



SWAN ENERGY LIMITED

(Formerly Swan Mills Limited)

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CIN: L17100MH1909PLC000294

swan/nse/bse

29th December, 2022

Dept. of Corporate Compliances,
National Stock Exchange Limited,
Exchange Plaza, Plot No. C/1, G Block,
Bandra –Kurla Complex, Bandra-east,
Mumbai – 400 051

Listing Department
Bombay Stock Exchange Limited
P.J. Tower, Dalal Street, Fort
Mumbai – 400 001

Scrip Code: 503310 (BSE) & SWANENERGY (NSE)

Dear Sir,

Sub: Approval of the Resolution Plan by the National Company Law Tribunal, Ahmedabad (“NCLT”) in the corporate insolvency resolution plan (CIRP) of Reliance Naval and Engineering Limited (RNEL)

Ref: Disclosure pursuant to Regulation 30 of the SEBI (LODR), Regulations, 2015

This is in continuation to our letter dated 23rd December, 2022, wherein it was intimated that by an order pronounced orally on 23rd December, 2022, the NCLT has approved the Resolution Plan submitted by the Resolution Applicant, i.e., the Hazel Mercantile Limited (HML) to acquire RNEL. Swan Energy Limited (SEL) is a strategic partner with HML, through a SPV, namely Hazel Infra Limited (HIL), to acquire RNEL.

This is to further intimate that Hon’ble NCLT has published a written order on 28th December, 2022, which sets out in detail the provisions of the Resolution Plan (including the financial proposal, treatment of claims of stakeholders of the Company).

The above order contains, inter-alia, para no. 15, about treatment to be given to the existing share capital of RNEL, which is reproduced below.

15. The Resolution Plan provides for the cancelation and extinguishment of all presently outstanding ordinary equity shares being held by the existing shareholders, subject to issuance of one fresh equity share of face value of Rs. 10/- for every 275 ordinary equity shares held by existing shareholder. Thus, 73,75,91,263 existing equity shares of face value of Rs. 10/- each will become 26,82,150 ordinary equity shares of Rs. 10/- each. It is also provided that the Special Purpose Vehicle (SPV) ‘Hazel Infra Limited’ shall take over the Corporate Debtor and this SPV shall subscribe to 5,00,00,000/- fresh ordinary equity shares of face value of Rs. 10/- each. Thus, once the share capital of the Corporate Debtor is reorganised, the resultant shareholding pattern of the Corporate Debtor will be as below:

Shareholder	No. of Shares	Shareholding Percentage
Promoter & Promoter Group		
SPV	5,00,00,000	94.91%
Public		
Existing shareholders	26,82,150	5.09%
Total	5,26,82,150	100%

A copy of the aforementioned written order is annexed hereto for the information of the Exchange, investors and all other concerned please.

We shall promptly disseminate any further updates in the matter, as and when the same occurs.

Thanking you,
Yours faithfully,
For Swan Energy Limited

(Arun S. Agrawal)
Company Secretary

Encl: as above

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
SPECIAL BENCH
COURT NO. II**

**IA No. 292/AHM/2022
IN
CP (IB) 418/AHM/2018**

IN THE MATTER OF IA No. 292/AHM/2022

**(An Application under Section 30(6) read with Section 31 of the
Insolvency and Bankruptcy Code, 2016.)**

**Mr. Sudip Bhattacharya
Resolution Professional of
Reliance Naval & Engineering Limited & Ors.**

...APPLICANT

AND

IN THE MATTER OF CP (IB) 418/AHM/2018

(An Application under Section 7 of the Insolvency and Bankruptcy)

Code, 2016_IDBI BANK LTD.

...FINANCIAL CREDITOR

VERSUS

RELIANCE NAVAL & ENGINEERING LTD.

