



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-IV**

Company Petition No.: IB 1526(ND)/2019

IA – 6688/ND/2023,

IA – 4981/ND/2023

IN THE MATTER OF:

M/s Amritvani Exim Pvt Ltd

...Financial Creditors

VERSUS

M/s Ajanta Offset and Packaging Ltd.

... Corporate Debtor

AND

1) IN THE MATTER OF IA 6688/ND/2023:

Under Section 30(6) of IBC, 2016 r/w Reg. 37 to 39 of IBBI (CIRP Regulations), 2016

Mr. Satya Narayana Guddeti

Resolution Professional of M/s Ajanta Offset and Packaging Ltd.

...Applicant

2) IN THE MATTER OF IA 4981/ND/2023

Under section 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016

Mr. Ramesh Sharma

...Applicant

VERSUS

Mr. Satya Narayana Guddeti

Resolution Professional of M/s Ajanta Offset and Packaging Ltd.

...Respondent



Pronounced on: 20.12.2024

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE
MEMBER (JUDICIAL)
DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

Present:

For the Applicant : Adv. Shashwat Parihar, Adv.
Deepanshu Badiwal,
Adv. Rishab Kumar in
IA/4981/ND/2023

For Union Bank of India : Adv. Mrinal Jha, Adv. Naman Shukla

For the SRA : Adv. Aditi Sharma

For the RP : Adv. Gaurav Mitra, Adv. Abhishek
Parmar

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. Preliminary

- 1.1. The present interlocutory application bearing IA No.6688 (ND) 2023 is moved on behalf of Mr. Satya Narayana Guddeti, Resolution Professional **("RP" / "Applicant")** of M/s Ajanta Offset and Packaging Limited (CIN: L74950DL1969PLC005126), under the provisions of Sections 30(6) and 31(1) of the Insolvency & Bankruptcy Code, 2016 [hereinafter referred to as **"the Code"** or **"IBC"**] read with regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**"CIRP Regulations"**) for approval of the Resolution Plan in respect of M/s Ajanta Offset and Packaging Limited (**"Corporate Debtor"**) and seeking following

Page **2** of **27**



reliefs:

- A. *“Allow the present Application and approve the Resolution Plan submitted by Mr. Govind Prasad Todi and Mr. Siddhartha Todi & approved by the Committee of Creditors of the Corporate Debtor with 79.59% voting share in the 9th CoC meeting;*
- B. *Declare that upon approval of the Resolution Plan by this Hon’ble Adjudicating Authority, provisions of the Resolution Plan shall be binding on the Corporate Debtor, its creditors, guarantors, members, employees and other stakeholders and the Successful Resolution Applicant in accordance with Section 31 of the Code, and shall be given effect to and implemented pursuant to the order of this Hon’ble Adjudicating Authority;*
- C. *Pass any such other and further orders as this Hon’ble Adjudicating Authority deems fit and proper in the interest of justice.”*

- 1.2. The underlying Company Petition CP (IB) No.1526(ND)2019 filed by M/s Amritvani Exim Pvt. Ltd. under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (“**CIRP**”) of the Corporate Debtor was admitted by this Adjudicating Authority *vide* its order dated 04.02.2020 (“**Admission Order**”). On that date, i.e., 04.02.2020 (“**Insolvency Commencement Date**”) Mr. Satyanarayana Gudetti was appointed as IRP. Thereafter, the IRP was confirmed as Resolution Professional by the CoC in its 1st meeting held on 05.03.2020 (*Annexure D at pg. 144-148 of ILA. No. 6688/2023*).



2. ***Collation of claims by RP***

2.1. The Applicant submits that the public announcement was published in Form A on 07.02.2020 in daily newspapers namely Financial Express and Jansatta (*Annexure- C of IA. No. 6688/2023 at pg.123-126*) in the region where the Registered Office and Principal Place of business of the Corporate Debtor is situated and called for proof of claims from the creditors of the Corporate Debtor and informed lenders to submit their claims as envisaged under the Code the last date for submission of claims being 18.02.2020. The applicant collated the claims and formed the CoC and thereafter conducted the 1st meeting of CoC on 05.03.2020.

