



**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-I), CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CA No. 1106 of 2019

In

CP (IB) No.46/Chd/Pb/2018

(Admitted)

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

IN THE MATTER OF:

Oriental Bank of Commerce

..... Petitioner/ Financial Creditor

VS.

J.R. Agrotech Private Limited

..... Corporate Debtor/Non-Respondent

AND IN THE MATTER OF CA NO. 1106/2019

Mohit Chawla,

Resolution Professional of J R Agrotech Private Limited

SCO 2935-36, Sector 22C,

Chandigarh-160022.

..... Applicant/ Resolution Professional

Compact Capital Limited

103, Gateway Plaza,

Hiranandani Garden, Powai,

Mumbai, Maharashtra-400076

..... Respondent 1

Committee of Creditors

Through Resolution Professional

..... Respondent 2



Order delivered on : 23.04.2025

CURUM: HON'BLE SHRI HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE SHRI UMESH KUMAR SHUKLA, MEMBER(TECHNICAL)

Present:

For Resolution Professional : Mr. Abhishek Anand, Advocate, Mr. Mohit Chawla, RP in person
For Successful Resolution : Ms. Munisha Gandhi, Senior Advocate, Ms. Applicant Salina Chalana, Advocate
For Committee of Creditors : Mr. Pulkit Goyal, Mr. Harsh Garg, Advocate

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)

ORDER

The present Application bearing CA No. 1106 of 2019 (hereinafter referred to as the “**CA**”) has been filed on 15.11.2019 by CA Mohit Chawla, Resolution Professional of J.R Agrotech Private Limited (hereinafter referred to as the “**RP**” or “**Applicant**”) under Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**” or “**Code**”), read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the “**CIRP Regulations**”) seeking approval of the resolution plan in respect of the J.R Agrotech Private Limited (hereinafter referred to as the “**Corporate Debtor**” or “**CD**”). It has been prayed in the CA to approve the Resolution Plan along with addendum as submitted by the Compact Capital Limited and as duly approved with a 91.95% voting share of the Committee of Creditors (hereinafter referred to as the “**CoC**”) in its 12th meeting held on 05.11.2019.



FACTS OF THE CASE

2. The facts of the case, as stated in the CA, are summarised below:

- (i) The Company Petition CP(IB) No.46/Chd/Pb/2018 was filed by the Financial Creditor, Oriental Bank of Commerce (hereinafter referred to as the “**OBC**”), against the Corporate Debtor, which was admitted into the Corporate Insolvency Resolution Process (hereinafter referred to as the “**CIRP**”) vide this Adjudicating Authority Order dated 27.07.2018 (copy attached as Annexure-1 of the CA) and Mr. Dinesh Seth was appointed as the Interim Resolution Professional (hereinafter referred to as the “**IRP**”) vide this Adjudicating Authority Order dated 02.08.2018 (copy attached as Annexure-2 of the CA).
- (ii) The IRP made a public announcement in Form A on 04.08.2018 in Indian Express (English) and Rozana Spokesman (Hindi) edition (copy attached as Annexure-3 of the CA) for intimation of the commencement of CIRP of the Corporate Debtor and for calling the creditors to submit their claims along with the proof in the prescribed format.
- (iii) Till the last date for the submission of claims i.e. 19.08.2018, the IRP received claims from six financial creditors namely, OBC, Union Bank of India (hereinafter referred to as the “**UBI**”), Canara Bank, IDBI, UCO Bank and State Bank of India (hereinafter referred to as the “**SBI**”). Based on the collated claims, the IRP constituted the CoC on 23.08.2018 and submitted the report to this Adjudicating Authority on 23.08.2018 (copy attached as Annexure-4 of the CA). Total six claims from the Financial Creditors (secured and unsecured) and twenty-one claims from the Operational



Creditors (other than Workmen & Employees) were received till filing of the CA.

- (iv) The IRP called for the 1st meeting of the CoC on 29.08.2018 (copy of the minutes of the meeting as circulated enclosed as Annexure-5 of the CA). During the meeting, it was discussed that the IRP will not be converted to RP till the fee was negotiated and ratified. The CoC, however, extended the period of IRP by the time, the decision on these matters were pending.
- (v) The IRP called for the 2nd meeting of the CoC on 17.09.2018 (copy of the minutes of the meeting as circulated enclosed as Annexure-6 of the CA). The notice was sent to the Financial Creditors and Promoter- Manager of the Corporate Debtor. The following matters were discussed in the meeting:
 - (a) Discussions took place on the ratification of the fee quoted by the IRP and the conversion of IRP into RP. Replacement of IRP was considered by the CoC due to high quotation of fee by the IRP.
 - (b) The CoC members resolved that the reimbursement of expenses incurred by IRP and OBC for CIRP of Rs.101,791/-, apart from IRP remuneration were approved and ratified.
 - (c) The CoC decided to appoint Mr. Abhay Kumar & Mr. Ankit Goel with all-inclusive fee of Rs.65000/- each for the valuation of plant & machinery and Mr. Sachin Goel & Mr. Anil K. Sexena (SCS Consultants) with all-Inclusive fee of Rs.32500/- & Rs.35000/- respectively for valuation of land and building (copy of valuation reports attached as Annexure-7 of the CA).



- (d) The CoC extended the period of IRP on the same consideration as paid to IRP earlier till the appointment of Mr. Mohit Chawla by this Adjudicating Authority.
- (e) The IRP requested the members of CoC to provide the necessary information for starting the process of appointing Mr. Mohit Chawla as the new RP through filing an application with this Adjudicating Authority and SBI provided the same.
- (vi) The IRP called and convened the 3rd meeting of the CoC on 09.10.2018 (copy of the minutes of the meeting as circulated enclosed as Annexure- 8 of the CA). The notice was sent to the Financial Creditors and directors of the Corporate Debtor. The following matters were discussed in the meeting:
 - (a) Resolved that the remuneration of Rs.5 Lakh (plus applicable taxes) per month on proportionate basis along with out-of-pocket expenses incurred by the IRP till the date of handing over the charge to the new RP was approved for deduction out of the cash accruals of the Corporate Debtor as a part of CIRP cost. The expenses incurred by the OBC that have already been ratified in the last meeting would become part of CIRP cost and will have preferential payment in the waterfall mechanism.
 - (b) Resolved that the notice of 3 days for holding 3rd meeting of CoC was approved and ratified as per Regulation 19(2) of CIRP Regulations.



- (vii) The RP called 4th meeting of the CoC on 23.10.2018. (copy of the minutes of the meeting as circulated enclosed as Annexure-9 of the CA). The notice was sent to the Financial Creditor and directors of the Corporate Debtor.
- (a) Mr. Mohit Chawla, the Chairman apprised the members of the CoC that pursuant to order of this Adjudicating Authority in CA No.439 of 2018 in CP(IB) No.46/Chd/2018 dated 12.10.2018 received on 16.10.2015, his appointment as the RP of the Corporate Debtor tar by replacing the IRP, Mr. Dinesh Seth. The copy of Order was sent to Committee Members.
- (b) The Chairman informed the CoC that under Regulation 35A of the CIRP Regulations, the RP needed to form an opinion, whether the Corporate Debtor has been subject to any transaction covered under sections 43, 45, 50 or 66 of Code. For this purpose, an Individual professional was needed to be appointed and thus, it was agreed to call upon the quotations.
- (c) The Chairman informed the CoC that he had approached this Adjudicating Authority for condoning the delay of publishing the Form G for the expressions of interest (hereinafter referred to as the "EoI"), which was not published within the prescribed time i.e. 75 days from the commencement of CIRP as mentioned in the CIRP Regulations, since he was appointed as RP by this Adjudicating Authority Order dated 12.10.2018, which was received by him on 16.10.2018. The RP engaged Advocate Mr. Manish Jain, for the said matter and all the CoC members approved the cost.



- (d) Resolved that Eol process document, eligibility criteria, evaluation matrix and Form G to call Interested and eligible prospective resolution applicants (hereinafter referred to as the “**PRAs**”) to submit resolution plans be and hereby approved (copy of Eol and evaluation matrix attached as Annexure-10 and Annexure-11 respectively of the CA).
- (e) The CoC members requested the Chairman to share the complete Information Memorandum (hereinafter referred to as the “**IM**”) with them as the IM prepared by the IRP was incomplete and needed amendments as per the provisions of IBC.
- (viii) The RP called the 5th meeting of the CoC on 21.12.2018. The notice was sent to the Financial Creditor and directors of the Corporate Debtor (copy of the minutes of the meeting as circulated enclosed as Annexure-12 of the CA. The following matters were discussed in the meeting:
- (a) The RP apprised the CoC that the complete IM, after incorporating the information as required under the Code as well as suggestions made by the CoC, was issued on 29.10.2018 to the CoC. Further, the IM was further amended on 14.11.2016 and a fresh IM was circulated to the CoC thereafter (copy of the IM attached as Annexure-28 of the CA).
- (b) The RP informed the CoC that independent professional i.e. Kansal Singla & Associates (Chartered Accountants), had been appointed as transactional auditors pursuant to Regulation 35A of the CIRP Regulations, so as to examine the transactions falling under sections 43, 45, 49, 50 and 66 of Code.



- (c) The RP put forth the transaction audit findings prepared by M/s Kansal Singla & Associates for the financial years 2016-17, 2017-18 and for the period from 01.04.2018 till the CIRP commencement date. The findings of the transaction audit were discussed at the meeting.
- (d) Mr. Kailash Chander from SBI apprised the CoC that they have classified the account as fraud and has filed a complaint with the CBI against the Corporate Debtor and the directors and promoters of the Corporate Debtor on 10.12.2018.
- (e) The RP apprised the CoC that several payments pertaining to operational expenses of the Corporate Debtors were made by him in order to keep the plant as a going concern. Further, the CoC was informed that the Corporate Debtor has regularly received payment against the bills raised for job work done by the Corporate Debtor. The receipt and payment statement for the period 16.10.2018 to 15.12.2018 was presented at the meeting.
- (f) The RP apprised the CoC that pursuant to Regulation 36A(1) & 36A(2) of the CIRP Regulations, he caused the publication of Form G (copy of Form G attached as Annexure-13 of the CA) on 25.10.2018 in Hindustan Times (English Dally) and Jag Bani (Regional Daily) and received three EoI from the PRAs. The RP issued the provisional list of eligible PRAs on 14.11.2018.
- (g) Further, the RP informed the CoC that as required under Regulation 36A(12) of the CIRP Regulations (as amended from time to time), he had issued the final list of eligible PRAs on 27.11.2018.