...CORPORATE DEBTOR

Order Pronounced On: 23/12/2022

Coram:

**DR. DEEPTI MUKESH,
HON'BLE MEMBER (JUDICIAL)
KAUSHALENDRA KUMAR SINGH,
HON'BLE MEMBER (TECHNICAL)**

MEMO OF PARTIES

IA 292/AHM/2022

Mr. Sudip Bhattacharya
Resolution Professional of
Reliance Naval & Engineering Limited & Ors.
C/o Duff & Phelps, 14th Floor, Raheja Tower,
G Block, Bandra Kurla Complex,
Mumbai - 400051

...Applicant

Present:

For the Resolution Professional : Mr. Navin Pahwa, Sr. Advocate
Mr. Dhruvad Vaghani, Adv.
Mr. Aditya Mehta, Adv.
For the Resolution Applicant : Mr. Parth Contractor, Advocate
Mr. Amir Arsiwala, Advocate
For CoC : Ms. Nishtha, Adv.

ORDER

1. This application has been filed by Mr. Sudip Bhattacharya, Resolution Professional of the Corporate Debtor Reliance Naval & Engineering Limited & Ors. under Section 30(6) read with Section 31 of the Insolvency & Bankruptcy Code, 2016 ('Code') for approval of the Resolution Plan.

2. The facts in brief are that the Corporate Debtor was admitted into Corporate Insolvency Resolution Process ('CIRP') by this Adjudicating Authority vide order dated 15.01.2020, in an application filed by the financial creditor IDBI Bank Limited under Section 7 of the Code triggering the moratorium and Mr. Rajeev Bal Sawangikar was appointed as Interim Resolution Professional ('IRP'). The IRP made a public announcement in Form-A and collated claims and thereafter constituted a Committee of Creditors ('CoC') comprising of 22 financial creditors. Thereafter in 2nd CoC meeting held on 13.03.2020, CoC had

resolved to replace IRP and appointed the Applicant herein as the Resolution Professional of the Corporate Debtor and the said replacement was confirmed by this Adjudicating Authority vide order dated 05.05.2020.

3. The Applicant submits that the members of the CoC in its 3rd meeting held on 09.04.2020 had approved the eligibility criteria for the prospective resolution applicants to submit their Expression of Interest ("EoI") for the Corporate Debtor. Thereafter pursuant to the approval of the members of the CoC during the 4th CoC meeting held on 22.05.2020, the Applicant made publication of 'Form G' on 28.05.2020, in Economic Times (All Editions) and Divya Bhaskar (Gujarat Edition) for inviting EoIs. On deliberations of CoC in 5th meeting held on 07.07.2020 to modify the eligibility criteria, an amended Form-G was issued on 18.07.2020 which was further amended from time to time. Copies of Form -G dated 28.05.2020, 29.06.2020, 18.07.2020, 06.08.2020 and 24.02.2021 are annexed.

4. It is stated that the Applicant in 7th CoC meeting held on 21.08.2020 apprised the CoC that 12 EOIs were received. The Applicant Resolution Professional apprised CoC in 13th meeting held on 17.02.2021 that he had received enquiries from domestic as well as international parties displaying interest to participate in the CIRP. In view thereof, it was decided to issue amended Form-G and thereby a revised Form-G was issued on 24.02.2021 and the last date for submission of resolution plans was fixed on 15.03.2021. The Applicant apprised the CoC in 14th meeting held on 10.03.2021 that three (3) EOIs were received from following prospective resolution applicants:

Sr. No.	Name of the PRAs
1	Jindal Steel and Power Limited ('JSPL')
2	Hazel Mercantile Limited ('HML') along with its strategic investor Swan Energy Ltd.
3	Global Marketing System DMCC ('GMS')

All three resolution plans were opened in the 19th CoC meeting held on 18.08.2021. It is submitted that as per clause 2.8.1 of RFRP, all prospective resolution applicants were required to provide an amount of Rs. 5,00,00,000/- at the time of submission of their respective resolution plans as Earnest Money Deposit ('EMD'). The earnest money was received only from Hazel Mercantile Limited and Jindal Steel and Power Limited and not from Global Marketing System DMCC. Thus, the CoC in its 24th meeting held on 20.11.2021 did not consider to evaluate the resolution plan submitted by Global Marketing System DMCC. It is further submitted that pursuant to approval of CoC in 23rd meeting held on 27.10.2021, the Applicant had appointed Amit Ray & Co. ('ARC') to carry out due diligence for assessing the eligibility of Prospective Resolution Applicants under Section 29A of the Code. The ARC in their reports observed that prospective resolution applicants, Hazel Mercantile Limited along with its strategic investor Swan Energy Ltd. and Jindal Steel and Power Limited appears to be not disqualified under Section 29A of the Code.

