

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

**Item No.-202**  
IB-393/ND/2021  
IA/4477/2022

**IN THE MATTER OF:**

Asset Reconstruction Company (India) Ltd.

**Vs.**

M/s Uday Estates Pvt. Ltd.

**....Applicant**

**.....Respondent**

**SECTION**

U/s 7 IBC CIRP

**Order delivered on 16.10.2023**

**CORAM:**

**SHRI P.S.N PRASAD,  
HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,  
HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

Order pronounced in open court vide separate sheets. IA/4477/2022 in IB-393/ND/2021 is **allowed**.

**Sd/-**  
**(DR. BINOD KUMAR SINHA)**  
**MEMBER (T)**

**Sd/-**  
**(P.S.N PRASAD)**  
**MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH-V**

**I.A/4477/ND/2022**

**IN**

**IB-393/ND/2021**

**[Under Section 30 (6) and 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]**

**IN THE MATTER OF:**

Nilesh Sharma  
Resolution Professional  
M/s Uday Estates Private Limited

... Applicant

**AND**

**IN THE MATTER OF**

Assets Reconstruction Company (India) Limited

... Financial Creditor

**Versus**

M/s Uday Estates Private Limited

... Corporate Debtor

**ORDER DELIVERED ON: 16.10.2023**

**CORAM:**

**SH. P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

**PER: SH. P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

1. The Present application i.e., I.A/4477/2022 has been filed under Section 30 (6) read with section 31(1) of the Insolvency and Bankruptcy Code, 2016 ('the Code')

Page 1 of 28

**I.A/4477/ND/2022**

**IN**

**IB-393/ND/2021**

**Date of Order: 16.10.2023**

read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations') on behalf of Mr. Nilesh Sharma, Resolution Professional ('Applicant') of M/s. Uday Estates Pvt. Ltd ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by M/s. Silver Duck Traders Private Limited ('Successful Resolution Applicant') and approved by the Committee of Creditor ('CoC') in its 13<sup>th</sup> meeting held on 09.08.2022 with 100% voting in favor.

2. Briefly stated, the facts as averred by the applicant in the application are stated are as follows:

- a) The applicant submits that the Corporate Insolvency Resolution Process was initiated against M/s. Uday Estates Private Ltd ('Corporate Debtor') by the Hon'ble NCLT vide order dated 15.11.2021 in C.P IB-393/ND/2021, an application filed by Asset Reconstruction Company (India) Limited ('ARCIL') under Section 7 of the Code and Mr. Nilesh Sharma was appointed as Interim Resolution Professional of the Corporate Debtor and later confirmed as Resolution Professional of the Corporate Debtor.
- b) The applicant submits that a public announcement was made inviting claims from all the creditors of the Corporate Debtor in Form A, in the manner prescribed under the Code and was published on 17.11.2021 in Business Standard (English and Hindi) in the Delhi NCR edition. The applicant further submits that pursuant to the Public Announcement, the Applicant had received and collated the claims of the creditors and constituted the Committee of Creditors ('CoC') on 08.12.2021 in terms of section 18 of the Code. The Applicant adds that the said list of creditors and the report of the constitution of the committee as per Regulation 13 and 17 respectively of the CIRP Regulations was taken on record by this Adjudicating Authority vide order dated 08.12.2021.
- c) The applicant submits that in the 2<sup>nd</sup> CoC meeting convened on 20.01.2022, the evaluation matrix, eligibility criteria, Invitation for Expression of Interest was approved by the CoC, however, at the request of the CoC the Resolution

for approval of the RFRP document was deferred to be considered at the 3<sup>rd</sup> CoC meeting and was accordingly approved in the 3<sup>rd</sup> meeting of CoC held on 22.02.2022.

- d) The applicant submits that expression of interest in Form G as per Regulation 36A(1) of the CIRP Regulations was published on 28.01.2022, as per which the last date for submission of the Resolution Plan was 29.03.2022. The Applicant further submits that subsequent of Form –G, Provisional List of Eligible PRAs was published on 22.02.2022 and the Final List of Eligible PRAs was published on 09.03.2022 including a total of ten PRAs who were eligible to submit the Resolution Plan.
- e) The applicant submits that by the last date of submission of the resolution plan, the Applicant had received only one Resolution Plan from only one of the Prospective Resolution Applicant and had received emails from other PRAs seeking an extension of time for submission of the Resolution Plan and depositing the EMD along with the plan, which was placed before the CoC during the 4<sup>th</sup> meeting of CoC held on 30.03.2022. The applicant adds that on the request of other Prospective Resolution Applicants, the CoC had decided to provide an extension till 09.04.2022 for the submission of the plan by the remaining PRAs.
- f) The applicant submits that in the 5<sup>th</sup> meeting of the CoC held on 13.04.2022, the Resolution plan received from only one of the Prospective Resolution Applicant was opened before the CoC and the Applicant was informed that the said plan would be examined to check whether the same was compliant with the provisions of the Code, 2016 and the regulations made thereunder. The applicant further submits that in the 6<sup>th</sup> CoC meeting, the Applicant after examining the plan had apprised the CoC that the provisions of the Resolution Plan did not comply with the provisions of Section 30(2) (b) and (e) of the Code. The Applicant adds that the CoC in the said meeting after deliberation had decided that instead of asking the Prospective Resolution Applicant (M/s Kundan Care Products Ltd) to rectify the non-compliances in the Resolution Plan, a fresh process inviting