- (h) The Chairman further informed the CoC that the last date for submitting the Resolution Plan is 24.12.2018. However, one of the PRA had called the RP to inform that they are carrying out due diligence and trying to understand more about the industry and requested for extension of the last date of submission of Resolution Plan by 15 days. The CoC after giving due consideration and with consensus, decided to extend the date for submission of Resolution Plan by 1 week i.e. till 31.12.2018.
- (i) The RP apprised the CoC that he had filed an application on 19.11.2018 with this Adjudicating Authority under section 14(1)(b) read with section 74 of the Code, so as to bring to the notice of this Adjudicating Authority about the transactions carried out by the Corporate Debtor and its officers, in violation of moratorium under section 14(1)(b) of the Code and the transfers were carried out to the extent of Rs.22,40,000/-
- (ix) The RP called the 6th meeting of the CoC on 07.01.2019. The notice was sent to the financial creditors and directors of the Corporate Debtor (copy of the minutes of the meeting as circulated enclosed as Annexure-14 of the CA). The following matters were discussed in the meeting:
- (a) The Chairman apprised the CoC that the Resolution Plan was received on 31.12.2018 from two PRAs as below:

Sl. No.	Name of eligible PRAs	Status	Email Address
1	Compact Capital Limited	Limited Company	compliance.compact capital@gmail.com
2	Vardhman Ispat Udyog	Partnership Firm	Pradeep@vardhmanmnk.com



- (b) It is apposite to mention here that the 6th meeting was convened in order to open the Resolution. Plans, since one of the PRA i.e. Compact Capital Limited had not shared the password of the PDF file, through which they had shared a Resolution plan. It is further important to notice that they were not willing to share the password, even after the RP stated that he needs to scrutinise the Resolution Plans before putting it in front of the CoC. Consequently, the RP could not open the Resolution Plan and form an opinion about the same and check, whether it is in compliance with the Code before putting forth in front of CoC. The PRA then sent an email stating that they can only share the password in the CoC meeting. Therefore, the RP convened a CoC meeting on 07.01.2019 and the Resolution Plans were duly opened in front of the CoC. The CoC took note of the fact that since the compliance was not checked previously due to the condition put forth by the PRA, therefore, the same shall be done before the next CoC meeting. The Resolution Plans were looked at prima facie by the RP along with its team in the meeting without delving into the details, since the CoC wanted to have an outline of both the Resolution Plans. Thereafter, they made a request for a copy of the Resolution Plans, since they need to assess the Resolution Plans at their end. The RP mailed both the Resolution Plans to the CoC by the evening.
- (c) The RP apprised the CoC that he was appointed by this Adjudicating Authority on 12.10.2018 and the order of his appointment was received on 16.10.2018. The CIRP period is coming to an end on 22.01.2019



and the Resolution Plans received on 31.12.2018, are still to be assessed and finalised.

(d) Ms. Vijaylakshmi from the SBI requested the RP to assess the Resolution Plans and check their compliance with the provisions of the Code, and also to do the background check of the PRAs before the next CoC, which was agreed to be held on 15.01.2019. After which, the RP assured the CoC that the same shall be done before the next meeting fixed for 15.01.2019 and a small brief shall be shared with the CoC. It was further agreed that the extension of CIRP shall also be discussed in the next meeting, which is proposed on 15.01.2019. The RP apprised all the CoC members that the issue of extension of CIRP period needs to be taken up urgently.

(e) The RP apprised the CoC that the earnest money deposit (hereinafter referred to as the “**EMD**”) received from both the PRAs amounting to Rs.50,00,000/- (refundable) is kept in designated EMD account opened with UBI, which was acknowledged by the CoC.

(x) The RP called the 7th meeting of the CoC on 15.01.2019. The notice was sent to the Financial Creditors and directors of the Corporate Debtor (copy of the minutes of the meeting as circulated enclosed as Annexure 15 of the CA). The following matters were discussed in the meeting:

(a) The RP apprised the CoC that he had supplied a brief note before the CoC meeting, containing comparative analysis of both the Resolution Plans and also his observations on the same. The COC members were also apprised that the fair value and liquidation value of the plant has



been provided to all the members of CoC after obtaining the necessary confidentiality undertaking from all the members of CoC. The CoC took note of the same and proceeded with the discussion on the Resolution Plans. The RP began the discussion with his point wise observations on the Resolution Plans submitted by both PRAs along with comparative analysis of the Resolution Plans.

- (b) The RP invited both the PRAs to present their Resolution Plans at the CoC meeting.
- (c) After discussion on the plan by Compact Capital Limited, the CoC advised the PRAs to suitably amend the Resolution Plan. The PRAs sought time of 20 days in order to revise the Resolution Plan vis-a-vis discussion held in the CoC. The CoC agreed for the same and told the PRAs to strictly adhere to the time granted.
- (d) The Manager (Accounts) of the Vardhman Ispat Udyog came and apprised the CoC that Mr. Pradeep Garg (key partner) was busy and therefore, could not come for the meeting. The CoC pointed out that they must inform the RP about their Incapacity to attend the meeting, as this reflects upon their non-seriousness. The Manager of Vardhman Ispat Udyog apologized and left the meeting. So, no discussion could be held with the representative of the Vardhman Ispat Udyog.
- (e) The CoC thereafter, upon consensus decided that Vardhman Ispat Udyog shall be given one more opportunity in order to present their Resolution Plan.



- (f) The CIRP period is coming to an end on 22.01.2019. Although the Form G was circulated on 25.10.2018, the final list of PRAs was circulated on 19.11.2018 and the last date of submission of Resolution Plans was 24.12.2018, however, one of the PRAs requested for extension of time and therefore in the 5th meeting of CoC held on 21.12.2018, it was decided to extend the time of submission of Resolution Plan by one week till 31.12.2018. After the Resolution Plans were received, another PRA i.e. Compact Capital Limited stated that their Resolution Plan shall be opened only in the meeting of CoC. Therefore, a meeting was convened on 07.01.2019 specifically to open the Resolution Plans and the next date for the meeting of CoC was fixed on 15.01.2019 in order to discuss the Resolution Plans submitted by the PRAs among the CoC as well as with the PRAs. Accordingly, the discussion and deliberation on the same were held on 15.01 2019 and upon request by one of the PRA, it was decided by the CoC to grant them time of 20 days to revise the Resolution Plan, since they agreed to make necessary changes to the Resolution Plan and present the same to the CoC. As the application for extension was to be filed prior to the lapse of moratorium as per the provisions of the Code, therefore, after due deliberations and discussions on the Resolution Plan and also after hearing the PRAs, it was decided that the CIRP period be extended for a period of 90 days, so that revised Resolution Plans can be placed on record for further discussions in order to arrive at a sustainable resolution, which serves all the stakeholders equally.



(xi) The RP called the 8th meeting of the CoC on 26.02.2019. The notice was sent to the Financial Creditors and directors of the Corporate Debtor (copy of minutes of the meeting as circulated enclosed as Annexure-16 of CA).

The following matters were discussed in the meeting:

- (a) this Adjudicating Authority on 23.01.2019 had passed an order for extension of the CIRP period by 90 days (copy enclosed as Annexure-17 of the CA).
- (b) The Corporate Debtor had filed an insurance claim for the fire that broke out in its premises on 09.05.2011. The aforesaid application was dismissed on the grounds of misrepresented loss and falsified records. The Corporate Debtor went into appeal at National Consumer Dispute Redressal Commission (hereinafter referred to as the “**NCDRC**”). The case at the NCDRC is at the stage of cross-examination and the next date of the hearing had been faxed for 17.07.2019.
- (c) The representatives of Compact Capital Limited did not bring the revised Resolution Plan even after giving them an extension of 20 days, as request by them, to submit their revised Revolution Plan.
- (d) The representatives of Vardhman Ispat Udyog, the second PRA informed the CoC that they were not interested to submit the Revolution Plan.
- (e) Resolved that the fees and expanse of Rs.42,964/ Incurred by the RP for travelling, lodging etc. was ratified and approved.



- (f) Resolved that fees and expenses of Rs.2,37,500/- and Rs.25000/- (taxes as applicable) to be paid to CA Vinod Jain for applications filed with this Adjudicating Authority were also ratified and approved.
- (g) Resolved that fees and expenses of Rs.30,000/- (including taxes) to be paid to Advocate, Amandeep Sharma, for obtaining certified copies of title deeds for SBI.
- (h) A payment of Rs.1,95,056/- had been received on account of refund of market fees. Apart from that, efforts were being made to generate more receipts and the Chairman had taken its best efforts in order to keep the unit profitable.
- (xii) The RP called the 9th meeting of the CoC on 01.03.2019. The notice was sent to the Financial Creditors and directors of the Corporate Debtor (copy of minutes of the meeting as circulated enclosed as Annexure-18 of the CA). A revised Resolution Plan was submitted by Compact Capital Limited, in which it submitted two Resolution Plans. Resolution Plan A was rejected by the members of CoC whereas Resolution Plan B was asked to be modified again.
- (xiii) The RP called the 10th meeting of the CoC on 26.03.2019. The notice was sent to the Financial Creditors and directors of the Corporate Debtor (copy of minutes of the meeting as circulated enclosed as Annexure-19 of the CA). The members of CoC stated that the following had to be taken care of in the revised Resolution Plan:
- (a) The PRA has to reduce the timeline and it shall not increase 6 months in any circumstances.



- (b) The PRA has to Increase the total amount of the Resolution Plan after considering all the issues raised by the members of CoC.
 - (c) A legal opinion on the third-party mortgage has to be sought.
 - (d) Opinion on sundry debtors has to be sought along with implication on the proceedings already going on at this Adjudicating Authority and various other judicial proceedings against the Corporate Debtor.
- (xiv) The RP called the 11th meeting of the CoC on 16.04.2019. The notice was sent to the Financial Creditors and directors of the Corporate Debtor (copy of minutes of the meeting as circulated enclosed as Annexure- 20 of the CA). The following matters were discussed in the meeting:
- (a) A total amount of Rs.4,94,056/- was recovered from the Market Committee, Dera Baba Nanak and Dinanagar on account of Rural Development Fund by the RP.
 - (b) An EMD of Rs.25,00,000/- deposited by Vardhman Ispat Udyog had to be returned as per the terms and conditions laid down in the IM.
 - (c) The monthly expenses of Rs.35000/- to be paid towards the appointment of the site manager was ratified and approved.
 - (d) The monthly expenses of Rs.40000/- (plus applicable taxes) to be paid towards the appointment of security guards was ratified and approved.
 - (e) CIRP expenses of Rs.45.032/- incurred by the RP for travelling, lodging etc. was ratified and approved.
 - (f) The members of CoC rejected the final Resolution plan submitted by the PRA, Compact Capital Ltd by 69 99% votes against it.



- (g) The CoC authorised the RP to file an application with this Adjudicating Authority for liquidation, since the Resolution Plan was not approved by 66% members of the CoC.
- (h) The CoC after obtaining consent of Mr. Mohit Chawla decided to appoint him as the liquidator of the Corporate Debtor on such fee per month, as will be decided by the Financial Creditors and will be notified to him in the mean course.
- (xv) Pursuant to the Order dated 01.11.2019 (copy attached as Annexure-21 of the CA), this Adjudicating Authority instructed the CoC to reconsider the Resolution Plan submitted by the PRA on 20.04.2019 and further instructed the CoC to convene a meeting, so as to discuss and vote on the Resolution Plan dated 20.04.2019 and thereafter decide, whether to accept the Resolution Plan submitted before the members of CoC or to vote on the liquidation of the Corporate Debtor.
- (xvi) Therefore, the RP called the 12th meeting of the CoC on 05.11.2019. The notice was sent to the Financial Creditors and directors of the Corporate Debtor (copy of notice and the copy of minutes of the meeting as circulated are enclosed as Annexure-22 and Annexure-23 respectively of the CA. The following matters were discussed in the meeting.
- (a) Total amount of Rs.11,34,391/- has been recovered by the RP on account of Rural Development Fund from Ajnala Mandi.
- (b) Total amount of Rs.33,85,838/- has been recovered from the market committee on account of security deposit and Rural Development Fund.