5. It is submitted that CoC in its 28th meeting held on 23.02.2022 deliberated on the resolution plans. The Hazel Mercantile Limited in its resolution plan had given two options regarding value of ongoing arbitration proceedings of the Corporate Debtor, which is reproduced below:

“Option 1- *The Corporate Debtor has initiated arbitration proceedings for the recovery of amounts owed to it under various contracts which have been terminated. The claims in these cases, amount to Rs. 1,247.48 Crores (approximately) (Rupees One Thousand Two Hundred and Forty-Seven Crore and Forty-Eight Paise Only). HML has proposed to assign 76% of the net amounts received from these pending disputes to the COC for the benefit of the Financial Creditors (subject to deduction of actual expenditure / costs incurred in realizing these receivables, and net of all applicable taxes).*

Option 2: *As an alternative to Option 1 above, the CoC may opt to receive a one-time lumpsum payment amount of INR 400*

Crores which shall be considered full and final consideration towards relinquishment of all rights of the Unrelated Financial Creditors upon amounts which may be received from the ongoing arbitration proceedings of the Corporate Debtor. This amount of Rs. 400 Crores (Four Hundred Core Only) shall be paid at the end of five years from the Approval Date (as defined under the Resolution Plan). The Unrelated Financial Creditors shall not have any other claim or right over any amount recovered by the Corporate Debtor through its ongoing arbitration proceedings if this option is chosen by the members of the committee of creditors.”

It is stated that CoC in its 28th meeting, with 71.12% voting share decided to go with Option 2. Also, the resolution plans were deliberated and the CoC has approved the resolution plan dated 15.08.2021 as amended from time to time up to 13.12.2021 of Hazel Mercantile Ltd. with 94.86% votes. The plan submitted by Jindal Steel and Power Ltd. was disapproved by CoC with 97.37 % of vote.

6. The applicant obtained two valuation reports from the registered valuers wherein the average Fair Value and Liquidation Value are ₹1,851/- crore and ₹1,352/- crore, respectively. The present Resolution Plan offers an amount of Rs. 2108.38/- crores including CIRP cost of Rs. 65.31 crores.

7. The letter of intent was issued on 17.03.2022 by Resolution Professional in terms of the Resolution Plan. As per the plan, the Hazel Infra Ltd. which is acting as SPV of Resolution Applicant Hazel Mercantile Ltd. and its strategic investor Swan Energy Ltd. in the ratio of 26:74 shares, shall be taking over the Corporate Debtor. It is submitted that in accordance with RFRP approved by CoC, the Hazel Infra Ltd. has issued a Performance Bank Guarantee (‘PBG’) of Rs. 75,00,00,000/- (Rupees Seventy-Five Crore Only) dated 22.03.2022 in favour of IDBI Bank who is acting on behalf of CoC. It is submitted that since after approval of resolution plan the Resolution Professional will

be functus officio, therefore, PBG was issued in favour of IDBI Bank Ltd. on behalf of the CoC of the Corporate Debtor. Copy of letter of intent and performance bank guarantee are annexed with the Application.

8. An affidavit dated 07.12.2021 from one Mr. Viren Agarwal authorized representative of the Successful Resolution Applicant and Hazel Infra Ltd. declaring the eligibility of the Resolution Applicant and Hazel Infra Limited under Section 29A of the Code is annexed with the instant Application.

9. It is further submitted by the Applicant Resolution Professional that the resolution plan complies with provisions of Code and all the requisite Regulations.

