



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, SPECIAL BENCH (COURT-II)

I.A. No. 02/2025
IN
C.P.(IB) – 23/ND/2021

IN THE MATTER OF:

VA Realcon Private Limited

**... Petitioner/
Operational Creditor**

Versus

Avail Holding Ltd.

**... Respondent/
Corporate Debtor**

AND IN THE MATTER OF IA. NO. 02/2025:

Satyendra Sharma,

Resolution Professional,
Avail Holding Limited (Under CIRP),
M-3, Block No. 51, Anupam Plaza-II,
First Floor, Above Axis Bank, Sanjay Place,
Agra-282002, Uttar Pradesh

... Applicant/RP

UNDER SECTION: 30(6) r/w 31 of IBC, 2016

Order delivered on: 18.03.2025

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. ANIL RAJ CHELLAN, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Adhish Srivastava

For the RP : Adv. Harshit Sikka, PCS a/w Adv. Satyendra
Sharma, Adv. Diggaj Pathak, Adv. Shweta
Sharma, Adv. Vaibhavi Pathak, Adv. B.
Abishek, Adv. Himanshi Girdhar



PER: SHRI ASHOK KUMAR BHARDWAJ, MEMBER (J)

ORDER

I.A. No. 02/2025: The present application has been preferred Mr. Satyendra Sharma, Resolution Professional qua Avail Holding Limited (hereinafter, referred to as the '**Applicant/RP**') under Section 30(6) of IBC, 2016, seeking the following reliefs:

- a) *Allow the present Application;*
- b) *Pass an order under sub-Section (1) of Section 31(1) of the Code for approval of the Resolution Plan of **Consortium of M/s Anand & Co., Mr. Pramod Kumar and Mr. Robin Khatter** as approved by the Committee of Creditors of Corporate Debtor by 100% voting share under sub-Section (4) of Section 30 of the IBC as the Resolution Plan meets the requirement of sub-Section (2) of Section 30 of the IBC.*
- c) *Pass such other further order/ order(s) as may be deemed fit and proper in the facts and circumstances of the case.*

2. Stating succinctly, the CP(IB) No. 23/ND/2021 was filed by VA Realcon Private Limited (hereinafter, referred to as the "**Operational Creditor**") seeking initiation of CIRP qua Avail Holding Limited (hereinafter, referred to as the "**Corporate Debtor**") in terms of the provision of Section 9 of IBC, 2016. The Corporate Debtor was admitted to CIRP in terms of order dated 29.01.2024 passed by this Tribunal and Mr. Praveen Bansal was appointed as IRP. The Corporate Debtor is currently represented through its RP, Mr. Satyendra Sharma i.e. the Applicant herein.



3. As per the provisions of Section 15 of the Code r/w Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the IRP issued a Public Announcement in Form-A on 10.02.2024 in two newspapers, namely Financial Express (English) and Jansatta (Hindi), inviting claims with proof thereof from the creditors of the Corporate Debtor. A copy of the aforementioned Public Announcement is enclosed as Annexure-II to the application.

4. Subsequently, the IRP prepared a list of Creditors after verification of claim received in response to the Public Announcement and filed the list of Creditors and a report certifying constitution of the Committee of Creditors, in terms of Section 21 of the Code, with this Adjudicating Authority on 02.03.2024. In the first meeting of the CoC, Mr. Satyendra Sharma i.e. the Applicant was appointed as the RP and the appointment was subsequently confirmed by this Adjudicating Authority in terms of order dated 06.05.2024.

5. The Applicant/ RP has submitted that till the date of filing of the application, 13 CoC meetings of the CD have been conducted. The details of the meetings as given in the application read thus: -

- **First COC Meeting held on 09.03.2024;**
- **Second COC Meeting held on 06.04.2024;**
- **Third COC Meeting held on 04.07.2024;**
- **Fourth COC Meeting held on 07.08.2024;**
- **Fifth COC Meeting held on 11.09.2024;**
- **Sixth COC Meeting held on 28.09.2024;**
- **Seventh COC Meeting held on 10.10.2024;**
- **Eight COC meeting held on 15.10.2024;**
- **Ninth COC meeting held on 21.10.2024 and 22.10.2024;**
- **Tenth COC meeting held on 18.11.2024;**
- **Eleventh COC meeting held on 18.12.2024;**
- **Twelfth COC meeting held on 30.12.2024**
- **Thirteenth COC meeting held on 06.01.2025.**



6. The Applicant/ RP has got the assets of the Corporate Debtor valued in terms of Regulation 35 of the CIRP Regulations, 2016 by the Registered Valuers who were appointed in terms of Regulation 27 of CIRP regulations during the 2nd CoC meeting viz: -

Sr. No.	Name of Registered Valuer (SFA)	IBBI Registration
1	Mr. Chirag Shah	IBBI/RV/06/2019/11438
2	Maitri Valuation Pvt. Ltd.	IBBI/RV-E/11/2023/184

The Applicant/ RP has stated that the fair value and liquidation value of the assets of the Corporate Debtor as submitted by the Registered Valuers in terms of Regulation 35 of CIRP Regulations, 2016 is Rs. 52,87,297/- and Rs. 26,44,130.50/-. The relevant excerpt of the valuation report reads thus:

S NO	ASSETS CLASS	NAME OF VALUERS	AVERAGE FAIR VALUE (IN INR)	AVERAGE LIQUIDATION VALUE (IN INR)
1.	Land & Building	Not Applicable	NIL	NIL
2.	Plant and Machinery	Not Applicable	NIL	NIL
3.	Securities & Financial Assets	M/s Maitri Valuation Pvt Ltd	52,87,297.00	26,44,130.50
		Mr. Chirag Shah		
TOTAL			52,87,297.00	26,44,130.50

7. The Applicant/ RP has submitted in the application that the IRP had published first Form- G (Invitation for Expression of Interest) in two newspapers, namely Financial Express (English) and Jansatta (Hindi) on 12.04.2024, with the last date for receipt of EoI being 27.04.2024. Subsequently, the Applicant/ RP proposed at the 3rd CoC meeting on 04.07.2024 for issue of second Form- G and a resolution to this effect was passed by the CoC. The Applicant/ RP has submitted that the second Form-



G was published on 11.07.2024 in Financial Express (English) and Jansatta (Hindi), with the last date for receipt of EoI being 26.07.2024.

8. According to the Applicant/ RP that he issued a Provisional and the Final List of Prospective Resolution Applicants (“PRAs”) on 05.08.2024 and 22.08.2024 respectively. The Applicant/ RP has also stated that the Information Memorandum (“IM”) and Request for Resolution Plan (“RFRP”) along with Evaluation Matrix (EM) was provided to the PRAs *vide* email dated 25.08.2024. The final list of PRAs as mentioned in the application reads thus: -

S.R. NO.	NAMES	TYPE
1.	Phool Devi Ghosal	Individual
2.	Sudheep Sampatmal Dasani	Individual *
3.	Amrit Kumar Agrawal	Individual**
4.	Anuj Goyal	Individual**
5.	SPSS infrastructure Private Limited	Company**
6.	Consortium of Mr. Yogesh Mittal & Mrs Seema Mittal	Consortium
7.	Gurram Venkata Sudha Kiran Babu	Individual***
8.	Consortium of M/s Anand & Co., Mr. Pramod Kumar and Mr. Robin Khatter	Consortium

**Withdrawn the EOI through email dated 06.08.2024;*

***Refundable Deposit is not submitted;*

****Resolution Plan was not submitted.*

9. In the application, it is stated that the Applicant/ RP received resolution plans from the following PRAs: -

- (i) Consortium of Mr. Yogesh Mittal & Mrs. Seema Mittal;



- (ii) Consortium of M/s Anand & Co., Mr. Pramod Kumar and Mr. Robin Khatter;
- (iii) Ms. Phool Devi Ghosal

10. The Applicant/ RP has submitted that at the 12th CoC meeting held on 30.12.2024, the modified resolution plans received from the PRAs were placed before the CoC, and the CoC considered the same viz. it conducted financial due diligence and checked their viability. Thereafter, the plan submitted by the Consortium of M/s Anand & Co., Mr. Pramod Kumar and Mr. Robin Khatter (hereinafter, referred to as **“Successful Resolution Applicant”**) was approved with 100% voting rights. The relevant excerpt of the minutes recording the CoC’s approval of the aforesaid plan reads thus:

RESOLVED FURTHER THAT pursuant to the provisions of Section 30(6) and other applicable provisions of the IBC and Rules and Regulations framed thereunder, the RP be and is hereby authorized to submit the Resolution Plan as approved by the COC to the Hon’ble NCLT and to do all such acts, deeds and things as may be required or considered necessary or incidental thereto in connection with.”