(c) An email dated 03.11.2019 (copy attached as Annexure-24 of the CA) was received from the PRA answering the queries of the CoC.

(d) The Resolution Plan presented by Compact Capital Limited dated 20.04.2019 along with addendum dated 05.11.2019 (copy of addendum attached as Annexure-26 of the CA) was ratified and approved with 91.95% votes in favour of the Resolution Plan.

(xvii) The RP submitted following report of events in compliance with the directions Issued by this Adjudicating Authority vide order dated 02.08.2018 under IBC and rules and regulations made there under:

- (a) First Event Report for the period 16.10.2018 to 29.10.2018
- (b) Second Event Report for the period 30.10.2018 to 12.11.2018
- (c) Third Event Report for the period 13.11.2018 to 27.11.2018
- (d) Fourth Event Report for the period 28.11.2018 to 15.12.2018
- (e) Fifth Event Report for the period 16.12.2018 to 09.01.2019
- (f) Sixth Event Report for the period 10.01.2019 to 24.01.2019
- (g) Seventh Event Report for the period 25.01.2019 to 07.02.2019
- (h) Eighth Event Report for the period 08.02.2019 to 04.03.2019
- (i) Ninth Event Report for the period 05.03.2019 to 19.03.2019
- (j) Tenth Event Report for the period 20.03.2019 to 04.04.2019
- (k) Eleventh Event Report for the period 05.04.2019 to 20.04.2019
- (l) Twelfth Event Report for the period 21.04.2019 to 13.05.2019
- (m) Thirteenth Event Report for the period 14.05.2019 to 28.05.2019
- (n) Fourteenth Event Report for the period 29.05.2019 to 15.06.2019
- (o) Fifteenth Event Report for the period 16.06.2019 to 02.07.2019
- (p) Sixteenth Event Report for the period 03.07.2019 to 20.07.2019



- (q) Seventeenth Event Report for the period 21.07.2019 to 10.08.2019
- (r) Eighteenth Event Report for the period 1.08.2019 to 28.08.2019
- (s) Nineteenth Event Report for the period 29.08.2019 to 13.09.2019
- (t) Twentieth Event Report for the period 14.09.2019 to 03.10.2019
- (u) Twenty First Event Report for the period 04.10.2019 to 20.10.2019
- (v) Twenty Second Event Report for the period 21.10.2019 to 05.11.2019.

(xviii) Liquidation value as per Regulation 35 of CIRP Regulations is the estimated value of the assets of the Corporate Debtor, if the Corporate Debtor were to be liquidated on the insolvency commencement date. Liquidation value has been determined by the two registered valuers for each kind of asset (copy of reports of Valuers attached as Annexure-7 of the CA), which is given as under:

Particular	Valuer	Distress Value (Rs Crore)	Average Liquidation Value (Rs. Crore)
Plant & Machinery	Ankit Goel	11.35	11.73
Plant & Machinery	Abhay Kumar	12.10	
Land & Building	SCS Consultants	9.30	8.5345*
Land & Building	Sachin Goel	8.50	
<p>*The value of Land and Building has been reduced, since the personal properties were included in the valuation by the valuers, the details of the same are as below;</p> <p>i. Land admeasuring 12 Kanal 6 Marla on which infrastructure of manufacturing unit has already been constructed, situated at Village Udipur, Tehsil Gurdaspur Punjab owned by JR Energy Solutions.</p> <p>ii. Land admeasuring 12 Kanal on which infrastructure of manufacturing unit has already been constructed, situated at Village Awankha, Tehsil Gurdaspur Punjab owned by JK Industries.</p> <p>iii. Land admeasuring 5 Kanal 7 Marla on which godown has already been constructed, situated at Village Bahmani, Tehsil Gurdaspur Punjab owned by Raman Kumar.</p> <p>iv. Flour Mill owned by Krishna Pulses established over land parcel owned by JR Agrotech Private Limited.</p>			



- (xix) The Applicant has not initiated any other legal proceedings before any other forum, which is the subject matter of the present application.
- (xx) The present Application is within the limitation and does not suffer from delay and/ or latches.
- (xxi) Under the provisions of the Code, an affidavit dated 02.11.2019 from Resolution Applicants regarding their eligibility under section 29A, read with regulation 38 of IBC has been received and has been attached as Annexure-27 of the CA.
- (xxii) As per the Code, the RP is required to submit compliance certificate in Form H, which is enclosed as Annexure-29 of the CA.
- (xxiii) The Resolution Applicant has proposed the repayments to stakeholders under Resolution plan in following manner:

S. No.	Cost of Plan	Rs. crore
1.	Insolvency Resolution Process Cost	0.10
2.	Financial Creditor	33.00
3.	Operational Creditors (except Workmen and Employees)	0.10
4.	Payment towards Contingency Fund*	0.30
5.	Working Capital when required**	10.00
6.	Capital Expenditure when required**	2.50
Total		46.00
* No claims have been filed by the workmen and the employees, but the amount kept in the contingency fund shall be used, if there is any claim filed and admitted by the RP before the effective date.		
** The resolution applicant shall infuse an amount of Rs. 10 crores for working capital and Rs. 2.5 crores for capital expenditure.		

- (xxiv) According to the provisions of Section 30 of the IBC read with Regulation 38 of CIRP Regulations, the CIRP cost will be paid in priority to any other class of creditors. Based on the information provided by the RP, the CIRP cost has already been paid to the tune of Rs.64.59 lakhs (Rs.71.48 - 6.89



lakhs) and Rs.6.89 lakhs are approved by the CoC to be paid to the OBC, since the unit was a going concern.

Particulars	Amount (in Rs.)
(A) CIRP EXPENSES FOR THE PERIOD OF IRP: 02.08.2018 to 17.10.2018	
Court Fee	25000.00
Advocate Fee	40400.00
Public Announcement Expenses	33808.00
COC Meeting Expenses	14999.00
IRP Fee till 17.10.2018	1514333.00
Search Report Form CS	7500.00
Travelling & Lodging Expenses by IRP	75254.00
Postage & Courier	5,000.00
COC- III Expenses	1950.00
Total (A)	17,18,244.00
(B) CIRP EXPENSES FOR THE PERIOD OF RP: From 18.10.2018 to 13.11.2019	
Advocate Fee	564000.00
Transaction Audit fee	204,538.00
Public Announcement Expenses	85398.00
Registered Valuer Expenses	197500.00
Meeting Expenses	48081.00
RP Fee from (18.10.2018 to 17.10.2019)	3360000.00
Travelling & Lodging Expenses by RP	153885.00
Other Expenses	816824.00
Total (B)	54,30,226.00
Total (A+B)	71,48,470.00

(xxv) The Resolution Applicant undertakes that payment of the CIRP cost amounting to Rs.6.89 lakhs (which was initially contributed by the OBC) out of total estimated cost of Rs.10 lakhs would be made in priority to all other debts of the Corporate Debtor. The rest of the CIRP cost of Rs.64.59 lakhs (Rs.71.48- 6.89 lakhs) has already been paid, since the unit was a going concern.

(xxvi) Considering the payments envisaged in the Resolution Plan, the total cost of the Resolution Plan is as under:



(Amount in Rs. Crores)

S. No.	Cost of Plan	Amount
1	Insolvency Resolution Process Cost proposed to be borne by Resolution Applicant	0.10
2	Payment to Financial Creditors:	
	a) Banks	33.00
	b) Related Parties	Nil
3	Payment to Operational Creditors	0.10
4	Payment to Contingency Fund	0.30
5	Others:	
	a) Payment to existing shareholders	Nil
	b) WC when required	10.00
	c) Capital Expenditure when required	2.50
Total		46.00

(xxvii) Out of the total amount of Rs. 46.00 crore proposed to be paid to all creditors under the Resolution Plan:

- (a) The Resolution Applicant will bring in a total amount of Rs.33.50 crores (Including EMD & Performance Deposit deposited along with cash & cash equivalent of the Corporate Debtor available as on T Day)
- (b) The Resolution Applicant will infuse Rs.12.50 crore as unsecured loan @ 12% per annum in the Corporate Debtor, comprising of working capital support of Rs.10.00 crore and a capital expenditure funding of Rs.2.50 crore to enable the improvements of the business affairs of the Corporate Debtor.
- (c) The upfront amount of Rs.33.50 crore will be contributed by the Resolution Applicant broadly as follows:
 - i. An amount of Rs.22.00 crore will infuse by the Resolution Applicant to acquire 100% equity share capital of Corporate Debtor.



ii. An amount of Rs.9.50 crore will be infused by the Resolution Applicant in Corporate Debtor as unsecured loan @ 12% per annum.

iii. An amount of Rs.2.00 crore available in the account of Corporate Debtor will also be utilized for the payment of all stakeholders as envisaged in the Resolution Plan

The above-mentioned fund except at iii above will be inducted by the Resolution Applicant through its own resources and by taking unsecured loan from the promoters and subsidiary.

(xxviii) The upfront amount of Rs.33.50 crore infused by the Resolution Applicant in Corporate Debtor will further be distributed among all the stakeholder as proposed in Resolution Plan within a below mentioned timelines:

Sr No.	Period	Amount
1	Between T to 3 Days	15,20,00,000/-
2	Between T+60 Days	3,00,00,000/-
3	From T+60 Days to T+120 Days or upto 31 st March 2020, whichever is earlier	6,00,00,000/-
4	From T+120 Days to T+180 Days	9,30,00,000/-
Total		33,50,00,000/-

- T shall mean resolution plan approval date from Adjudicating Authority
- Upfront amount of Rs 15.20 Crores as mentioned above is including EMD, Performance Deposit deposited by the Resolution Applicant along with Cash & Cash Equivalent available with CD as on T Day

(a) The Resolution Applicant proposes payment of Rs. 33.00 crores to the Financial Creditors that will be further divided among all the CoC members in the ratio of their voting right in the CoC.



- (b) The total CIRP cost of Corporate Debtor, till the effective date is not known to the Resolution Applicant. That's why Resolution Applicant assumed the CIRP cost incurred or to be incurred till the effective date is Rs.10.00 lakh. The Resolution Applicant proposes to pay CIRP cost on actual basis as contemplated by the RP. In the event, CIRP cost is more than Rs.10.00 lakh, the same will be adjusted from the payment of Financial Creditors in the ratio of their voting rights in CoC. In the event, CIRP cost is less than Rs.10.00 lakh, the same will be adjusted to the payment of financial creditors in the ratio of their voting rights in CoC.
- (c) The Resolution Applicant proposes to make a payment of Rs.10.00 lakh, since the liquidation value of Corporate Debtor is not known to the Resolution Applicant. However, the Resolution Applicant has assumed that the liquidation value payable to the Operational Creditor (except for the dues/wages of workmen's or employees of the Corporate Debtor for the period of 24 Months preceding the Insolvency Commencement Date & excluding related party creditors) is NIL. However, Resolution Applicant proposes payment towards full & final settlement of Operational Creditor dues.
- (d) Payment towards discharge of the Operational Creditors being the liabilities pertaining to workmen and employees' dues in full and final settlement is not applicable, since there is no claim filed by any workmen & employee as informed by the RP.