10. The distribution as per the plan to the stakeholders under the Resolution Plan is as under, as described in Form-H:

(Amount in Rs. lakh)

Sr. No.	Category of Shareholder *	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount provided under the Plan#	Amount provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of Section 21	0	0	-	0.00
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	36,805	36,805	3952	10.73%
		(ii) who voted in favour of the resolution plan	11,54,908	11,49,006	2,00,048	17.32%

		Total [(a)+(b)]	11,91,713	11,85,811	20,4000	17.12%
2	Unsecured Financial Creditors	(a)Creditors not having a right to vote under sub-section (2) of section 21	31,31,714	11,111	0	0
		(b)Other than (a) above:				
		(i) who did not vote in favour of the resolution plan.	26,918	26,918	0	0
		(ii) who voted in favour of the resolution plan	27,444	27,444	0	0
		Total[(a)+(b)]	31,86,076	65,473	0	0
3	Operational Creditors	(a)Related party of the Corporate Debtor	67	0	0	0
		(b)Other than(a) above:				
		(i) Government	1,438	17.97	Note 1	0.06%
		(ii) Workmen	0	0	0	0
		(iii)Employees	948	948	151	15.93%
		(iv)Operational Creditor	2,61,205	34,711	157	0.06%
		(iv) Others	2,700	0	0	0
		Total[(a)+(b)]	2,66,358	37,097	308	0.09%
4	Other debts and dues		0	0	65	0.00%
	Grand Total	[1+2+3]	46,44,147	12,88,381	2,04,373	4.40%

Note 1: The Resolution Plan of Hazel Mercantile Limited provides for INR 157 lakhs to operational creditor including the government claim.

11. On perusal of the above table a clarification was sought with regard to the payment to the dissenting secured financial creditor under the resolution plan. The relevant part of Section 30(2) of the Code is reproduced below:

“Section 30: Submission of resolution plan. –

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan –

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than- (i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

*whichever is higher, and **provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.***

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.”

12. The Resolution Professional through an affidavit referred to the following observations made by Hon’ble Supreme Court of India in the matter of ***Committee of Creditors of Essar Steel India Limited Through Authorised Signatory versus Satish Kumar Gupta & Ors. (Civil Appeal No. 8766-67 of 2019)***:

“80. When it comes to the validity of the substitution of Section 30(2) (b) by Section 6 of the Amending Act of 2019, it is clear that the substituted Section 30(2)(b) gives operational creditors something more than was given earlier as it is the higher of the figures mentioned in sub-clauses (i) and (ii) of sub-clause (b) that is

now to be paid as a minimum amount to operational creditors. The same goes for the latter part of sub-clause (b) which refers to dissentient financial creditors. **Mrs. Madhavi Divan is correct in her argument that Section 30(2)(b) is in fact a beneficial provision in favour of operational creditors and dissentient financial creditors as they are now to be paid a certain minimum amount**, the minimum in the case of operational creditors being the higher of the two figures calculated under sub-clauses (i) and (ii) of clause (b), and the minimum in the case of dissentient financial creditor being a minimum amount that was not earlier payable. As a matter of fact, pre-amendment, secured financial creditors may cramdown unsecured financial creditors who are dissentient, the majority vote of 66% voting to give them nothing or next to nothing for their dues. In the earlier regime it may have been possible to have done this but after the amendment such financial creditors are now to be paid the minimum amount mentioned in sub-section (2). Mrs. Madhavi Divan is also correct in stating that the order of priority of payment of creditors mentioned in Section 53 is not engrafted in sub-section (2)(b) as amended. Section 53 is only referred to in order that a certain minimum figure be paid to different classes of operational and financial creditors. It is only for this purpose that Section 53(1) is to be looked at as it is clear that it is the commercial wisdom of the Committee of Creditors that is free to determine what amounts be paid to different classes and sub-classes of creditors in accordance with the provisions of the Code and the Regulations made thereunder.

