

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

IA No. 290/2020

IN

CP.NO(IB)120/ALD/2017

(under Section 30 (6) of Insolvency and Bankruptcy Code, 2016) (r/w Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016)

IN THE MATTER OF:

M/S RANASARIA POLY PACK PVT. LTD

v/s

.....Operational Creditor

M/S UNIWORLD SUGARS PRIVATE LIMITED

.....Corporate Debtor

IN THE MATTER OF:

**PRAMOD KUMAR SHARMA
(Resolution Professional)**

.....Applicant

ORDER DELIVERED ON :17.03.2021

CORAM:

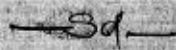
Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial

For the Resolution Professional: Ms Babita Jain AdvAlongwith
Mohd. Nazim Khan, PCS
For the Operational Creditor: Ms. Archi Agarwal, Adv
For Resolution Applicant: Mr. M.S. Kalra, Adv

Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)

ORDER

1. The instant application is filed under Section 30 (6) & 31(1) of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 (CIRP Regulations) for seeking approval of Adjudicating Authority, under Section 31 of the IBC, of the resolution plan submitted by the successful resolution applicant i.e“ **NCIRCLE EXIM LLP**”.



2. The Corporate Insolvency Resolution Process ("CIR Process") of the corporate debtor was initiated vide order of this Tribunal dated 29.05.2018 upon admission of an application filed by the Operational Creditor under Section 9 of the Code and Mr. Pramod Kumar Sharma was appointed as the IRP who was later confirmed as RP during 2nd COC meeting held on 07.07.2018.
3. It is stated by the Ld. Counsel for the applicant that the applicant has prepared a list of creditors after verification of claim received pursuant to the public announcement made within 7 days from the last date of receipt of the claims and made the list of creditors available for inspection.
4. Further the RP has filed an interlocutory application as IA No. 288/2018 before this Tribunal for extension of CIR Process by 90 days beyond 180 days which was approved by this Tribunal.
5. Further stated that in spite of tremendous efforts and receipt of no. of EOI's , no resolution was submitted and in absence of any resolution plan, the applicant convened 9th COC meeting on 18th February, 2019 in which COC approved the Resolution for liquidation of the corporate debtor and authorized the Resolution Professional to make an application for liquidation, in pursuance of which RP has submitted application for liquidation as CA No. 83/2019.
6. On 09/07/2019, during the course of arguments, counsel for RP submitted that the CIRP period has been completed and no option

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was left except liquidation, but the Tribunal considering the spirit of Code and in paramount interest of the corporate debtor granted one more opportunity to suspended management to approach COC, meanwhile impleadment application IA No. 260/2019 was filed objecting the liquidation application on behalf of employees of the corporate debtor.

7. It is further stated that RP, as per the compliance of the order of this Adjudicating Authority, convened 13th COC meeting on 13th January, 2020 and placed two resolution plans before the COC and in the 14th COC meeting, the COC members considered the Resolution Plans and negotiated with the RA's and requested them to revise the commercial offer and time was given for the same.

8. Thereafter, the 15th COC meeting was held on 19.05.2020 for consideration of the revised Resolution plan by RA Sakuma Exports Limited which was not approved by COC. Then M/s Glencore Agriculture India Private Limited filed an application i.e IA No. 145/2020 for allowing the submission of the Resolution plan in the CIR Process of the corporate Debtor in which as per the direction of this Tribunal the RP has submitted all the Information and documents as sought for to the applicants. In the meanwhile, the RP received the request from one more applicant namely M/s NCIRCLE Exim LLP and the RP following the same principle, provided the same information to the Second Resolution applicant also. M/s NCIRCLE Exim LLP has submitted the plan to the CoC on 07.09.2020 thereafter the RP convened the meeting of the CoC and during the course of time the Glencore expressed in its ability to submit the Resolution Plan, thus

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the RP presented the Resolution Plan received from NCIRCLE Exim LLP before the COC in order to maximize the value of corporate debtor.

9. Thereafter, RP convened various meeting of CoC for discussion, consideration and negotiation on Resolution Plan and finally in the 21st meeting of the COC held on 27th October, 2020 approved the Resolution Plan of M/s NCIRCLE Exim LLP via e-voting, the result of e-voting was declared on 8th November, 2020 and COC with 100 % voting rights has passed the Resolution for approval of the Resolution Plan and to present the Application before this Adjudicating Tribunal to approve the same.

