, Precision Plaza, No.23, 3rd Floor,
Teynampet, Anna Salai,
Chennai - 600 018.

The Committee of Creditors
M/s. Regen Powertech Private Limited
Sivanandam Building,
No.1, Pulla Avenue,
Shenoy Nagar,
Chennai – 600 030

.... Respondent

CORAM :

Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

Order Pronounced on ***1st February 2022***

Present:-

Learned Counsels argued in
***Favour** of Resolution Plan* :-

P.H. Arvindh Pandian, Senior Advocate
For A.G. Sathyanarayana, Advocate
(For Resolution Professional)

S.R. Rajagopal, Senior Advocate
Arvind Srevatsa, Advocate
(For Resolution Applicant)

M.S. Krishnan, Senior Advocate
For Vipin Warrier, Advocate
(For Committee of Creditors)

*Learned Counsels **objecting***
Resolution Plan :-

E. Om Prakash, Senior Advocate
B. Dhanaraj, Advocate
(For RP of RISPL)

R. Murari, Senior Advocate
Cibi Vishnu, Advocate
(for ARCIL)

P.S. Raman, Senior Advocate
Vidya, Advocate
(for Applicant in Inv.P/11/2021)

P. Mohan Prasad, Advocate
(for Applicant in Inv.P/13 & 14/2021

COMMON ORDER

***Per:* Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)**

Under adjudication is an application filed by the Resolution Professional in respect of the Corporate Debtor viz. Regen Powertech Private Limited under Section 30(6) of Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as "IBC, 2016") seeking approval of Resolution Plan submitted by the Resolution

Applicant viz. Renew Power Services Limited which was approved by the CoC in its 13th CoC meeting held on 03.04.2021.

2. OTHER APPLICATIONS:

2.1. The following intervening Petitions has been filed as objections to the Resolution Plan:

a) Inv.6/IB/CHE/2021
b) Inv.7/IB/CHE/2021
c) Inv.11/IB/CHE/2021
d) Inv.13/IB/CHE/2021
e) Inv.14/IB/CHE/2021

2.2. Inv.6/IB/CHE/2021 is filed by the Resolution Professional in respect of the Regen Infrastructure Services Private Limited *(which is the subsidiary of the Corporate Debtor)* and it is stated in the application that the proposed Resolution Plan is prejudicial to the public interest and also against the well settled principles of law and it seeks to destroy the business of the Regen Infrastructure Services Private Limited which is the subsidiary of the Corporate Debtor. The detailed objections raised by the Applicant in the present application will be dealt with in the later portion of the order.

2.3. Inv.7/IB/CHE/2021 is filed by the successful Resolution Applicant to intervene in the Resolution Plan and to submit its ground for the sanction of the Resolution plan.

2.4. Inv.11/IB/CHE/2021 is filed by one Ms. Giriraj Enterprises who claims to be an Operational Creditor who has duly filed his claim for a sum of Rs.25,18,56,602/- and it has been stated that the Applicant has filed an application seeking consolidation of the Corporate Debtor and also raised his detailed objections to the Resolution Plan which will be dealt with later in the order.

2.5. Inv.13/IB/CHE/2021 is also filed by the Applicant who claims to be one of the Operational Creditor who has duly filed his claim for a sum of Rs.11,80,628/- in respect of the Corporate Debtor. The same will be dealt with later in the order.

2.6. Inv.14/IB/CHE/2021 filed by the Applicant namely Gazala claims to be an Operational Creditor who has duly filed his claim for a sum of Rs.31,44,117/- and has raised several objections to the Resolution Plan. The same will be dealt with later in the order.

Apart from the above, there are certain objections being filed directly in the Resolution Plan in IA/460/IB/CHE/2021.

3. BRIEF FACTS OF CIRP

3.1. In the application filed by one of the Operational Creditor viz. Sarangs Heavy Lift India Private Limited under Section 9 of IBC, 2016, this Tribunal vide its order dated 09.12.2019 initiated the Corporate Insolvency and Resolution Process (CIRP) as against

the Corporate Debtor and appointed the Applicant herein, as Interim Resolution Professional (IRP).

3.2. Pursuant thereto, the Applicant has caused public announcement in Form A as per Regulations 12 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in two newspapers, one in English ("Times of India") and another in Tamil ("The Hindu") on 15.12.2019 and also in "Andhra Prabha" (Telugu) daily on 16.12.2019.

3.3. Thereafter the IRP took control and custody of the Corporate Debtor and it is stated that the Applicant has taken steps under Section 25 of the IBC, 2016, and also reviewed the production of stock in respect of the Corporate Debtor. In pursuance of the publication announcement being made, it was submitted that the Applicant received claims from the various creditors and accordingly constituted the Committee of Creditors (CoC) in the following manner:

S. No	NAME OF THE FINANCIAL CREDITOR	TOTAL CLAIM FILED	DETERMINED CLAIM	% OF VOTING SHARE
1	State Bank of India	802,53,76,258	802,53,76,258	51.56
2	Canara Bank	288,23,63,476	288,23,63,476	18.52
3	Axis Bank	125,68,66,009	125,68,66,009	8.08
4	Indian Overseas Bank	77,26,59,307	77,26,59,307	4.96
5	Standard Chartered Bank	12,67,74,320	12,67,74,320	0.81
6	L & T Infra Investment Partners	70,13,51,231	56,86,97,721	3.65
7	L & T Finance Limited	238,17,94,723	193,13,02,279	12.41
	TOTAL CLAIM OF FINANCIAL CREDITORS	**1614,71,85,324**	**1556,40,39,370**	**100**

3.4. After constituting the CoC, the 1st meeting of the CoC was conducted on 10.01.2020 and in the said meeting, the CoC did not approve the resolution to confirm the Applicant to continue as the Resolution Professional (RP) in respect of the Corporate Debtor. Subsequently on 02.03.2020, it is stated that the Applicant has received an email from two of the Financial Creditors viz. (i) L & T Infra and (ii) L & T Finance Limited, informing the IRP that they are withdrawing the claim in respect of the Corporate Debtor which was made earlier and also sought for an opportunity to file a fresh claim, at a later stage.

3.5. In view of the same, the Applicant reconstituted the CoC and accordingly filed a report before this Tribunal on 05.03.2020. Thereafter, in the CoC meeting held on 06.03.2020, the CoC with 92.51% voting rights appointed the Applicant herein to be the Resolution Professional in respect of the Corporate Debtor and in the said meeting the CoC has also approved the eligibility criteria to be set for the prospective Resolution Applicants (PRA), which is a follows:

a) Rs.50Crore net worth for the body corporate

b) Refundable deposit of Rs.1 Crore under Section 22(2) (h) of IBC, 2016.

3.6. In pursuance thereof, the Applicant herein issued Form-G i.e., Expression of Interest (EOI) for inviting

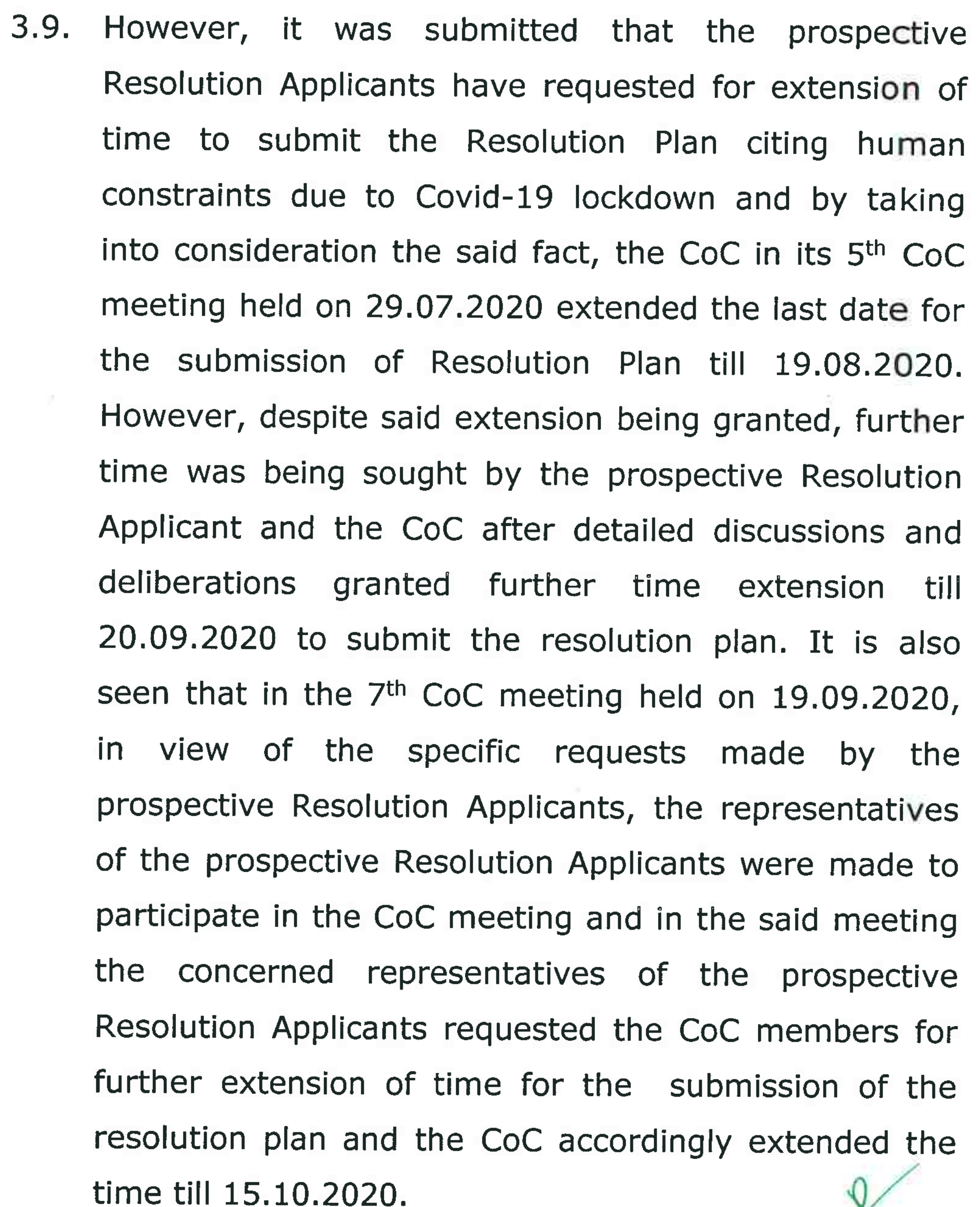
the prospective Resolution Applicant to submit the Resolution Plan in respect of the Corporate Debtor and the said Form-G was also published in "Business Standard" (English) and "Dina Mani" (Tamil) on 12.03.2021. However, after the issuance of Form G, it is seen that the nationwide lock down was imposed on account of Covid-19 pandemic and hence the PRAs' requested for the further time to submit the Expression of Interest and accordingly the CoC has approved the last date for submission of Expression of Interest upto 30.04.2020. Thereafter, it is seen that on 06.05.2020, the Applicant has extended the last date for the submission of Form-G upto 15.06.2020.