81. As has been held in this judgment, it is clear that Explanation 1 has only been inserted in order that the Adjudicating Authority and the Appellate Tribunal cannot enter into the merits of a business decision of the requisite majority of the Committee of Creditors. As has also been held in this judgment, there is no residual equity jurisdiction in the Adjudicating Authority or the Appellate Tribunal to interfere in the merits of a business decision taken by the requisite majority of the Committee of Creditors, provided that it is otherwise in conformity with the provisions of the Code and the Regulations, as has been laid down by this judgment.”

The Resolution Professional has submitted that dissenting financial creditors are proposed to be paid Rs. 39.52 crores which is the liquidation value as per Section 32 (2) (b) and same shall be paid in priority to other financial creditors. It is further stated that the proposed

distribution to dissenting creditors is in compliance with Section 30 (2) (b) of the Code and is fair and equitable; and that it is well within the commercial wisdom of CoC to decide on the distribution of the resolution plan amount as provided in Section 30 (4) of the Code.

13. It is noted that Form-H has been filed by Resolution Professional wherein all information as regard to conduct of CIRP, as well as process adopted for Resolution Plan, has been given. It is stated in clause 12.3 of the resolution plan that as on 30.06.2021 the CIRP costs amounts to Rs. 6530.66 lakhs and the Resolution Applicant shall pay this amount in full alongwith the additional CIRP costs incurred between 30.06.2021 and the closing date. The closing date is defined as the date on which the Resolution Applicant causes the upfront payment amount under clause 20.1(Timeline of Implementation) to be deposited with the designated lender.

14. The sources of funds for making payments to various stakeholders by the Resolution Applicant as provided at clause 11.6 of the Resolution plan is as below:

Sources of funds	Amount (in Crs.)	Application of Funds	Amount (In Crs.)
Promoters Contribution	600	CIRP Costs	65.30
		Payment to Employees	0.95
Loan	550	Payment to Operational Creditors	1.57
From the Operations of the Corporate Debtor	1807.86	Payment to Provident Funds & Pension Funds	0.56
		Payment to Secured Financial Creditors in case Option 2 is considered under clause 10.3	2040
		Working Capital	311.68
		CAPEX	537.8
Total	2957.86	Total	2957.86

With respect to the sources of funds from the operations of the Corporate Debtor a clarification was sought and the Successful Resolution Applicant had submitted through an affidavit that an amount of Rs. 1807.86 crores is anticipated to be generated from the

business operations of the Corporate Debtor during the period of implementation of the resolution plan. It is further submitted that this be read with clause 11.1 of the resolution plan which clearly states that the successful Resolution Applicant shall ensure that payment is made to the stakeholders even if the internal accruals fall short of the targets.

15. The Resolution Plan provides for the cancelation and extinguishment of all presently outstanding ordinary equity shares being held by the existing shareholders, subject to issuance of one fresh equity share of face value of Rs. 10/- for every 275 ordinary equity shares held by existing shareholder. Thus, 73,75,91,263 existing equity shares of face value of Rs. 10/- each will become 26,82,150 ordinary equity shares of Rs. 10/- each. It is also provided that the Special Purpose Vehicle (SPV) 'Hazel Infra Limited' shall take over the Corporate Debtor and this SPV shall subscribe to 5,00,00,000/- fresh ordinary equity shares of face value of Rs. 10/- each. Thus, once the share capital of the Corporate Debtor is reorganised, the resultant shareholding pattern of the Corporate Debtor will be as below:

Shareholder	No. of Shares	Shareholding Percentage
Promoter & Promoter Group		
SPV	5,00,00,000	94.91%
Public		
Existing shareholders	26,82,150	5.09%
Total	5,26,82,150	100%

16. In view of the recent judgment of the Hon'ble Supreme Court in the case of **State Tax Officer Vs. Rainbow Papers Limited (CA No. 1661/2020)** on the issue of the statutory dues, the bench called upon the Resolution Professional to put forth his submission as to whether the resolution plan under reference is in compliance with the decision

of the Hon'ble Supreme Court in State Tax Officer Vs. Rainbow Papers Limited on the issue of statutory dues payable by the corporate debtor.