2.2. The details of claims submitted are as follows:

a. List of claims received Creditors:

Sr. No.	Name	Amount Claimed	Amount admitted	Voting Share
<u>Secured Financial Creditors:</u>				
1.	Canara Bank	33,77,21,683	33,77,21,683	28.01
2.	Corporation Bank (Presently Union Bank of India)	48,69,72,863	48,69,72,863	40.39
3	State Bank of India	18,99,42,060	18,99,42,060	15.75
4	Exim Bank	2,76,54,258	2,76,54,258	2.29
<u>Unsecured Financial Creditors:</u>				
5	Todi Investors (India) Pvt Ltd	57,20,000	57,20,000	0.47
6	Vinayak Dealer Pvt. Ltd.	3,26,92,623	3,26,92,623	2.71



7	South City Projects (Kolkata) Ltd.	1,80,31,977	1,80,31,977	1.50
8	EDCL Infrastructure Ltd.	10,16,60,687	10,16,60,687	8.43
9	Amritvani Exim Pvt. Ltd.	53,81,180	53,81,180	0.45
Total		120,57,77,331	120,57,77,331	100

b. List of claim received from Operational Creditors (other than workers and employees):

Total claims filed by Operational Creditor (**EPFO**) as on Insolvency Commencement Date amount to INR 1,32,23,301/- and the Applicant has the admitted claim of Operational Creditor (**EPFO**) in full.

c. List of claims from employees or workmen:

No claim has been filed by the workmen or employees of the Corporate Debtor (as on Insolvency Commencement Date). However, as per information provided in the IM, amount due to workmen/ employees of the CD is Rs.15,96,173/-.

- 2.3. The RP submits that a total of twenty CoC meetings have been held during CIRP period as follows:

Particulars	Date of CoC Meeting
1 st CoC Meeting	05.03.2020
2 nd CoC Meeting	13.07.2020
3 rd CoC Meeting	19.08.2020



Particulars	Date of CoC Meeting
4 th CoC Meeting	04.01.2021
5 th CoC Meeting	05.06.2021
6 th CoC Meeting	20.10.2021
7 th CoC Meeting	10.04.2023
8 th CoC Meeting	25.04.2023
9 th CoC Meeting	09.05.2023

3. Valuation of Corporate Debtor

Pursuant to approval from members of CoC in 2nd CoC meeting held on 13.07.2020, RP appointed two groups of registered valuers (“**Registered Valuers**”), as detailed below, to determine the Liquidation Value and Fair Value of the Corporate Debtor as per Regulation 35 of the IBBI (insolvency resolution process for corporate persons) Regulations, 2016 (“**CIRP Regulations**”) (*Annexure-E Vol-1 Pg 166-176*).

Valuation Particulars	Group 1	Group 2
Land and Building	Mr. Dhiraj Jaiswal	Mr. Sandeep Goyal
Securities or Financial Assets	Mr. Mohit Sagar	Ms. Ashlesha Maurya
Plant and Machinery	Mr. NR Sharma	Mr. Alok Kaushik

As per the valuation reports, the average of Fair Value of CD is Rs. 56.61 Crores and the average of Liquidation Value of CD is 44.63 Crores. (*Annexure A Pg 54 of Volume-1*)

4. Evaluation, voting & factual background:

4.1 The applicant issued an invitation for **Expression of Interest (EOI)**



for submission of Resolution Plans for the Corporate Debtor (CD) from interested and eligible Prospective Resolution Applicants (PRAs) in Form-G on **19.08.2020**, with the last date for receipt of EOIs being **03.09.2020**. Pursuant thereto, the Resolution Professional (RP) received EOIs from two PRAs, both of whom were evaluated and deemed eligible to submit Resolution Plans.