- (e) The Resolution Applicant Proposes to make a NIL payment towards full & final settlement of all the claims of other creditors, related party debt, related party creditors & existing shareholders.
- (f) An amount of Rs.30.00 lakh shall be allocated to the contingency fund that will be used to meet out the uncertain liabilities if any arise
- (xxix) The Resolution Plan envisages following payment scheme:
- (a) Related Parties: Resolution Applicant proposes to make a NIL payment towards full & final settlement of all the claims of other creditors, related party debt, related party creditors & existing shareholders.
- (b) Operational Creditors and Statutory Dues: The liquidation value of the Corporate Debtor is not known to the Resolution Applicant. However, the Resolution Applicant has assumed that the liquidation value payable to the Operational Creditors (except for the dues/ wages of workmen's or employees of the Corporate Debtor for the period of 24 months preceding the Insolvency Commencement Date & excluding related party creditors) is NIL. Accordingly, Resolution Application proposes to make a payment of Rs.10.00 lakh towards full & final settlement/ discharge of the entire amount of the all-Operational Creditors including statutory dues (except workmen and/ or employee dues and related party creditor dues).
- (c) Workmen/ employees dues: As per the IM, no claim of workmen and/ or employees is pending as on the Insolvency Commencement Date. Due to that there is no claim of workmen & employee outstanding as



on Insolvency Commencement Date & accordingly no amount is due & payable to workmen's and employees. Further Resolution Applicant proposes that if any workmen's and/ or employees files the claim and same is admitted by the RP prior to approval of Resolution Plan from the Adjudicating Authority, then same will be adjusted with the payment of financial creditor in the ratio of their voting rights in the CoC.

(d) Contingent liabilities: Amount of Rs.30.00 lakh shall be allocated to the contingency fund that will be used to meet out the uncertain liabilities if any arise.

(e) Other Terms of Resolution Plan:

- i. On the approval of this Resolution Plan and payment of amount payable to all stakeholders, as proposed in this Resolution Plan, all the current and non-current assets (including movable and immovable) of the Corporate Debtor shall be transferred to the Resolution Applicant as going concern.
- ii. Upon approval of this Resolution Plan and upfront payment of Rs.15 crore, the Financial Creditors shall issue all required NOC to the Restructured Corporate Debtor on request of Monitoring Committee, which are essential for taking Milling Contract from Government of Punjab during Kharif Season 2019-20.
- iii. The Corporate Debtor, on the approval of the Resolution Plan, would be liable to pay an amount of Rs.33.50 crore, as proposed in the Resolution Plan for all the stakeholders, as full & final settlement of the entire claim of all stakeholder. After receiving entire payment



as envisaged under this Resolution Plan, all the Financial Creditors shall relinquish all his right from the Corporate Debtor existing as on Insolvency commencement date and issue No Dues Certificate to Corporate Debtor

- iv. The Resolution Applicant is agreeing to make various payments under this Resolution Plan based on its understanding that the Corporate Debtor will enjoy full rights with respect to the entire assets of Corporate Debtor, free from all encumbrances and litigation.
- v. The Financial Creditors may recover the remaining financial debt from the Third-Party Security Provider by way of enforcement of the Third-Party Securities or otherwise, without any liability on the Corporate Debtor. The Third-Party Security Provider shall remain liable for the remaining financial debt of the Corporate Debtor, to the Financial Creditors, as principal debtors, without any right of subrogation against the Corporate Debtor under the applicable laws and/ or under the terms of the Third-Party Securities Agreements executed between the Financial Creditors and such Third-Party Security Provider.
- vi. The Third-Party Security Provider shall not be entitled to exercise any right of subrogation in respect of such arrangement and they shall have no rights or claims against the Corporate Debtor and/ or its assets and/ or the Resolution Applicant. The Third-Party Security Provider shall be deemed to have waived such right of subrogation against the Corporate Debtor and any liability of the Corporate



Debtor arising out of any exercise of such subrogation right shall be deemed to have been, waived and extinguished upon approval of this Resolution Plan.

vii. Implementation of this Resolution Plan is subject to approval of the CoC of the Corporate Debtor and thereafter by the Adjudicating Authority

(f) Capital Restructuring: The Resolution Plan also contemplates restructuring of the share capital of the Corporate Debtor, standalone capital reduction of the Corporate Debtor, as part of this Resolution Plan. Upon implementation of this Resolution Plan, Resolution Applicant will hold total paid up equity share capital of the Restructured Corporate Debtor. However, Resolution Applicant shall pledge its 80% equity in Restructured Corporate Debtor to the Financial Creditors till transfer date. On the approval of this Resolution Plan, Restructured Corporate Debtor or/ and its directors are not liable for any act or liability that will be arise in future due to default of Corporate Debtor or/ and its management prior to transfer date.

(g) Operational Restructuring: As per the IM, currently operational activities are being carried out in the plant of the Corporate Debtor at Village Awankha, Dodwan Road, Dinanagar, Distt. Gurdaspur, Punjab. The present infrastructure is adequate to carry on the operations in the unit, but some infusion in working capital, of about Rs.10 crore, shall be infused as and when required for smooth functioning of the unit. The Resolution Applicant will infuse the funds required to continue and expand the operations in the unit.



(h) Restructuring of Financial Statements: After approval of the Resolution Plan, the liabilities of the Corporate Debtor will be restructured in following manner.

- i. All other liabilities except proposed to be paid in the Resolution Plan shall stand extinguished.
- ii. All the contingent liabilities pertaining to period before the date of approval of Resolution Plan and which could discover after the approval of Resolution Plan, but that relate to period preceding the date of approval of Resolution Plan shall stand extinguished after approval of Resolution Plan.

(xxx) The mandatory contents as per section 30 of the IBC read with Regulation 38 of CIRP Regulations are as below:

(a) Payment of CIRP cost in priority of other debts: The Resolution Applicant has proposed to pay estimated CIRP cost to the extent of Rs.0.10 Crores in priority to the repayment of other debts of the Corporate Debtor.

(b) Repayment of debts to operational creditors: As per clause 13.1.1 of the Resolution Plan, the amount due to Operational Creditors will be given priority in payment over Financial Creditors. The liquidation value of the Corporate Debtor is not known to the Resolution Applicant. However, the Resolution Applicant has assumed that the liquidation value payable to the Operational Creditor (except for the dues/ wages of workmen's or employees of the Corporate Debtor for the period of 24 months preceding the Insolvency Commencement Date and excluding related party creditors) is Nil. However, Resolution Applicant



proposes payment of Rs.10 lakh towards full and final settlement of operational creditor dues.

(c) Management of affairs of the Corporate Debtor after approval of Resolution Plan under section 30(2)(c):

Up to Transfer Date

- i. From the submission of Resolution Plan up to the effective date, the RP shall continue to manage the business and operation of the Corporate Debtor. The RP shall ensure that no material adverse change is caused to the business and operations of the Corporate Debtor, the assets of the Corporate Debtor are protected in the existing state and the liabilities of the Corporate Debtor are not increased in any manner.
- ii. On the effective date, a Monitoring Committee shall be constituted, which during the period between the effective date until the closing date, shall comprise of two representatives of the financial Creditors, two representatives of the Resolution Applicant and the RP or the independent person, as the case may be, appointed as stated in clause 7.3 of the Resolution Plan.
- iii. On the effective date, the Resolution Applicant requests the RP, who is experienced in managing the affairs of the Corporate Debtor during the CIRP, to act as a Monitoring Agent on such remuneration as approved by the Monitoring Committee. In the event, the RP refuses to, or is unable to continue post approval of this Resolution Plan by this Adjudicating Authority, the Monitoring Committee shall



appoint an independent person to act as the Monitoring Agent and such person shall discharge all functions of the Monitoring Agent as envisaged under this Resolution Plan.

- iv. During the term: (i) the Monitoring Committee shall supervise the functions of the Board of Directors and the implementation of the Resolution Plan; (ii) the Monitoring Committee may decide to appoint advisors, legal and technical consultants, etc. as may be required; (iii) All the major decisions including change in shareholding, transfer of assets of the Corporate Debtor, all matters, which requires special resolutions, etc, shall be taken only with the prior approval of the Monitoring Committee.
- v. During the period between the effective date and the transfer date, the Monitoring Agent shall have the right to appoint an observer on the Monitoring Committee, who will be entitled to receive all notices, agendas, explanatory statements, minutes of meetings sent to the members of the Monitoring Committee and participate in all meetings of the Monitoring Committee, but not vote in any such meetings. During the term, the Monitoring Agent may appoint advisor(s) or legal or other professional(s) to assist and advise the Monitoring Committee as may be necessary, and such advisor(s)/ legal or other professional(s) shall receive such fee that the Monitoring Committee may, at their discretion decide as deemed fit. All fees payable to the observer appointed by the Monitoring Agent and advisors/ legal or other professionals (including costs and expenses and legal costs, which have arisen or may arise out of or



in connection with the CIRP of the Corporate Debtor) shall be met out of the accruals of the Corporate Debtor.

- vi. During the term, all the decisions, which could otherwise have been taken by the Corporate Debtor's Board, shall be taken by the Monitoring Committee and that the Corporate Debtor's Board shall have no authority, whatsoever to conduct the business of the Corporate Debtor. Any decisions taken by the Corporate Debtor's Board during the term shall be null and void and not be binding on the Monitoring Committee and/ or the Corporate Debtor. All decisions of the Monitoring Committee shall be taken with minimum 66% voting in favour of all members present and/or voting.
- vii. Further, the Monitoring Committee shall be required and entitled to do all such acts, deeds, matters and things as may be necessary, desirable or expedient to supervise the implementation and give effect to this Resolution Plan in accordance with its terms and shall act under the ultimate supervision of this Adjudicating Authority.
- viii. Upon the effective date, the Monitoring Committee shall consider to be authorized by this Adjudicating Authority to implement the Resolution Plan in accordance with its terms. The Monitoring Committee or its members or the entities nominating such members shall not in any manner be implicated in, or in any manner adversely affected by, or have any liability in relation to any actions and/ or omissions.



- ix. The existing Board of the Corporate Debtor shall be and remain suspended post the effective date and all powers and duties of the Board shall vest with the Monitoring Committee.
- x. The Monitoring Committee shall be deemed to have been carrying on and shall carry on the business and activities of the Corporate Debtor in trust for the Resolution Applicant and strictly as provided in the Resolution Plan, through the Monitoring Agent.
- xi. The Monitoring Committee shall have full and final authority to decide all matters relating to the business of the Corporate Debtor arising during the term or incidental thereto.
- xii. Upon and with effect from the transfer date, the Monitoring Committee shall cease to have any powers, duties or obligations in terms of this Resolution Plan and the Suspended Board of the Corporate Debtor shall stand replaced by the Board of Directors as nominated by the Resolution Applicant.

From the Transfer date

On and from the effective date, upon implementation of the Resolution Plan, the total equity shareholding of the Restructured Corporate Debtor shall be held by Resolution Applicant as follows:

Shareholder	%age of paid-up equity share capital
Resolution Applicant	100 %
Other	NIL
Total	100%

The Resolution Applicant will reconstitute the Board of Restructured Corporate Debtor immediately after effective date, which will take care



of the operation of Restructured Corporate Debtor with the consent of Monitoring Committee. The Resolution Applicant will also constitute Audit committee for monitoring revival and rehabilitation of Restructured Corporate Debtor.