17. The Applicant Resolution Professional has filed its submission and submits that Resolution Professional had admitted a claim of Rs. 12,29,78,585/- of Maharashtra VAT Department for the period 2012-13 and a claim of Rs. 2,08,16,038/- of GST for period 2017-18 aggregating to Rs. 14.37 crores. Further with regard to MVAT by referring to Section 37 of MVAT Act, 2002, it has been submitted that claim of the department under the MVAT would be subordinate to any Central Legislation creating first charge i.e. financial creditors.

18. For ready reference, Section 37 of MVAT is reproduced below:

*“Section 37: **Liability under this Act to be the first charge:-***

(1) Notwithstanding anything contained in any contract to the contrary, but subject to any provision regarding creation of first charge in any Central Act for the time being in force, any amount of tax, penalty, interest, sum forfeited, fine or any other sum, payable by a dealer or any other person under this Act, shall be the first charge on the property of the dealer or, as the case may be, person.

(2) The first charge as mentioned in sub-section (1) shall be deemed to have been created on the expiry of the period specified in sub-section (4) of section 32, for the payment of tax, penalty, interest, sum forfeited, fine or any other amount.”

With regard to GST, the Applicant Resolution Professional has referred to Section 82 of Maharashtra GST Act which is reproduced below:

*“**Section 82: Tax to be first charge on property.***

Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or

penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.”

It was further stated that Ministry of Finance vide Notification No. CBEC-20/16/12/2020-GST dated 23.03.2020 stated that dues under GST for pre CIRP period would be treated as operational debt.

19. The CoC has also filed its submission and submits as under:
- (a) The statutory secured creditor cannot raise such claims at this juncture by taking advantage of the decision of the Supreme Court in Civil Appeal No. 1661 of 2020.
 - (b) The judgment of Hon'ble Supreme Court in Civil Appeal No. 1661 of 2020 does not apply to secured creditor,

Thus, it is submitted that the Resolution Plan will not require any revision or modification, in view of the abovementioned judgment.

20. Three Applications (IA No. 306/AHM/2022, IA No. 296/AHM/2022 and IA No. 234/AHM/ 2022) objecting resolution plan had been filed, raising the issue of eligibility of the successful Resolution Applicant in terms of Section 29A of the Code, in respect of connected persons to the successful resolution applicant. Considering the submissions made and documents placed on record all three Applications are disposed of by a separate order of even date with an observation that the successful Resolution Applicant is not disqualified under Section 29A of the Code on the ground of issues raised in those three Applications.

21. It is to be noted that for getting the approval of the Adjudicating Authority, the resolution plan should adhere to the following requirements as per Section 30(2) of the Code read with CIRP Regulations:

(i) It should provide for the payment of insolvency resolution process costs in priority to the repayment of other debts of the corporate debtor.

[Section 30(2)(a)]

(ii) The repayment of the debts of operational creditors and dissenting financial creditors should not be less than the amount to be paid to such respective creditors in the event of liquidation of the corporate debtor under section 53 of the Code. Moreover, the payment to the operational creditor is to be made in priority over the financial creditor; and the payment to dissenting financial creditor is to be made in priority to the consenting financial creditors.

[Section 30(2)(b) read with
CIRP Regulation 38(1)(a) & 38(1)(b)];

(iii) Provides for the management of the affairs of the corporate debtor after approval of the resolution plan.

[Section 30(2)(c) read with CIRP Regulation 38(2)(b)];

(iv) The implementation and supervision of the resolution plan.

[Section 30(2)(d) read with CIRP Regulation 38(2)(c)];

(v) It does not contravene any of the provisions of the law for the time being in force.

[Section 30(2)(e)];

(vi) It conforms to such other requirements as may be specified by the Board.

[Section 30(2)(f)]

Such other requirements of the resolution plan as detailed in IBBI (Resolution Process for Corporate Persons) Regulations, 2016 which are not covered above, are as under:

(a) The resolution plan should include statement as to how it has dealt with the interests of all stakeholders including financial creditors and operational creditors of the corporate debtor.