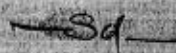
10. In objection to the approved Resolution plan, the counsel for the operational creditor i.e M/s Rana Saria Polypack Pvt. Ltd has stated that they are neither against the approval of Resolution Plan nor does it wish to stall the CIRP of the Corporate Debtor. But CoC has approved the Plan without considering the legality of the plan as the Resolution Plan approved by the COC makes a provisions of Rs. 8 crores to meet the CIRP expenses however, RP has failed to furnish the categorical item wise breakup or complete details of CIRP cost to the extent of Rs.8 crores thus making it an exorbitant amount. Further submitted that the Resolution Plan is also silent about the current assets of the Corporate Debtor and is also not in accordance with the settlement agreement dated 13.11.2017 which was entered into by the promoter of the Corporate Debtor from the business by selling their assets/shares, waiving of their rights and relinquish their investments and outstanding dues in the Corporate Debtor to meet the third party allegations. The said agreements also provided that in case of sale of

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assets of the Corporate Debtor, the claim for amount due to the Operation creditors will be paid first in order of priority which was also approved by financial creditors and lenders of the Corporate Debtors. Thus according to the settlement agreement, the Resolution Plan should provide for payment of claims of Operational Creditors in entirety.

11. It is further stated that the Resolution Plan has been prepared without considering the Report of Forensic auditors. The CoC in its 11th, 12th, and 13th meeting convened on 19.06.2019, 04.11.2019 and 13.01.2020 respectively, decided to appoint a forensic auditor, the same was appointed on 06.06.2020, however the report from the forensic auditor is still awaited. The Resolution Plan is silent regarding utilization of borrowing working capital of Rs 81 Crores and working capital margin of 35 Crores therefore the total inflow of fund in the corporate Debtor under the Resolution Plan is of Rs. 172.06 Crores. Thus the Operational Creditor prays that the Resolution Plan should be modified to the extent of claim of RPPL.

12. The counsel appearing on behalf of Resolution applicant has raised their objections to the reply filed on behalf of Operational Creditor and submitted that the Resolution Plan was approved with unanimous voting in the 21st meeting of COC on 27th October, 2020 whereby NCIRCLE Exim LLP was declared as successful Resolution Applicant by the COC. It was also stated that the Resolution Applicant has already dealt with all the issues and demands raised by the Operational Creditor in the Resolution Plan and no irregularities have been committed in the CIRP of the Corporate Debtor.


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13.The categorical item wise breakup of CIRP cost to the Extent of Rs.8Crores has already been furnished in the Resolution Plan by the successful Resolution Applicant and was approved by COC, the COC had even approved an outstanding of Rs.6.45Crores which is due to be paid against the approved cost of Rs.9.25 Crores upto 10.10.2020. The total calculation with respect to Rs. 8 crores has already been approved and the total expenses incurred by successful Resolution Applicant in relation to CIRP has already been furnished before the CoC.

14.The objection raised by the Operational Creditor in relation the debtors, stock, inventory, bank balance etc. have already been considered by the successful Resolution Applicant. Further the refinery plant is non operational since June, 2017 and there are no major current assets available with the corporate debtor which can be realized in the ordinary course of business. Thereby, the plan had not assigned any value to the current assets and the same was approved by the COC. It is further submitted that the Resolution Plan submitted by successful Resolution Applicant is in no manner bound to be in accordance with the settlement agreement as claimed by the Operational Creditor as the agreement is over 3 years old and has lost its commercial and legal validity and Resolution applicant and COC are governed under the provisions of IB Code and not bound by the private agreement between the shareholders. Further, the working is mainly meant for procurement and inventory of raw sugar, packing materials, coal, consumables and financing of finished goods and receivables for operating business, payments to the suppliers is required after the revival period of Corporate Debtor. All the Operational Creditors, subject to their quality, competitiveness and

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willingness can become the supplier, however no amount can be earmarked for the operational creditor against their claim out of working capital contemplated under the plan and the Resolution Plan describes the method of utilization of the working capital and working capital margin.

15. Heard the Ld. Counsels for the parties and perused the record available.

16. Section 30 of the Code provides as below:

(1) A resolution applicant may submit a resolution plan to the resolution professional prepared on the basis of the information memorandum.

(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 repayment of other debts of the corporate debtor;

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

(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.

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in subsection (2).

(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty six percent of voting share of the financial creditors.

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered: Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

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(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority”.

Section 31 of the Code provides as below:

“(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1),—

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.”