S. No.	Name of the Creditor	Voting Share (%)	Signature		
			Assent	Dissent	Abstain
1	Sital Leasing and Finance Limited	25.08	25.08	x	x
2	Utsav Securities Private Limited	55.37	55.37	x	x
3	ECHT Finance Limited	19.55	19.55	x	x
Total		100.00	100.00	-	-

APPROVED WITH 100% VOTING RIGHTS

11. The Applicant/ RP has submitted that after approval of the plan submitted by the SRA, a performance security of Rs. 10,00,000/- as



required under Regulation 36B(4A) of CIRP Regulations, 2016 was received from the SRA.

12. The Resolution Plan submitted by the SRA, which stands approved by the CoC, has been enclosed as Annexure- XV to the application.

13. The compliance certificate in prescribed Form- H, in terms of Regulation 39(4) of the CIRP Regulations, 2016, has been filed by RP and enclosed as Annexure- XIX to the application.

14. The Applicant/ RP has submitted in the Form- H that the Resolution Plan submitted by the SRA includes a statement under Regulation 38(1A) of CIRP Regulations, 2016 as to how it has dealt with the interests of all stakeholders in compliance of the Code and the Regulations made thereunder. The relevant excerpt of Form- H reads thus: -

“6. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made thereunder. (Chapter 13 clause d on Page No. 72 of the Resolution Plan) Page No. 634

7. The amounts provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rs.)						
S. No.	Category of Stakeholder*	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)	(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	-	-	-	-
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	-	-	-	-
		(ii) who voted in favour of the resolution plan	-	-	-	-
		Total [(a) + (b)]				
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	-	-	-	-
		(ii) who voted in favour of the resolution plan	2,23,59,015.00	2,23,59,015.00	1,45,00,000.00	64.85%
		Total[(a) + (b)]	2,23,59,015.00	2,23,59,015.00	1,45,00,000.00	64.85%
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above:	-	-	-	-
		(i)Government (ii)Workmen (iii)Employees (iv) Other than (i) to (iii) above	1,55,76,588.00	1,19,09,148.00	5,00,000.00	3.21%
		Total[(a) + (b)]	1,55,76,588.00	1,19,09,148.00	5,00,000.00	3.21%
4	Other debts and dues		-	-	-	-
Grand Total (1+2+3+4)			3,79,35,603.00	34,268,163.00	1,50,00,000.00	39.54%



15. The Applicant/ RP has also provided details of the amounts proposed to be paid towards the CIRP qua Corporate Debtor pursuant to the implementation of the resolution plan, which reads thus: -

33. That the brief of amounts proposed to be paid towards the Corporate Insolvency resolution of the Corporate Debtor pursuant to the implementation of the proposed Resolution Plan briefed as under:

S No	Particulars	Basis	Amount (in Rs.)
i.	Corporate Insolvency Resolution Process cost	Actual	20,00,000.00 or actual amount whichever is lower
ii.	Secured Financial Creditors, Unrelated, Having Voting Right	Not Applicable	Nil
iii.	Unsecured Financial Creditors, Unrelated, Having Voting Right	2,23,59,015 i.e., 64.85% of claim admitted	1,45,00,000
iv.	Operational Creditors other than workmen and employees	1,19,09,148 i.e., 4.20% of admitted claim	5,00,000
v.	Workmen Dues	Not Applicable	Nil
vi.	Employees	Not Applicable	Nil
vii.	Government dues	Not Applicable	Nil
viii.	Others i.e. Working Capital	Not Applicable	50,00,000
ix.	Contingency	Not Applicable	10,00,000
Total			2,30,00,000

16. As can be seen from the tables reproduced at paragraphs 14 and 15 above, the plan provides for payment of CIRP cost of Rs. 20,00,000/- or actual amount, whichever is lower. There are no Secured Financial Creditors. Further, the Unsecured Financial Creditors shall be paid a sum of Rs. 1,45,00,000/- against the admitted claim of about Rs. 2,23,59,015/. As stated in the plan as well as the application, no claims with regard to



employees/ workmen were received by the RP and thus, 'NIL' payment is proposed for this category. Similarly, no claim has been received by the RP with respect to Government/ Statutory dues and hence, 'NIL' payment is proposed for this category. With respect to Operational Creditors (other than employees/ workmen and statutory authorities), against the admitted claim of Rs. 1,19,09,148/-, the plan provides for Rs. 5,00,000/-. Thus, against the admitted claim of Rs. 3,42,68,163/-, an amount of Rs. 1,50,00,000/- (amounting to 39.54%) has been proposed to be paid under the plan as per the breakup given in the table reproduced above.

17. The certificate given in Form – H indicates the compliance of various provisions of IBC, 2016 r/w the provisions of IBBI (CIRP) Regulations, 2016. paragraph 9 of Form H, reads thus: -

9. The compliance of the Resolution Plan is as under:			
Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the COC having regard to the complexity and scale of operations of business of the CD?	Pg. 94-97	Yes Page 426-429
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Pg. 94-97 of the Resolution Plan.	Yes Page 426-429
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Pg. 94-97 of the Resolution Plan.	Yes Page 426-429
Section 30(2)	Whether the Resolution Plan-		Yes Page 582
	(a) provides for the payment of insolvency resolution process costs?	Clause 5.1 at Page- 20 of the Revised Resolution Plan read with clause 4.d. of the addendum of the Resolution Plan.	
	(b) provides for the payment to the operational creditors?	Clause 6.7 at Page- 29 of the Revised Resolution Plan.	Page 591
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Not applicable	
	(d) provides for the management of the affairs of the corporate debtor?	Chapter 8 (Pg. 37-45) of the Revised Resolution Plan.	Page 599-607
	(e) provides for the implementation and	Clause 8.5 at	Page 604



	supervision of the resolution plan? (f) contravenes any of the provisions of the law for the time being in force?]	Page- 42 of the Revised Resolution Plan. Clause 11.7 at Page- 64 of the Revised Resolution Plan..	Page 626
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the COC? (b) has been approved by the COC with 66% voting share?	Clause K of Chapter-13 on page no. 75 of Revised Resolution Plan.	Yes Page 637
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the COC?	Chapter 6	Yes Page 584-596
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?]	Clause C of Chapter-13 on page no. 72 of Revised Resolution Plan	Yes Page 634
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause D of Chapter-13 on page no. 72 of Revised Resolution Plan.	Yes Page 634
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]	Clause M of Chapter-13 on page no. 75 of Revised Resolution Plan.	No Page 637
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	Indicative Timeline for Implementation Schedule is provided in Chapter 6 of the Revised Resolution Plan Term of Plan and Implementation Schedule is provided in Chapter 6 of the Revised Resolution Plan	Yes Page 584-596 Page 584-596