3.7. It is seen that due to the pandemic, the 3rd meeting of the CoC was conducted through Video Conferencing on 18.06.2020 and the 4th CoC meeting was scheduled on 24.06.2020. However, it is seen that due to certain connectivity issues, the 4th CoC meeting could not be continued and hence it was adjourned on 25.06.2020. In the 4th CoC meeting, it is seen that the Applicant has discussed about the difficulty faced by him in operating the factory during the pandemic and also there is no business operations in the Corporate Debtor Company from 25.03.2020. The Applicant has also apprised the CoC that he has received the Expression of Interests from the following persons:

a) Renew Power Services Private Limited;
b) Rajalakshmi Renewable Energy Limited;
c) CFM Asset Reconstruction Private Limited;

3.8. It was submitted in the said CoC meeting after a detailed discussion, the final list of prospective Resolution Applicants was placed before the CoC and also the CoC fixed the last date for the submission of the Resolution Plan as 30.07.2020. It is also seen that the Applicant has issued the Information Memorandum to the final prospective Resolution Applicant on 30.06.2020.

3.9. However, it was submitted that the prospective Resolution Applicants have requested for extension of time to submit the Resolution Plan citing human constraints due to Covid-19 lockdown and by taking into consideration the said fact, the CoC in its 5th CoC meeting held on 29.07.2020 extended the last date for the submission of Resolution Plan till 19.08.2020. However, despite said extension being granted, further time was being sought by the prospective Resolution Applicant and the CoC after detailed discussions and deliberations granted further time extension till 20.09.2020 to submit the resolution plan. It is also seen that in the 7th CoC meeting held on 19.09.2020, in view of the specific requests made by the prospective Resolution Applicants, the representatives of the prospective Resolution Applicants were made to participate in the CoC meeting and in the said meeting the concerned representatives of the prospective Resolution Applicants requested the CoC members for further extension of time for the submission of the resolution plan and the CoC accordingly extended the time till 15.10.2020.



3.10. It was submitted that the prospective Resolution Applicants have submitted their Resolution Plan to the Applicant on 10.10.2020 and 11.10.2020 and the Applicant after verifying the same has forwarded the same to the members of the CoC. Further, in the 8th CoC meeting which was held on 22.10.2020, the representatives of the prospective Resolution Applicants were allowed to present their respective Resolution Plans before the CoC separately. However, it was submitted that one of the prospective Resolution Applicant namely CFM Asset Reconstruction Company who participated in the CoC meeting withdrew their participation in the bidding process in view of the RBI notification passed on the Asset Reconstruction company during the CIRP.

3.11. It was submitted that the CoC members have expressed that there should be a substantial improvement in the offer of the Resolution Plan submitted by the prospective Resolution Applicant since the proposed amount is very low and accordingly the Core Committee after several negotiations with the prospective Resolution Applicants has requested them to submit the revised Resolution Plan to the Applicant.

3.12. In the meantime, the 180 day of CIRP in respect of the Corporate Debtor came to an end and accordingly the RP has moved an application IA/30/2021 seeking extension of CIRP and this Tribunal vide its order dated 20.04.2021 after excluding the period from 25.03.2020

to 31.10.2020 extended the CIRP for a period of 90 days.

3.13. The 10th CoC meeting was held on 05.02.2021, wherein a detailed discussion about the modification of the Resolution Plan with the prospective Resolution Applicants was discussed and the prospective Resolution Applicants were directed to submit the revised Resolution Plan before the CoC on or before 10.02.2021. However, it is stated the revised Resolution Plan was submitted only by M/s. Renew Power Services Private Limited in the 11th CoC meeting on 26.02.2021 and another prospective Resolution Applicant namely M/s. Rajalakshmi Wind Energy Limited has not submitted the Resolution Plan to the Applicant within the due date.

3.14. It was submitted that the CoC in its 12th meeting held on 04.03.2021, 05.03.2021 & 06.03.2021 discussed about the modifications of the resolution plan submitted by the prospective Resolution Applicant viz. Renew Power Services Private Limited in detail and after detailed discussions and deliberations made in the CoC meeting, the CoC in its 13th CoC meeting held on 03.04.2021 has put for vote the Resolution Plan submitted by the Renew Power Services Limited. The last date for e-voting was fixed as 24.03.2021 and accordingly the CoC with the 94.08% has voted in favour of the Resolution Plan.

3.15. It is stated that the said decision of the CoC in approving the Resolution Plan was conveyed to the successful Resolution Applicant on 25.04.2021 and the RP has also issued a Letter of Intent to the successful Resolution Applicant on 26.04.2021. It is also submitted that the successful Resolution Applicant has submitted its performance guarantee to the tune of Rs.16,75,06,600/- which is 10% of the Resolution amount to the RP on 03.05.2021.

Under the said circumstances, the RP has moved the present application under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016, seeking approval of the resolution plan by this Adjudicating Authority.

4. Salient features of the Resolution Plan:

4.1. Payment proposal:

- Rs.160 Crores to the Financial Creditors and the same shall be distributed as per the voting rights of CoC and issue and allotment of lender equity share to the Financial Creditors to Rs.75 Lakhs (15% of equity of Rs.500 lakhs) as per their voting rights.
- Rs.271.40 lakhs for employee creditors
- Rs.186.40 Lakhs for workmen creditors
- Rs.25.95 Lakhs for statutory creditor
- Rs.176.91 Lakhs for the operational creditors

Totally Rs.166,60,66,000/- *(One Hundred and Sixty-Six Crores Sixty Lakhs Sixty-Six Thousand only)* proposed to the stake holders.

4.2. **Terms of Payment:**

- 1st Tranche INR 65 Cr. shall be payable within 30 days of NCLT approval of resolution plan (or Transfer date) and

- Remaining amount shall be payable within 60 days of 1st Tranche (or Transfer date)

- The resolution applicant proposes to pay 12.25% to the financial creditors on the admitted amount to the secured financial creditors and 100% to EPFO, 100% to the Workmen, 0.39% to Operational Creditors. The Resolution Applicant proposes to pay 12.25% to the financial creditors on the admitted amount to the secured financial creditors. Further to that the summary of the Resolution Plan proposed in the Resolution Applicant as follows:

TRANCHE OF PAYMENT	DATE OF PAYMENT	AMOUNT (RS. IN LAKHS)
10% of Resolution Plan amount as Performance Guarantee	7 days from the date of approval of CoC	16,75,06,600/-
I Tranche - 38.80% of the Resolution Plan amount	30 days from the date of approval by AA	65,00,00,000/-
II Tranche & Final Tranche- Balance 61.20% of the Resolution Plan amount	60 days from the date of approval by AA	102,50,66,000/-

5. OBJECTIONS TO THE RESOLUTION PLAN

The objections to the resolution plan can be categorized in the following manner;

(i) Objections raised by RP of RISPL.

(ii) Objections raised by customers of RISPL

(iii) Objections raised by other Operational Creditors and Financial Creditors

Regen Infrastructure and Services Private Limited *("RISPL")* is a wholly owned subsidiary of M/s. Regen Powertech Private Limited *("RPPL")*. RISPL was admitted into Corporate Insolvency Resolution Process by this Tribunal vide its order dated 19.02.2020 passed in IBA/1424/2019 and one Ms. Renuka Devi Rangaswamy was appointed as Interim Resolution Professional, who was confirmed as the "Resolution Professional" in the 3rd meeting of the CoC held on 21.09.2020.

5.1. OBJECTIONS RAISED BY RP OF RISPL

5.1.1 That the proposed Resolution Plan is prejudicial to public interest and against well settled principles of law and seeks to destroy the business of RISPL which is a Subsidiary of RPPL.

5.1.2 That the Applicant was appointed as the Resolution Professional of RISPL, which is the

100% Wholly Owned Subsidiary of RPPL, by virtue of the Order of this Hon'ble Tribunal dated 19.02.2020 made in Application No. IBA/1424/2019. Likewise, the Holding Company RPPL was admitted into CIRP by the order of this Hon'ble Tribunal dated 13.12.2019 made in IBA/1099/2019.