Expressions of Interest for submission of the resolution plan should be started on account of the following reasons;

- i. There was only one resolution plan received in the process,
  - ii. The value/consideration offered in the resolution plan was much below CoC's expectations,
  - iii. Vide an email received from one eligible Prospective Resolution Applicant namely United Biotech Limited, it had shown its interest to submit a Resolution Plan,
  - iv. More interested parties should participate to have higher competition amongst themselves and therefore a greater number of interested parties should be approached/invited for participating in the Resolution Process.
  - v. In the interest of maximization of the value of the assets of the Corporate Debtor, a fresh round of invitations of EOIs should be conducted.
- g) The applicant submits that the CIRP period of 180 days expired on 14.05.2022 and due to the fresh publication of Form G on 27.04.2022, the applicant after taking approval from the COC member filed an extension application seeking an extension of 90 days beyond 180 days. This applicant adds that this Adjudicating Authority vide order dated 11.05.2022 allowed the extension of 90 days of the CIRP period.
- h) The applicant further submits that subsequent to the grant of extension and approval of revised eligibility criteria to be met by the PRAs at the 6<sup>th</sup> meeting of CoC held on 21.04.2022, the applicant had published Form G for the invitation of expression of interest under Regulation 36A of CIRP Regulations on 27.04.2022 in two newspapers in Business Standard (All India Edition of English and Hindi) with last date of receipt of EOI as 18.05.2022 and the last date for submission of the Resolution Plan as per revised Form G was 30.06.2022. The applicant adds that pursuant to the second invitation in Form G, Six (6) resolution plans were received from the Prospective Resolution Applicants.

- i) The applicant submits that one of the PRAs could not deposit the EMD within the stipulated timeline along with his proposal and requested for withdrawal of his Resolution Plan.
- j) The applicant submits that pursuant to receiving the five Resolution Plans along with the EMD, the applicant with his team had conducted extensive due diligence of all the five (5) Resolution Plans with respect to the compliance with the terms of provisions of IBC, CIRP Regulations and relevant clauses of the RFRP document. The applicant adds that the receipt of all the Resolution Plans along with the compliance checklist was confirmed by the only member of the CoC i.e. ARCIL and the ex-directors of the CD.
- k) The applicant submits that the valuation report was submitted by both sets of valuers to the applicant on 21.04.2022 and the valuation reports were shared by the Applicant with the CoC on 22.07.2022 after taking confidentiality undertaking from the CoC member.
- l) The applicant submits that with respect to the said five (5) Resolution Plans presentations were made by the respective PRAs before the CoC during the 10<sup>th</sup> CoC Meeting held on 13.07.2022. The applicant further submits that discussions were held between the CoC and PRAs on 23.07.2022 and on 25.07.2022. The applicant further submits that CoC had informed that the updated Resolution Plans from all PRAs after the discussions and negotiations be submitted by 28.07.2022 for consideration.
- m) The applicant submits that the note explaining the challenge mechanism shared by the CoC/ARCIL on 27.07.2022 with the Applicant while adopting the 'Swiss Challenge Mechanism' as per Regulation 39(1A)(b) of CIRP Regulations and terms of RFRP, was communicated to the PRAs on 27.07.2022 and the bidding by Swiss challenge method was scheduled to be carried out on 29.07.2022 at the office of the RP.
- n) The said bidding was decided to take place on the NPV of the highest bid received in the plans to be received on 28.07.2022 as the base bid. Pursuant

to the same all the five PRAs submitted their resolution plans on 28.07.2022.

- o) The applicant submits that as per the NPVs of commercial offers made in the resolution plan of all PRAs, the NPV of Silver Duck Traders Pvt. Ltd. came out to be the highest at Rs 36.50 crore. Accordingly, bidding started with the NPV of Rs 36.50 crores to which improvements were made by the participating bidders with the highest bid of Rs 40 crore payable in 180 days made by the consortium of Chandra Laxmi Developers Pvt. Ltd. along with Mr Mukesh Kumar Agarwal with NPV of Rs. 39.51 Crores, however Silver Duck Traders Pvt Ltd, improvised to pay the said sum in a period of 90 days. Thus, the PRA, M/s Silver Duck Traders Pvt Ltd, with the Total Plan Value of Rs 40 crores payable within 90 days from the effective date, having the highest NPV amounting to Rs. 40 Crores was the highest bidder.
- p) The applicant submits that during the 12<sup>th</sup> CoC all the said Resolution Plans were put to vote, however, vide an email dated 06.08.2022, the sole CoC member informed that Silver Duck Traders Pvt Ltd had given an improved financial proposal offering to pay an amount of Rs. 42 Crores (Rs. 41.42 Crores to the only secured FC ARCIL, Rs. 50 Lakhs towards CIRP cost and Rs. 8 Lakhs towards OCs) within a period of sixty days vide an email dated 05.08.2022 and in view of the same the sole member of the CoC/ ARCIL wanted to defer/cancel the voting on the resolution plan proposed to be carried out on 06.08.2022. Thereafter two other PRAs, also requested the sole CoC member for giving an opportunity for improving their financial proposals/ for holding an open bidding process.
- q) The applicant submits that the CoC in the 13<sup>th</sup> meeting held on 08.08.2022 passed a resolution to conduct an online open bidding process to be held on 09.08.2022 to give all the PRAs an equal opportunity to improve their bids with the reserve price as Rs 41.42 crore, being the amount offered by Silver Duck Traders Pvt. Ltd. (i.e. the successful bidder under the Swiss Challenge Method).