		<p>Supervision and Monitoring Implementation of Revised Resolution Plan is provided at Clause 8.5 at Page no. 42-43 of Revised Resolution Plan</p> <p>Clause 8.1 on Page No 37 of the Revised Resolution Plan specify the term of the plan as 1 year.</p>	<p>Page 604-605</p> <p>Page 599</p>
38(3)	<p>Whether the resolution plan demonstrates that –</p> <p>(a) it addresses the cause of default? Page 584</p> <p>(b) it is feasible and viable? Page 585</p> <p>(c) it has provisions for its effective implementation? Page 586</p> <p>(d) it has provisions for approvals required and the timeline for the same? Page 586-590</p> <p>(e) the resolution applicant has the capability to implement the resolution plan? Page 584-585</p>	<p>Indicative Timeline for Implementation Schedule is provided in Chapter 6 of the Revised Resolution Plan</p> <p>Term of Plan and Implementation Schedule is provided in Chapter 6 of the Revised Resolution Plan</p> <p>Supervision and Monitoring Implementation of Revised Resolution Plan is provided at Clause 8.5 at Page no. 42-43 of Revised Resolution Plan</p> <p>Clause 8.1 on Page No 37 of the Revised</p>	Yes



		Resolution Plan specify the term of the plan as 1 year.	
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Clause 4A of addendum dated 02.01.2025 to the revised resolution plan	Yes Page 642
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]	Performance Security of INR 10,00,000.00 is received	Yes

18. In the Resolution Plan, the SRA has indicated the equity shareholding structure before and after the approval of the resolution plan. The relevant excerpt of the plan reads thus: -

The equity shareholding structure before and after the Resolution Plan of the Resolution Applicant is as under:

NAME OF SHAREHOLDER	BEFORE RESOLUTION		AFTER RESOLUTION	
	NO. OF SHARES	%	NO. OF SHARES	%
Promoters of the Corporate Debtor	Nil	0	-	-
Public other than Promoter of the Corporate Debtor	11,50,000	100	1,15,000	1.36
Partners of Resolution Applicant, associates or their relatives and others	-	-	83,35,000	98.64
TOTAL	11,50,000	100	84,50,000	100

Note: Face value of share shall remain same as Rs 10 per share post approval of Resolution Plan

19. As per Section 30(1) of the Code, a resolution applicant needs to submit, along with the resolution plan, an affidavit stating that he is eligible under Section 29A of the Code to the RP. In this respect, an affidavit dated 23.09.2024, under Section 29A of the Code, has been submitted by the SRA and relevant excerpt of the same reads thus: -

APPENDIX 10 AFFIDAVIT UNDER SECTION 29A OF IBC

I, **Robin Khatter** S/o Shri Madan Lal Khatter, aged 50 years, residing at N-2/8, DLF Outer Enclave Phase II Gurgaon, 122008 designated as Partner of **M/s Anand & Company** (Lead Member of the Resolution Applicant Consortium) having its registered office at 15/32, Near Flyover, Road No 32, Punjabi Bagh East, West Delhi, Delhi - 110026 do solemnly affirm and declare on oath as under: -

1. I understand that an insolvency resolution process has been initiated against M/s Avail Holding Limited (Corporate Debtor) vide order dated 29.01.2024 (Admission Order) passed by National Company Law Tribunal, New Delhi Bench- II (Adjudicating Authority) in an application filed by Operational Creditor against the Corporate Debtor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (amended up to date) (IBC).
2. I state that the present affidavit is sworn by me on behalf of the Resolution Applicant, in compliance of section 29A of the IBC.
3. I on behalf of the Resolution Applicant and any other person acting jointly or in concert with the Resolution Applicant hereby confirm that:
 - i. The Resolution Applicant and any connected person as per the Explanation I provided under Section 29A of the IBC is not an undischarged insolvent; or
 - ii. The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC, is not identified as a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949; or
 - iii. At the time of submission of the Resolution Plan, the account of the Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC or an account of the corporate debtor under the management or control of such person of whom such person is a promoter, IBC is not classified as nonperforming asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or guidelines of a financial sector regulator issued under any other law at the time being in force and at least a period of one year or more has lapsed from the date of such classification till the date of commencement of corporate insolvency resolution process of the corporate debtor and that I have no failed to make the payment of all overdue amounts with interest thereon and charge relating to non-performing asset before submission of Resolution Plan; or



- iv. The Resolution Applicant and any connected person as per Explanation I provided

under section 29A of the IBC have not been convicted for any offence punishable with imprisonment for 2 years or more under any Act specified in the Twelfth Schedule or for seven years or more under any law for the time being in force or a period of two years has expired from the date of release of such imprisonment; or

- v. The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not been disqualified to act as a director under the Companies Act 2013; or

- vi. The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not been prohibited by the Securities and Exchange Board of India from trading in securities or assessing the securities markets; or

- vii. The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not indulged in preferential transaction or undervalued transaction or fraudulent transaction in respect of which an order has been made by the Adjudicating Authority under the IBC; or

- viii. The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not executed a guarantee in favor of a creditor, in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under the IBC and no such guarantee has been invoked by the creditor or remains unpaid in full or part; or

- ix. The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC are not subject to any disability, corresponding to clauses mentioned above under any law in a jurisdiction outside India.

- a. That the Resolution Applicant unconditionally and irrevocably agrees and undertakes that it shall make full disclosure in respect of itself and all its connected persons as required under Regulation 8(3) of the CIRP Regulations.
- b. That the Resolution Applicant unconditionally and irrevocably agrees and undertakes that it shall make full disclosure in respect of itself and all its connected persons as per the provisions of the CIRP and the rules and regulations framed there under to submit a resolution plan and that it shall provide all documents, representations and information as may be required by the RP or the COC to substantiate to the satisfaction of the RP and the COC that the Resolution Applicant is eligible under the IBC and the rules and regulations there under to submit a resolution plan in respect of Corporate Debtor.
- c. That the Resolution Applicant unconditionally and irrevocably undertakes that it shall provide all data, documents and information as may be required to verify the statements made under this affidavit.



- d. That the Resolution Applicant understands that the COC and the RP may evaluate the resolution plan to be submitted by the Resolution Applicant or any other person acting jointly with it and such evaluation shall be on the basis of the confirmations, representations and warranties provided by the Resolution Applicant under this affidavit.
- e. That the Resolution Applicant agrees that each member of the COC and the RP are entitled to rely on the statements and affirmations made in this affidavit for the purposes of determining the eligibility and assessing, agreeing and approving the resolution plan submitted by the Resolution Applicant.
- f. That in the event any of the above statements are found to be untrue or incorrect then the Resolution Applicant unconditionally agrees to indemnify and hold harmless the RP and each member of the COC against any losses, claims or damages incurred by the RP and / or the members of the COC on account of such ineligibility of the Resolution Applicant.

20. Regarding the source of funds, the SRA at chapter 7 of the plan has provided details of the funding plan wherein it is stated that the overall resolution plan is for a total amount of Rs. 2,30,00,000/- which shall be funded with a mix of equity/ preference shares and unsecured loan/ inter corporate deposit/ other loan/ internal accruals from the Resolution Applicant. Relevant excerpt of the plan reads thus: -

“CHAPTER – 7

FUNDING PLAN AND SOURCE OF FUNDS

7.1 FUNDING PLAN

The overall Resolution Plan is for a total amount of approximately INR 2,30,00,000, which shall be funded with a mix of Equity/Preference Shares and unsecured loan/ Inter corporate deposit/ other loan/ internal accruals from the Resolution Applicant. In case this amount becomes short, the shortfall amount may also be infused by the Resolution Applicant with a mix of Equity/Preference Shares and



unsecured loan/ Inter corporate deposit/ other loan/ internal accruals.