17. It is observed that the Resolution Professional has examined the Resolution Plan and has found it to be in compliance with Section 30 (2) of the IBC read with Regulation 38 of the CIRP Regulations. In accordance with Regulation 39 (4) of the CIRP Regulations, the RP vide his Affidavit certified that:

a) The contents of the Resolution Plan submitted by **“M/s NCIRCLE Exim LLP”** meet all the requirements of the IBC and the Regulations thereunder; and

b) The Resolution Plan submitted by **“M/s NCIRCLE Exim LLP”** has been approved by the Committee of Creditors by 100% voting share under Section 30 (4) of the IBC in its meeting.

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c) Further, Resolution Professional has submitted compliance certificate in Form-H as required under Regulation 39(4) of the CIRP regulations, *interalia*, certifying eligibility of Resolution Applicant under Section 29 A of the Code and feasibility & viability of the Resolution resolution.

Further, Regulation 38 & 39 of CIRP Regulations specify certain mandatory contents of the resolution plan.

18. The resolution plan approved by the Committee of Creditors meets the requirements laid down in various Clauses of Section 29 A and Sec 30 (2) as per the compliance table below:

Section	Requirement	Compliance under the Resolution plan
Section 29 A	The resolution applicant is eligible to submit resolution plan as per final list of resolution professional or order, if any, of the Adjudicating Authority	Yes
Section 30	(1) The resolution Applicant has submitted an affidavit stating that he is eligible	Yes
	(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan only one resolution plan received in the Insolvency resolution process of the CD)	
a)	Provides for payment of IRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	As per the Resolution Plan, the CIRP Costs shall be paid in priority to any other creditors of the Corporate Debtor, in the manner set forth in Clause 30 in financial Proposal of the Resolution Plan.
b)	Provides for repayment of debts of operational creditors (OCs) in such manner as may be specified by the	The Liquidation amount due to the operational creditor NIL However, Resolution Plan

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	Board, which shall not be less than the amount payable to them in the event of liquidation u/s 53.	provided for payment @ 18.84% of claim admitted amount.
c)	Provides for management of the affair of the CD after approval of the resolution plan.	The Resolution Plan provides the details regarding the formation and functioning of the Corporate Debtor, its business and affairs, as a going concern after the approval of the resolution plan as set forth in Clause 6 of the Resolution Plan
d)	Implementation and Supervision of resolution plan	<p>The Implementation Provisions Are Mentioned In The Resolution Plan And Outlined Clauses 7. The Implementation Of The Plan Until The Final Payment Shall Be Jointly Supervised By The Monitoring Committee Till The Final Payment Of Resolution Plan. The Monitoring Committee shall comprises of-</p> <ul style="list-style-type: none"> • a representative or an advisor of the financial creditors (COC) other than related party) • a representative of the resolution applicant and • Resolution Professional
e)	Plan does not contravene any of the provisions of the law for the time being in force.	The Resolution Plan submitted by the Resolution Applicant does not contravene any provisions of law for the time being in force.
f)	Confirms To Such Other Requirements As May Be Specified By The Board	The Resolution Plan confirms to all such other requirements as may be specified by the Board under the Code and the Regulations.

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19. The following table shows that the requirements of Regulation 35 A, Regulation 38 & Regulation 39(2), Regulation 39(4) CIRP Regulation are met by the approved plan:

Reference of relevant Regulations	Requirement	Compliance in Resolution plan
38(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	The amount due to the operational creditors NIL. However, the RA has approved 18.84% of Claim admitted amount.
38 (1A)	Plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of Corporate Debtor.	The Resolution Applicant has dealt with the interest of all the stakeholders as set forth in Clause 30 (page62) of the Resolution Plan.
38 (1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any Resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation.	The Resolution Applicant has included a statement in terms of Regulation 38(1B) as set forth in Clause 34(c) at page 56 of the Resolution Plan.
38(2) (a)	Plan shall provide the term of the Plan and its implementation schedule.	The Resolution Applicant has provided for the term of the Resolution Plan at Clause 21 at page no. 21& 22 of the Addendum to Resolution Plan dated 19th September,2020.
38 (2) (b)	Plan shall provide for the management and control of the business of CD during its term.	The Resolution Applicant has provided for the management and control of the business of the Corporate Debtor as