- r) The applicant submits that in the said open bidding process held on 09.08.2022 for all the PRAs, only two PRAs participated in the bid, out of which the bid of Silver Duck Traders Pvt Ltd was declared the highest bid with an offer of Rs 46,22,00,000 payable to the sole secured financial creditor (in addition Rs. 50 Lakhs towards CIRP costs and Rs. 8 Lakhs towards OCs dues). The consortium of Chandra Luxmi Developers Pvt Ltd and Mr Mukesh Aggarwal increased their bid up to Rs. 46,02,00,000/- and did not increase it further. M/s. Silver Duck Traders Pvt Ltd updated their resolution plan with the highest bid made by them and submitted the same to the RP on 09.08.2022.
- s) The applicant submits that all the five (5) Resolution Plans were again put to vote in the deferred 13<sup>th</sup> CoC meeting held on 09.08.2022 and the CoC voted and approved the proposed updated Resolution Plan of M/s. Silver Duck Trader Pvt Ltd (Successful Resolution Applicant) with a 100% voting share.
- t) The applicant submits that pursuant to the approval of the resolution plan submitted by the Successful Resolution Applicant, a Letter of Intent (LOI) dated 10.08.2022 was issue declaring M/s. Silver Duck Trader Private Limited to be the Successful Resolution Applicant. The applicant adds that the issued Letter of Intent was unconditionally agreed to and accepted by the SRA and the same was submitted to the applicant on 10.08.2022 and deposited the Performance Security of Rs. 4,68,00,000/- on 12.08.2022.

3. This Adjudicating Authority vide order dated 19.09.2022 had directed the Resolution Professional to issue a public notice calling for objections, if any and the same to be displayed on the website of IBBI and also in two local newspapers. The Applicant in compliance of the order dated 19.09.2022, published notice in Business Standard (English) & Jansatta (Hindi) (Delhi NCR Edition) on 21.09.2022 and an affidavit of service dated 10.10.2022 is placed on record of this Adjudicating Authority.



4. While the applicant sought approval of the Resolution Plan submitted by M/s. Silver Duck Trader Private Limited so approved by the CoC in its 13th COC meeting held on 09.08.2022 with 100% voting, the Suspended Directors of the Corporate Debtor had raised objections against the approval of the Resolution Plan. The objections as raised by the Suspended Directors ('objector') against the approval of Resolution Plan are summarized below:-
- a. The objector submits that the Resolution Professional had failed to reply to the objections raised by the PRAs namely Mr P.K. Agarwal and Mr Anuj Goyal with respect to the transparency of the bidding process.
  - b. The objector submits that the Statutory Liability towards Income Tax amounting Rs.8 Crore was not accounted for in the plan by the Resolution Applicant.
  - c. The objector submits that Successful Resolution Applicant has purchased the Corporate Debtor as a going concern i.e. as a hotel business but does not have intentions to run it as a hotel and instead has expressed their plan to run it as a commercial mall and not explained how the SRA would change the land use as the same is not allowed in Delhi.
  - d. The objector submits that the Resolution Professional has not shared the valuation report with the ex-management.
5. We have heard the submissions made by the Ld. Counsel for the applicant and have carefully gone through the documents produced on record. Before, examining the Resolution Plan vis-à-vis with the mandatory compliance under the Code and the Regulations made thereunder, the objections raised against the approval of resolution plan need to be determined.
6. The applicant responded to the objections as raised by the objector in its reply dated 25.10.2022, wherein the applicant had explained in detail about all the measures and safeguards adopted by the applicant in the entire Corporate Insolvency Resolution Process to ensure transparency and it is also submitted that the promoters/objectors have been a participant in every CoC meeting and have witnessed the entire Corporate Insolvency Resolution process.
7. With regard to the objection (i) as raised by the objector, the applicant submits that it is evident from the record that at no stage any objection was raised by any of the unsuccessful Prospective Resolution Applicant/s (PRAs), and the detailed

emails were issued by the applicant to Mr P.K. Agarwal and Mr Anuj Goyal, basis whom the promoters/objectors have raised frivolous objections. It is further submitted that the said PRAs have not even bothered to approach this Adjudicating Authority with their respective objections or even participated in the second round of open bidding. We observe that in the absence of any objections substantiated with any document by the objector, this Adjudicating Authority is not inclined to consider that the bidding process was not transparent. The PRA's namely Mr. P.K. Agarwal and Mr Anuj Goyal may have raised concerns about the bidding process, which are being duly replied by the Applicant vide email dated 05.08.2022 after which no objection was raised before this Adjudicating Authority by the PRA's regarding the bidding process.