(d) Provision for implementation and supervision of the Resolution Plan

under section 30(2)(d): The Resolution Applicant undertakes that on approval of the Resolution Plan by the Adjudicating Authority, it shall comply with all the stipulations mentioned in the Resolution Plan. Further, the Resolution Applicant also proposes to appoint a Monitoring Committee as would be decided by the CoC.

(e) Compliance under Regulation 38(1)(A) of CIRP Regulations to meet

interest of all stakeholders of Corporate Debtor: The interest of all stakeholders is being met as under:

- i. The secured Financial Creditors being paid Rs.33.00 crore.
- ii. The Corporate Debtor will be a going concern and will generate employment in the local region.
- iii. As per the IM, there is no claim filed by the workmen and employees, so it is not required to be provided in the Resolution Plan. Further, the liquidation value flowing to the Operational Creditors as per section 53 is Nil, however, the Resolution Plan proposes to pay Rs.10.00 lakh to the Operational Creditors as full and final settlement. No other liability or dues are being informed in the IM, so as per information, all stakeholders have been taken care of as per the applicable provisions of the IBC.



- (f) Term of the Resolution Plan and its implementation schedule: The term of the resolution plan is 180 days from the date of approval of resolution plan by this Adjudicating Authority. The Resolution Plan shall be implemented as per the following schedule:

Action	Timeline
Approval of the Resolution Plan by the NCLT	T
Resignation of existing directors	T+3 days
Extinguishment of all existing shares and issue of fresh shares to the Resolution Applicant	T+3 days
Payment of CIRP costs (up to Rs.0.10 crore) having priority, workmen & Employees dues (if any) & creditors (other than Financial Creditors)	T+3 days
Payment of Rs. 0.10 crore to Operational Creditors	T+3 days
Payment of Rs. 15.00 crore to Financial Creditors	T+3 days
Payment of Rs. 3.00 crore to Financial Creditors	T+60 days
Payment of Rs. 6.00 crore to Financial Creditors	From T+ 60 Days to T+120 Days or up to 31.03.2020, whichever is earlier
Payment of Rs.9.30 crore to Financial Creditors	T+120 to T+180 Days
Infusion for Working Capital of Rs.10 crore	As and when required
Infusion for Capital Expenditure of Rs.2.5 crore	As and when required

- (g) Other requirements: As per amendment in Regulation 38 of IBC, a Resolution Plan shall provide for the measures, as may be necessary, for insolvency resolution of the Corporate Debtor for maximization of value of its assets. The Resolution Applicant sets out means of finance in the proposed Resolution Plan for carrying on the operations of the Corporate Debtor. The resolution of Corporate Debtor will generate re-employment opportunities for employee/ workers and it will also generate fresh jobs for others. The Resolution Applicant has also asked for directions to the Central Board of Direct Tax to give all benefits and relief to the Corporate Debtor, as admissible to all sick



units in Income Tax Act along with exemption to obtain No Objection Certificate under section 281 of Income tax Act from Income Tax Authorities.

3. Subsequently, the revised Form H along with certain documents was filed by the RP vide Diary No. 1047 dated 07.02.2020, which was taken on record vide this Adjudicatory Authority Order dated 10.02.2020.

4. During the course of hearing dated 10.02.2020, it was observed that the Resolution Applicant under para 8 of the Resolution Plan under the heading “Reliefs and Concessions” sought various observations/ directions from this Adjudicating Authority, however Ld. Counsel for the RP submitted that the Resolution Applicant shall not press the said para 8 i.e. Reliefs & Concession and sought time to file affidavit in this regard. In the next hearing dated 28.02.2020, the Ld. Counsel for the Resolution Applicant sought two weeks’ time to comply with the Order dated 10.02.2020, which was granted subject to payment of costs of Rs.10,000/- vide this Adjudicating Authority Order dated 28.02.2020.

5. Subsequently, the Convenience Proforma was filed by the RP vide Diary No. 1274/02 dated 12.08.2022, which was taken on record vide Order dated 07.09.2022 of this Adjudicatory Authority and Ld. Counsel for the RP was directed to submit the following clarifications:

- (i) Short note on the issues relating to the appeal filed by the erstwhile directors before NCLAT regarding the avoidance transactions.
- (ii) A note on the relief, concessions and approvals sought with reference to the orders passed by this Tribunal.



6. In compliance of the above order, the affidavit dated 17.09.2022 was filed by the RP vide Dairy No. 01274/3 dated 19.09.2022, which was taken on record vide Order dated 23.09.2022 of this Adjudicatory Authority.

7. During the course of hearing dated 23.09.2022, the RP was also directed to file the copy of the order of Hon'ble NCLAT. In compliance of the above Order, the RP, vide Diary No.01274/4 dated 26.10.2022, refilled the affidavit dated 20.10.2024 along with appropriate annexure as filed in compliance of the Order dated 07.09.2024, which was taken on record by this Adjudicating Authority vide its Order dated 27.10.2022. It has been stated in the affidavit that:

- (i) An application was filed by the erstwhile director before the Hon'ble NCLAT, where the Appellant (Mr. Raman Aggarwal, Promoter of the Corporate Debtor) had grievance against the impugned order dated 27.11.2019 of this Adjudicatory Authority limited to the CA No.543 of 2019, wherein the Appellant/ Promoter/ Shareholder raised objection with regard to the maintainability of the application filed by the RP under sections 43, 45 and 66 of the Code.

"An Extract from Grounds of Appeal with NCLAT

** That the Ld. AA entirely failed to appreciate that the Transaction Audit Report dated 31.12.2018 (Kansal Singla & Associates, transaction auditor) cannot form the basis of any decision opinion or action, as it does not disclose any independently verified conclusion.*

That the Ld. Adjudicating authority erred in misconceiving that the application filled by the appellants (Mr. Raman Kumar Aggarwal) was under Section 43, 45 and 66 of the IB code, 2016 seeking to initiate any proceedings under the said sections. In the impugned order, the Ld. Adjudicating authority held that "no right is vested in the ex-promoter/ director to file any application to direct the CoC not to take any adverse action against the CD or suspended management.

That RP failed to provide any document, which can suggest that he formed an opinion independently without solely relying upon the defective auditor's report."



The Hon'ble NCLAT in para 3 and 4 of Order dated 10.01.2020 held that:

“we allow the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh to pass appropriate order on the application filed under section 43, 45 and 66 of the 'I&B Code' after giving opportunity to the parties to file their respective replies, including the Appellant. It will be open to the Appellant to show that the transactions were not 'preferential transactions' or 'undervalue transactions', based on the record.

The appeal stands disposed of with aforesaid observations.

There is no provision to file any company application under the 'National Company Law Tribunal Rules, 2016'. Henceforth, the Adjudicating Authority (National Company Law Tribunal) of the country will never entertain the company applications in insolvency matters as Interlocutory Applications are maintainable under the I&B Code”.

The Hon'ble NCLAT rejected the appeal of the erstwhile promoter and directed them to file their reply in the main application filed by the RP for the avoidance transaction.

(ii) The Resolution Applicant, Compact Capital Limited has prayed for the following reliefs and concessions under Para 8 of the resolution plan:

(a) Hon'ble NCLT be pleased to give or issue necessary directions, instructions to all relevant Governmental Authorities to continue to make available the licenses and permissions to the Corporate Debtor and waiver from obtaining any approval or no-objection, and the business may continue being carried out, as being carried out prior to the Insolvency Commencement Date.

(b) Hon'ble NCLT be pleased to give or issue necessary directions, instructions to all that prior approval of the counterparties of any contract, agreement, licenses and permissions shall not be required to



be obtained for change in control/ ownership/ constitution of the Corporate Debtor.

(c) Hon'ble NCLT be pleased to give or issue necessary directions, instructions to all relevant Governmental Authorities to provide relief and/ or concession to Corporate Debtor as mentioned below: -

- To the Central Board of Direct Tax to give all benefits & relief to the Corporate Debtor as admissible to all sick units in Income Tax Act along with exemption to obtain No Objection Certificate under section 281 of Income tax Act from Income Tax Authorities.
- Post this resolution approval and payment of plan amount as envisaged in the Resolution Plan, all the assets would be handed over free from all encumbrances.
- To the Government of Punjab that the Corporate Debtor also consider, while providing such relief and concession of Government of Punjab admissible to sick units for expeditious revival of the unit.
- To the Government of Punjab to give concession in market fees & RDF to the Corporate Debtor as available to establish new unit within a State.
- To the Director of Food, Civil Supplies & Consumer Affairs, Punjab that the Corporate Debtor shall be considered as existing unit instead of new unit due to change in management of Corporate Debtor & while deciding maximum permissible allocable quantity of free paddy to the Corporate Debtor during Kharif Season 2019-20, the performance of milling paddy during Kharif Season 2017-18



shall be considered instead of Kharif Season 2018-19 (Period in which Company is under CIRP).

(d) Hon'ble NCLT be pleased to allow as mentioned below:

- Other than persons receiving settlements under this plan, other payments or settlements (of any kind) shall be made to any other person in respect of claims filed under the CIRP (including, for avoidance of doubt, any unverified portion of their claims) and all claims against the Corporate Debtor, along with any related legal proceedings, including criminal proceedings and other penal proceedings, shall stand irrevocably and unconditionally abated, settled and extinguished in perpetuity on the effective date.
- The payment of persons contemplated in this Resolution Plan shall be the Corporate Debtor's and RA's full and final performance and satisfaction of all its obligations to such persons and all claims (including, for the avoidance of doubt, any unverified portion of their claims) of such persons against the Corporate Debtor and affiliates shall stand irrevocably and unconditionally settled and extinguished in perpetuity on the effective date.

However, during the hearing of the Resolution Plan application, the Resolution Plan has categorically stated that they will not press upon the relief and concessions, and they will file an affidavit in this regard vide Order dated 10.02.202, but even on the next date of hearing i.e. on 28.02.2020, the Resolution Applicant didn't file the said affidavit and the



cost was imposed on them. Furthermore, till date, the Resolution Applicant had not filed any affidavit in this regard.

The IRP issued a notice inviting all potential claimants to submit their proofs of claims. This was published in the newspapers in accordance with the applicable law. The said Resolution Plan is being proposed in order to revive the stressed Corporate Debtor entity by way of rearranging/ restructuring assets and liabilities of the Corporate Debtor and in the best interest of stakeholders of the Corporate Debtor to the extent possible. With this objective, the Resolution Applicant assumes that all the creditors of the Corporate Debtor that have any claims against the Corporate Debtor have filed their claims and the verifiable claims have been admitted by the IRP/ RP and disclosed in the IM and its supporting documents. Accordingly, the RA and the Corporate Debtor shall have no responsibility or liability in respect of any claims against the Corporate Debtor along with its promoters, directors, officers or any associates attributable to the prior period to the effective date other than any payment to be made under this Resolution Plan and all claims along with any related legal proceedings, including criminal proceedings, and other penal proceedings, shall stand irrevocably and unconditionally abated, settled, and extinguished in perpetuity.

8. This Adjudicating Authority vide its Order dated 25.01.2023 directed the Ld. Counsel for the RP to file the information in the updated convenience proforma for Resolution Plan. In compliance of the above Order, Ld. Counsel for the RP filed Convenience Proforma dated 03.02.2023 vide Diary No. 01274/5 dated 06.02.2023.