7.2 SOURCE OF FUND:

Time Period	Equity/Preference Shares (INR) Unsecured loan/ inter corporate deposit/ other loan (INR.)	Utilization
Upfront Payment Within 60 Days from the cut-off date	1,70,00,000	Towards CIRP cost and payment to Creditors
As and when required	60,00,000	Contingent Liabilities and Working Capital Margin

7.3 The Resolution Applicant has sufficient fund to infuse the requisite fund in the Corporate Debtor. Further, the Partners of the Resolution Applicant are high net worth individuals having sufficient fund to invest in the Corporate Debtor. The Resolution Applicant has INR 4+ crores of free cash flow in its bank account as reflected in the financial statements for FY 2023-24 and as such has sufficient sources of funds to implement this Resolution Plan.”

21. Regulation 38(1B) of CIRP Regulations, 2016 provides that a Resolution Plan shall include a statement giving details as to whether the SRA or any of its related parties have failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past. In this regard, a declaration has been given by the SRA in chapter 13 of the plan, which reads thus: -

“We hereby undertake that neither the resolution applicant nor any of its related parties has failed to implement or contributed



to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.”

22. Regulation 38(2)(a) of CIRP Regulations, 2016 states that the plan should provide for the term of the plan and its implementation schedule. In this respect, clause 8.1 of the plan states that the term of the plan shall be for a maximum period of one year commencing from the cut-off date i.e. the date from which the RP hands over the assets of the CD to SRA after approval of the Resolution Plan by this Adjudicating Authority. Clause 8.1 of the plan reads thus: -

“8.1 TERM OF PLAN:

The term of plan shall be for a maximum period of One Year commencing from the cut-off date.”

Furthermore, in clause 6.7 of the Resolution Plan, the SRA has provided the timeline for settlement of claims of various classes of stakeholders, which read thus: -

“6.7 SETTLEMENT OF CLAIMS:

The settlement of claims of various classes of stakeholders, their order of priority and their respective settlement amount shall be as under:

Nature of Creditor	Basis of Settlement and Indicative Amount	Estimated Amount (INR)	Timeline (From the Cut-off date)
CIRP Cost	Actual amount incurred to be paid in full	20,00,000 or Actual amount as on Cut off date	Upfront within 60 days



Dues to Workmen/ Employees	No claim with regard to any workman/employee is received by the Resolution Professional. Thus all claims (if any) for the period upto the cut off date shall be deemed to be extinguished/settled	Nil	NA
Financial Creditors	As on 29.06.2024, the admitted claims of Financial Creditors are INR 2,23,59,015. The Resolution Applicant proposes to pay INR 1,45,00,000 in accordance with Clause 6.5.1 to 6.5.6	INR 1,45,00,000	Upfront within 60 days
Operational Creditors	As on 29.06.2024, the admitted claims of Operational Creditors are INR 1,15,84,648. The Resolution Applicant proposes to pay INR 5,00,000/- towards full and final settlement of the dues of the Operational Creditor in accordance with Clause 6.5.1 to 6.5.6	INR 5,00,000/-	Upfront within 60 days



Shareholders	No Amount shall be paid to the current shareholders of the Corporate Debtor. Any claim of the existing shareholders against the Corporate Debtor up to the cut-off date shall be deemed to be settled/extinguished.	NA	NA
Other Creditors (Present/Past/Future arising out of any ongoing/past transactions prior to the Cut Off Date)	No claim with regard to any workman/employee is received by the Resolution Professional. Thus all claims (if any) for the period upto the cut off date shall be deemed to be extinguished/settled.	NA	NA
Contingent Liabilities	INR 10,00,000/- is proposed to be paid proportionately towards any contingent/unforeseen/liabilities not part of the IM subject to other clauses of the Resolution Plan.	10,00,000	Within 60 days of the Cut off.
Total		INR 1,80,00,000	

23. As per Regulation 38(2)(b) of CIRP Regulations, 2016, the Resolution Plan should provide for the management and control of the business of the



Corporate Debtor during its term. In this regard, the SRA has provided at chapter 8 of the plan that upon approval of the plan by this Adjudicating Authority, the CD will be merged with the SRA and the status of the SRA will be converted from Private Limited to Public Limited. The relevant excerpt of the plan reads thus: -

“CHAPTER- 8

**MANAGEMENT OF THE CORPORATE DEBTOR AFTER
APPROVAL OF THE RESOLUTION PLAN**

[...]

8.2 CONVERSION OF STATUS OF RESOLUTION APPLICANT

That the Resolution Applicant has already applied for the name approval with the Registrar of Companies (ROC) for conversion of status of Resolution Applicant from the status of partnership firm to the status of private limited company and RK & Aanand Pvt Ltd. has been made available by the ROC on 09.08.2024. A copy of name approval letter issued by the ROC is annexed herewith as Annexure 6.

The Resolution Applicant pursuant to conversion shall comprise of Mr. Robin Khatter and Mr. Pramod Kumar Anand as directors and shareholder and such other persons as may be appointed/nominated by the newly constituted Board of Directors.

Upon approval of the Resolution Plan by the NCLT and then upon effective date, the Corporate Debtor will be merged with the Resolution Applicant and then the status of the Resolution Applicant will be converted from Private Limited to the Public Limited without any further act, deed or thing on the part of the



Corporate Debtor and the name of the Resolution Applicant consequent upon conversion will be changed to RK & Aanand Limited.

Immediately upon the said change in the name of Resolution Applicant becoming complete and effective due to conversion and merger, the new name will be changed and substituted for the existing name of the Resolution Applicant, wherever it appears in the Memorandum and Articles of Association and in all other records/ display of the Company and the Clause I of the Memorandum of Associations and Articles of Associations of the Transferee Company will be deleted and substituted as “RK & Aanand Limited”.

24. Further, as per Regulation 38(2)(c) of said Regulations, the plan should also provide for adequate means for supervising its implementation. Furthermore, as per Regulation 38(4) of the CIRP Regulations, 2016, the CoC may consider the requirement of a Monitoring Committee for the implementation of the plan. In this regard, it is apt to refer to Clause 8.5 of the Resolution Plan which deals with implementation and supervision of the Resolution Plan as well as constitution of a Monitoring Committee. The said clause read thus: -

“8.5 IMPLEMENTATION AND SUPERVISION OF THE RESOLUTION PLAN:

- a. Once the Resolution Plan is approved by the Adjudicating Authority, a Monitoring Committee shall be constituted for the purpose of supervising and monitoring the progress in the implementation oi the Resolution Plan.*



- b. The Monitoring Committee shall supervise the implementation of the Resolution Plan until the final payment is made to the Creditors as per the Resolution Plan.*
- c. The Monitoring Committee shall comprise of: -*
 - i. Mr. Satyendra Sharma, the Resolution Professional (as stated in clause 1.1.24) of the Corporate Debtor (Chairman).*
 - ii. One Member to be nominated by the CoC with majority voting.*
 - iii. One Member to be nominated by the Resolution Applicant.*
- d. The Monitoring Committee shall meet as and when decided with 7 days clear notice wherein two members must be present for a quorum provided such quorum shall only be valid quorum if nominee of Resolution Applicant is present in such meeting.*
- e. In the Event, Resolution Professional of the Corporate Debtor is not present in the meeting of the Monitoring Committee for any reason, the nominee of the Committee of Creditor shall chair the meeting.*
- f. All the decision of the Monitoring Committee shall be taken by consensus and in case of difference of opinions, a decision shall be taken by majority vote which shall be binding on all the concerned.*
- g. The minutes of the meeting of the Monitoring Committee shall be duly signed by the attendees.*
- h. Scope of Monitoring Committee:*



- *Supervise and ensure the receipt of amount from resolution applicant and its allocation to various creditors as per the Resolution Plan.*
 - *Supervise and ensure the compliance of terms of Resolution Plan.*
 - *Supervise and ensure the effective implementation of Resolution Plan.*
 - *Supervise and ensure the measure for recovery of all receivable of Corporate Debtor.*
 - *Periodically reviewing financials (Quarterly)*
 - *Supervising and monitoring the Safety of the fixed assets of the Corporate Debtor.*
 - *Supervise disposal of fixed assets if any as per Resolution Plan.*
 - *Communicate and supervise recovery of claims receivable by Corporate Debtor*
 - *Submit compliance report at end of implementation period to COC and Resolution Applicant and to Hon'ble Adjudicating Authority (if required).*
- i. *Fees of monitoring committee: Remuneration shall be paid by the Resolution Applicant to the Resolution Professional from the cut-off date towards discharging his duties in the Monitoring committee as per IBBI Regulations.*
- j. *Term and Validity of Monitoring Committee: The implementation of the Resolution Plan shall be*



supervised by the Monitoring committee till the final payment is made to creditors as per the Resolution plan.”