4.2 During the 5th meeting of the Committee of Creditors (CoC) held on **01.06.2021**, members of the CoC deliberated on the submitted Resolution Plans but resolved not to put them to vote. Instead, discussions were held regarding the initiation of the Liquidation Process of the Corporate Debtor (refer **Annexure-J, Pg Volume-2**). Subsequently, prior to the expiry of the CIRP period on **18.06.2021**, extended by virtue of an order dated **01.06.2021** passed by this Tribunal (refer **Annexure-I, Pg Volume-2**), the applicant filed an application, being **IA No. 2710/2021**, seeking initiation of the Liquidation Process.

4.3 Following the filing of the liquidation application, the suspended directors of the Corporate Debtor submitted an application, being **IA No. 4388 of 2021**, seeking permission to submit a Resolution Plan under the Micro, Small, and Medium Enterprises (MSME) classification. This Tribunal allowed the suspended directors' request to submit a Resolution Plan and extended the CIRP by **150 days** to facilitate the resolution process (refer **Annexure-K, Pg 23-238, Vol-2**). The Successful Resolution Applicant (SRA) subsequently obtained the UDYAM certificate declaring the Corporate Debtor as an MSME on **30.08.2021** (refer **Pg 291-291A**,



Volume-2).

- 4.4 Pursuant to the Tribunal's directions, the RP convened the 6th meeting of the CoC on **20.10.2021**, which concluded on **05.11.2021**. During this meeting, the RP circulated the Resolution Plan submitted by the suspended management and placed it before the CoC for deliberations and voting. The e-voting process concluded on **30.12.2021**, during which the CoC approved the Resolution Plan submitted by the ex-directors with **67.34% voting share** (refer **Annexure-N, Pg 259, Vol-2**).
- 4.5 An application for approval of the Resolution Plan was subsequently filed before this Tribunal. After due consideration, this Bench, vide order dated **17.08.2022**, rejected the Resolution Plan and directed the commencement of the Liquidation Process, appointing the applicant herein as the Liquidator (refer **Annexure-O, Pg 269-297, Vol-2**).
- 4.6 Aggrieved by the Tribunal's order dated **17.08.2022**, the suspended directors filed an appeal before the Hon'ble National Company Law Appellate Tribunal (NCLAT) in **Company Appeal (INS) (AT) 1125 of 2022**. The Hon'ble NCLAT, vide its order dated **14.09.2022**, directed the applicant not to proceed with the liquidation. Subsequently, on **14.02.2023**, the Hon'ble NCLAT issued its final judgment, directing the RP to issue a fresh Form-G and consider willing Resolution Applicants, including the appellants, based on the MSME registration obtained by the Corporate Debtor on **30.08.2021**. The eligibility of the SRA/suspended management to submit a Resolution



Plan was thus reaffirmed by the Hon'ble NCLAT (refer **Annexure-T, Pg 301-314, Vol-2**).

4.7 In compliance with the Hon'ble NCLAT's directions, the applicant published a fresh Form-G on **21.02.2023**. Subsequently, EOIs were received from six PRAs, all of whom were found eligible to submit Resolution Plans (refer Pg 31, Vol-1). On the last date for submission of Resolution Plans, the applicant received two proposals: one from Mr. G.P. Todi and Mr. Siddarth Todi (ex-promoters) and another from Amritvani Exim Private Limited, an unsecured financial creditor of the Corporate Debtor. In the 8th CoC meeting, the RP and CoC members discussed revaluation of the Corporate Debtor's assets, noting that the last valuation was conducted nearly three years earlier. The CoC approved the appointment of IBBI-registered valuers for fresh valuation. During this meeting, the RP opened the sealed Resolution Plans in the presence of CoC members and PRAs for their confirmation.