8. With regard to the objection (ii) as raised by the objector, the applicant submits that the Income Tax Department had filed their claim after a delay of almost 11 months from Insolvency Commencement Date, resultantly the applicant had rejected the claim of the Income Tax Department on the ground that the claim is highly belated in nature. Further, we observe that this Adjudicating Authority vide order dated 03.01.2023 had rejected the application (I.A/5386/2022) filed by Income Tax Officer, Ward 27(1), New Delhi for consideration of a claim, as no claim was filed by the Income Tax Department within the stipulated time provided under the code. Therefore, the objection raised by the Suspended Director is inconsequential.
9. With regard to the objection (iii) raised by the objector, the applicant submits that the Successful Resolution Applicant in the plan has proposed to convert and use the land & building of the Corporate Debtor, currently meant to be used for hotel industry, for the commercial purpose of manufacturing and wholesale business of garments. It is further submitted that as per Section 31(4) of the Code, 2016, twelve months (12) grace period to be provided to the Corporate Debtor to comply with the provisions of the various Acts / Regulations or for obtaining of any license or permission under any Act in this regard, to enable Corporate Debtor to

ascertain the status of various compliances and take necessary steps to regularize the said business activity. The applicant adds that the change of land use for using the land owned by the Corporate Debtor for other commercial activities is not a pre-condition to the implementation of the Resolution Plan and the Successful Resolution Applicant has undertaken that irrespective of change of land usage, they will implement the resolution plan and will make payment of Rs.46.80 Crore as stated in the plan within a period of 90 days from the date of approval of the resolution plan. The applicant adds that the possibility of continuing the land use for the purpose for which it was originally allotted i.e. for running a hotel, is also not ruled out by the SRA in the said plan. On perusal of the resolution plan, we observe that a detail turnaround strategy is provided in the resolution plan and further the Successful Resolution Applicant had provided the clarification with regard to the future prospect of the Corporate Debtor.

10. With regard to the objection (iv) raised by the objector, the applicant submits that it is not mandatory to provide a valuation report to the ex-management in light of Regulation 35 of CIRP Regulations. The law requires RP to maintain utmost confidentiality regarding the valuation reports received/ procured by him, so to ensure that no PRA is put to an advantage for arriving at the financial values indicated in its resolution plan. The provisions of regulation 35(2) require the RP to provide the liquidation value and fair value to the members of the CoC after taking a confidentiality undertaking from them and only after receipt of resolution plans. However, there is no provision enabling the RP to share such values with the suspended management. Being so, the Applicant was not within his rights to provide the valuation report of the Corporate Debtor to the ex-management. Further it is submitted that, without prejudice, neither any rights of the promoters are affected herein by the non-availability of such valuation report nor did they prefer any application before this Adjudicating Authority seeking such relief/directions to the RP to provide them a copy of the valuation report.

11. The members of the Suspended Board of Directors have the right to participate in the CoC meeting as per the provisions of Section 24 (3) (b) of the Insolvency and Bankruptcy Code and to ensure effective participation, copies of valuation reports can be provided subject to an undertaking from members of the suspended management, to maintain confidentiality. However, at the stage of seeking approval of Resolution Plan, the grievance that the Valuation Report is not shared with the Suspended Board of Directors cannot be a bonafide ground to refuse the Resolution Plan. Moreover, the objector failed to place on record of this Adjudicating Authority any correspondence showcasing that they have demanded for providing Valuation Report from the Applicant, therefore, at this juncture the grievance raised by the suspended directors/objectors that valuation report is not shared with the suspended Board of Directors cannot be entertained by this Adjudicating Authority.
12. After hearing both the parties, it is evident that the objections raised by the ex-directors/objector to the Resolution Plan approved by the CoC are not maintainable and do not merit any consideration by this Adjudicating Authority. Therefore, the resolution plan as approved by the CoC in its 13<sup>th</sup> CoC Meeting held on 09.08.2022 and which has 100% voting by the members of CoC is placed before this Adjudicating Authority vide I.A./4477/2022 for approval.
13. The salient features of the resolution plan submitted by M/s. Silver Duck Traders Private Limited ('Successful Resolution Applicant') and approved by the Committee of Creditor ('CoC') in its 13<sup>th</sup> meeting held on 09.08.2022 with 100% voting in favor, are as follows:-

**I. Background of the Resolution Applicant :**

That the SRA is engaged in the business of manufacturing and distribution of ready-made garments for women including wedding wear and is willing to revive the company by using the building of the Corporate Debtor for the commercial purpose of manufacturing and sale of women ethnic garments. The SRA, being a leading manufacturer, exporter and multi-channel wholesaler” is ISO 9001:2008

certified, also providing employment opportunities to various individuals. The SRA along with its group companies (i.e. M/S\_Bramhand System Pvt Ltd, RLM Infratech Pvt Ltd and TQM Advertising & Marketing Private Ltd) has the Net Worth of over Rs 15 crore as per the certificates of their respective auditors, all the four companies are controlled by the same promoters with more than 26% of the equity share capital of the group companies held by them and the said companies formed part of the same group for at least 3 years as the same promoters continued to hold more than 26% of the equity capital of the said companies for more than three years.