9. Subsequently, this Adjudicating Authority disposed of the above CA No. 1106/2019, vide its Order dated 18.04.2023, the extracts of which are reproduced below:

2. The present application is inter-linked and inter-related with IA No. 332/2021, decided by this Adjudicating Authority on 16.02.2023, wherein it is held that

"The present application has been filed by the Resolution Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, considering the revised Resolution plan dated 21.05.2021. Further, in the alternative, permit the Resolution Applicant to withdraw the Resolution Plan as approved by the Committee of Creditors.

xxxxxx

13. In the present case, the Resolution Plan was approved by the CoC on 05.11.2019, and the Resolution Applicant has filed a revised Resolution Plan dated 21.05.2021 as submitted by one third party, namely M/s. R.L. Enterprises in substitution of the present Resolution Applicant. While considering that Covid did affect the economic condition of the industry in general, we rely on the decision of the Hon'ble Supreme Court in the matter

*of the **Committee of Creditors of AMTEK Auto Limited through Corporation Bank (supra)** and hold that there is no scope for negotiations and discussions after the approval of the resolution plan by the CoC under the IBC.*

14. In the instant matter, the Resolution Plan has already been approved by the CoC, and now the Resolution Applicant is claiming that the Resolution Applicant is not in the position to implement the plan anymore and that the plan be taken over by M/s R.L. Enterprises. In this context, we hold that the Resolution Applicant does not possess adjudicatory powers and cannot dictate the terms in which the plan must be approved by the CoC.

15. In view of the above discussions, the present application i.e., IA no. 332/2021, fails and is dismissed accordingly."

3. In view of the above, the Resolution Plan is referred back to the CoC with the direction to convene a meeting within one week of this order with the SRA regarding his decision on the Resolution Plan, and if Resolution Applicant conveys its decision to back out, then, the CoC is to explore the possibility and feasibility of resolving the Corporate Insolvency of the corporate debtor by keeping in mind the objective of maximisation of the value of the corporate debtor. Since the process of IBC is strictly time-bound, the Resolution Professional is directed to complete the Resolution process within 45 days of this order. Further, the Resolution Professional is directed to apprise this Bench of the outcome of the said meeting of the CoC and the Resolution process.

4. In the result, the present application, i.e. CA No. 1106/2019, is disposed of with aforesaid directions.



10. An appeal was filled before the Hon'ble NCLAT bearing Company Appeal (AT) (Insolvency) No. 702 of 2023 against the above order dated 18.04.2023 of this Adjudicating Authority by the SBI. The appeal was allowed vide Hon'ble NCLAT Order dated 01.02.2024 stating that,

"9. Before this application, I.A. No. 332 of 2021 dated 19.06.2021 was filed by none other than the Resolution Applicant under Section 60(5) of the IBC, making two prayers therein, firstly, to consider the revised resolution plan dated 21.05.2021, which was to be submitted by M/s R.L. Enterprises (Third Party) and secondly, for allowing the Resolution Applicant to withdraw the resolution plan, though approved by the CoC with the voting share of 91.95%. This application was dismissed by the Tribunal, while referring to the decision of the Hon'ble Supreme Court, passed in the case of Committee of Creditors of AMTEK Auto Limited through Corporation Bank V/s Dinkar T Venkatasubramanian & Ors. (2021 SCC Online SC 135), holding that there is no scope for negotiations and discussions after the approval of the resolution plan by the CoC under the IBC and dismissed the application, rejecting both the prayers made by the Resolution Applicant, referred to above. In such a scenario, once the application filed by the Resolution Applicant on 09.06.2021, before the application CA No. 1106 of 2019 dated 15.11.2019 filed by Resolution Professional was dismissed, there is no question that the Adjudicating Authority could have passed the order of referring back the resolution plan to the CoC for allowing the Resolution Applicant to withdraw the same. In this regard, the judgment relied upon by the Appellant in the case of Ebix Singapore (Supra) would apply, because in the said case the Hon'ble Supreme Court has held that there is no exit route provided in the statute and the IBC is silent in regard to withdrawal of the resolution plan by the Successful Resolution Applicant. It is suffice to say that the Tribunal failed to apply its mind and the order is also non-speaking, as no reason has been given in para 3 as to why the Tribunal has passed the order of referring the case back to the CoC. In so far as, the judgment relied upon by Respondent No. 2 in the case of Ocean Capital Market Limited (Supra) is concerned, this judgment is on its own facts because in this case, there was no finding recorded by the Tribunal to have considered the decision of the Hon'ble Supreme Court rendered in the case of Ebix Singapore Private Limited.



10. Keeping in view of the facts and circumstances herein, we are satisfied that impugned order is totally illegal and therefore, the present appeal is allowed and the impugned order is set aside. The application bearing I.A. No. 1106 of 2019 is revived and the Tribunal directed to decide the same in accordance with law expeditiously”.

11. In compliance of the Hon'ble NCLAT direction to revive the CA No. 1106 of 2019 and decide the same in accordance with law expeditiously, the CA No. 1106 of 2019 along with other IAs were listed, vide order dated 08.05.2024, for arguments on 14.05.2024.

12. During the course of hearing dated 20.08.2024, a date was requested by Ld. Counsel for SRA for filing the written submissions for consideration of the Resolution Plan as per law and also in view of the directions given by the Hon'ble NCLAT vide order dated 01.02.2024 and this Adjudicating Authority vide its Order dated 20.08.2024 directed the SRA and RP to file written submissions and counter written submissions respectively.

13. During the course of hearing dated 09.09.2024, the RP was also directed to file the reconciliation of assets as per the last balance sheet prepared by erstwhile management and first balance sheet prepared by the RP vis-a-vis assets considered in the valuation report and liabilities considered in the Resolution Plan. The RP filed compliance affidavit dated 18.09.2024, wherein it is stated that from the last balance sheet prepared by the erstwhile management of the Corporate Debtor dated 02.08.2018 and the first balance sheet prepared by the RP dated 31.03.2019, the RP has prepared a comparative table showing the value of the various equities and liabilities as well as assets as reflected in the last balance sheet as on CIRP initiation date and just after CIRP date as below:



	Particulars	02/08/2018 (Last Balance Sheet as on CIRP Date)	1st Balance Sheet after CIRP date (31.03.2019)
I.	EQUITY AND LIABILITIES		
1	Shareholders' funds	(144.83)	(146.32)
(a)	Share capital	21.11	21.11
(b)	Reserves and surplus	(165.94)	(167.43)
2	Share application money pending allotment	-	-
3	Non-current liabilities	-	-
(a)	Long-term borrowings	10.26	9.68
	From Banks	9.60	9.60
	From Related Parties & Others	0.66	0.08
(b)	Deferred tax liabilities (Net)	-	-
(c)	Other Long term liabilities	-	-
(d)	Long-term provisions	-	-
4	Current liabilities	312.40	313.04
(a)	Short-term borrowings	268.85	268.85
(b)	Trade payables	21.06	21.15
(c)	Other current liabilities	22.49	23.04
(d)	Short-term provisions	-	-
	TOTAL	177.83	176.40
II.	ASSETS		
1	Non-current assets	63.82	62.17
(a)	Fixed assets		
(i)	Tangible assets	54.54	52.89
(ii)	Intangible assets	-	-
(iii)	Capital work-in-progress	-	-
(iv)	Intangible assets under development	-	-
(b)	Non-current investments	-	-
(c)	Deferred tax assets (net)	-	-
(d)	Long-term loans and advances	0.20	0.20
(e)	Other non-current assets	9.08	9.08
2	Current assets		
(a)	Current investments	-	-
(b)	Inventories	0.10	0.12
	WIP	-	-
	Finished Goods	0.10	0.12
	Stores & Spares	-	-
(c)	Trade receivables	111.65	110.91
(d)	Cash and cash equivalents	0.57	2.36
	FDR	0.53	2.28
	Bank Balance	0.02	0.08
	Cash and Imprest Balance	0.02	-
(e)	Short-term loans and advances	1.69	0.76
	Unsecured	0.57	0.42
	Market Fee/RDF	1.00	0.24
	Vat and Duty Drawback Receivables(stat Refund)	0.12	0.10
(f)	Other current assets	-	0.08
	TDS Receivables	-	0.05
	Prepaid Expenses	-	0.03
	Interest Refundable	-	-
	Other CA	-	-
	TOTAL	177.83	176.40



However, the reconciliation of assets shown in the balance sheet with the assets considered in the valuation report and the reconciliation of liabilities shown in the balance sheet with the liabilities considered in the Resolution Plan were not furnished.

Written submission of the SRA

14. In compliance of this Tribunal Order dated 20.08.2024, written submissions were filed by the SRA vide Diary No. 02174/7 dated 03.09.2024, which were taken on record by this Adjudicating Authority vide its Order dated 09.09.2024. The SRA vide above affidavit has sought the rejection of the Resolution Plan on the sole ground that it does not qualify the test of 'effective implementation' envisaged under the proviso to Section (1) of the Code. It is argued in the written submission that:

- (i) The Adjudicating Authority, before approving any Resolution Plan presented to it by the CoC/RP, has to satisfy itself that such Resolution Plan has provisions for its effective implementation, however, in the present case, the Resolution Plan, as it approved, is incapable of being effectively implemented, as the RP has failed to keep the Corporate Debtor as a going-concern.
- (ii) An IM prepared under section 29 of the Code by the RP, forms the genesis for submission of a Resolution Plan by any SRA and is the foundation stone, on which the Resolution Plan is set. In the present case, the situation of the Corporate Debtor today is far different, from what had been informed in the IM dated 17.11.2018 (copy of the IM as supplied to the SRA is annexed as Annexure A-1 of the written submission).



- (iii) The relevant portions of the IM of the Corporate Debtor, which played vital role in the decision-making process for the SRA while formulating its plan are as follows:

a) Brief of assets and liabilities of Corporate Debtor (page 7 of the IM):

c) Net Fixed Assets as on 02-08-2018

(As per provisional unaudited books of account of CD):

S.No	Particulars	Amount (Rs.Crs)
1.	Land	4.39
2.	Building	20.49
3.	Plant & Machinery	22.17
4.	Utilities (Boiler, ETP, Lab equipments)	4.25
5.	MFA	3.24
	Total:	54.54

b) Agreements in force (page 23 of the IM):

- Presently the plant is running on job work basis. The CD has entered into a Job work agreement with Surya Enterprises for milling of paddy and rice.

- (iv) Furthermore, not only the IM, even under the Resolution Plan, it was incumbent upon the RP to maintain the unit as a going concern. The relevant clause of the Resolution Plan, is as below:

Corporate Debtor

7.1. Upto the Transfer Date

7.1.1. From the submission of Resolution Plan up to the effective date, the Resolution Professional shall continue to manage the business and operation of the Corporate Debtor. The Resolution Professional shall ensure that no material adverse change is caused to the business and operations of the Corporate Debtor, the assets of the Corporate Debtor a protected in the existing state and the liabilities of the corporate debtor I'm not increase in any manner."

- (v) At present, neither is the plant and machinery valued at ₹22.7 crores, nor is the plant running on job-work basis. Thus, the RP has failed to ensure that there is no material adverse change caused in the business and



operation of the Corporate Debtor, as envisaged under clause 7.1 of the Resolution Plan.