4.8 The 9th CoC meeting was convened on **12.05.2023**, during which the Resolution Plans submitted by both PRAs were deliberated upon. However, the RP apprised the CoC members that the CIRP period was expiring on **15.05.2023**, per the Hon'ble NCLAT's order dated **14.02.2023**. The CoC allowed both PRAs to submit revised plans by **16.05.2023**, and the adjourned meeting was scheduled for **20.05.2023**. The RP was also directed to seek an extension of the CIRP period.

4.9 The RP filed **IA No. 2889 of 2023** seeking a 60-day extension of the



CIRP period. This application was rejected by this Tribunal on **04.07.2023**. The decision was subsequently appealed by the SRA, before the Hon'ble NCLAT, which, vide its judgment dated **25.09.2023**, allowed a 60-day extension to complete the CIRP (refer **Annexure-AC, Pg 351-354, Vol-2**). The adjourned 9th CoC meeting was reconvened on **03.10.2023**, where the CoC members resolved to put both Resolution Plans to vote. On **21.11.2023**, the CoC approved the Resolution Plan submitted by **ex-promoters** with a majority vote of **79.59%**, while the Resolution Plan submitted by Amritvani Exim Private Limited was rejected (refer Annexure-AG, Pg 385-386, Vol-2).

4.10 Following the CoC's approval, Mr. G.P. Todi duly submitted the performance security of **INR 50,00,000** in compliance with the terms of the Request for Resolution Plan (RFRP) and **Regulation 36B(4A)** of the CIRP Regulations. This was provided in the form of a Fixed Deposit Receipt issued by SBI (refer Annexure-AH, Pg 390-392, Vol-3).

4.11 Pursuant to **Regulation 36B(4A)** of the **IBBI (CIRP) Regulations, 2016**, the SRA complied with the RFRP condition to furnish a performance guarantee of **INR 50,00,000** in favor of the Corporate Debtor, supported by the Fixed Deposit Receipt dated **07.01.2022**. The RP is hereby directed to ensure compliance and submit a duly renewed Performance Guarantee, coterminous with the tenure of the Resolution Plan, within one week from the date of this order.

4.12 As mandated under **Regulation 39(4)** of the CIRP Regulations, the



RP has submitted a Compliance Certificate in **Form-H**, annexed to this application as '**Annexure A**'.

4.13 In light of **Section 30(6)** of the Insolvency and Bankruptcy Code, 2016, read with **Regulations 37 to 39** of the CIRP Regulations, the RP has filed the present application seeking approval of the Resolution Plan submitted by Mr. G.P. Todi and Mr. Siddarth Todi, ex-promoters of the Corporate Debtor (an MSME), as approved by the CoC with a voting share of **79.59%** during the 9th CoC meeting held on **09.05.2023**. This application for approval of the Resolution Plan was filed before this Tribunal on **24.11.2023**.

5. Details of Resolution Applicant, Project Details and Payment Schedule

5.1 As per the Resolution Plan, the Successful Resolution Applicants ("**SRA**"), Shri Govind Prasad Todi and Shri Siddhartha Todi, who are the ex-promoters of the Corporate Debtor, propose to revive the Corporate Debtor. The Corporate Debtor has been involved in publishing high-quality books, including children's books, medical books, coffee table books, calendars, diaries, and other products with superior visuals, for more than four decades.

5.2 The SRA proposes to revive the Corporate Debtor by securing fresh funding from their own sources, friends, and relatives, as well as from the sale of non-core assets, thereby infusing further working capital to restore the company's operations. The balance dues are intended to be settled through internal accruals. To accelerate revenue growth,



market expansion, and the development roadmap, strategic investors are also being inducted. The commitment from these investors has been secured through a letter of intent, which has been submitted along with the Resolution Plan and shall be deemed to form part of the Plan.

5.3 Pursuant to the directions of the Hon'ble NCLAT vide its order dated 14.02.2023, wherein the Hon'ble NCLAT directed the RP to issue a fresh Form-G and consider willing Resolution Applicants, including the SRA, based on the MSME registration, it is submitted by the RP that the SRAs are eligible to submit a Resolution Plan in terms of the invitation seeking Resolution Plans for "Ajanta Offset and Packaging Ltd." as published on the IBBI website. The SRA has obtained a copy of the Information Memorandum and other relevant information from the RP after fulfilling the conditions set out in the Expression of Interest (EOI) by submitting the necessary documents and KYC details.