**II. Summary of Claims vis-à-vis provisions of the Resolution Plan Financial proposal:**

The basis of settlement of claims of various classes of stakeholders, their order of priority and their respective settlement amount including the term of the plan are provided as tabulated below:-

**(In Rs )**

<b>Category of Claim</b>	<b>Amount Admitted</b>	<b>Resolution Amount Proposed</b>	<b>Payment (within 0-90 days)</b>
CIRP COST as on the date of approval of the plan by Ld. AA	-	50,00,000	50.00 Lakhs or the CIRP cost as per actual as on the Effective date whichever is higher shall be paid in top priority within 90 days of the Effective Date
Financial creditor/ARCIL (Secured)	1,56,30,40,399	46,22,00,000	Within 90 days of the Effective Date
Financial creditors (Un-Secured)-Related Parties	NIL	NIL	NIL
Operational Creditors			
Workmen & Employee	NIL	NIL	
Statutory Dues	NIL	NIL	

Schindler India Pvt Ltd	76,22,015	8,00,000	Within 90 days of the Effective Date
Total Resolution Plan Value		<b>468000000</b>	<b>468000000</b>
Amount to be infused for Capex		<b>200000000</b>	<b>200000000</b>
Amount to be infused for Working Capital		<b>150000000</b>	<b>150000000</b>

### III. Sources of Funds:

The SRA has proposed funding of Rs 46,80,00,000/- in the following manner:-

- a. *SRA has proposed to infuse funds as Equity share capital to the tune of Rs 25,00,000/- in the corporate debtor by itself or its nominee.*
- b. *SRA has proposed to infuse funds to the tune of Rs 46,55,00,000/- by itself or its promoters or companies or its nominees or banks or Financial Institutes as subscribing to Preferential shares or convertible or non-convertible debentures or loans or deposits or such other instrument limited to the extent the said requirement towards repayment of CIRP Cost, operational creditors and financial creditors is not met by internal accruals.*

### IV. Key Terms for Implementation of the Resolution Plan

*The Resolution Applicant, post the Effective Date, reserves the right to terminate or re-negotiate any and/or all agreements deeds or contracts or other similar rights or entitlements whatsoever entered into with any third party, including Related Parties of the Corporate Debtor or its existing promoters/promoter group, by the Corporate Debtor, without any recourse to the Corporate Debtor, by such third party, for any claim of specific performance, damages or indemnity from the Corporate Debtor and without any penalty, charges, fees, fines or liabilities pursuant to such agreements, deeds or contracts.*

*In order to ensure that the financial statements of the Corporate Debtor reflect the true financial position of the Corporate Debtor, the Corporate Debtor's assets and liabilities will be re-casted with the intent that the Corporate Debtor has*

*been restructured and reborn. The following steps shall be completed by the Resolution Applicant:*

- a) The financial statements of the Corporate Debtor will be restated based on applicable accounting standards to reflect the true and fair value of the assets and liabilities.*
- b) The cut-off date for the above-mentioned exercise should be the date of approval of the Resolution Plan by the Adjudicating Authority.*
- c) Any write-back / gain on settlement / waiver of liability(s) arriving out of settlement of all dues as proposed in the Resolution Plan shall be transferred to a separate reserve (hereinafter called “Business Reorganization Reserve” or “BRR”) which may subsequently be transferred to General Reserve as and when the newly constituted Board of Directors of the Corporate Debtor may deem fit.*

**V. Supervision & Implementation / Monitoring Committee:**

Chapter 12 of the Resolution Plan provides for constitution of a monitoring committee comprising 3 members i.e. one representative of the financial creditor, one representative of the RA and the Applicant/RP to be formed to look after the implementation of the subject resolution plan.

14. The synopsis of the Resolution Plan submitted by M/s. Silver Duck Traders Private Limited and approved by the CoC is extracted overleaf:-

**SYNOPSIS OF THE RESOLUTION PLAN**

Table-A

1.	Name of the Resolution Applicant	M/s Silver Duck Traders Pvt Ltd  Group Entities: M/s. Bramhand System Private Limited, M/s. RLM Infratech Private Limited and M/s TQM Advertising & Marketing Private Limited
2.	Fund Infusion by the Resolution Applicant	Rs 46.80 Cr in period of 90 days from effective date.
3.	Resolution of Financial Creditors (Secured)	Rs 46.22Cr to be paid within 90 days of the effective date. Details as per Chapter 6 of the resolution plan
4.	Resolution of Statutory Dues & Contingent Liabilities	Statutory Dues- NA (No claims received or admitted)
5.	Resolution of Workmen & Employees	Workmen & Employees- NA (No claims received or admitted)
6.	Resolution of Operational Creditors	Consolidated Settlement of Rs 0.08 Cr payable in T+90 days.
7.	Resolution of Related Parties	All other Related Parties (unsecured creditors) settled @ NIL.
8.	Resolution of Share Holders of CD	100% of existing equity to be extinguished and fresh equity to be issued to the Resolution Applicant and / or their nominee directly.
9.	Payment of CIRP Cost	Rs 0.50 Cr or as per actual on the effective date whichever is higher on Priority within T+90 days
10.	Recovery from Avoidance Application/Transactions	Allocated to financial creditors of the CD in the same proportion as funds are allocated to them in the Resolution Plan after deducting the applicable expenses and taxes.
11.	Timeline of Implementation of Plan	T + 90 days
12.	Supervision & Implementation of the Plan	As per Chapter 12 of the Resolution Plan

6 | Page

Page 15 of 28

I.A/4477/ND/2022

IN

IB-393/ND/2021

Date of Order: 16.10.2023



15. In view of Section 31 of the Code, this Adjudicating Authority before approving the Resolution Plan is required to examine whether the Resolution Plan which is approved by the CoC under Section 30 (4) of the Code meets the requirements as referred to under Section 30 (2) of the Code.