25. As per Regulation 38(2)(d) of the CIRP Regulations, 2016, a resolution plan shall provide the manner in which the proceedings with respect to avoidance transactions and fraudulent/ wrongful trading is to be pursued and the manner in which the proceeds, if any, from such proceedings shall be distributed. In this respect, it is apposite to note that as per Form – H given by the Applicant/ RP, one application filed under Section 66 of the Code is pending before this Adjudicating Authority. The relevant excerpt of Form- H reads thus: -

15. Provide details of section 66 or avoidance application filed / pending-

Sl. No.	Type of Transaction	Date of Filing with Adjudicating Authority	Date of Order of the Adjudicating Authority	Brief of the Order
1	Preferential transactions under section 43	-	-	-
2	Undervalued transactions under section 45	-	-	-
3	Extortionate credit transactions under section 50	-	-	-
4	Fraudulent transactions under section 66	28.11.2024	Matter is not yet disposed and the next date of hearing in this matter is 10.02.2025.	-

Furthermore, as per clause 9.17 of the plan, post the approval of the plan, any application relating to preferential transactions, fraudulent



transactions, undervalued transactions, extortionate credit transactions would be pursued by the CoC and if any amount is received under such applications, the whole of the said amount shall vest with the Committee of Creditors and further, if any amount is left after the settlement of entire dues of the Committee of Creditors, it shall be paid to the Operational and other creditors if any. The said clause reads thus: -

**“9.1.7 PREFERENTIAL TRANSACTIONS AND
RECEIVABLES**

- a. If any amount during or post the Cut Off Date is received or liable to be received on behalf of the Corporate Debtor, the whole of the said amount shall inure, vest and be paid to the Committee of Creditors. Any amount left after settlement of the entire dues of the Committee of Creditors shall be paid to the Operational and other creditors if any.*
- b. Post approval of the Resolution Plan by the Hon'ble NCLT, New Delhi Bench, the applications related to any preferential transactions, fraudulent transactions, undervalued transactions, extortionate credit transactions will be pursued by the Committee of Creditors at their own cost/ expense and such expense or cost shall not be included in the CIRP cost and if any amount is received or liable to be received on account of any preferential transactions, fraudulent transactions, undervalued transactions, extortionate credit transactions undertaken by the Corporate Debtor, the whole of the said amount shall inure, vest and be paid to the Committee of Creditors. Any amount left after settlement of the entire dues of the Committee of*



Creditors shall be paid to the operational and other creditors if any.”

26. As per the requirement of Regulation 38(3)(a) of CIRP Regulations, 2016, a plan shall demonstrate that it addresses the cause of default by the Corporate Debtor. In this respect, it is relevant to refer to clauses 6.1 to 6.3 of the resolution plan wherein the SRA has stated the cause of default by the CD and how the same is to be addressed. The said clauses read thus: -

“6.1 CAUSE OF DEFAULT: *-As understood by the Resolution Applicant based on its vast experience in relevant industry, there are many reasons for default by the Corporate Debtor, some of them are enumerated as under:-*

- i. Low Liquidity*
- ii. Lack of Financial Discipline*
- iii. Lack of proper management*
- iv. High expectations of Investors*
- v. Lack of legal compliance”*

6.2 TURNAROUND PLAN

6.2.1 Ability to turnaround. distress assets: *-The Resolution Applicant is the a consortium of sound financial organization which is owned, Promoted and managed by experienced people having vast working experience.*

6.2.2 They have managerial ability and the financial resources to hire and engage professionally qualified executives to run the business profitably. *Suitable experienced and qualified manpower shall be hired for operation of the Corporate Debtor. The Corporate Debtor was sick due to various internal and external factors. The Resolution Applicant is financially sound and profitable and is engaged in business for decades, the said*



experience will come handy in the turnaround of the Corporate Debtor.

6.2.3 The turnaround plan would also include steps to settle the outstanding liabilities of the Corporate Debtor i.e. the liability towards the creditors of the Corporate Debtor.

6.2.4 The Resolution Applicant intends to merge the Corporate Debtor with the Resolution Applicant and hence the business of the Corporate Debtor shall be dissolved without being wound up.

6.3 TURN AROUND STRATEGY BY RESOLUTION APPLICANT WHILE ADRESSING THE CAUSE OF DEFAULT

Following shall be the turnaround strategy by the Resolution Applicant which is indicative and not exhaustive:

- i. To infuse fund to pay of the creditors of the Corporate Debtor in accordance with the Resolution Plan.*
- ii. To infuse fresh fund in any form such as equity/ unsecured loans to settle the outstanding liabilities in full/ part during the implementation of the Resolution Plan;*
- iii. To merge the Corporate Debtor with itself.”*

27. Further, in compliance of Regulation 38(3)(b) of CIRP Regulations, 2016, the Resolution Plan under clause 6.4 also demonstrates as how the plan will be feasible and viable. The said clause reads thus: -

“6.4 VIABILITY OF PROJECT

6.4.1 Operational Viability:- The Resolution Applicant is a consortium of sound financial organization which is owned, promoted and managed by successful and experienced people having vast working experience. The Resolution Applicant intends to merge the Corporate Debtor within itself. The Resolution Applicant has decades of experience in. its business and has been successfully running the same. In view of



successful track record of the Resolution Applicant, it is safe to assume their ability to operate the merged entity with ease. Hence the project is considered as operationally viable.

6.4.2 Technical Viability:- The Resolution Applicant proposes to hire an experienced technical team to take care of the business of the merged entity.

6.4.3 Financial Viability:- The Resolution Applicant has a successful track record coupled with their decades of experience and professional, seasoned and experienced team of experts to manage its business. The Resolution Applicant is already enlisted as Class I contractor with various government agencies and especially the CPWD and has many ongoing projects. Keeping the above in perspective, the business of the merged entity is estimated to be profitable and accordingly considered financially viable.”

28. As can be seen from clause 11.7 of the Resolution Plan, the SRA has stated that the plan is not in contravention of any law. The said clause reads thus: -

“11.7 COMPLIANCE OF APPLICABLE LAWS IN FORCE:

The Resolution Applicant confirms that the Resolution Plan as submitted above does not contravene any of the provisions of the law for the time being in force.”

29. In the plan, the SRA has mentioned that certain actions will be deemed to be approved upon approval of the resolution plan by this Adjudicating Authority. Relevant excerpt of the plan reads thus: -

“9.4 CONSENTS AND APPROVALS, AUTHORIZATIONS ETC.

Upon Approval of this Resolution Plan by the Hon’ble Adjudicating Authority, all actions stated in this Resolution Plan shall be deemed to be approved. Accordingly, any action or implementation of this Resolution Plan shall not be a ground for termination of any consents, approvals, concessions, authorizations, permits etc. that has been granted to the



Corporate debtor or for which the Corporate Debtor has made an application for renewal or grant to any statutory authorities including Securities Exchange Board of India, Income Tax etc.