- (vi) As a matter of fact, since January, 2021 the unit is non-operational. Further, in order to reduce expenses, the RP has also reduced the power load of the unit from 2000 KV to 100 KV, which was duly been discussed by the CoC in its 18th meeting dated 13.10.2022 (copy of the minutes annexed as Annexure A-2 of the written submission).
- (vii) The unit of the Corporate Debtor is situated in an area, which is near the Pakistan border and hence the provision of basic facilities in the area are scarce. Even if the plan is approved, it would take a minimum of 5-6 months for the SRA just to get the power load increased to the required capacity of 2000 KV in addition to incurring a huge cost for the restoration of connection.
- (viii) During the aforesaid meeting, the CoC was in knowledge of the financial position of the SRA as well as the Corporate Debtor's non-functioning unit, however, it continued persisting on the Resolution Plan knowing well that a new plan will not fetch the CoC, the amount proposed by the SRA. The CoC was, thus, fully aware that the Corporate Debtor is not in the same position, as was promised in the IM, it still, with a mala-fide intent did not opt for fair resolution of the Corporate Debtor. The relevant extract of the minutes is reproduced below:

“Mr. Rajneesh representative of Canara bank asked the RP that whether there is a chance in which the Hon'ble NCLT can order the CoC or give some time to the CoC to again seek for new resolution applicants in case the CoC requests for the same? To which the Legal Counsel of RP replied that yes, there are instances wherein the NCLT has decided to give some more time to the CoC to seek for new resolution applicants in the cases, wherein the CoC requested to the bench for the



same. Other CoC members however reiterated their stand that since the CD is now not operational, they don't want to request for seeking more time."

- (ix) The RP has also failed to protect the assets of the Corporate Debtor in a state, as they existed at the time of submissions of the Resolution Plan. The plant and machinery of the Corporate Debtor have been lying idle for the last 3 and half years. The same being open to sky, has also become unusable or in need for major fixings and repairs. The cost of repairing the unit and making the unit operational would be more than Rs.50 lakhs, which expense is being laid at the doorstep of the Resolution Plan for failure of the RP in its duty to keep the mill running and operational.
- (x) In view of the aforesaid, on account of the RP having failed to maintain the Corporate Debtor as a going concern, the Resolution Plan is not capable of being implemented effectively and thus deserves to be rejected in view of proviso to Section 31(2) of the Code.
- (xi) On account of failure of the Resolution Plan to protect the position and the assets of the Corporate Debtor in the state as promised and portrayed in the IM, the Resolution Plan ought to be rejected on this ground. The plan is implementable, only if the Corporate Debtor was a going concern and without the same, the entire structure of the Resolution Plan has been changed unilaterally by the RP/ CoC, which burden cannot in any manner be fastened upon the Resolution Plan.
- (xii) Even the co-ordinate benches of the Hon'ble NCLT have accepted this position that once the RP fails to maintain the Corporate Debtor as a going concern or if there's any material change from the IM, the Resolution Plan is deemed to be unworkable under the proviso of Section 31(1) of IBC and thus rejected (copy of the Orders dated 30.04.2024 passed by the **NCLT**



Delhi Bench in the matter of 'Mr. Chandra Prakash vs. Sumit Kumar Khanna and Ors' in IA/4383/ND/2021 in CP(IB) No. 2039/ND/2019 and dated 06.07.2022 passed by the ***Hon'ble NCLT, Ahmedabad Bench in the matter of 'M2K Developers Pvt. Ltd. and Ors. vs. Ramachandra D. Choudhary, RP of Anil Mega Food Park Pvt. Ltd. and Ors.'*** in ***IA/843(AHM)/2021 and IA/420(AHM)/2022 in CP(IB) No. 287/NCLT/AHM/2019*** are annexed as Annexure A-3 and Annexure A-4 respectively.

Counter written submission of the RP

15. In compliance of this Tribunal Order dated 20.08.2024, the counter written submissions were filed on behalf of the RP vide Diary No. 1274/8 dated 09.09.2024, which was taken on record by this Adjudicating Authority vide its Order dated 19.09.2024. The RP in his counter written submissions sought approval of the Resolution Plan along with Addendum as submitted by the SRA and as duly approved by the CoC in its meeting dated 05.11.2019 and in its support has argued as below;

- (i) As per the scheme of IBC, a Resolution Plan, which has been approved by the CoC, shall be binding inter-se between the CoC members and the SRA, even when an Application for approval of Resolution Plan is pending adjudication before the Adjudicating Authority. The Hon'ble Supreme Court in the matter of "***Ebix Singapore Pvt. Ltd. vs. CoC of Educomp Solutions Limited and Anr. (2022) 2 SCC401***", had categorically held that the SRA cannot withdraw or modify the Resolution Plan after the CoC has approved it.



- (ii) It is a settled position of law that once the Resolution Plan is approved by the CoC of the Corporate Debtor, the same is binding on the SRA and the CoC and the SRA cannot withdraw or modify the Resolution Plan or make a prayer before the Adjudicating Authority for withdrawing its Resolution Plan. Therefore, the present application is liable to be dismissed, as the Resolution Plan cannot be sent for re-consideration to the CoC.
- (iii) The Hon'ble Appellate Tribunal in the matter of "***Noble Marine Metals Co Wll vs. Kotak Mahindra Band Ltd. and Ann, Company Appeal (AT) (Insolvency) No. 653 of 2022***" has categorically held that it is a settled position of law that the approved Resolution Plan is binding upon the SRA in terms of the provisions of the Code.
- (iv) The Resolution Plan once approved by the CoC is a 'Contract' and becomes binding between the SRA and the CoC. The Hon'ble Supreme Court in a catena of Judgements has held that the jurisdiction of this Adjudicating Authority is limited as far as the Commercial Wisdom of the CoC is concerned, unless and until there is any material irregularity or is against the provisions of section 30(2) of the Code and in the instant case there being none therefore, the plea of SRA cannot be allowed.
- (v) Once a Resolution Plan has been approved by the CoC of the Corporate Debtor and an Application for approval of Resolution Plan is pending adjudication before this Adjudicating Authority, the SRA has no jurisdiction to withdraw or seek rejection of the Resolution Plan or to reconsider the Resolution Plan or renegotiate the same. The Resolution Plan, once approved by the CoC, is binding on all stakeholders & the SRA and it is only subject to approval of this Hon'ble Adjudicating Authority under



Section 31 of the Code. In doing so, it is a settled principle of law that this Adjudicating Authority would not have the jurisdiction to entertain the Application to withdraw the Resolution Plan Approval Application, be it for reconsideration of the Resolution Plan or to renegotiate the same with the SRA. The Resolution Plan was approved by the CoC in their 12th meeting convened on 05.11.2019 with 91.95% voting share in favour of the Resolution Plan with a view to maximize the assets of the Corporate Debtor and to revive the Corporate Debtor at the earliest. The Application for approval of Resolution Plan is pending adjudication before this Adjudicating Authority, and at this stage the SRA cannot be allowed to take a U-Turn from its earlier stand and reverse the decision already taken by it. Once the Resolution Plan is submitted and the CoC has exercised of approving the Resolution Plan by applying its commercial wisdom, the SRA cannot withdraw its Resolution Plan as held by the Hon'ble Supreme Court in ***Ebix (supra) and Deccan Value Investors L.R & Anr. vs Dinkar Venkatsubramaniam & Anr in Civil Appeal No. 2801 of 2020.***

- (vi) The Hon'ble National Company Law Appellate Tribunal in the matter of ***"Kalinga Allied Industries India Private Limited vs. CoC and Ors.- Company Appeal (AT) (Insolvency) No. 689 of 2021"*** has held that once the Resolution Plan is submitted to the Adjudicating Authority, it is binding and irrevocable as between the CoC and the SRA in terms of the provisions of the Code.
- (vii) It is well settled that the SRA lacks the locus standi to directly object to the approval of its very own Resolution Plan by this Adjudicating Authority however, the present written submission wrongfully seeks withdrawal of



the Resolution Plan, which amounts to indirectly objecting to its own Resolution Plan.

- (viii) It is a well settled position of law that one cannot do indirectly, what one cannot do directly as laid down by the Hon'ble Supreme Court in a catena of judgments. It is worthwhile to refer to the well settled principle of law i.e. "The Doctrine of colourable legislation", which means what cannot be done directly, cannot be done indirectly.
- (ix) The SRA had earlier filed I.A. no. 332 of 2021 under section 60(5) of the Code, seeking revision/ withdrawal of the Resolution Plan claiming that the SRA is not in the position to implement the Resolution Plan and that the Resolution Plan be taken over by one M/s. R.L. Enterprises. This Adjudicating Authority vide Judgment dated 16.02.2023 dismissed the I.A. 332 of 2021 and held that the SRA doesn't possess adjudicating powers and cannot dictate the terms in which the Resolution Plan must be approved by the CoC. Therefore, the doctrine of Res Judicata will be applicable in the present case and the same amounts to an abuse of the process of Court. The copy of Judgment dated 16.02.2023 passed by this Adjudicating Authority is annexed as Annexure A-1 of the counter written submissions.
- (x) The Hon'ble Supreme Court in the matter, ***Bombay Gas Co. Ltd. Vs. Jagannath Pandurang & Others, (1975) 4 SCC 690*** in paragraph 11 held that the doctrine of res judicata is a wholesome one, which is applicable not merely to matter governed by the provisions of the Code of Civil Procedure, but to all litigations. It proceeds on the principle that there should be no unnecessary litigation and whatever claims and defences are open to



parties should all be put forward at the same time provided no confusion is likely to arise by so putting forward all such claims. In the case of ***Kaushik Co-operative Building Society Vs. N. Parvathamma and Others, (2017) 13 Supreme Court Cases 138*** it is held that the application of the rule by the courts should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law. The rule of res judicata while founded on ancient precedent is dictated by a wisdom, which is for all time. The basic character of this principle is public policy and preventive as to give finality to the decision of the court of competent jurisdiction and prevent further litigation.

- (xi) The ***Hon'ble Appellate Tribunal in Vikas Dahiya Vs. Arrow Engineering Limited & Anr., Company Appeal (AT) (Insolvency) No. 699 of 2022***, held that the doctrine of Res Judicata is applicable to the proceeding of IBC as well.
- (xii) In view of the principle laid down in the above judgments, strictly doctrine of Res Judicata is applicable even to the proceedings under IBC and challenge to the findings in incidental or collateral proceedings amounts to an abuse of process of Court.
- (xiii) The Applicant is a mere facilitator in the Resolution Procedure and is working under the continuous supervision of this Adjudicating Authority. The Hon'ble Supreme Court in ***Ebix (Supra) and Deccan Value (Supra)*** had specifically held that contentions from the SRAs justifying withdrawal on the grounds of lack of information or alleged fraud by the RP do not constitute fraud and thus, are not grounds for altering the Resolution Plan.



(xiv) The delay in the present matter is caused on account of the SRA as the SRA had filed an Application bearing no. I.A. 332 of 2021 under section 60(5) of the Code, seeking revision/ withdrawal of the Resolution Plan claiming that the SRA is not in the position to implement the Resolution Plan and that the Resolution Plan be taken over by M/s. R.L. Enterprises. This Adjudicating Authority vide Judgment dated 16.02.2023 dismissed I.A. No. 332 of 2021 and held that the SRA doesn't possess adjudicating powers and cannot dictate the terms, in which the Resolution Plan must be approved by the CoC. Therefore, the doctrine of Res Judicata will be applicable against the instant plea of SRA.