**Section 30 (2) is quoted below: -**

*“(2) The resolution professional shall examine each Resolution Plan received by him to confirm that each Resolution Plan –*

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

*(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-*

*(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or*

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

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

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

*Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-*

*(i) where a Resolution Plan has not been approved or rejected by the Adjudicating Authority;*

*(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or*

*(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a Resolution Plan;]*

*(c) provides for the management of the affairs of the Corporate debtor after approval of the Resolution Plan;*

*(d) The implementation and supervision of the Resolution Plan;*

*(e) does not contravene any of the provisions of the law for the time being in force*

*(f) conforms to such other requirements as may be specified by the Board.*

*Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the Resolution Plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]”*

16. In respect of compliance with Section 30(2)(a) of the Code, it is seen that there is a provision in Chapter 5 (Payment for the Insolvency Resolution Process Cost) of the Financial Proposal of the Resolution Plan wherein it provides for the payment of the CIRP cost in priority to other creditors of the corporate debtor. The estimated CIRP cost as per the information provided will be Rs. 50 Lakhs which may increase during the course of the CIRP Period, however, the actual CIRP cost will be paid in full in priority to any other creditor.
17. In respect of compliance with Section 30(2)(b) of the Code, it is seen that there is a provision in Chapter 7 (iii) (Proposal for a settlement of Operational Creditors) of the resolution plan wherein it provides that “ *The settlement of the operational creditors of the Corporate Debtor is in confirmation to the terms of Chapter 30(2)(b) of IBC that the amounts to be paid to operational creditors shall not be less than: (i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under Chapter 53; or (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-Chapter (1) of Chapter 53, whichever is higher.*
18. Further, we observe that in Compliance of Section 30(2)(b) of the Code, 2016, the Resolution Plan proposed to pay Rs. 8,00,000/- in Full and Final settlement of the Operational Creditor’s Claim of Rs. 76,22,015 as admitted by the Applicant within a period of 90 days from the date of approval of the Resolution Plan by this Adjudicating Authority.
19. Further with respect compliance of the payment of debts of financial creditors,

who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor is mentioned under Chapter 4 (iv) of the resolution plan.

20. In respect of compliance with Section 30(2)(c) and 30(2)(d) of the Code, it is seen that the manner of the management of the affairs of the Corporate Debtor and the implementation and supervision of the resolution plan has been provided in detail in Chapter 11, 12, 13 and 14 of the Resolution Plan. The resolution plan provides for the constitution of a monitoring committee which states that upon the NCLT approval stage an Implementation and monitoring committee comprising of (i) the Existing Resolution Professional as Chairman. (ii) One Authorized Representative on behalf of the Resolution Applicant and (iii) One Representative to be nominated by the financial creditors of the Corporate Debtor shall be constituted to monitor and supervise the implementation of the plan. The monitoring committee shall dissolve immediately after the Transfer date as envisaged under the Resolution Plan.
21. In respect of compliance with Section 30(2)(e) of the Code, it is seen that the SRA had mentioned in the plan that *“Resolution Applicant has prepared the Resolution Plan after taking into consideration compliance of all applicable laws and Regulations and the plan does not contravene any of the provisions of law for the time being in force”*.
22. In respect of compliance with Section 30(2)(f) of the Code, it is seen that the SRA had mentioned in the plan that *“The Resolution Plan has been prepared taking every aspect into consideration so as to conform with such other requirements as may be specified by Board”*.
23. In respect of compliance regarding Regulation 38(1) of the CIRP Regulations, it is seen that there is a provision in Chapter 7 (Settlement of Operational Creditor) of the resolution plan wherein it provides that the amount due to the operational creditor shall be given priority in payment over financial creditors.

24. In respect of compliance regarding Regulation 38(1A) of the CIRP Regulations, it is seen that there is a provision in Chapter 4 to 10 of the resolution plan which provide how it will deal with the interest of all the stakeholders including Financial Creditors and the Operational Creditors.
25. In respect of compliance regarding Regulation 38(1B) of the CIRP Regulations, it is seen that there is a declaration in the resolution plan whereby the SRA had declared *“We hereby declare that Resolution Applicant or any of its related parties hasn’t failed to implement or contributed to the failure of implementation, in past of any resolution plan approved under the Insolvency and Bankruptcy Code (“Code”)”*.
26. In respect of compliance regarding Regulation 38(2) (a),(b) and ( c) of the CIRP Regulations i.e. the term of the plan and its implementation schedule, management and control of the business of the CD and adequate means for supervising its implementation, the same are mentioned under Chapters 6 to 10 to 14 of the resolution plan.
27. In respect of compliance regarding Regulation 38(2)(d) of the CIRP Regulations we observe that certain application u/s 43, 45 and 66 of IBC were filed by the RP which are pending adjudication before this Adjudicating Authority. The resolution plan provides that the RP shall be released from his duties upon approval of the resolution plan by the Adjudicating Authority and all action towards the pending avoidance application shall be pursued by the financial creditor/Monitoring committee with the cooperation of RA. Also, any amount received in furtherance of these applications shall be allocated to the financial creditor of the CD in proportion to the funds allocated to them under the resolution plan.
28. In respect of compliance regarding Regulation 38(3) of the CIRP Regulations, the same is dealt under chapter 2, 3 4, 6, 11 and 15 of the Resolution Plan.
29. In respect of compliance regarding Regulation 39(4) of the CIRP Regulations, the applicant has filed a compliance certificate in Form-H annexed as Annexure-25 at Page 557-573 of the application, certifying that the Resolution Plan submitted by the Successful Resolution Applicant meets the requirements as