9.5 LICENSES/APPROVALS/CONTRACTUAL RIGHTS AND BENEFITS:

Upon approval of this Resolution Plan by the Hon'ble Adjudicating Authority and since the Resolution Applicant shall acquire the Corporate Debtor on going concern basis, all subsisting consents, incentives, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favor of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to shall, notwithstanding any provision to the contrary in their terms, be deemed to continue without any disruption for the benefits of the Corporate Debtor.

For the avoidance of doubt, it is hereby clarified that all consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to, which have expired as of the Cut Off Date, shall be deemed to continue without disruption for the benefit of the Corporate Debtor until renewed by the relevant authorities. Without any liability for the non-compliance during the time specified above, the Resolution Applicant undertakes to cause the Corporate Debtor to expeditiously identify such expired consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed, evaluate the steps required to address the same and take remedial steps to the extent practically possible.



Upon approval of this Resolution Plan by Hon'ble Adjudicating Authority, any claims by any person (whether filed/verified/admitted or not, due or contingent, asserted or unasserted, crystallized or un-crystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future) against the Corporate Debtor accruing due to the commencement or pendency of insolvency proceedings against the Corporate Debtor, whether arising under the terms of subsisting consents, licenses, approvals, rights, entitlements, benefits, and privileges whether under law, contract, lease or license, granted in favour of the Corporate debtor or any contractual arrangements entered into by the Corporate Debtor shall, notwithstanding any provision to the contrary in their terms, stand extinguished without any response.

9.6 LIABILITY FOR PAST ACTIONS AND/ OR OMISSIONS:

- a. The Resolution Applicant shall acquire control over the Corporate Debtor immediately after the order of Hon'ble Adjudicating Authority. The Resolution Applicant may take some time to discover any non-compliance that may exist in relation to the Corporate Debtor on the date of acquisition of control over the Corporate Debtor and accordingly, take necessary steps to address the same.*
- b. In light of the above, the Corporate Debtor shall have immunity from any actions and penalties (of any nature) under any law for any non-compliance of laws in relation to the Corporate Debtor or by the Corporate Debtor, as well as with the terms of any agreement or arrangement entered into by the Corporate Debtor, which was existing as on the cut-off date Without any liability for the non-compliance on or before the cut-off date, the Resolution Applicant undertakes to cause the Corporate Debtor to*



expeditiously identify such non-compliances, evaluate the steps required to address such non compliances and take steps to remedy such non compliances to the extent practically possible.

- c. The Resolution Applicant and the entitled to apply to and approach the Hon'ble Adjudicating Authority for relief for continued implementation of the approved Resolution Plan before or after any coercive action is taken against the Corporate Debtor or the Resolution Applicant.*
- d. All the offences, non-compliances, dues of any authority till the cut-off date shall be deemed to be cured, settled and extinguished. None of this shall continue against the Corporate Debtor. All the fees, charges, dues, penalties, or any other amount till cut-off date shall be extinguished and settled.*
- e. The Resolution Plan shall be implemented pursuant to order of Hon'ble Adjudicating Authority, and all actions stated in the Resolution Plan shall be deemed to be approved by Hon'ble Adjudicating Authority.*

9.7 INQUIRIES, INVESTIGATIONS ETC.:

Upon approval of this Resolution Plan by the Hon'ble Adjudicating Authority, all inquiries, investigations and proceedings, whether civil or criminal, notices, cause 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 or the affairs of the Corporate Debtor, pending or threatened, present or future, (including without limitation any investigation, action, proceeding, prosecution, whether civil or criminal, by the Central Bureau of Investigation, the Enforcement Directorate or



any other regulatory or enforcement agency), in relation to any transaction for the period prior to the cut-off date or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan shall stand withdrawn or dismissed but not against the suspended directors, senior management present till the cut-off date, auditors and KMPs of the Corporate Debtor till the cut-off date. All liabilities or obligations in relation thereto (including Criminal liability in respect of the same), whether or not set out in balance sheets of the Corporate Debtor or Profit and loss account statements of the Corporate Debtor, will be deemed to have been written off in Full and permanently 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 be passed in respect of the same by any authority prior to or after the cut-off date. Upon approval of this Resolution Plan by Hon'ble Adjudicating Authority, all new inquiries, investigation, whether civil or criminal, notices, Suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings will be deemed to be barred and will not be initiated or admitted or pursued against the Corporate Debtor in relation to any period prior to the acquisition of control by the Resolution Applicant/cut-off date over the Corporate Debtor or on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to the Resolution Plan.

However, the suspended directors, senior management, auditors and KMPs including the past directors, senior management, auditors and KMPs will be held responsible for any investigation, action, proceeding, prosecution, whether civil or criminal, by the Central Bureau of Investigation, the



Enforcement Directorate or any other regulatory or enforcement agency), in relation to any period prior to the cut-off date.

9.8 TAX AND STAMP DUTY EXEMPTIONS:-

Upon the Resolution Plan being approved by Hon'ble Adjudicating Authority, the actions undertaken pursuant to the implementation of the Resolution Plan shall be deemed to be exempt from any tax obligation under various taxing statutes, including but not limited to Sections 41A, 50B, 50C, 50CA, 56 and 115JB under the Income-Tax Act as well as the Central Goods and Services Tax Act, 2017 (as amended from time to time) and the provisions of the Indian Stamp Act, 1899 (as amended from time to time) and other laws in relation to payment of stamp duty applicable in any state.

The Corporate Debtor shall be entitled to carry forward the unabsorbed depreciation and accumulated losses under Income tax and minimum alternate tax and to utilize such amounts to set off future tax obligations notwithstanding anything to the contrary in any law in force.

9.9 ANTI-CORRUPTION PROVISIONS AND IMMUNITY:

- a. As the Resolution Applicant will acquire control over the Corporate Debtor pursuant to the order of Hon'ble Adjudicating Authority and not pursuant to the usual acquisition process which would ordinarily include a detailed due diligence and representation, warranties and indemnities in relation to the affairs of the Corporate Debtor from its existing promoters, the Resolution Applicant may take some time to discover all the non-compliances that may exist in relation to the Corporate Debtor on the Date of acquisition of the control by Resolution Applicant over the Corporate Debtor.*



- b. *Upon approval of the Resolution Plan by Hon'ble Adjudicating Authority, immunity shall be deemed to have been granted to the Corporate Debtor and not to the suspended directors, senior management, auditors and KMPs including the past directors, senior management, auditors and KMPs from any, actions and penalties (of any nature) under any laws for any non-compliance of laws in relation to the Corporate Debtor or by the Corporate Debtor, which was existing as on the cut-off date.*
- c. *Upon approval of the Resolution plan by the Hon'ble Adjudicating Authority, immunity shall be deemed to have been granted to the Corporate Debtor and not to the suspended directors, senior management, auditors and KMPs including the past directors, senior management, auditors and KMPs, from any actions and Penalties (of any nature) under any laws for any non-compliance of laws in relation to the Corporate debtor or by the Corporate Debtor which was existing as on the Cut-Off Date. Without any liability for the non-compliance during the time specified above, the Resolution Applicants undertakes to cause the Corporate Debtor to expeditiously identify such non-compliances, evaluate the steps required to address such non-compliances and take steps to remedy such non-compliances to the extent practically possible.*
- d. *Immunity shall be provided from any claim/ prosecution arising from money laundering, fraud, tax fraud, willful defaulter classification, foreign exchange fraud, foreign remittance fraud, taxation fraud, revenue fraud, compliance fraud, Securities & Exchange Board of India (SEBI) fraud or any other fraud of any nature (if any) with*



regard to any transaction undertaken by the Corporate Debtor prior to the cut-off date under various acts, laws, rules and regulations including but not limited to Prevention of Money Laundering Act, Code of criminal procedure, Reserve Bank of India Acts, SEBI Act, Foreign Exchange Management Act, Factories Act, Pollution Control/ Environment Act, Excise Act, Customs Act, Income Tax Act, VAT Acts, Sales Tax Act of .any state, Employee's State Insurance Act, Employee's Provident Fund, Gratuity, Professional tax and Miscellaneous Provision Act, all labor/ workman/ employee Laws/ Acts etc.