[CIRP Regulation 38 (1A)]

(b) The resolution plan should include a statement giving details as to whether the resolution applicant or any of its related parties has at any time failed to implement or caused to the failure of implementation of any other resolution plan which was approved by the Adjudicating Authority.

[CIRP Regulation 38 (1B)]

(c) The resolution plan should contain the term of the plan and its implementation schedule.

[CIRP Regulation 38(2)(a)]

(d) The resolution plan should also demonstrate that it addresses the cause of default; is feasible and viable; has provisions for its effective implementation; has provisions for approvals required and timeline for the same. Further that the resolution applicant has the capability to implement the resolution plan.

[CIRP Regulation 38(3)]

22. In view of the above provisions of the Code, 2016, the resolution plan submitted before us has been examined as follows:

(i) The provision towards CIRP costs is made for Rs. 65.30/- crore to be paid within 90 days from the date of the approval of the said plan by the Adjudicating Authority, in priority to the repayment of other debts of the corporate debtor and hence, the provision for payment towards CIRP cost has been made. Thereby, Section 30(2)(a) has been complied with.

(ii) It is stated in clause 13.3 of the resolution plan that the net worth of the core assets of the Corporate Debtor would be insufficient to cover the debts of the financial creditor in full. Therefore, the liquidation value to the operational creditor is presumed to be nil. It is further stated that even if the liquidation value is not nil, it undertakes that the liquidation value shall be paid and given in priority in payment over the financial creditors and such payment will be made within 90 days from the approval date. However, from Form-H, it is seen that the operational creditors are proposed to be paid Rs. 308 lakhs.

Further with respect to dissenting financial creditor, under clause 14.7 of the resolution plan, the Resolution Applicant has undertaken that any dissenting financial creditor would be paid the liquidation value due to them in priority to the other financial creditors. However, it is noted that on considering only Section 30(2) (b) of the Code, the CoC in its commercial wisdom have proposed the distribution to dissenting financial creditors at an amount of Rs. 39.52 crore payable to them in accordance with Section 53 (1) of the Code

in the event of a liquidation of the Corporate Debtor. To this a query was raised by the bench as to what would have been the amount payable to those dissenting creditors, had they given their consent. On this, an affidavit has been filed stating that in that case amount payable to those dissenting creditors would have been Rs. 63.32 crores. We are of the view that the provision of Section 30(2)(b) is in fact a beneficial provision in favour of dissenting financial creditors. Explanation-1 to Section 30 (2) provides that the distribution should be fair and equitable also to dissenting creditors. A conjoint reading of Section 30(2)(b) together with the Explanation 1 thereunder would require, the payment to the dissenting financial creditors in the present case at Rs. 63.32 crores. However, we also note that in the context of the present plan, dissenting secured financial creditors namely “IFCI Ltd. and LIC of India” having total 5.14% of voting share have not raised any objection on the ground of discrimination, if any, in this regard before us. Therefore, on this issue we do not intend to stop/withheld the resolution of the Corporate Debtor which has already got delayed on account of various litigations. As such the provisions of Section 30(2)(b) read with CIRP Regulation 38(1)(a) & 38(1)(b) are also complied with.

(iii) The mechanism for management and control of the affairs of the corporate debtor after approval of the resolution plan has been provided in the resolution plan itself whereby it is mentioned that SPV “Hazel Infra Limited” shall take over the Corporate Debtor. Further as per clause 26.7, the monitoring committee shall within 14 days from the closing date, submit forms with RoC as may be necessary to

constitute the Board of Directors of the Corporate Debtor with the persons nominated by the Resolution Applicant for this purpose. Thereby, we hold that provisions of Section 30(2)(c) read with CIRP Regulation 38(2)(b) have been complied with.