laid down in various sections of the Code and the CIRP Regulations and there are sufficient provisions in the Plan for its effective implementation as required under the Code. Further, an affidavit has been obtained from the Successful Resolution Applicant stating that he is eligible under the provisions of Section 29A of the Code, 2016.

30. Further, on perusal of Form -H, we observe that the Fair Market Value of the Corporate Debtor as provided in Form- H is Rs. 7247.64 Lakhs and the Liquidation Value of the Corporate Debtor is Rs 5819.49 Lakhs. Moreover, a total of three applications bearing I.A./2817/ND/2022, I.A./3621/2022 ad I.A./4814/2022 under Section 43, Section 45 and Section 66 of the Code, 2016 respectively are pending before this Adjudicating Authority.
31. This Adjudicating Authority had observed that the liquidation value of the Corporate Debtor is over Rs.58.19 crores whereas the Resolution Plan value is Rs. 46.80 crores only. This Adjudicating Authority vide its order dated 17.04.2023 had directed Resolution Professional to file a short affidavit regarding the factors considered by CoC while approving the Resolution Plan.
32. The Resolution Professional ('applicant') had submitted an affidavit dated 21.04.2023 in compliance of this Adjudicating Authority's order dated 17.04.2023. The Applicant submits that as per Regulation 35 of the CIRP Regulations, 2016, the average of the two closest estimates of a value shall be considered the fair value or the liquidation value as the case may be. The Fair Value of the Corporate Debtor stood as Rs. 7247.64 Lakhs and the Liquidation Value of the Corporate Debtor stood as Rs. 5819.49 Lakhs. The tabular presentation of the Fair Value and Liquidation Value of the assets of the Corporate Debtor as valued by the Valuers appointed in accordance with Regulation 27 of the CIRP Regulation is represented below:-

Uday Estates Private Limited (UEPL)						
Fair Value and Liquidation Value (in Rs. Lakhs)						
Type of Asset	Fair Value			Liquidation Value		
	Adroit Appraisers	Futurevalue Advisors	Average	Adroit Appraisers	Futurevalue Advisors	Average
Land	4879.04	5211.00	5,045.02	4,147.18	4,168.00	4,157.59
Building	1472.00	1654.00	1,563.00	1,030.40	1,240.00	1,135.20
Plant, Machinery & Furniture & Fixtures	120.35	178.57	149.46	84.25	133.92	109.08
Securities & Financial Assets	453.45	526.86	490.16	371.26	463.96	417.61
<b>Grand Total</b>	<b>6,924.85</b>	<b>7,570.43</b>	<b>7,247.64</b>	<b>5,633.09</b>	<b>6,005.88</b>	<b>5,819.49</b>

33. The Applicant further submitted that the Land on which the Hotel Property is constructed was allotted by Delhi Development Authority to the Corporate Debtor and a Conveyance Deed for Freehold ownership on possession rights in the property is executed between the DDA and MCD with respect to Hotel Property. The Hotel Building consists of two basements, seven floors, ground floor entry hall and banquet hall. The entire civil construction of the hotel is completed, however, plumbing, electrical and other fittings and interiors are not completed. Further, it was submitted that the hotel never became functional and has been lying

in the similar condition since inception. The possession of the Hotel was taken over by the Financial Creditor namely, Assets Reconstruction Company (India) Limited in the year 2018 under the SARFAESI Act, 2002 and the sale notice for the auction of the Hotel Property was published on multiple occasions without any success.

34. The Applicant submitted that the CoC in its 6<sup>th</sup> Meeting had decided to republish the Form -G with an objective to invite more Prospective Resolution Applicants, pursuant to which Five Resolution Plans were received and the same were assessed as per the Swiss Challenge Mechanism, as per which the highest bidder was M/s. Silver Duck Traders Private Limited ('Successful Resolution Applicant') and further during the e-voting on the Resolution Plans, the improvised Financial Offers were made by few PRAs subsequent to which again open bidding was conducted for maximization of value for the stakeholders and M/s. Silver Duck Traders Private Limited was the highest bidder with an offer of Rs. 46.80Crores, It was further submitted that the Financial Creditor namely, Assets Reconstruction Company (India) had also explored all possible options to attain highest bid for the said property since they have also tried selling the property through auction under SARFAESI Act, 2002 followed by the Bid Process under the provisions of IBC, and finally basis the Commercial wisdom has approved the Resolution Plan of M/s. Silver Duck Traders Private Limited ('Successful Resolution Applicant').
35. We have heard the Id. Counsel for the Applicant and meticulously perused the submissions of the Applicant. At this juncture it is relevant to refer the judgement of the Hon'ble Supreme Court in **Maharashtra Seamless Steel Ltd. v. Padmanabhan Venkatesh & Ors. [Civil Appeal No. 4242 of 2019; Judgement dated 22.01.2020]**, wherein it was observed as follows:-