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		per Clause 29, page 57 of the Resolution Plan.
38 (2) (c)	Plan shall provide for adequate means for supervising its implementation.	The Resolution Applicant has provided for the management and control of the business of the Corporate Debtor by setting up the Monitoring Committee as set forth in Clause 7, page 15 under implementation and supervision of resolution plan management of the Corporate Debtor after the Approval of the Resolution Plan up to completion of the Plan.
38 (3)	<p>A resolution plan shall demonstrate that</p> <ul style="list-style-type: none"> (a) The term of the plan and its implementation schedule (b) It is feasible and viable (c) It has provisions for its effective implementation (d) It has provisions for approval required and the timelines for the same (e) The resolution applicant has the capability to implement the resolution plan 	<p>a) The Resolution applicant has addressed the cause of default of the Corporate Debtor as set forth in Clause 29 (i) & (iii) page no. 59-60 of the Resolution Plan.</p> <p>b) The Resolution Plan does not contain Clause 29(iv) at page 61 of the Resolution Plan.</p> <p>c) The Resolution Applicant has provided for the effective implementation under Clause 19 at page 57 of the Resolution Plan.</p> <p>d) The Resolution Applicant has provided provisions for approvals required and the timeline in Clause 12 at page 41 of the Resolution Plan.</p> <p>e) The Resolution Applicant has provided the statement in regards to its capability as set forth in Clause 5 at page 37 of the Resolution Plan.</p>

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39(2)	The RP has filed applications in respect of transaction observed, found or determined by him	Yes
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20. That the compliance certificate form H to the Resolution Plan is being filed before the Hon'ble Adjudicating Authority within time. A Compliance Certificate in terms of prescribed Form-H under Regulation 39(4) of the CIRP Regulations alongwith the Copy of Letter of Intent issued to RA and receipt of performance security by means of fixed deposit of Rs.2.50 crores towards performance security is to be made in escrow account as required under Regulation (4A) of Regulation 36B of the CIRP Regulations.
21. The resolution plan is for the amount of Rs. 172.06 crores, in order to successfully implement the plan and to improve the operation of the Corporate Debtor, the Resolution Applicant states that a special purpose vehicle (SPV) will subscribe to the capital of USL. Fund will be infused by NCIRCLE EXIM LLP, its associate companies, its partners and related parties from their own fund and borrowing. The NCIRCLE EXIM LLP may also borrow the fund directly in USL and sufficient funds are available for investment in USL. The existing business assets of the Uniworld sugars Limited continue to be charged to Secured Financial Creditor till final payment under this Resolution Plan. After final payment the security to be released by Secured Financial Creditor and the Resolution Applicant shall be free to create fresh charge in favour of new bankers/financial institution. The shareholding of SPV can be sold to the extent of 50% to any strategic investor who is 29A compliant.

Sources of funding is provided as :

In Crores

Time period	Equity	Unsecured loan/inter corporate deposit/other loan/internal accruals	Bank borrowing	Utilization
Upfront	1.00	9.61	--	Towards CIRP Cost,

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Payment-1 within 30 days of vesting date		(Upfront Payment-I shall be made after deducting Rs. 1.50 Crores of pledged fixed deposit amount		workmen, employee, operational creditors, other creditors, existing liability/stakeholders, financial creditors
Upfront Payment-2 within 60 days of vesting date		10.61	--	Towards financial creditors
Within 6 months of vesting date		10.9325 (Principal= 10.512 Interest = 0.4205)	--	Towards financial Creditors (Including Interest @ 8 P.A.)
Within 12 months of vesting date	----	21.865 (Principal =20.2370 Interest = 1.6189) (The last installment shall be made after deducting Rs. 1.00 Crores of pledged fixed deposit amount)	--	Towards financial creditors (Including Interest @ 8 P.A.)
Within 6 months of vesting date	--	8.00	--	Refurbishment, repairs & maintenance deposits and start-up expenses)
Within 6 months of vesting date		27.00		Working Capital Margin
Within 6 months of vesting date	--	--	81.00	Working capital borrowing/expansion

It is stated that Fixed Deposit of Rs. 2.50 Crores shall be made in escrow account (opened on the approval of COC by RP) as mentioned in Clause 3.12 of RERP and the same shall be pledged as performance guarantee with resolution professional along with accepted Letter of Intent. Out of this Rs. 2.50 Crores Fixed Deposit, upfront Payment -1 shall be made after deducting Rs. 1.50 Crores of pledged fixed deposit amount. The last installment to be paid within 12 months of vesting date shall be made after deducting Rs. 1.00 Crore of pledged fixed deposit amount. The

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resolution Applicant will pay the installment amount at any time at interest rate of 8 % P.A. No pre-payment charges or penalty shall be charged.