9.11 CONTRACTS:

- a. The Corporate Debtor shall have a right to review and terminate any contract that was entered into prior to the cut-off date. If during such review, the Corporate Debtor terminates any such contracts then the Corporate Debtor shall not be liable towards any claims with respect to termination of such contracts, including but not limited to any claims, penalty, damages (liquidated or otherwise), arbitration claims or claims for specific performance.*
- b. Any contingent liabilities, litigation, Court cases, Income tax Search/Survey proceedings Investigation, Non deduction/Delay deduction/Non Payment of tax deducted/collected at Source, Provident Fund cases, Employee State Insurance Cases, Gratuity, Professional tax, Excise Duty, Customs Duty Cases, Various States Sales tax cases, Non- compliance of Registrar of Company filling, Income Tax Filling, Sales tax/ Laws, Inspection, Tax assessments, etc. or any other proceeding pending against or such threatened*



proceedings which may arise against the Corporate Debtor shall be deemed to be settled and none of this proceeding against Corporate Debtor shall be carried forward. If any of the liability set hereto is crystalized for any period prior to the cut-off date; shall be paid “NIL” Amount” towards full and final settlement.”

30. It is also pertinent to note that in addition to the aforesaid approvals, the SRA has sought certain reliefs and concessions from this Adjudicating Authority in Chapter 12 of the plan, which reads thus: -

“CHAPTER- 12:

RELIEFS AND CONCESSIONS

The Resolution Applicant prays before Hon’ble Adjudicating Authority for the reliefs and concessions set out below for the successful implementation of the Resolution Plan: -

- i. Neither the Resolution Applicant, nor any of its Affiliates, shall be disqualified from or considered ineligible under the IBC for proposing and/ or implementing a plan in relation to the insolvency resolution of any Person, merely on account of the implementation of this Resolution Plan by the Resolution Applicant.*
- ii. Any assets in financial statement (Including fixed assets, loans, advances, deposit, current assets, non-current assets or any other assets of any nature) of “PL” which is considered as not recoverable/ realizable and written off shall be allowed as expenses under the Companies Act, Income Tax Act.*
- iii. May be allowed to file separate/fresh application for reliefs and concession with regard to any matter which may come to the notice of the Resolution Applicant after submission of this binding plan before COC and such reliefs and concession necessary for successful implementation of Resolution Plan may be granted.”*



31. It is pertinent to note that in Form- H, the Applicant/ RP has stated that the fair value and liquidation value of the CD is Rs. 52,87,297/- and Rs. 26,44,130/- respectively. Thus, we find that the value of the plan is more the fair value of the Corporate Debtor, assessed by the valuers appointed by the RP in terms of the provisions of Regulation 27 of CIRP Regulations, 2016 r/w Regulation 35 thereof.

32. Besides, we note that in terms of the judgment of Hon'ble Supreme Court in the case of **Committee of Creditors of Essar Steel India Limited Through Authorised Signatory vs. Satish Kumar Gupta & Ors.** [Civil Appeal No. 8766-67 of 2019], it is the subject matter of commercial wisdom of CoC to take decision regarding the amount of bid offered by SRA and the scope for this Tribunal to interfere on such issues is negligible. The above view was also reiterated by Hon'ble Supreme Court in **Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited & Anr.** (Civil Appeal No. 3224 of 2020) wherein the Hon'ble Court ruled that the scope of examination of the application for approval of Resolution Plan by this Tribunal is confined to the provisions of Section 30(2) of IBC, 2016. Para 153 of the Judgment reads thus: -

“153. Regulation 38(3) mandates that a Resolution Plan be feasible, viable and implementable with specific timelines. A Resolution Plan whose implementation can be withdrawn at the behest of the successful Resolution Applicant, is inherently unviable, since open-ended clauses on modifications/ withdrawal would mean that the Plan could fail at an undefined stage, be uncertain, including after approval by the Adjudicating Authority. It is inconsistent to postulate, on the one hand, that no withdrawal or modification is permitted



after the approval by the Adjudicating Authority under Section 31, irrespective of the terms of the Resolution Plan; and on the other hand, to argue that the terms of the Resolution Plan relating to withdrawal or modification must be respected, in spite of the CoC's approval, but prior to the approval by the Adjudicating Authority. The former position follows from the intent, object and purpose of the IBC and from Section 31, and the latter is disavowed by the IBC's structure and objective. The IBC does not envisage a dichotomy in the binding character of the Resolution Plan in relation to a Resolution Applicant between the stage of approval by the CoC and the approval of the Adjudicating Authority. The binding nature of a Resolution Plan on a Resolution Applicant, who is the proponent of the Plan which has been accepted by the CoC cannot remain indeterminate at the discretion of the Resolution Applicant. The negotiations between the Resolution Applicant and the CoC are brought to an end after the CoC's approval. The only conditionality that remains is the approval of the Adjudicating Authority, which has a limited jurisdiction to confirm or deny the legal validity of the Resolution Plan in terms of Section 30 (2) of the IBC. If the requirements of Section 30(2) are satisfied, the Adjudicating Authority shall confirm the Plan approved by the CoC under Section 31(1) of the IBC."

33. As far as the issue of reliefs and concessions which fall in the jurisdiction of different Government Authorities, and/ or are subjected to the provisions of different laws for the time being in force are concerned, it is made clear that the amount payable by the SRA in terms of the plan to different creditors, stakeholders, and to keep the Corporate Debtor as a going concern cannot be subject to any condition, assumptions, relief/ concessions and/ or qualification. It also needs to be underlined that the provisions of Section 31(4) of IBC, 2016 mandates the Resolution Applicant to obtain the necessary approval 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 of the IBC,



2016. In terms of the provisions of Section 14 of the Code even during the period of CIRP, no default in payment of current dues is a precondition for continuation of the License, Permit, Registration and similar rights. Thus, even during the moratorium period, some of the facilities forming part of the reliefs and concessions sought are made available to the CD only when there is no default in payment of the current dues. On approval of the Resolution Plan, the SRA/CD cannot be put on a better footing by exempting it from paying its legitimate dues under the law. For the sake of convenience, the explanation below Section 14 of the code is extracted below:

“14. Moratorium. –

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -

(a)

(b)

(c)

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Explanation.- For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit,



registration, quota, concession, clearances or a similar grant or right during the moratorium period;”

(Emphasis Supplied)

34. In any case, in terms of the provisions of Sections 13 and 15 of the IBC 2016 read with Regulations 6, 6A, 7, 8, 8A, 9 and 9A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, all the claimants such as Operational Creditors, Financial Creditors, Creditors in Class, Workmen and Employees and other Creditors can raise their claims before the IRP/RP. The claims are dealt with by IRP in terms of the provisions of Section 18(1)(b) of the IBC, 2016 and by RP in terms of the provisions of Section 25(1)(b) thereof read with Regulations 12A, 13 and 14 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Thereafter, the RP prepares an Information Memorandum in terms of the provisions of Regulation 36(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Memorandum contains inter alia a list of creditors containing the range of creditors, the amounts claimed by them, the amount of their claim admitted and the security interest if any in respect of such claims. As has been provided in Regulation 36(1) of the Regulations (ibid), the Information Memorandum is required to be submitted in electronic form to each member of CoC, on or before 95th day from the Insolvency commencement date. As has been provided in Regulation 36A of the Regulations the RP publish brief particulars of the invitation for Expression of Interest in Form G of Schedule I to the Regulations at the earliest i.e. not later than 60th day from the Insolvency commencement date, from interested and eligible Prospective