5.4 Summary of the consolidated payments to be made by the SRA:

(amount in lakhs)

Particulars	Amount (in Rs.)	Timeline from the effective date i.e. date of approval of the Resolution Plan
Unpaid CIRP Cost (Estimated)	100.00	3 months
Payment to FC – Secured	4650.00	3 months to 9 months
Payment to FC – Unsecured	10.00	3 months



Payment to workmen and employees	15.00	3 months
Payment to OC	5.00	3 months
Payment towards Statutory Dues	145.00	3 months
Payment to Equity Shareholders	0	
To meet working capital requirement	400	3 months to 5 months
Refurbishment of Plant & Machinery and Building	200	3 months
Total	5525.00	

5.5 Sources of Fund as stated in the Resolution Plan by the SRA is extracted below for reference:

Particulars	Amount in lakh Rs.
Infusion of funds by the Resolution Applicant or strategic investors or relatives or friends or investor co-promoter or financier or banks (To be used for payment of CIRP Cost, settlement of the Financial Creditors, repayment of Operational Creditors and for meeting overhead costs), wherein -Mr. P.K. Todi shall infuse 8.5 Crores, -Mr. Nipun Gupta shall infuse 17.5 Crores,	2750.00



and 1.5 Crores shall be infused through Relatives and Friends of SRA	
Infusion of Funds by the combination of following: <ul style="list-style-type: none">- Sale of front portion of plot (expected to generate appx. Rs. 24.5 Crores)- Sale of non-core Business Plant & Machineries of CD, which is expected to generate approx. 3.25 Crores	2775.00
Total	5525.00

**In case the sale of land does not generate expected realization, or incase of any shortfall from any of the above mentioned sources; then Mr. Nipun Gupta shall infuse Rs. 19 Crores along with Ms. Sunita Todi, who shall infuse Rs. 5.5 Crores through her relatives and friends.*

The Resolution Applicant has paid the Performance Bank Guarantee amounting to Rs. 50 Lakhs vide fixed deposit receipt favouring the CD dated 07.01.2022 which is still lying with the State Bank of India, on behalf of the CoC, which may be at appropriate stage, be adjusted against the performance security, in case the Resolution Plan is approved in favour of the SRAs.

6. Compliance of the successful Resolution Plan with various provisions:

- 6.1. The Applicant has submitted the details of various compliances as envisaged by Sections 30(2) of the Code and Regulations 37 & 38 of CIRP Regulations which a Resolution Plan is required to adhere to.



The same is also a part of Form-H Annexed to the Application as Annexure-A.

6.2. It is further submitted that the initial period of 180 days for completion of the Corporate Insolvency Resolution Process (CIRP) expired on **02.08.2020**, as prescribed under Section 12 of the Insolvency and Bankruptcy Code, 2016.

- a. **Extension 1:** The Applicant filed an application before this Adjudicating Authority bearing IA No. 1992/2021 for seeking an exclusion of 222 days. This Adjudicating Authority, after hearing the said matter on **01.06.2021** passed a detailed order dated 01.06.2021 allowing extension of 90 days under section 12(2) of the Code along with exclusion of 100 days for covid-19 pandemic, extension of 60 days limiting to 330 days and further allowed extension of 70 days beyond 330 days **which was to be expired on 18.06.2021**, so as to allow PRAs to file revised resolution plan.
- b. **Extension 2:** On an application by the Applicant, this Adjudicating Authority vide order dated **28.09.2021** extended the CIRP by 150 days **expiring on 15.11.2021**.
- c. **Extension 3:** On an application by the Applicant, this Adjudicating Authority vide order dated **22.11.2021** extended the CIRP further by 45 days **expiring on 30.12.2021**.
- d. **Extension 4:** The Applicant sought a further extension of CIRP period by 15 days, however this Adjudicating Authority vide order dated 01.02.2022 rejected the same. This was appealed before



the Hon'ble NCLAT and the **Hon'ble NCLAT** vide order dated **23.02.2022**, allowed the application thereby granting **1weeks** time from the date of the order.