5.1.3 That RPPL's principal business is the manufacture of Wind Energy Generators (WEGs). RPPL incorporated RISPL as its Subsidiary to aid RPPLs business by making main objects of RISPL as Land Aggregator / Facilitator, Erection, Testing, Commissioning, Operation and Maintenance services

5.1.4 That RPPL had acquired the Technical Knowledge in respect of the WEGs through the Know How License & Technical Assistance Agreement dated 05.11.2007 entered between Regen Renewable Energy Generation Global Ltd., Cyprus (Foreign WoS of RPPL) and Vensys Energy AG, Saarbruecken (Germany) and subsequently sub-licensed to RPPL as noted in the Know How Sub-License & Technical Assistance Agreement dated 20.11.2007,Know How License & Technical Assistance Agreement dated 21.03.2011 entered between Vensys Energy AG, Saarbruecken (Germany) and RPPL, Tripartite Deed of Assignment dated 06.03.2015

executed between Regen Renewable Energy Generation Global Ltd., Cyprus (Foreign WoS of RPPL), Vensys Energy AG, Saarbruecken (Germany) and RPPL and Know How License & Technical Assistance Agreement dated 17.09.2015 entered between Vensys Energy AG, Saarbruecken (Germany) and RPPL. Thereafter, RPPL had permitted RISPL to carry out its business of Operation and Maintenance which is also covered under the License from Vensys Energy AG, Saarbruecken (Germany).

5.1.5 That the business of both Holding Company RPPL and Subsidiary Company RISPL are intertwined and inter-connected. In view of the commencement of CIRP against both the Holding Company RPPL and Subsidiary Company RISPL, the Customers of both Companies have filed various Applications before this Hon'ble Tribunal, seeking to address their grievances in relation to service of WEGs manufactured by RPPL and in some cases, operated and maintained by RISPL.

5.1.6 That after assuming charge, this Applicant found that both RPPL and RISPL have their Registered Office at the same address and that most of the records of RISPL were not available in the Registered Office. Inspite of numerous requests and repeated reminders to the Ex-Directors, they were not willing to

come forward to provide the records and cooperate with this Applicant. Therefore, the Applicant was constrained to file IA/1040/2020 under Sec.19(2) of IBC,2016.

5.1.7 That the Applicant had also sought for information from the Respondent herein, the Resolution Professional of RPPL, in relation to the Know-how License and Technical Assistance Agreements entered with Vensys Energy AG, Saarbruecken (Germany). Strangely, the Respondent did not share the Agreements until the copy of the Agreements were filed before the Mediator appointed by this Tribunal.

5.1.8 That on going through the various Applications filed by RISPL Customers, where in some cases RPPL is also made a party, the Applicant came to understand the impact of the Know-how License and Technical Assistance Agreements entered with Saarbruecken (Germany).

5.1.9 That the crux of the said Agreements is that RPPL is vested with the rights to use the Know- how technology provided by Vensys Energy AG and RPPL is entitled to assign its right under the said Agreements to RISPL. In short, RISPL business operation mostly depends on the Intellectual Property rights

vested with RPPL. In the event RPPL revokes the permission given to RISPL under the Know-how License and Technical Assistance Agreements, RISPL would be forced to close its business and wind up its operations. In essence, RISPL is a pawn in the hands of RPPL.

5.1.10 That in these circumstances, RPPL proceeded to call for Expression of Interest (EoI) during Covid Lockdown period and secured a plan from the Proposed Resolution Applicant (PRA). A bare perusal of the Resolution Plan submitted by the PRA would establish that the plan is prejudicial to public interest and opposed to public policy.

5.1.11 That the impact of the Resolution Plan would have a devastating effect on the business of RISPL, its Stakeholders and Third-Party Public Customers. The following reasons would make it vividly clear that the proposed Resolution Plan if approved, would result in more complications than Resolution, for the following reasons:-

a) Business connection of RISPL to RPPL is inseparable.

b) The main object of RPPL is to carry on the business of manufacturing WEGs. RPPL incorporated RISPL as its

Subsidiary to carry out major activities like procurement of land, installation of WEGs manufactured by RPPL, commissioning of WEGs manufactured by RPPL, rendering Operation and Maintenance services and Settingup of Pooling Substations for evacuation of Power to the Grids. In short, RISPL isrequired to operate and maintain the WEGs manufactured and supplied by RPPL and to provide incidental and ancillary services.

5.1.12. That the O&M services provided by RISPL is governed by the various Know-how License and Technical Assistance Agreements dated from 2007 to 2015 for different models of WEGs with Power Variants, entered with Vensys Energy AG, Saarbruecken (Germany). Therefore, the Standalone Resolution Plan of PRA seeks to snatch the right of RISPL to carry on its O & M business and other incidental and ancillary services. The entire business of RISPL depends on WEGs manufactured by RPPL.

5.1.13. That the Resolution Plan is prejudicial to public interest. The Customers of RPPL and RISPL are public Third Parties, who have availed the Generators from RPPL. Most of the Customers have purchased the WEGs by Bank loans to fund the purchase. The Customers of both Companies have entered into Agreements with

both RPPL and RISPL for replacement, service, operation and maintenance. In the event of default by RPPL, RISPL is required to honour the same and vice versa. In the event RISPL is unable to service the customers, the RPPL undertook to carry out the service of Generators. The failure of RPPL to service RISPL customers has resulted in liquidated damages being slapped on RISPL. The failure of expected Wind Power Generation from the WEGs manufactured by RPPL, also entitles the WEG Customers to slap damages against RISPL.

5.1.14. That in these circumstances, if the Standalone Resolution Plan of the PRA is sanctioned, the affected parties are not only the Stakeholders of RISPL but also the Third-Party Public Customers and indirectly the Banks which funded the purchase of WEGs also will not be able to realize their dues. In addition to the above, the shutting down of most of the WEGs in view of the threat of closure of RISPL's business impacts the Nation's capacity to generate wind energy. Thus, on all counts, the Resolution Plan is prejudicial to the public and against public policy.

5.1.15. Without prejudice to the above, it is just and necessary to point out that the proposed Resolution Plan in addition to resulting in the

death of RISPL, would also deprive 320 Direct Employees and about 350 Contract Employees currently working across India, of their employment.

5.1.16. That the Proposed Resolution Plan also intends to prohibit the transfer of the License to Know-how technology on production, license, marketing, sale and installation of WEGs of different models with power variants. In view of the prohibition clause contained in the Know-how License and Technical Assistance Agreements, RISPL would be deemed as a Third Party bringing the businesses of RISPL i.e., Erection and Commissioning as well as Operation and Maintenance businesses to a grinding halt.

5.1.17. That the Proposed Resolution plan intends to strike off and wind up the Subsidiaries of RPPL as the Proposed Resolution Plan adopts the principles of fresh slate policy. In other words, the Proposed Resolution Plan intends to wipe away any liability, claims or obligations relating to its Subsidiaries such as RISPL, which were in existence prior to the Transfer Date and also covers any undertaking, indemnity or guarantee issued by RPPL to the customers of RISPL.

5.1.18. That RISPL has taken on lease vast tracks of lands from RPPL and the Proposed Resolution Plan intends to dilute the lease and take over the available infrastructure which are prevailing on the leased lands which is nothing but a back door entry to snatch away the infrastructure of RISPL which is detrimental to all interested stake holders of RISPL

5.1.19. That the Resolution Plan of the Holding Company is therefore unreasonable, arbitrary, fanciful, capricious and oppressive. In addition to the above, the Resolution plan depletes the value of the assets rather than increasing the value of assets in the interest of all Stakeholders which is against the spirit of the Code.

5.2. OBJECTIONS RAISED BY CUSTOMERS OF RPPL

5.2.1 The Applicants claim to be one of the 293 Operational Creditors in respect of the Corporate Debtor, who had duly filed a Claim with the RP of RPPL and the said Claim had been duly admitted in full and is reflecting in the Operational Creditors Claim.

5.2.2 That as an Operational Creditor, reference was made to Sec.24(3) of the Insolvency and Bankruptcy Code 2016, which provides that a Notice of each Meeting of the Committee of

Creditors be given by the Resolution Professional to Operational Creditors or their representatives if the amount of their aggregate dues is not less than 10% of the Debt. In the matter of Rajputana Properties (.P) Ltd., vs. Ultra Tech Cement Ltd., and Others (I.A.No.594 of 2018 in Company Appeal (AT) Insolvency No.188 of 2018), the Hon'ble National Company Law Appellate Tribunal, New Delhi has recorded in its Order dated 15.05.2018 the following observations, that insists on transparency and to value the opinion of persons without voting rights including that of the Operational Creditors. In the context of approving or rejecting a Resolution Plan, the intent of the legislature to follow a transparent procedure is clear.

5.2.3 That the Applicant states that 10% of the Representation has not been provided for and is in violation of the Code. Hence, the approval of the Resolution Plan by the COC is vitiated and bad in law.

5.2.4 That there is a lack of transparency with respect to the details of the subsidiaries of the Corporate Debtor. It was submitted that the minutes of the COC meeting do not provide the details of the subsidiaries, however, it merely records that the "Chairman briefed the CoC on the various subsidiaries of the

Corporate Debtor". It was further submitted that Corporate Debtor has certain Special Purpose Vehicles who hold certain land assets of the Corporate Debtor and this fact has been totally ignored by the COC and there has been no attempt to confirm the veracity of these facts.