Resolution Applicants to submit Resolution Plans. As can be seen from Regulation 36B of the Regulations, the RP shall issue Information Memorandum Evaluation Matrix (IMEM) and request for Resolution Plans, within 5 days of the date of issue of provisional list of eligible Prospective Resolution Applicants (required to be issued under Regulation 36A(10) of the Regulations). It is with reference to such Information Memorandum Evaluation Matrix that the RP issues request for Resolution Plan. The request for Resolution Plan details each step in the process and the manner and purposes of interaction between the Resolution Professional and the Prospective Resolution Applicant. The Resolution Plan submitted after consideration of the IMEM and RFRP is then examined by the Committee of Creditors. Nevertheless, it needs to satisfy the requirements of Regulation 37 and 38 of the extant Regulations. Once the plan is approved by the CoC, in terms of the provisions of Regulations 39 of the aforementioned Regulations, it virtually becomes a contract entered into between the CD represented through RP, SRA and the Creditors of the CD. On being approved by this Adjudicating Authority, by operation of Section 31(1) of the Code, the plan becomes binding on the Corporate Debtor and its employees, members, creditors (including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being enforced such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the Resolution Plan. Thus, Section 31(1) of IBC,



2016, takes care of most of the relief/concession/waiver solicited by the Resolution Applicant.

35. Besides, in terms of the provisions of Section 32A, for an offence committed prior to the commencement of the Corporate Insolvency Resolution Process, the liability of the CD ceases and the CD is not liable to be prosecuted from the date of approval of Resolution Plan by this Adjudicating Authority, if the Resolution Plan results in change of management or control of the CD to a person who was not promotor or in the management or control of the CD or a related party of such a person or a person with regard to whom the concerned Investigating Agency has reason to believe that he had abated or conspired for the commission of the offence and has submitted or filed a report or a complaint to the relevant statutory authority or Court. In such cases, where the prosecution is instituted against the CD, during CIRP, the CD stands discharged qua the same from the date of approval of the Resolution Plan. Nevertheless, every person who was a designated partner as defined in clause (j) of Section 2 of the Limited Liability Partnership Act, 2008, “an officer who is in default” as defined in Clause (60) of Section 2 of Companies Act, 2013 or was in any manner in charge of, or responsible to the CD for the conduct of his business or associated with the CD in any manner and was directly or indirectly involved in the commission of an offence as per the report submitted or complaint filed by Investigating Agency shall continue to be liable to be prosecuted and punished for such an offence committed by the



Corporate Debtor notwithstanding the Corporate Debtors' liability ceases after approval of the plan.

36. In the wake of the provisions of Section 32A(2), no action is taken against the property of the Corporate Debtor in relation to an offence committed prior to the commencement of the Corporate Insolvency Resolution Process of the CD, where such property is covered under Resolution Plan approved by this Authority under Section 31, which result in the change in the control of the CD to a person who was not a promotor or in the management or control of the Corporate Debtor or related party of such person or a person with regard to whom the Investigating Agency has reason to believe that he had abated or conspired for commission of the offence and has submitted or filed a report or complaint to the relevant statutory authority or Court.

37. The action against the property of the Corporate Debtor as referred to in Section 32A of the Code includes the attachment, seizure, retention or confiscation under such law as may be applicable to the Corporate Debtor. One may also be not oblivious of the fact that in the backdrop of provisions of Section 31(3)(a) of the IBC, 2016, the moratorium order passed by the Adjudicating Authority under Section 14 ceases to have effect. In sum and substance, the SRA/CD would be entitled to no other relief/concession/waiver except those, which are available to it as per the provisions of Section 31(1) and 32A of IBC, 2016.



38. In any case, the SRA has also stated in the Resolution Plan that the plan is unconditional. Relevant excerpt of the same reads thus: -

“UNDERTAKING FOR NO CONCESSION OR RELIEF BY NCLT

I, Robin Khatter, S/o Madal Lal Khatter aged 50 years resident of N-2/8, DLF Qutub Enclave Phase II, Gurgaon – 122008 and Partner of M/s Anand & Company on behalf of the consortium of M/s Anand & Company, Parmod Kumar and Robin Khatter do hereby solemnly affirm and undertake to the committee of creditors of Avail Holding Limited and Satyendra Sharma the resolution professional as follows: -

- 1. That I am duly authorized and competent to make and affirm the instant undertaking for and on behalf of the Consortium of Resolution Applicant. The said document is true, valid and genuine to the best of my knowledge, information and belief.*
- 2. That the Resolution Applicant shall conditionally and irrevocably implement the Resolution Plan and shall not back out at any time from implementation of Resolution Plan during its tenures if any relief or concession asked for in the Resolution Plan is not granted by the Hon’ble National Company Law Tribunal in pursuant to the provision of the Insolvency and Bankruptcy Code 2016.*

Solemnly affirmed at on this 24th day of September 2024 at New Delhi.

(Emphasis Supplied)

39. It is further directed that the SRA shall implement the plan as per the timelines indicated in the Resolution Plan.

40. In the backdrop of aforementioned factual position, discussion, analysis and findings, the IA-05/2025 filed by the Applicant/ RP for approval of the Resolution Plan is allowed. The Plan submitted by the SRA,



certified by the RP by issuing a certificate in prescribed form viz. Form “H”, is approved.

41. As a sequel, we issue the following directions: -

- i.** The approved Resolution Plan shall become effective from the date of passing of this Order and shall be implemented strictly as per the term of the plan and implementation schedule given in the Plan;
- ii.** The SRA/CD would be entitled to no other reliefs/concessions/waivers except those are available/permissible to it as per the provisions of Section 31(1) and 32A of IBC, 2016. The SRA is at liberty to approach the relevant authorities who would consider these claims as per the provisions of the relevant law in an expeditious manner;
- iii.** Following steps would be taken in terms of the resolution plan: -

SL. NO.	STEP TO BE TAKEN	TIMELINE OF PAYMENT FROM CUT-OFF DATE
1.	Constitution of Monitoring Committee	Within 7 days
2.	Payment of CIRP Cost	Within 60 days
3.	Payment to Financial Creditors	Within 60 days
4.	Payment to Operational Creditors	Within 60 days
5.	Settlement of contingent liabilities, if any, which do not form part of the IM	Within 60 days

- iv.** The order of the moratorium in respect to the corporate debtor passed by this Adjudicating Authority under Section 14 of the IBC, 2016 shall cease to have effect from the date of passing of this Order;



- v.** The SRA shall act in terms of the provisions of Section 31(4) of IBC 2016;
 - vi.** The Monitoring Committee shall file progress report regarding implementation of the Plan before this Tribunal, every month;
 - vii.** The RP shall forward all the records relating to the conduct of the CIRP and the Resolution Plan to the IBBI for its record and database;
 - viii.** The RP shall also forthwith send a copy of this order to the participants and the Resolution Applicant. He would also send a copy of this order to the ROC concerned within 15 days of this order;
 - ix.** The RP shall intimate each claimant about the principle or formulae, as the case may be, for payment of debts under the Plan;
- 42.** The Court Officer and Resolution Professional (RP) shall forthwith make available/send a copy of this Order to the CoC and the Successful Resolution Applicant (SRA) for immediate necessary compliance.
- 43.** A copy of this order shall also be sent by the Court Officer and Applicant to the IBBI and RoC for their record.

Sd/-
(ANIL RAJ CHELLAN)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)