- e. **Extension 5:** Thereafter the Resolution Plan was filed before this Adjudicating Authority whereby this Bench vide order dated 17.08.2022 rejected the plan and ordered Liquidation of the Corporate Debtor. This order was appealed before the Hon'ble NCLAT and the Hon'ble NCLAT set aside the Liquidation order of this Bench and directed the RP to consider the Resolution Plans afresh. The **Hon'ble Appellate Tribunal also extended the CIRP period by 90 days, expiring on 15.05.2023.**
- f. **Extension 6:** The Applicant again sought an extension of the CIRP period, however, this Adjudicating Authority vide order dated 24.07.2023 rejected the same. This was appealed before the Hon'ble Appellate Tribunal, whereby **the Hon'ble Appellate Tribunal vide order dated 25.09.2023** granted and extension to the CIRP period further by **60 days** expiring on **24.11.2023.**

- 6.3. The Applicant submits that the SRA has submitted an affidavit in regard to the eligibility under section 29A of the Code, as required by Regulation 39(1)(a) of the CIRP Regulations. The same has been annexed to the Application as 'Annexure B'.
- 6.4. The Applicant has filed a Compliance Certificate in prescribed Form, i.e Form 'H' in compliance with Regulation 39(4) of the CIRP Regulations and the same is annexed with the application as 'Annexure A'.



7. Details on Management/Implementation and Reliefs as per the Resolution Plan

- 7.1 The Resolution Plan also provides details of management and control, implementation and supervision of the Resolution Plan and term of plan. After the approval of the resolution plan by the CoC till the date the plan is approved by Adjudicating Authority, the Corporate Debtor shall continue to be managed by the Resolution professional. On Adjudicating Authority Approval, and till Closing Date, the Monitoring Committee shall be formed to supervise the implementation of the Resolution Plan as detailed in **Clause 7.2** of the present Resolution Plan.
- 7.2 The Monitoring Committee shall comprise three members, including one Insolvency Professional appointed by the Committee of Creditors (CoC), one representative of the Resolution Applicant, and one representative from the Financial Creditors. The constitution of the Monitoring Committee shall take effect without requiring any further action from the Corporate Debtor or the Resolution Applicant. The terms of appointment of the members, as well as the detailed modalities for the functioning and implementation of the Monitoring Committee, shall be jointly finalized by the Financial Creditors and the Resolution Applicant. All costs and expenses associated with such appointments and the functioning of the Monitoring Committee shall be borne by the Corporate Debtor, in accordance with the approved terms.

8. Details on fraudulent and avoidance transaction



It is submitted before this Adjudicating Authority that, based on the transaction audit conducted during the Corporate Insolvency Resolution Process (CIRP), no avoidance transactions, as contemplated under the provisions of the Insolvency and Bankruptcy Code, 2016, have been identified for the relevant period. Consequently, the provisions of **Regulation 38(2)(d)** of the **Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016**, which mandate the inclusion of a statement regarding avoidance transactions in the Resolution Plan, are not applicable in the present case. Accordingly, the Resolution Plan is compliant with the applicable regulatory framework in this regard.

9. *Waivers, Reliefs and Exemptions*

- 9.1 The SRA has prayed for the reliefs, waivers and concessions as enumerated under the Resolution Plan approved by the CoC, namely, that from the plan approval date all inquiries, investigations and proceedings, whether civil or criminal, suits, claims, disputes, interests and damages in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the plan approval date, or arising on account of implementation of this Resolution Plan, shall stand withdrawn, satisfied and discharged, from the date of approval of the 'Resolution Plan'. In this regard, the SRA shall be legally authorized to seek appropriate orders from respective authorities/ courts/ tribunals for renewal of licenses/ withdrawal/ dismissal or abatement of the proceedings as the case may be.