5.2.5 It was submitted that the Corporate Debtor has 8 wholly owned subsidiaries and one of which is a Foreign wholly owned subsidiary and it is a fact borne on record that no Annual Returns have been filed by the Corporate Debtor for the Financial Year 2019 – 2020 as a result of which the correctness of the Enterprise Valuation / Companies Share valuation is questionable. The Resolution Application is required to convince this Tribunal as to whether the details of the Wholly owned subsidiary / step down subsidiary are recorded in the Information Memorandum which was shared with the prospective Resolution Applicants to enable the submissions of an Appropriate Resolution Plan.

5.2.6 It was submitted that all the cash, accruals, profits earned during CIRP and all the book receivables till Approval of the Plan are intended for the benefit of the Resolution Applicant. Further, it was submitted that there

is an unlimited accrual for which reason the Resolution Plan approved by the CoC clearly states the upper cap of amount receivable from the Resolution Applicant.

5.2.7 It was submitted that the Request for Resolution Plan (RFRP) should contain a clear clause about the treatment of Cash Accruals and Profits earned during the CIRP and the RP in the present case has failed in his duty and has freely allowed the Resolution Professional to take the assets earned during the CIRP. It was further submitted that it is very clear from the minutes of the CoC that the Corporate Debtor is earning profit of Rs.3 to 4 Crore every month and this is expected to continue in the future too and as such this Resolution Plan is prejudicial to the interest of the Operational Creditor like the Applicant.

5.2.8 It was submitted that there is a severe violation is noted in the Resolution Plan in relation to the Workmen Retrenchment Process, by directing payments out of the funds generated by the Corporate Debtor during the CIRP. It was submitted that the RP in its 10th CoC meeting suggested for payment of Compensation / Settlement instead of going through legal process by obtaining the permission of Joint Commissioner of Labour for such

Retrenchment of Employees. The question which is raised by the Applicant is that whether the Retrenchment cost should form part of the Resolution Plan amount or that the same should be taken out of the Cash Accruals or any other Revenue of the Company during the CIRP. In the present case, it was submitted that the Retrenchment cost to be spent from the earnings during CIRP is a Preferential Treatment by way of allocating fund to certain class of creditors, which is against the spirit of the Code and nowhere, the same shall become part of the CIRP cost.

5.2.9 It was submitted that there was non-adherance to the provisions of IBC, 2016 and the publication of Expression of Interest in Form G has not been made by the RP as required under Regulation 36A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It was submitted that, considering that the Corporate Debtor has business operations in various parts of India, it would have been appropriate to publish Form G in All India Edition in both English and respective vernacular, however the RP has chosen to ignore publication in the principal office of the Corporate Debtor at Tada, Andhra Pradesh.

5.2.10 It has been averred in the Petition that the Applicant Mr. S. Krishnamoorthy has perused the Resolution Plan and having been in the Wind Industry the Applicant is of the firm opinion that the present Resolution Plan has overlooked a lot of practical requirements from the customers point of view and aims at settling RPPL alone with disregard to the status of its customers.

5.3. OBJECTIONS RAISED BY TVH ENERGY RESOURCES PVT. LTD.

5.3.1 The Objector i.e., TVH Energy Private Limited, claims to be an Operational Creditor of the Wholly owned Subsidiary of the Corporate Debtor viz. RISPL.

5.3.2 It was submitted that the proposed Resolution Plan proposes to cut the ties with all the subsidiaries and leaving them to fend on their own. It was submitted that the purpose of IBC, 2016 would be lost that if a proposed Resolution Plan rewrites a long-standing contractual obligation and alter them to suit a set of parties alone.

5.3.3 It was submitted that the Resolution Plan is contrary to the Code since it does not maximize the value of the group assets and it does not benefit the economy, rather hurts the other stakeholders and may possibly push each of

those entities to a CIRP process. Further, it was submitted that the Resolution plan fails to account for functioning of the Corporate Debtor as a going concern, however treats the Resolution Process as a mode of acquisition and independent asset sale primarily of the intellectual property and of the immovable assets.

5.3.4 It was submitted that the contractual arrangement between the Objectors and the subsidiary of the Corporate Debtor are being overridden through the terms of the Resolution Plan and the Resolution Plan under the guise of streamlining its operations is severing all its contractual obligations and guarantees which are effectively its primary obligations as a parent holding access all the technical know-how, factory premises and repair facilities. By calling all the assignment agreements under para 5.2.8(b) of the Resolution Plan titled 'Contracts with the Customers of the Corporate Debtor' as discharged cannot be construed as legally valid.

5.3.5 It was submitted that the established fact remains that all the original supply and maintenance agreement of the objector was executed with the Corporate Debtor alone and the purpose of assignment and reorganizing the operating structure of the Corporate Debtor was to ensure that the ground operations and

maintenance could be effectively governed through a separate entity whereas, the pare still retained exclusive control over the repairs, equipment control, access to factory premises etc.

5.3.6 It was submitted that the Resolution Plan fails to look at the underlying structure between the parent and its subsidiaries. Further, the manner of approval by the Committee of Creditors too is questionable and all the stakeholders are aware of the two simultaneous CIRP process pending before this Tribunal against the Corporate Debtor and its wholly owned subsidiary.

5.3.7 It was submitted that it was beyond comprehension for the subsidiary of RPPL to even survive or secure the repair equipment for the infrastructure installed in their respective wind farms. Further, it was submitted that the Resolution plan leave the objector stranded with no contractual relief and the manner of approval is shrouded with malice, haste and underhandedness.

5.3.8 It was submitted that the Resolution Plan is contradictory to the object of IBC, 2016 and also contrary to the principles observed and discussed by the drafters of the Code. Further, it was submitted that the Resolution Plan does not meet the requirements as set out under

Section 30(2) of IBC, 2016. It was submitted that the Resolution Applicant has sought to repudiate all the contracts and liabilities of the Corporate Debtor and also it was pointed out that the Objectors six motors and wind mill parts are de-erected and are at the factory of the Corporate Debtor and the same is yet to be serviced. Hence it was submitted that the Resolution Plan submitted by the Resolution Applicant is required to be rejected.

6. Reply and Written Submission of RP of RPPL

6.1. It was submitted that the Intervention Application filed by the subsidiary Company or its Resolution Professional has no legs to stand, since the Intervener has no locus – standi to question the Resolution Plan of RPPL.

6.2. It was submitted that the submission of the RP of RISPL that the nature of business of RPPL and RISPL are inseparable in nature and hence the Resolution Plan of RPPL should not be approved will no longer survives for consideration since the same issue was canvassed during the simultaneous / consolidated CIRP and the same has been rejected and in any even both RPPL and RISPL are separate entities and can carry on their business in their respective spheres.

6.3. It was submitted that the contention of the RP of RISPL that the approval of the Resolution Plan of RPPL will wipe out RISPL and in the alternative intends to wind up RISPL is false. In this context it was submitted that when RISPL is already under CIRP, the question of winding up of RPPL would not arise. Further, it was contended that RPPL has no right or control over RISPL as all its rights as shareholder are frozen at the stage of initiation of CIRP and as such no rights of equity in RISPL are exercisable by RPPL. It was contended further that RP of RISPL has already received a Resolution Plan as early as on April 2021, however the RP of RISPL for the reasons best known to her has not proceeded with the same yet. As a matter of record, it was contended that RISPL has proceeded with the Expression of Interest and has received the Resolution Plan, and the very fact proves that RISPL can survive without the Corporate Debtor.

6.4. It was submitted that the very basis of CIRP and Resolution plan is on the concept of clean slate as noted by the Apex Court and no Resolution Applicant who is pumping in money would want to be saddled with all obligations of the Corporate Debtor.

6.5. In relation to the contention of the RP of RISPL that the Resolution Plan seeks to deal with the

assets in the custody of RISPL as a Lessee, it was submitted that the said claim is high untenable as no Resolution Plan of one Corporate can deal with the assets of another entity. In this context, it was submitted that whatever rights are vested with RISPL by way of leases etc., are bound to continue as per law and RISPL is wholly entitled to act by due process of law to recover any assets, if legally taken over by the Corporate Debtor as alleged. It was submitted that the Resolution Plan does not and cannot in any way seek to vest rights on RPPL over any assets of RISPL or assets of the subsidiary as the Resolution Plan can deal only with the assets of the Corporate Debtor.

6.6. In relation to the intervention Application filed by the alleged Operational Creditors, it was submitted that they are erstwhile customers of RPPL and has no legs to stand and to maintain any objections to the Resolution Plan in respect of RPPL. In order to buttress the said issue, reliance was placed upon the order passed by this Tribunal on 01.11.2021 wherein, this Tribunal has dismissed the Application filed for Consolidation / simultaneous CIRP in respect of the RPPL and RISPL, in which it was held that the Applicants have no locus standi since they are only customers in respect of RPPL. It was submitted that the alleged Operational Creditors are trying to re-agitate the same

issue which was canvassed and rejected by this Tribunal vide its order dated 01.11.2021 on the ground of locus standi.

6.7. On merits, it was submitted that as per the Guidelines of Ministry of New and Renewable Energy (MNRE) Union of India, RPPL had the technology monopoly over Vensys Technology even when the Applicants have purchased the machines and also currently and will continue to have the same after the approval of the Resolution Plan, since exclusivity is not created or modified by the virtue of the Resolution Plan. Further it was submitted that the contention of the Applicant that only a person in whose name the Type Certificate is issued by MNRE for a model of Wind Energy Generator (WEG) is entitled to service is a misnomer, since the position under the Guideline is merely that only the person who has the Type Certificate is entitled to manufacture and supply the WEG and there is no such restriction under the MNRE Guidelines apply for service.