22. Further as per the terms and condition of the resolution plan **"The Schedule of payment of the Resolution Applicant Amount is as follows:**

S.No.	Particulars	Rs. (In crores)
A.	CIRP Cost	8.00
B.	Financial Creditors(Including Interest @ 8p.a on differed payment, Rs. 2.0394	43.73
C	Workmen dues/ claim whether admitted or not, admitted later, crystallized late	0.29
D.	Operational creditors/ due/ claim whether admitted later, crystallized late	1.6949
E.	Employee admitted claim, retirement benefits, other creditors/ due/ claim whether admitted or not, admitted later, crystallized later	0.3051
F.	Others Creditors	0.00
G.	Payment to outside party A+B+C+D+E+F)	54.02
H.	Repairs/ Deposits	8.00
J.	Working Capital Margin	27.00
K.	Investments in company (H+J)	35.00
L.	Fund Required from promoters(G+L)	89.02
M.	Borrowing WC	81.00
N.	Total Fund required (L+M)	170.02

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If the expenses incurred for CIRP Cost is less than the amount proposed then the same shall be retained with Corporate Debtor and will be utilized for payment of employee dues, other strategic purposes depending on the viability of running of the business. If the expenses incurred is more than the same shall be paid out of fund available to financial creditors.

23. With regard to the objection raised by the operational Debtor, this Adjudicating Authority has observed that the plan has dealt with the interest of the stakeholders as per Section 53 of IBC, 2016. The amount available to the Operational Creditor as per Section 53 of the Code, is considered as nil in view of large due to Secured Financial Creditors. In spite of that, some amount is provided for operational creditors, workman and employees. It is proposed in the plan that the residual amount due to the Operational Creditors and employee, if any, (After allocation of Resolution Plan fund to Financial Creditor) shall be given priority in payment over Financial Creditors and the amount proposed for Operational Creditor and employees is as per Financial Plan and if there is shortfall in amount available to operational Creditor as per the Resolution Plan when compared to what is available to the Operational Creditor considering the liquidation value, in that case shortfall amount will be paid to them by reducing amount available to the Financial Creditor.

24. In the case of Pratap Technocrats (P) Ltd & Ors vs Monitoring Committee Of Reliance the Hon'ble NCLAT stated that

It is by now well settled that equitable treatment can be claimed only by similarly situated creditors. Operational Creditors stand at a different footing as compared to Financial Creditors. They are entitled to receive a minimum payment being not less than liquidation value, which does not apply to Financial Creditors.

Para 77 read in juxtaposition with para 76 of the judgment delivered by the Hon'ble Apex Court in "Swiss Ribbons Private Limited v. Union of India (2019) 4 SCC 17" dealing with this aspect of legal proposition clearly lays

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down that there is a difference in payment of the debts of Financial and Operational Creditors, Operational Creditors having to receive a minimum payment, being not less than the liquidation value, which does not apply to Financial Creditors. This is elucidated in para 56 of the judgment rendered by the Hon'ble Apex Court in "Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and Ors."

Manu/SC/1577/2019", which reads as under: -

"56. By reading paragraph 77 de hors the earlier paragraphs, the Appellate Tribunal has fallen into grave error. Paragraph 76 clearly refers to the UNCITRAL Legislative Guide which makes it clear beyond any doubt that equitable treatment is only of similarly situated creditors. This being so, the observation in paragraph 77 cannot be read to mean that financial and operational creditors must be paid the same amounts in any resolution plan before it can pass muster. On the contrary, paragraph 77 itself makes it clear that there is a difference in payment of the debts of financial and operational creditors, operational creditors having to receive a minimum payment, being not less than liquidation value, which does not apply to financial creditors. The amended Regulation 38 set out in paragraph 77 again does not lead to the conclusion that financial and operational creditors, or secured and unsecured creditors, must be paid the same amounts, percentage wise, under the resolution plan before it can pass muster. Fair and equitable dealing of operational creditors' rights under the said Regulation involves the resolution plan stating as to how it has dealt with the interests of operational creditors, which is not the same thing as saying that they must be paid the same amount of their debt proportionately. Also, the fact that the operational creditors are given priority in payment over all financial creditors does not lead to the conclusion that such payment must necessarily be the same recovery percentage as financial creditors. So long as the provisions of the Code and the Regulations have been met, it is the commercial wisdom of the requisite majority of the Committee of Creditors which is to negotiate and accept a resolution plan, which may involve differential payment to different

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classes of creditors, together with negotiating with a prospective resolution Applicant for better or different terms which may also involve differences in distribution of amounts between different classes of creditors."