9.2 We further reiterate that the Approved Resolution Plan shall not construe any waiver to any statutory obligations/liabilities arising out of the approved resolution plan and the same shall be dealt in accordance with the appropriate authorities concerned as per relevant laws. We are of the considered view that if any waiver is sought in the Approved Resolution Plan, the same shall be subject to approval by the concerned authorities. The same view has been held by the Hon'ble Supreme Court in **Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Embassy Property Development.**

10. Findings

10.1. On hearing the submissions made by the Ld. Counsel for the Resolution Professional and after perusing the record, we find that the Resolution Plan has been approved by the CoC with **79.59%** of the members voting in favour of the Resolution Plan. As per the resolution of the CoC, the Plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Adjudicating Authority.

10.2. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

10.3. The reliefs, concessions and waivers sought by the SRA will be dealt with strictly as per law taking into consideration the decision of the Hon'ble Supreme Court in the matter of **Embassy Property**



Development Private Limited v. State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019, this Adjudicating Authority is not inclined to granting any relief prayed for except that is provided in the case itself and direct the Successful Resolution Applicant to file necessary application before the necessary forum/ authority in order to avail the necessary relief and concessions, in accordance with respective laws. The relevant part of the judgement is reproduced herein below:-

“39. Another important aspect is that under Section 25 (2) (b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:

“25. Duties of resolution professional – (1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions:-

(a).....

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings.”

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”



10.4. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the SRA is permitted to do the same within one year as prescribed under section 31(4) of the Code or within such period as provided for in such law, whichever is later.

10.5. In case of non-compliance with this order or withdrawal of the Resolution Plan within the stipulated time, in addition to other consequences which follow under law, the CoC shall forfeit the Performance Bank Guarantee, already paid by the SRA.

10.6. In so far as the approval of the resolution plan is concerned, this authority is not sitting on an appeal against the decision of the Committee of Creditors and this Adjudicating Authority is duty bound to follow the judgement of the **Hon'ble Supreme Court in the matter of K. Sashidhar v. Indian Overseas Bank (2019) 12 CC 150**, wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as follow:-

“35. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not



contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.”

10.7. Also, the Hon’ble Supreme Court of India in the matter of Committee of Creditors of **Essar Steel India Limited vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019**, vide its judgement dated 15.11.2019 has observed as follows:

“38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants.”

10.8. **IA – 4981/ND/2023:**

10.8.1 This application has been filed by Mr. Ramesh Sharma, an ex-employee of the Corporate Debtor (hereinafter referred to as the "Applicant"), seeking directions from this Adjudicating Authority

Page **22** of **27**



to the Resolution Professional for admitting his claim towards salary and gratuity, along with applicable interest.

10.8.2 During the hearing conducted on **11.09.2024**, the Learned Counsel representing the Successful Resolution Applicant (hereinafter referred to as the "SRA") submitted that the Applicant's claim would be treated proportionately along with other workmen, as provided under the Resolution Plan. However, this Bench directed the SRA to furnish an undertaking to this effect in the present application to ensure compliance and clarity regarding the Applicant's claim.

10.8.3 In compliance with the above-mentioned order, the SRA, through an email dated **23.09.2024**, communicated to the Resolution Professional that the Applicant's claim would be settled in full. The contents of the said email are extracted below for reference:

Re: Request to provide the clarity on Treatment of claim filed by workmen namely Ramesh Sharma

gptodi77@gmail.com <gptodi77@gmail.com>
To: Satyanarayana Guddeti <ip.ajantaoffset@gmail.com>

23 September 2024 at 08:41

Dear Sir,

Ramesh kumar has a credit balance of 73500/ in the books of accounts.
Will arrange to pay, 73500/ plus 32853/, Interest, even though not provided in the plan to avoid further delays in the Plan Resolution!
Will pay from my own sources in three months of time from date of approval of plan.
Hope this clarifies as requested!