6.8. It was further submitted that even presently RISPL does not have any Type Certificate and yet it is servicing machines and similarly even third parties are servicing the machines and in such a position there is not even an iota of truth to claim that only RPPL can service the 1.5 MW WEG. In addition, it was submitted

that the said issue is not even relevant since in any event the Resolution Applicant has undertaken to service the 1.5MW WEG on normal commercial terms for all the owners of such machines. Also it was submitted that the Resolution Plan does not seek any waiver or exemption from MNRE guidelines. It was also contended that the guidelines are not meant to mean that even if a supplier gets liquidated the customer will get services, as evidently there will be no one to service. In any event it was submitted that the guidelines cannot override the provisions of IBC, 2016.

6.9. It was also contended that if the Resolution Plan is rejected and if RPPL is ordered for liquidation, which is the only alternative then there would be no one available to ensure that the services are provided and as such if the Applicant is serious about obtaining services for the WEG purchased from RPPL it cannot be objecting to the approval of the Resolution Plan of RPPL.

6.10. It was submitted that the provisions of the Code and Regulations do not envisage any representative of disparate Operational creditors being made an invitee to the CoC. It only envisages that representatives of such Operational Creditors who are more than 10% of the total debt would be invited to the CoC.

Pointedly there is no provision in the Code to allow unconnected Operational Creditors to nominate a representative for them at the COC nor is there any procedure mandated for the Resolution Professional to select such representative. Even at the most stretched interpretation of the Code and Regulations a representative who approaches the Resolution professional setting out that he is duly appointed by Operational Creditor's owning 10% debt can be invited to the CoC. It is no part of RP's duty to find and select representatives of Operational Creditor in the absence of any mechanism under the Code and regulations thereunder for this purpose. It is not the case that someone who represented 10% debt holder Operational Creditor was refused to be allowed to participate in the COC despite such person having sought the same. Even otherwise as per the Explanation proviso of Section 24(4) clearly indicates that such absence will not invalidate the proceedings of COC as there is no voting right to Operational Creditor.

6.11. The value of the subsidiaries that accrues to the holding company is not the value of the assets of the subsidiary but is rather only the investments value in subsidiary. It was submitted that two valuations have been got done as per the Code by IBBI registered

valuers and the integrity of such valuation is sought to be impeached on vague assertions claiming subsidiaries have lot of land without any details. It was submitted that it is a well settled principle that when one pleads fraud the onus of proof is on him and as such bland claims are to be rejected as nothing is adduced as proof.

6.12. It was submitted that the claims in respect of reliability of the COC minutes, impeach the integrity of the COC comprised of some of the largest and best banks in the country and who are the persons who have a stake of over Rs 1000 Crores vis-à-vis RPPL. An Operational Creditor who has a meagre claim when compared to that of COC, who have more than 1000 crores seeking to paint the COC as dishonest, cannot be countenanced and such allegations are all made in thin air without any basis for the same.

6.13. It was submitted that the issues of dealing with the CIRP period accruals and the Workmen retrenchment cost are all part of the commercial evaluation of the plan. Further, it was submitted that the Workmen retrenchment was discussed only to reduce the fixed cost whereby fixed cost would come down and the same will not anyway increase CIRP cost. The Resolution Applicant in clause 5.5.9 of the

Resolution plan deals with the accruals based on the position of accruals anticipated during submission of Resolution Plan. The Applicant not being an expert in these matters should not venture into second guessing the decisions of the COC. As if any additional amounts are received it would only flow to the COC member banks and as such the COC member banks have taken all steps to maximize realisation from the Resolution plan.

7. REPLY AND WRITTEN SUBMISSION OF CoC OF RPPL

7.1. It was submitted that as on date, the objectors to the Resolution Plan are only customers of RISPL and not of RPPL and the nature of relief sought for in their main applications are for specific performance of a contract. Further, it was submitted that the basis of these claims are based on equity and assumption that they will be put to irreparable loss and in an insolvency proceedings, several players lose out because primary importance is given to the revival of the Company and the said decision is entirely vested upon the CoC.

7.2. Reliance was placed upon the Judgment of the Hon'ble Supreme Court in the matter of **India Resurgence ARC Limited -Vs- Amit Metaliks Limited and Another**; *(2021) SCC Online SC 409* to state that *"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".

7.3. It was submitted that customers are not stakeholders and they have no *locus standi*to maintain any application before this Tribunal and an attempt is made to circumvent the order dated 01.11.2021 passed by this Tribunal wherein consolidation plea was rejected. Further, it was submitted that Section 24(3)(c) of IBC, 2016 provides for right to attend meetings to those operational creditors having claim value of 10% of the debt and not of operational debt and by virtue of Sec. 24(4) of IBC, 2016 any non-compliance will not invalidate the proceedings.

7.4. It was submitted that section 60(5) of IBC, 2016 is in the nature of a residuary jurisdiction vested in NCLT so that NCLT may decide all questions of law or fact arising out of or in relation to insolvency resolution and liquidation under the provisions of IBC, 2016 and such a residual jurisdiction does not in any manner impact Section 30(2) of IBC, 2016 which circumscribes the jurisdiction of the Adjudicating Authority when it comes to the confirmation of the Resolution Plan under Section 31(1) of IBC, 2016. IN support of the said contention, reliance was placed upon the

Judgment of the Hon'ble Supreme Court in the matter of **Committee of Creditors of Essar Steel India Limited -Vs- Satish Kumar Gupta and Ors**; *(2020) 8 SCC 531* and **Ebix Singapore Private Limited and Ors -Vs- Committee of Creditors of Educomp Solutions Limited and Ors**; *2021 SCC Online SC 707.*

7.5. Further, it was submitted that a Resolution Plan can provide for extinguishment of onerous contracts and as such a provision cannot amount to violation of Section 30(2)(e) of IBC, 2016 and in order to buttress the said argument, reliance was placed upon the Judgment of the Hon'ble Supreme Court in the matter of **P. Mohanraj and Ors. -Vs- Shah Brothers IspatPvt. Ltd.**; *(2021) 6 SCC 258*.

7.6. It was submitted that the CoC has earnestly worked towards the resolution of the insolvency of the Corporate Debtor as is evidenced from the minutes of the meetings and also from the 12th CoC meeting it is seen that the CoC has clearly awarded marks on each of the parameters of the evaluation matrix. Further the CoC has filed an affidavit detailing the business transacted in the said meetings evidencing revision of the Resolution Plan by the Resolution Applicant multiple times based on the suggestion of the CoC.

8. FINDINGS OF THIS TRIBUNAL

8.1. In so far as the objections raised by the purported Operational Creditors in respect of the Corporate Debtor is concerned, it is seen that this Tribunal already vide its order dated 01.11.2021 has dealt in detail as regards the contention raised by the alleged Operational Creditors and has rendered its finding which is as follows;

> *"5.6. As already alluded supra, the status of the Applicants who have filed the present Application is that they are the customers of RPPL or RISPL. We have gone through the Application filed by the Applicants and in all the Applications the status of their claim filed with the RP has not been disclosed by the Applicants. Further, from the nature of transactions that happened between the Applicants and the respective Corporate Debtor viz. RPPL and RISPL, it is clear that Applicants herein cannot be treated as an "Operational Creditor" in relation to the Corporate Debtors. Sec. 5(20) and 5(21) of IBC, 2016 defines the term "Operational Creditor" and "Operational debt", which is extracted hereunder;*
>
> > *(20) "operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;*
> >
> > *(21) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the 2 [payment] of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;*

5.7. The term "Operational Creditor" means a person who has provided goods or rendered service to the Corporate Debtor. In the present case, all the Applicants herein have not rendered services to the Corporate Debtor, however, it is that the Corporate Debtor who has rendered services to all the Applicants as per the Operation and Maintenance Agreement. In such a scenario, the Applicants herein cannot be termed as an "Operational Creditor". Thus, these Applicants who are all customers of RPPL and RISPL in the opinion of this Adjudicating Authority has no locus standi to maintain the present Application, since they are not either a 'Financial Creditor' or an 'Operational Creditor' in respect of both RPPL and RISPL. Also these Applicants are not members of the CoC of either RPPL or RISPL. Thus, this Tribunal is of the considered view that except IA/548/CHE/2021, which is filed by the RP of RISPL, the other Applications filed by the customers of either RPPL or RISPL seeking consolidation or simultaneous CIRP in relation to the Corporate Debtors are not maintainable.

5.9. Thus, a reading of Section 18(f)(v) of IBC, 2016 would manifest the fact that the Interim Resolution Professional shall take control over the securities including shares held in any subsidiary of the Corporate Debtor. However, clause (b) to the Explanation to Section 18 of IBC, 2016 would state that the assets of the subsidiary of the Corporate Debtor would not form part of the assets of the holding Company. A similar corollary can be seen in Section 36(4) of IBC, 2016 wherein it is stated that shares held in any subsidiary of the Corporate Debtor would form part of the Liquidation Estate and that the assets of the subsidiary of the Corporate Debtor would not form part of the Liquidation Estate. Thus, it is made clear that IBC, 2016, treats the assets of the holding and subsidiary company independently and expressly excludes the assets of the subsidiary Company to be treated along with that of the holding Company. While this being the position of law in relation to holding and subsidiary company under IBC, 2016, the next question which arises for consideration is that de hors the said statutory provision, whether this Tribunal can order for

consolidating the assets of the holding and subsidiary company together and thereby order for consolidated CIRP in relation to RPPL and RISPL.