Again in para 57 of the same judgment, it was observed by the Hon'ble Apex Court as under: -

"57. the equality principle cannot be stretched to treating unequals equally, as that will destroy the very objective of the Code to resolve stressed assets. Equitable treatment is to be accorded to each creditor depending upon the class to which it belongs: secured or unsecured, financial or operational."

25. In the case in hand, this Adjudicating Authority is of the view that as the amount available to the Operational Creditor as per Section 53 of the Code, is considered as nil but Resolution Plan provided for payment @ 18.84% of claim admitted amount of the operational creditors which is more than the liquidation value and all the operational creditors has been treated equally thus the prayer of the operational creditor to modify the Resolution Plan to the extent of claim of RPPL is not sustainable.
26. The RP as required under regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 certified that the contents of the resolution plan meets with the requirements of the IBC and the regulations thereto and that the resolution plan has been approved by the CoC in the manner prescribed under the IBC.
27. Further referring to the Judgment of The Hon'ble Supreme Court in the case of **"K. Sashidhar vs. Indian Overseas Bank" (2019 SCC OnLine SC 257) at para 49 of the Judgement held as below:**
"49. The argument, though attractive at the first blush, but if accepted, would require us to re-write the provisions of the I&B Code. It would also

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result in doing violence to the legislative intent of having consciously not stipulated that as a ground - to challenge the commercial wisdom of the minority (dissenting) financial creditors. Concededly, the process of resolution plan is necessitated in respect of corporate debtors in whom their financial creditors have lost hope of recovery and who have turned into non-performer or a chronic defaulter. The fact that the concerned corporate debtor was still able to carry on its business activities does not obligate the financial creditors to postpone the recovery of the debt due or to prolong their losses indefinitely. Be that as it may, the scope of enquiry and the grounds on which the decision of "approval" of the resolution plan by the CoC can be interfered with by the adjudicating authority (NCLT), has been set out in Section 31(1) read with Section 30(2) and by the appellate tribunal (NCLAT) under Section 32 read with Section 61(3) of the I&B Code. No corresponding provision has been envisaged by the legislature to empower the resolution professional, the adjudicating authority (NCLT) or for that matter the appellate authority (NCLAT), to reverse the "commercial decision" of the CoC much less of the dissenting financial creditors for not supporting the proposed resolution plan. Whereas, from the legislative history there is contra indication that the commercial or business decisions of the financial creditors are not open to any judicial review by the adjudicating authority or the appellate authority."

28. Thus it is a well settled proposition of law that the commercial wisdom of COC are not open to judicial review thus the Adjudicating Authority cannot enquire into it. It is however reiterated that the Resolution plan in question meets the requirement specified in Sec 30(2) of the Code and the reasoned commercial decision of COC is neither discriminatory nor perverse.
29. In the facts as stated, this bench is satisfied that the requirements as per the Code and regulations have been complied with. Moreover, the

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Resolution Plan has been approved by 100% voting share of the members of COC and has been submitted in compliance of Sec 30 of the Code for approval. In view of the aforesaid discussions and as no infirmity have been brought out upon screening of the Resolution plan, this Adjudicating Authority hereby approve the Resolution plan under sub- section (1) of Section 31 of the Code.

30. This bench further directs that the Monitoring Agency shall comprise of one representative of COC, one representative of Resolution Applicant and the Resolution Professional and thus appointed persons to act as "Monitoring Agency" to monitor and supervise the implementation of the Resolution plan and the remuneration of the monitoring agency shall be on Rs. 1,50,000/- plus taxes and out of pocket expenses at actual.
31. The Resolution Applicant is allowed to remove and/or substitute the Monitoring Agency with prior approval of this Adjudicating Authority if the Monitoring Agency is unable to satisfactorily perform its responsibilities or breaches terms of its appointment.
32. It is directed that the resolution plan so approved shall be binding on the Corporate Debtor, its employees, members,(including the Central Government, any state Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owned), creditors, guarantors and other stakeholders involved in the resolution plan. With the approval of the resolution plan, the moratorium order passed by this Tribunal under Section 14 of the Code shall ceases to have effect. The Resolution Professional is directed to forward all the record relating to the conduct of the corporate insolvency resolution process and the resolution plan to the IBBI to be recorded on its database.

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