(iv) Clause 29 of the resolution plan contains a provision that monitoring committee shall be formed which shall be responsible for the Corporate Debtor from the Approval date till the expiry of 30 days from the closing date. It is also provided that the monitoring committee shall, prior to its discharge, formally nominate a person to act as a Liaison between the Resolution Applicant and the unrelated financial creditor ('Monitoring Agency') and such monitoring agency shall supervise the implementation of the resolution plan from the closing date until all obligations under the resolution plan are completed. Thereby, Section 30(2)(d) and Regulation 38(2)(c) of CIRP Regulations, 2016 has been complied with.

(v) The Resolution Applicant has submitted that the plan does not contravene any provisions of the law. We also noted that the plan does not contravene any provisions of the law for the time being in force. Thereby, Section 30(2)(e) of IBC, 2016 has been complied with.

(vi) The resolution plan also conforms to other IBBI Regulations as given hereunder:

(a) The resolution plan contains a statement regarding dealing with interests of all stakeholders, including

financial creditors and operational creditors, of the Corporate Debtor. Thereby, Regulation 38(1A) of CIRP Regulations, 2016 has been complied with.

(b) The resolution plan contains a statement that the Resolution Applicant or any of its related parties has not failed to implement or contributed to failure of implementation of any other Resolution Plan approved by the Adjudicating Authority. Thus, statement giving details of such non-implementation is not applicable under Regulation 38(1B) of CIRP Regulations, 2016.

(c) The term of the resolution plan is for a period of five years which shall commence on the date of the approval of the said plan by the Adjudicating Authority. It provides for the implementation schedule for payment to the creditors as envisaged in the resolution plan within a period of 5 years.

Thereby, Regulation 38(2)(a) of CIRP Regulations, 2016 has been complied with.

(d) The resolution plan contains the sources of funds; is feasible and viable; has provisions for its effective implementation. Thereby, Regulation 38(3) of CIRP Regulations, 2016 has been complied with.

23. As far as reliefs and concessions claimed by the resolution applicant, the law has been well settled by the Hon'ble Supreme Court in the case of ***Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited***

and Ors. reported in MANU/SC/0273/2021 in the following words:

“86. The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.

87. We have no hesitation to say, that the word "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of IB Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief...”

24. In view of the above, all past claims would stand extinguished. However, as far as various statutory rights vested with the corporate debtor in form of various licenses, leases, and other alike matter, we make it clear that the successful resolution applicant has to approach the concerned statutory authority for those concessions and those authorities will consider the same as per their established procedure.

25. The proviso to Section 31 of the Insolvency and Bankruptcy Code, 2016, states that before passing an order for approval of the resolution plan the Adjudicating Authority, shall satisfy that the resolution plan has provisions for its effective implementation. We being satisfied approve the resolution plan submitted by Hazel Mercantile Limited and in addition to the above directions, proceed to pass the following orders:

(i) Application is allowed.

(ii) The resolution plan of Hazel Mercantile Limited for

Corporate Debtor i.e. Reliance Naval and Engineering Ltd., stands allowed as per Section 30(6) of the Code.

(iii) The approved 'Resolution Plan' shall become effective from the date of passing of this order.

(iv) The order of moratorium dated 15.01.2020 passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of passing of this order.

(v) The resolution applicant shall, pursuant to the resolution plan approved under Section 31(1) of the Code, obtain necessary approvals required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under Section 31 or within such period as provided for in such law, whichever is later, as the case may be;

(vi) As far as right of Financial Creditors against the personal guarantees / corporate guarantees in connection with loan / debt obtained by Corporate Debtor is concerned, such guarantors shall be at liberty to pursue their rights independent of approval of Resolution Plan. We further make it clear that there will not be any right of subrogation of such guarantors qua Corporate Debtor.

(vii) The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant(s).

(viii) The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.

(ix) Accordingly, IA 292 of 2022 in CP (IB) 418 of 2018 is allowed and stands disposed of in terms of the above directions.

(x) Certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

-Sd-

**Kaushalendra Kumar Singh,
Member (Technical)**

-Sd-

**Dr. Deepti Mukesh
Member (Judicial)**

Mansi J./LRA