5.10. We have gone through decisions in regard to Consolidation of CIRP ordered by the NCLT Mumbai Bench in the Videocon case (supra) and by the Hon'ble NCLAT in the matter of Radico Khaitan (supra) and also in Oase Asia Pacific Pte. Ltd. (supra). It need not be emphasized that the provisions of IBC, 2016 does not specifically authorize consolidation of CIRP and as already discussed above, the provisions of IBC, 2016 treat the assets of the holding and subsidiary independently. It is seen that the NCLT Mumbai Bench by placing reliance on several US and UK case laws, one of which being the case of Food Fair Inc., In re; 10 BR 123 (1981), where the Bench held that the key factor for granting substantive consolidation of all debtors is required to yield an 'equitable treatment' of creditors without any undue prejudice. However, the provisions of IBC, 2016 do not deal with the 'equitable treatment' when it comes to Operational Creditors and 'Financial Creditor' and this legal position is fortified by the Judgment of the Hon'ble Supreme Court in the matter of ***Committee of Creditors of Essar Steel India Limited -Vs- Satish Kumar Gupta and Others;*** *(2020) 8 SCC 531, wherein it has been held that the Financial Creditors and Operational Creditors by virtue of their business relations with the Corporate Debtor can never be equally placed and that the IBC itself contemplates Operational Creditors as a separate class of creditors.*

5.11. It is also required to be noted that the question of consolidation is one arising out of equity. The decision of the NCLT Mumbai Bench, and the Hon'ble NCLAT in certain matters ordering for Consolidation of CIRP, in the absence of specific provisions under IBC, 2016, was only by exercising its equity jurisdiction. At this juncture, this Adjudicating Authority, which is a creature of a statute, is required to carefully examine whether such an 'equity jurisdiction' has been conferred upon this Tribunal. In relation to the UK and US law referred by the NCLT Mumbai Bench in Videocon Case (supra), wherein

consolidation of CIRP is being ordered, is by exercising equity jurisdiction which is available under the US and UK Bankruptcy Law. The Indian parliament in its 'legislative wisdom' has expressly and deliberately omitted to implant the concept of 'equitable jurisdiction' upon the Adjudicating Authority under IBC, 2016.

5.12. Further, the term 'equity' which is conspicuous by its absence under the provisions of IBC, 2016 has been engrafted in the Indian Insolvency regime by way of judicial intervention by referring to the US and UK Bankruptcy Law, in which the equity jurisdiction has been embedded under the relevant US and UK Bankruptcy Code. Under the US Bankruptcy Code, the power to order for substantial consolidation emanates from Section 105(a) of the US Bankruptcy Code, which is as follows;

U.S. Code § 105 - Power of court

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

5.13. Thus, we can see that a broad and equitable power has been conferred under Section 105(a) of the US Bankruptcy Code, which authorizes the Court to issue "any order, process or judgment". However, in so far as the Indian Bankruptcy law is concerned, similar powers have been conferred under Section 60(5)(c) of IBC, 2016, which are as follows;

60. Adjudicating Authority for corporate persons. –

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of –

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) <u>any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code</u>

5.14. The powers conferred under Section 60(5)(c) of IBC, 2016 cannot be equated with that of Section 105(a) of the US Bankruptcy Code, since under the latter, broad powers have been conferred to pass "any orders or judgments", however under provisions of IBC, 2016, powers have been conferred only to decide on the question of priorities or any question of law or facts arising out of or in relation to the insolvency resolution or liquidation proceedings of the Corporate Debtor. Thus, it is seen that the Indian legislative makers have consciously omitted to confer such "equity jurisdiction" upon the Indian Insolvency and Bankruptcy Code, 2016. Also, the Hon'ble Supreme Court while dealing with the provisions of IBC, 2016 had an occasion to deal with the said issue and as early as in the year 2019 while dealing with the approval of a Resolution Plan and the jurisdiction of NCLT and NCLAT, in the matter of ***K. Sashidhar -Vs- Indian Overseas Bank and Ors;*** *(2019) 12 SCC 150, has held in para 58 as follows;*

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)

5.15. Also, the Hon'ble Supreme Court recently in the matter of ***Pratap Technocrats (P) Ltd. and Others -Vs- Monitoring Committee of Reliance Infratel Limited &Anr;*** *2021 SCC OnLine SC 569, dealt with the equity jurisdiction of NCLT and NCLAT and has held as follows;*

> ***26.*** *The resolution plan was approved by the CoC, in compliance with the provisions of the IBC. The jurisdiction of the Adjudicating Authority under Section 31(1) is to determine whether the resolution plan, as approved by the CoC, complies with the requirements of Section 30(2). The NCLT is within its jurisdiction in approving a resolution plan which accords with the IBC. There is no equity-based jurisdiction with the NCLT, under the provisions of the IBC.*
>
> ***30.*** *The jurisdiction which has been conferred upon the Adjudicating Authority in regard to the approval of a resolution plan is statutorily structured by sub-Section (1) of Section 31. The jurisdiction is limited to determining whether the requirements which are specified in sub-Section (2) of Section 30 have been fulfilled. This is a jurisdiction which is statutorily-defined, recognised and conferred, and hence cannot be equated with a jurisdiction in equity, that operates independently of the provisions of the statute. The Adjudicating Authority as a body owing its existence to the statute, must abide by the nature and extent of its jurisdiction as defined in the statute itself.*
>
> ***47.*** *These decisions have laid down that the jurisdiction of the Adjudicating Authority and the*

Appellate Authority cannot extend into entering upon merits of a business decision made by a requisite majority of the CoC in its commercial wisdom. Nor is there a residual equity based jurisdiction in the Adjudicating Authority or the Appellate Authority to interfere in this decision, so long as it is otherwise in conformity with the provisions of the IBC and the Regulations under the enactment.

48. *Certain foreign jurisdictions allow resolution/reorganization plans to be challenged on grounds of fairness and equity. One of the grounds under which a company voluntary arrangement can be challenged under the United Kingdom's Insolvency Act, 1986 is that it unfairly prejudices the interests of a creditor of the company. The United States' US Bankruptcy Code provides that if a restructuring plan has to clamp down on a dissenting class of creditors, one of the conditions that it should satisfy is that it does not unfairly discriminate, and is fair and equitable. However, under the Indian insolvency regime, it appears that a conscious choice has been made by the legislature to not confer any independent equity based jurisdiction on the Adjudicating Authority other than the statutory requirements laid down under sub-Section (2) of Section 30 of the IBC.*

50. *Hence, once the requirements of the IBC have been fulfilled, the Adjudicating Authority and the Appellate Authority are duty bound to abide by the discipline of the statutory provisions. It needs no emphasis that neither the Adjudicating Authority nor the Appellate Authority have an unchartered jurisdiction in equity. The jurisdiction arises within and as a product of a statutory framework.*

(emphasis supplied)

5.16. Thus, the Hon'ble Supreme Court has vociferously stated that this Adjudicating Authority (NCLT) and also the Appellate Authority (NCLAT) have not been empowered with equity jurisdiction under the provisions of IBC, 2016 and that there is no equity-based jurisdiction with the Adjudicating Authority, under the provisions of the IBC, 2016. Also, it is made

clear that, under the Indian insolvency regime, it appears that a conscious choice has been made by the legislature not to confer any independent equity-based jurisdiction on the Adjudicating Authority. Further, an attempt was made by the Learned Senior Counsels arguing in favour of consolidation to state that these decisions were rendered on the issue of approval of Resolution Plan and hence the same cannot be applied to the facts of the present case. However, we are unable to accept the said contention, in view of the fact that the ratio decidendi which has been laid down in the above referred Judgment is that in order to exercise an 'equity jurisdiction', the same has to be conferred under the statutory framework i.e. under the provisions of IBC, 2016.

5.17. Further, as emphasised by the Hon'ble Supreme Court in the Judgment referred supra, the Indian Bankruptcy Code, has consciously did not confer any independent equity-based jurisdiction on the Adjudicating Authority. As a corollary thereof, if there is no equity-based jurisdiction available under the provisions of the IBC, 2016, then the consolidation of CIRP of group companies, in the absence of specific provisions under IBC, 2016, cannot be ordered by this Adjudicating Authority.

5.18. Further, it is also significant to point out here that, the Hon'ble Supreme Court, while dealing with the Indian Insolvency Laws, after examining the judicial interventions and innovations made under the provisions of IBC, 2016 by the Adjudicating Authority and also by the Appellate Authority, in the matter of ***Arun Kumar Jagatramka -Vs- Jindal Steel and Power Ltd. &Anr.,*** *2021 SCC OnLine SC 220, has held as follows;*

> ***103.*** *At this juncture, it is important to remember that the explicit recognition of the schemes under Section 230 into the liquidation process under the IBC was through the judicial intervention of the NCLAT in Y Shivram Prasad (supra). Since the efficacy of this arrangement is not challenged before us in this case, we cannot comment on its merits. However, we do take this opportunity to offer a note of*

caution for the NCLT and NCLAT, functioning as the Adjudicatory Authority and Appellate Authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from the NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC. *This conscious shift in their role has been noted in the report of the Bankruptcy Law Reforms Committee (2015) in the following terms:*

> ***"An adjudicating authority ensures adherence to the process***
> *At all points, the adherence to the process and compliance with all applicable laws is controlled by the adjudicating authority. The adjudicating authority gives powers to the insolvency professional to take appropriate action against the directors and management of the entity, with recommendations from the creditors committee. All material actions and events during the process are recorded at the adjudicating authority. The adjudicating authority can assess and penalise frivolous applications. The adjudicator hears allegations of violations and fraud while the process is on. The adjudicating authority will adjudicate on fraud, particularly during the process resolving bankruptcy. Appeals/actions against the behaviour of the insolvency professional are directed to the Regulator/Adjudicator."*

104. *Once again, we must clarify that our observations here are not on the merits of the issue, which has not been challenged before us, but only limited to serve as guiding principles to the benches of NCLT and NCLAT adjudicating disputes under the IBC, going forward.*

(emphasis supplied)

5.19. Thus, it is also seen that the Hon'ble Supreme Court after examining the provisions of IBC has stated that IBC is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. Further, it has been stated that the legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from the NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.