*"25. Now the question arises as to whether, while approving a resolution plan, the Adjudicating Authority could reassess a resolution plan*

**approved by the Committee of Creditors, even if the same otherwise complies with the requirement of Section 31 of the Code.**

*Learned counsel appearing for the Indian Bank and the said erstwhile promoter of the corporate debtor have emphasized that there could be no reason to release property valued at Rs.597.54 crores to MSL for Rs.477 crores. Learned counsel appearing for these two respondents. have sought to strengthen their submission on this point referring to the other Resolution Applicant whose bid was for Rs.490 crores which is more than that of the appellants MSL.*

**26. No provision in the Code or Regulations has been brought to our notice under which the bid of any Resolution Applicant has to match liquidation value arrived at in the manner provided in Clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. This point has been dealt with in the case of Essar Steel (supra). We have quoted above the relevant passages from this judgment.**

**27. It appears to us that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Once, a resolution plan is approved by the CoC, the statutory mandate on the Adjudicating Authority under Section 31(1) of the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof.** *We, per se, do not find any breach of the said provisions in the order of the Adjudicating Authority in approving the resolution plan.*

**28. The Appellate Authority has, in our opinion, proceeded on equitable perception rather than commercial wisdom. On the face of it, release of assets at a value 20% below its liquidation value arrived at by the valuers seems inequitable. Here, we feel the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis. Such is the scheme of the Code. Section 31(1) of the Code lays down in clear terms that for**



*final approval of a resolution plan, the Adjudicating Authority has to be satisfied that the requirement of sub-section (2) of Section 30 of the Code has been complied with. The proviso to Section 31(1) of the Code stipulates the other point on which an Adjudicating Authority has to be satisfied. That factor is that the resolution plan has provisions for its implementation. The scope of interference by the Adjudicating Authority in limited judicial review has been laid down in the case of Essar Steel (supra), the relevant passage (para 54) of which we have reproduced in earlier part of this judgment. The case of MSL in their appeal is that they want to run the company and infuse more funds. In such circumstances, we do not think the Appellate Authority ought to have interfered with the order of the Adjudicating Authority in directing the successful Resolution Applicant to enhance their fund inflow upfront.”*

36. Considering the conspectus of facts and the ratio laid down in Maharashtra Seamless Steel Ltd (supra), this Adjudicating Authority is prima facie satisfied that the possible endeavors have been made by the Applicant and the CoC to maximize the value of assets of the Corporate Debtor. We also observe that the Resolution Plan provides for payment of Rs.8,00,000/- towards the claim of the total Operational Debt of Rs.76,22,015/- as admitted by the Applicant and the same is in conformity with Section 30(2)(b) of the Code,2016. Further, the proposed Resolution Plan provides for settlement of the amount payable to Operational Creditors before the settlement of Financial Creditors.
37. As per the Resolution Plan, the following terms are defined as below:-
- a) "Effective Date" shall mean the later of the following dates the date on which the Hon'ble NCLT approves the Resolution Plan with or without amendment and copy of the order duly received by the Resolution Applicant, or if an appeal is made against the order of the Adjudicating Authority, then the date of the order of NCLAT or the Supreme Court or any other court approving the Resolution Plan.

b) "Transfer Date" shall mean the date on which a new board of directors is reconstituted comprising of nominees of the Resolution Applicant.

38. As to the relief and concessions sought in the Resolution Plan more specifically set out in Clause 10 (Necessary Measures needed for implementation of the Resolution Plan) of Part – I of the Resolution Plan, 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 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.”*

39. 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.*

40. 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, vid 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.”*

41. Thus, from the judgements cited supra, it is amply clear that only limited judicial review is available to the Adjudicating Authority under Section 30(2) read with Section 31 of the Code, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the committee of the creditors.

42. Therefore, in our considered view, there is no impediment to giving approval to the instant Resolution Plan. Accordingly, we hereby approve the Resolution Plan, which shall be binding on the corporate debtor and its employees, shareholders of the corporate debtor, creditors including the Central Government, any State Government or any local authority to whom statutory dues are owed, Successful Resolution Applicant and other stakeholders involved.

43. It is declared that the moratorium order passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of pronouncement of this order.

44. While approving the resolution plan as mentioned above, it is clarified that the 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 in such law.

45. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the corporate debtor and the Resolution Plan to IBBI to be recorded in its database in terms of Section 31(3) (b) of the Code. The Resolution Professional is further directed to hand over all the records, premises, and properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.
46. The approved Resolution Plan shall become effective from the date of passing of this order. The Approved Resolution Plan shall be part of this order, subject to our observations regarding concessions, reliefs and waivers sought therein.
47. The Monitoring Committee is directed to file the monthly status report with regard to the implementation of the approved plan before this Adjudicating Authority.

**In view of the above, the IA No 4477 of 2022 stands approved in terms of the aforesaid discussion.**

Let the copy of the order be served to the parties.

**Sd/-  
(DR. BINOD KUMAR SINHA)  
MEMBER (T)**

**Sd/-  
(SH. P.S.N. PRASAD)  
MEMBER (J)**