Thanks,

Govind Todi.
Resolution Applicant.

10.8.4 Additionally, the SRA filed an affidavit dated **25.09.2024**, which



has been placed on record, unequivocally affirming its commitment to settle the Applicant's claim in its entirety.

10.8.5 The affidavit filed by the SRA and the subsequent communications clearly establish the intent to resolve the Applicant's claim of **₹1,06,353.44** in full. Given these submissions and the undertakings furnished, this Bench is of the considered view that the matter requires no further adjudication.

10.8.6 In light of the above, the claim of the Applicant, Mr. Ramesh Sharma, stands fully addressed by the SRA. Consequently, the instant application, **IA – 4981/ND/2023**, is hereby **disposed of**.

10.9. Thus, from the judgments cited and the statutory framework of the Insolvency and Bankruptcy Code, 2016, it is evident that the scope of judicial review available to this Adjudicating Authority under **Section 30(2)** read with **Section 31** is limited to assessing the compliance of the Resolution Plan with the prescribed legal requirements. This Authority is neither empowered nor obligated to delve into or evaluate the commercial wisdom of the Committee of Creditors (CoC), which is paramount and binding, provided it aligns with the provisions of the Code. Upon satisfaction that the proposed Resolution Plan adheres to the statutory mandates, including equitable treatment of stakeholders and compliance with applicable laws, this Bench finds no impediment to granting its approval.

11. Orders

11.1. Subject to the observations made in this Order, the Resolution Plan *(alongwith the affidavit dated 25.09.2024 and other documents*



connected to the Resolution Plan that have been filed by the SRA from time to time) is hereby **approved. The Resolution Plan shall form part of this Order.**

- 11.2. The approved Resolution Plan as annexed alongwith COC approved addendums shall be binding on all the stakeholders of the Corporate Debtor and 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 therein. The Resolution Plan will form part of the order.
- 11.3. The Monitoring Agency, as provided in the Resolution Plan shall be set up by the Applicant within 07 days of passing of this Order, which shall take all necessary steps for expeditious implementation of the Resolution Plan as per approval;
- 11.4. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
- 11.5. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- 11.6. MoA and AoA of the Corporate Debtor shall be amended and filed with the RoC for information and record as prescribed. While approving the Approved Resolution Plan as mentioned above, it is clarified that the Successful Resolution Applicant shall pursuant to the Resolution Plan approved under section 31(1) of the Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for such in law.



- 11.7. Accordingly, **IA (IB) No.6688/(ND) 2023** is allowed.
- 11.8. Liberty is hereby granted for moving appropriate application if required in connection with the implementation of this Resolution Plan.
- 11.9. A copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies, NCT of Delhi & Haryana.
- 11.10. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.
- 11.11. The Resolution Professional is further directed to hand over all records, licences, plans, approvals of premises/ factories/ documents and all other relevant records relating to the Corporate Debtor, available with it to the SRA to finalize and co-operate on the further line of action required for starting the operation and implementation of this Plan. The Resolution Applicant shall have access to all the records, documents and the premises through the Resolution Professional to finalize the further course of action required for starting and running the operations of the Corporate Debtor on a clean slate basis.
- 11.12. The Registry is directed to send copies of the order forthwith to IBBI, all the parties and their Ld. Counsels for information and for taking necessary steps.
- 11.13. Certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.



Summary:

1. **IA (IB) No.6688/(ND) 2023** in CP IB 1526/ND/2019 stands allowed.
2. **IA – 4981/ND/2023 & IA – 3419/ND/2024** in CP IB 1526/ND/2019 stand disposed of.

-sd-

-sd-

(DR. SANJEEV RANJAN)

(MANNI SANKARIAH SHANMUGA SUNDARAM)

MEMBER (TECHNICAL)

MEMBER (JUDICIAL)