5.20. Another raison d' etre on why this Adjudicating Authority is not in favour of ordering for consolidation is that in the cases referred to by the Learned Senior Counsels for the Applicants are that the major Financial Creditors have moved an application for consolidation of CIRP of group companies, however in stark contrast, in the present case, the Committee of Creditors of RPPL are totally opposing consolidation, since they have a Resolution Plan in the offing. Similar is the case of RISPL, as seen from the 7th and 8th CoC meeting that RISPL is also evincing Resolution Plans from four prospective Resolution Applicants, however the RP of RISPL based upon a Resolution passed in the 8th CoC meeting has moved IA/548/CHE/2021 for simultaneous CIRP of both RPPL and RISPL. Thus, it becomes crucial at this stage for this Adjudicating Authority to decide on the aspect as to whether consolidation can be ordered at this stage, where the Resolution Plan in respect of both the entities are in the offing. Hence, the timing of consolidation is also required to be examined, since ordering of consolidation of CIRP would amount to de novo start of CIRP process and also there is no extant procedure established under IBC, 2016, as to how to conduct the consolidated CIRP in relation to group companies. Further, when the Resolution Plan in respect of both RPPL and RISPL are in the pipeline, ordering for consolidation of CIRP and thereby starting a de novo CIRP process would amount to defeating the provisions of IBC, 2016, since there is always a danger which exists as to whether the Corporate Debtors would fetch a Resolution Plan during

the period of consolidation. Also, as per the due process of law, the CIRP period in respect of RPPL came to an end on the day on which it has approved the Resolution Plan and at this point of time, it is not lawfully right under the provisions of IBC, 2016 to force RPPL (which has already fetched a Resolution Plan), to undergo another fresh round of CIRP.

5.21. It is also required to be noted at this stage, that one of the essential conditions which is required to be fulfilled for consolidation of CIRP is that the assets of a Corporate Debtor cannot be sold as a standalone unit and that only if consolidation is ordered, the same will maximize the assets of the Corporate Debtor. In the present case, it is seen that the Resolution Plan in respect of RPPL has already been placed before the CoC of RPPL way back in the year November 2020 itself and the CoC has voted in favour of the Resolution Plan in the month of April 2021. Further, it is significant to point out here that, only after the Resolution Plan has been voted by the CoC of RPPL, the Applicants, who are all customers of RISPL have moved the present Application seeking consolidation of CIRP in relation to the Corporate Debtors viz. RPPL and RISPL. As already alluded supra the Resolution Plan in respect of RISPL is also in the offing and it cannot be said that the creditors of RISPL, let alone the customers, would be left in lurch in the present scenario.

8.2. Thus, the objections raised by the alleged Operational Creditors is already answered by this Tribunal in the Consolidation Application vide its order dated 01.11.2021 and need not be gone further into by this Tribunal.

8.3. In so far as the objections raised by the one of the Financial Creditor who has withdrew his claim viz. ARCIL it was submitted that the said Financial Creditor originally submitted his claim before the RP

in respect of the Corporate Debtor and subsequently withdrew their claim with the RP on the basis of the Judgment of the Hon'ble NCLAT in the matter of **Vishnu Kumar Agarwal –Vs- Piramal Enterprises Limited**, wherein it was held that the proceedings could not be initiated simultaneously against the Corporate Debtor and the Guarantor. Hence by way of an e-mail dated 02.03.2020, the Objector / Financial Creditor withdrew the claim with a liberty and the RP also by way of its e-mail dated 11.03.2020 allowed for withdrawal of the claim.

8.4. Subsequently the Hon'ble NCLAT vide its judgment dated 24.11.2020 in the matter of **State Bank of India –Vs- Athena Energy** stated that the creditors were allowed to proceed against the Corporate Debtor and the guarantor simultaneously and immediately thereafter, the objector / Financial Creditor filed their claim with the RP on 08.12.2020 and has resubmitted the claim before the RP in Form-C. However, it was submitted that the RP of the Corporate Debtor has failed to reply to the email of the Financial Creditor and that it was submitted that after a delay of more than 3 months the RP has replied vide email dated 05.04.2021 that the Applicant's resubmission of the claim has been rejected in terms of Regulation 12 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Aggrieved by the same, the Financial Creditor has filed MA/61/2020 before this Tribunal. The gist of objections raised by the said objector / Financial Creditor is that the CoC was

illegally constituted and hence the decisions taken by it are void and the entire CIRP process stands vitiated.

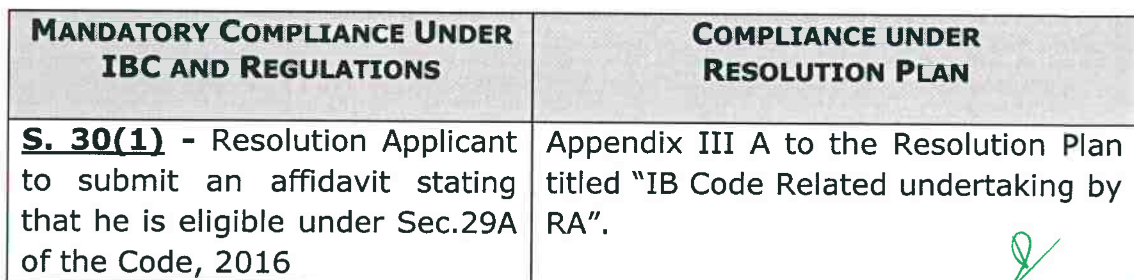
8.5. It is not in dispute that the said Financial Creditor has re-filed the claim before the IRP on 08.12.2020 and from the sequence of events, it is seen by that time, a total of 8 CoC meetings in respect of the Corporate Debtor has been concluded and also the eligibility criteria in respect of the Prospective Resolution Applicants was under discussion. Further, we are of the view that even though 90 days' time period has been prescribed under the attendant Regulations for the RP to accept the claims of the Financial Creditor, the time period could be extended upto the period the RP prepares the Information Memorandum and submits the same to the prospective Resolution Applicant. Once the said process is done, and the Information Memorandum is being given to the prospective Resolution Applicant, then no claims of the Financial Creditor can be accepted. In the present case, the Financial Creditor has resubmitted his claim only on 08.12.2020, and by that time, already the prospective Resolution Applicants have submitted their offer before the CoC and the CoC was under negotiations with the said prospective Resolution Applicants to increase their offer. Thus, it could be seen that a Financial Creditor cannot be allowed to file its claim at any time during the CIRP period in respect of a Corporate Debtor as it would adversely upset the timelines and would not bring CIRP to a logical

conclusion and would lead to perpetuality. Further, in the present case, the Applicant / alleged Objector is not even a member of the CoC cannot raise any objection to the present Resolution Plan in respect of the Corporate Debtor.

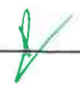
8.6. In relation to the objections raised by the RP of RISPL, which is the subsidiary of the Corporate Debtor, which is also under CIRP, it is seen that the RP of RISPL has raised the same issues that were raised by it at the time of consolidation / simultaneous CIRP in respect of the Corporate Debtor and as already adumbrated *supra,* the said contentions were rejected by this Tribunal vide its order dated 01.11.2021. Further, the RP of RISPL cannot seek to canvass the same points over and over during the approval of the Resolution Plan. It is also evident that the Resolution Plan for the subsidiary Company are already received and are before the Resolution Professional and once a Resolution Plan is approved for the subsidiary the same would bind the parties including the Corporate Debtor herein. Further, it is also seen that the approval of the Resolution Plan in respect of the Corporate Debtor would not in any way interfere with the CIRP proceedings of the subsidiary of the Corporate Debtor viz. RISPL and that as already noted in the order dated 01.11.2021, the RP of RISPL is not left in lurch and the RP of RISPL can in no manner be permitted to interfere in the Resolution Plan of the Corporate Debtor.

8.7. The RP has filed the Compliance Certificate as mandated under Regulations 39 (4) of the IBBI Regulations Corporate Persons, 2016 in Form H and the perusal of the same discloses that the fair value and the liquidation value of the Corporate Debtor is arrived at Rs.189,38,04,819/- and Rs.137,12,08,408/- respectively and the perusal of the Resolution Plan also manifest the fact that the RP has obtained an affidavit from the successful Resolution Applicant that he is not ineligible to submit the Resolution Plan as per Section 29A of the IBC, 2016.

8.8. From the averments made in the Application as well as in Form-H as filed by the Resolution Professional in relation to the procedural aspects, the same seems to have been duly complied with for which the Resolution Professional has issued a Certificate and it is not necessary for this Authority to go into the same. However, this Authority is duty bound to examine the Resolution Plan within the contours of Section 30(2) of the IBC, 2016. A comparison *vis-à-vis* with the Mandatory compliance under the IBC and the Compliance made under the Resolution Plan is captured hereunder;



MANDATORY COMPLIANCE UNDER IBC AND REGULATIONS	**COMPLIANCE UNDER RESOLUTION PLAN**
S. 30(1) - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	Appendix III A to the Resolution Plan titled "IB Code Related undertaking by RA".

S. 30(2)(a) - Payment of Insolvency and Resolution cost in the manner specified by the Board	Clause 5.2.1 of the Resolution Plan provides payment of the CIRP costs in priority.
S. 30(2)(b) - Payment of debts of Operational Creditors in such manner as may be specified by the Board, which shall not be less that the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under Sec. 53	Clause 5.2.2 deals in detail about the Discharge of the Operational Creditors Liabilities in detail.
Reg. 38(1) - Resolution Plan identifies specific source of funds that will be used to pay the (a) Insolvency Resolution Process cost? (b)Liquidation value due to Operational Creditors? (c) Liquidation value due to dissenting financial creditors	Clause 5.8 of the Resolution Plan deals with the Means of Finance of the Resolution Applicant for implementation of the Resolution Plan.
Reg. 38(1A) - Resolution Plan shall include a statement as to how it has dealt with the interest of all the stakeholders, including financial creditors and operational creditors of the Corporate Debtor	Clause 10 of the Resolution Plan enumerates how the interest of all the stakeholders including operational and financial creditors has been dealt with under the Resolution Plan.
S. 30(2)(c) - Management of the affairs of the Corporate Debtor after approval of the Resolution Plan	Clause 5.6 of the Resolution Plan deals with the Management and Control and Implementation of Terms in relation to the Resolution Plan.
S. 30(2)(d) - Implementation and Supervision of the Resolution Plan **and** **Reg. 38(2)** – Resolution Plan shall provide: a) term of plan and its implementation schedule	Clause 5.4 of the Resolution Plan deals with the Implementation Schedule and supervision of the Resolution Plan 

b) management and control of the business of the Corporate Debtor during its term; c) it has provisions for effective implementation d) it has provisions for approval required and the timeline for the same; and e) the Resolution applicant has the capability to implement the Resolution Plan.	
Reg. 38(3) - Resolution Plan shall demonstrate: a) it address the cause of default b) it is feasible and viable c) it has provisions for effective implementation d) it has provisions for approval required and the timeline for the same e) the resolution applicant has the capability to implement the resolution plan	Clause 3.7 of the Resolution Plan and the sub sections given thereunder address the capability of the Resolution Applicant to implement the Resolution Plan and Clause 5.6 of the Resolution Plan deals with the provisions for effective implementation.
S. 30(2)(e) - Does not contravene any of the provisions of the law for the time being in force	The Resolution Professional in Form H has confirmed that the Resolution Plan is not in contravention with the provisions of any Applicable Law.
S. 30(4) - Committee of Creditors approve the Resolution Plan by not less than 66% of voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by the Board	The CoC, in its 13th meeting held on 03.04.2021 with a 94.08% voting share has approved the Resolution Plan.

9. The Resolution Applicant in the Resolution Plan has sought for certain Relief and concessions from this Adjudicating Authority

so as to implement the Resolution Plan. These are ordered as follows;

SL. No.	RELIEF / CONCESSIONS SOUGHT FOR	ORDERS THEREON
1	Contracts in respect to continuation of business operations: Business Continuity Contracts as defined in clause 5.2.8 (a)of the resolution plan shall continue in full force and effect and shall remain valid and binding against the relevant counter party (ies) without any further act and without payment of any premium/ penalty on account of change in ownership, etc. as provided in Clause 5.2.8 (a) of the resolution plan.	**Granted, subject to the provisions of IBC, 2016 and other Applicable laws.**
2	Contracts with the customers of the Corporate Debtor: The customer contracts as defined in clause 5.2.8 (b)of the resolution plan, subsisting as of the Transfer Date shall be deemed to be terminated (unless within 90 (ninety) days from the Transfer Date, the Corporate Debtor expressly notifies the counterparty to any such Customer Contract in writing that such Customer Contract will continue to operate on the terms therein) without any claim for restitution, specific performance or damages of any nature whatsoever and all liabilities, damages or claims arising from the Customer Contracts, in relation to any period prior to the Transfer Date, or on account of the measures contemplated under the resolution plan including termination of these Customer Contracts shall, be deemed to be permanently extinguished by virtue of the order of the Adjudicating Authority approving this Resolution Plan. Further, by virtue of the business transfer agreement dated March 5, 2014 **("Business Transfer Agreement"),** the O&M business of the Corporate Debtor was assigned to its subsidiary Regen Infrastructure Services Private Limited **("RISPL").** To bring the same into effect, the Corporate Debtor in the capacity of assignor, RISPL in the capacity of assignee and the relevant customer executed various assignment agreements to set out their agreement in respect of the assignment of the O&M agreements. Pursuant to the execution of the said assignment agreements with various customers, all obligations, promises or commitments made or guarantee given by, or	**Granted, subject to the provisions of IBC, 2016 and other Applicable laws**

	indemnity given by the Corporate Debtor whatsoever in respect of obligation of RISPL with regard to the O&M agreement shall stand extinguished, released and discharged, without any further act, instrument or deed by the Corporate Debtor, and no person shall have any claim whatsoever against the Corporate Debtor or the Resolution Applicant in respect of obligation or liabilities of the Corporate Debtor under the said assignment agreements.	
3	Contract with National Aluminium Company Limited ("NALCO"):Post the Transfer Date the Corporate Debtor will complete and implement 15 (fifteen) MW (10 (ten) WEGs) out of the agreed 25.5 MW wind energy project at Kayathar site, Tuticorin in terms of the agreement dated October 13, 2017 executed with NALCO, subject to NALCO agreeing to the terms & conditions as mentioned in 5.2.8 (c) of the resolution plan.	**Granted, subject to the provisions of IBC, 2016 and other Applicable laws**
4	In the interest of survival of the Corporate Debtor and to continue maintaining the Corporate Debtor as a going concern, the Resolution Applicant proposes that except for the Retained Employees (as defined in the resolution plan) who have been identified based on the preliminary due diligence, all the other workmen and employees of the Corporate Debtor be terminated in accordance with applicable laws including receipt of necessary approvals from the relevant authority and payment of relevant dues to such workmen and employees in connection with such termination. For this purpose, the Resolution Professional the Corporate Debtor shall endeavour to take all such steps as may be necessary or expedient including making application to and procuring approval from the relevant authorities for the said termination	**Granted, subject to the provisions of IBC, 2016 and other Applicable laws.**
5	Upon approval of the Resolution Plan by the Adjudicating Authority, except for the continued litigations as mentioned in clause 5.2.10 of resolution plan, all inquiries, investigations, proceedings, whether civil or criminal, notices, causes of action, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings, against, or in relation to, or in connection with the Corporate Debtor, pending or threatened, present or future, in relation to any period prior to the Transfer Date or arising on account of the transaction herein shall stand withdrawn and dismissed and all liabilities or obligations thereto, whether or not set out in the books of the Corporate Debtor, will be deemed to have been written off in full and permanently	**Granted in terms of the judgment of the Hon'ble Supreme Court in *Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.*** *2021 SCC Online SC 313*

	extinguished and the Corporate Debtor or the Resolution Applicant shall, at no point of time be, directly or indirectly, held responsible or liable in relation thereto notwithstanding any adverse order that may have been passed in respect of the same by any relevant authority.	
6	The Resolution Applicant and the Corporate Debtor shall have immunity from any actions and penalties (of any nature whatsoever) under any applicable laws for any non-compliance of applicable laws or breach of contractual obligations in relation to or by the Corporate Debtor for any period upto the Transfer Date.	**Granted**
7	The Corporate Debtor shall be entitled to carry forward the unabsorbed depreciation and accumulated losses under the income tax and minimum alternate tax and to utilize such amounts to set off future tax obligations.	**Granted**
8	All consents, licenses, approvals, rights, entitlements, benefits and privileges whether under applicable law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to shall, notwithstanding that they may have already lapsed or expired due to any non-compliance or efflux of time, be deemed to continue without disruption for the benefit of the Corporate Debtor and the Resolution Applicant for a period of 12 months from the Approval Date (as defined in the resolution plan) or until the period mentioned in such licenses, consents or approvals, whichever is later.	**Granted, subject to the provisions of IBC, 2016 and other Applicable laws.**
9	All right, title, interest and property in respect of intellectual property of the Corporate Debtor including trademarks, copyright in works, know-how, designs, patents and domain names shall remain with the Corporate Debtor.	**Granted, subject to the provisions of IBC, 2016 and other Applicable laws.**

10. In so far as the approval of the Resolution Plan is concerned, this Authority is not sitting on an appeal against the decision of the Committee of Creditors and this Authority is duty bound to follow 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."

11. 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).

12. 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)

13. 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)

14. 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 exposited by this Court.

15. 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.

16. On perusal of the documents on record, we are also satisfied that the Resolution Plan is in accordance with sections 30 and 31 of IBC, 2016. Thus, the Resolution Plan is hereby **approved** and is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect and the "Moratorium" imposed under section 14 of IBC, 2016 shall not have any effect henceforth. In case of non-compliance of this order or withdrawal of Resolution Plan, the performance guarantee amount already paid by the Resolution

Applicant shall stand forfeited, in addition to the Resolution Applicant being liable for any other action as per law.

17. 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 also return to the Resolution Applicant or New Promoters. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance. Liberty is hereby granted for moving any Application, if required, in connection with implementation of this Resolution Plan. The RP shall stand discharged from his duties with effect from the date of this Order. He shall, however, perform his duties in terms of the Resolution Plan as approved by this Adjudicating Authority.

18. The Resolution Professional is further directed to handover all records, premises / documents to Resolution Applicant to finalise the further line of action required for starting of the operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access to all the records premises / documents through Resolution Professional to finalise the further line of action required for starting of the operation.

19. IA(IBC)/460/CHE/2021 stands **ordered** accordingly. All other connected Intervening Petitions filed in IA(IBC)/460(CHE)/2021 as arrayed in the cause title also stands **closed.**

-Sd- **B. ANIL KUMAR** MEMBER (TECHNICAL)	-Sd- **Justice (Retd.) S. RAMATHILAGAM** MEMBER (JUDICIAL)

Raymond