ANALYSIS AND FINDINGS

16. We have heard the submissions made by the RP/ Applicant, SRA and have also perused the records carefully.

17. The first issue for consideration before us is **“Whether SRA can contend for rejection of the Resolution Plan submitted by it”**.

(i) The SRA, in its written submission, has narrated the sequencing of events in this matter as shown in the Table below:

Dates	Particulars
27.07.2018	Corporate Debtor admitted to CIRP.
25.10.2018	Form G Published
17.11.2018	IM prepared
16.04.2019	The CoC rejected Resolution Plan filed by SRA (Compact Capital Ltd.).
22.04.2019	IA No. 343/2019 filed by CoC under Section 33(2) of the Code, seeking liquidation of the Corporate Debtor.
25.04.2019	IA No. 344/2019 filed by the SRA seeking approval of its Resolution Plan and rejection of IA No. 343 of 2019.
01.11.2019	IA No. 344/2019 filed by the SRA allowed by this Adjudicating Authority.



Dates	Particulars
05.11.2019	The CoC accepted the revised Resolution Plan dated 20.04.2019 along with the addendum dated 05.11.2019.
15.11.2019	CA No. 1106/2019 filed by the RP seeking approval of the aforesaid Resolution Plan.
March, 2020	Due to COVID-19, the financial positions of the SRA as well as the Corporate Debtor changed drastically, just as majority of the industries across the country.
30.07.2020	Due to financial distress caused to SRA on account of COVID-19, the SRA sought modification of the Resolution Plan to the extent that the amount payable to the Financial Creditors be reduced and the Resolution Plan be implemented by collectively and jointly by the Resolution Plan along with M/s R.L. Enterprises, a proprietorship firm of Mr. Hardeep Kumar Arora by M/s R.L. Enterprises
18.08.2020	IA No. 400/2020 filed by the SRA seeking directions to the CoC to consider the aforesaid revised Resolution Plan dated 30.07.2020.
11.06.2021	The SRA sought modification of the revised Resolution Plan dated 30.07.2020 to the extent that the same be allowed to be solely carried out by M/s R.L. Enterprises in substitution of the SRA and filed IA No. 332/2021 before this Adjudicating Authority.
15.12.2021	IA No. 400/2020 was disposed of being infructuous in view of filing of IA No. 332/2021.
16.02.2023	IA No. 332/2021 was dismissed on the ground that once the Resolution Plan is approved by the CoC, there is no scope for negotiation and further discussions.
16.04.2023	CA No. 1106/2019 was disposed of with the directions to the CoC to convene a meeting with the SRA and if the SRA conveys its decision to back out, then the COC is to explore the possibility and feasibility of resolving the Corporate Debtor.
April-May, 2023	Aforesaid order dated 16.04.2023 was assailed by the SBI, one of the CoC members before the Hon'ble NCLAT vide Company Appeal (AT)(Ins) No. 702 of 2023.
01.02.2024	The Hon'ble NCLAT allowed the appeal on the ground that the Adjudicating Authority has no power to refer the matter to CoC and there is no exit route provided in the statute. The order dated 16.04.2023 passed by this Adjudicating Authority was thus set aside by the Hon'ble NCLAT and CA No. 1106/2019 was ordered to be revived and this Adjudicating Authority was directed to decide the same in accordance with law expeditiously.



- (ii) We note from the above sequence of events that the in April 2019, the CoC had rejected the Resolution Plan filed by SRA and recommended for liquidation of the Corporate Debtor, which was challenged by SRA and when the revised Resolution Plan of the SRA was approved by the CoC, the SRA made attempts to exit from the Resolution Plan by bringing another person in its place. As the same is not permissible as per law, this Adjudicating Authority rejected the IAs filed by the SRA.
- (iii) The SRA now is attempting to exit from the Resolution Plan on the ground of change in circumstances, which is not permissible under the law. In this regard, we place reliance on the ***Hon'ble Supreme Court Judgement in the matter of "Ebix Singapore Pvt. Ltd. vs. CoC of Educomp Solutions Limited and Anr. (Supra)"***, wherein it was held as below:

"While the above observations were made in the context of a scheme that has been sanctioned by the court, the resolution plan even prior to the approval of the adjudicating authority is binding inter se the CoC and the successful resolution applicant. The resolution plan cannot be construed purely as a "contract" governed by the Contract Act, in the period intervening, its acceptance by the CoC and the approval of the adjudicating authority. Even at that stage, its binding effects are produced by IBC framework. The BLRC Report mentions that "[w]hen 75% of the creditors agree on a revival plan, this plan would be binding on all the remaining creditors". The BLRC Report also mentions that, "the RP submits a binding agreement to the adjudicator before the default maximum date". We have further discussed the statutory scheme of IBC in Sections I and J of this judgment to establish that a resolution plan is binding inter se the CoC and the successful resolution applicant. Thus, the ability of the resolution plan to bind those who have not consented to it, by way of a statutory procedure, indicates that it is not a typical contract."

(Emphasis Supplied)

- (iv) We also note that the IAs filed by the SRA regarding modification of the plan have already been rejected by this Adjudicating Authority and thus allowing the prayer of the SRA would indirectly amount to review by this Adjudicating Authority of its own order.



- (v) In view of the above, we do not find any content in the arguments of the SRA and reject the same. Thus, we proceed further with the direction of the NCLAT to decide the present application for the approval of the Resolution Plan, in accordance with law.

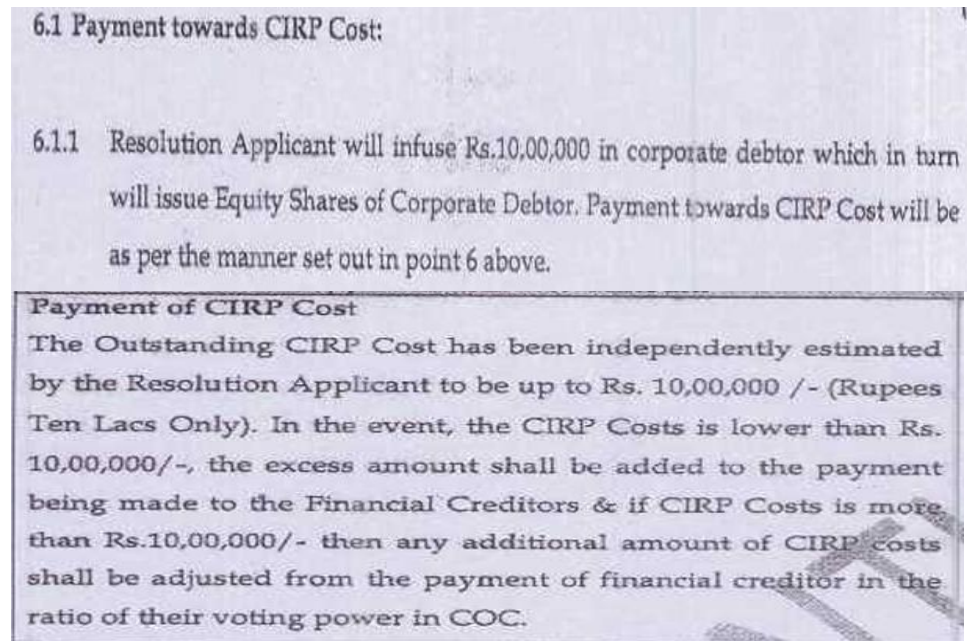
18. Section 31 of the IBC provides that ***if the Adjudicating Authority is satisfied that the resolution plan as approved by the COC under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan***, which shall be binding on the corporate debtor and its employees, members, creditors, 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 owed, guarantors and other stakeholders involved in the resolution plan. In view of the above, we consider it appropriate to examine whether resolution plan meets the requirements of sub-section (2) of section 30 of the IBC as below:

- (a) ***The resolution plan 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.***

- (i) The RP at page 18-19 of the Convenience Proforma dated 03.02.2023 has mentioned as below:

“The total CIRP cost incurred is Rs.71.48 lakh. Since the Corporate Debtor was a going concern, therefore, whatever CIRP cost was incurred was paid for through the amount generated in the account of the Corporate Debtor. However, since the initial cost for initiating CIRP was incurred by the OBC amounting to Rs.6.89 lakh against the Corporate Debtor. The same amount needs to be released to the OBC. Further, the CIRP cost provided for in the plan is Rs.10 lakh. However, it has been stated that if the CIRP costs is less than Rs.10 lakh, then the difference amount shall be adjusted towards payment to the secured financial creditors and in case, the CIRP costs is more than Rs.10 lakh, then the same shall be met out from the amount offered to financial creditors. The excess of whatever is left after paying the CIRP cost shall be adjusted against the financial creditors.

- (ii) The RP at page 18 of the Convenience Proforma dated 03.02.2023 has also referred to clause 6.1 of the of the Resolution plan (page 430-431 of the CA), which states as below:



- (iii) Thus, the Resolution Plan complies with the provision of the section 30(2)(a) of IBC regarding CIRP costs.

(b) The resolution plan 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.



- (i) The RP at page 19 of the Convenience Proforma dated 03.02.2023 has referred to clause 6.3 of the of the Resolution plan (page 431 of the CA), which states as below:

6.2 Payment towards Operational Creditors (Workman and Employees dues): Nil
(As no claim filed by the Workman & Employee). Further if any claim filed & admitted by the RP prior to effective date then same will be paid from the contingency fund up to the extent of Rs.10,00,000/-.

6.3 Payments towards remaining Operational Creditor:
6.3.1 Resolution Applicant will infuse 10,00,000 in corporate debtor, which in turn will issue Equity Shares of Corporate Debtor.

- (ii) The RP at page 2 of the Convenience Proforma dated 03.02.2023 has stated the fair and liquidation value of the Corporate Debtor as below:

Sr. No.	Name of Valuer	Fair value	Liquidation Value
1	Abhay Kumar (Machinery)	17,28,00,000	12,09,60,000
2	Ankit goel (P&M)	16,21,00,000	11,35,00,000
	Total	16,74,50,000	11,72,30,000
3	Sachin Goel (L&B)	19,17,36,000	8,16,17,000
4	Anil Kumar (L&B)	17,12,25,000	8,99,55,000
	Total	18,14,80,500	8,57,86,000
5	Total (Average)	34,89,30,500	20,30,16,000

- (iii) The RP at page 21 of the Convenience Proforma dated 03.02.2023 has mentioned the amounts actually provided for under Section 30(2) of the Code as below:



Particulars	Amount of Claim Filed (Rs. in Cr.)	Amount of Claim admitted (Rs. in Cr.)	Amount provided under the Plan (Rs. in Cr.)	Amount provided to the amount claimed %	Amount reflected in the last Balance Sheet before CIRP. (only on 3 * starred item below)
Secured Financial Creditors	312.59	312.59	33.00	10.65%	20.30
Unsecured Financial Creditors (except related party)	Nil	Nil	Nil	Nil	Nil
*Staff & Workmen	Nil	Nil	Nil	Nil	Nil
Operational Creditors (statutory dues)	11.42	7.73	0.10	1.30%	NIL
Related Party (includes Unsecured Financial Creditors & Operational Creditor)	Nil	Nil	Nil	Nil	Nil
*Statutory Liabilities	Nil	Nil	Nil	Nil	Nil
*Any other liability, including contingent liability	Nil	Nil	0.30	--	--
Total	324.01	320.32	33.40	10.36%	20.30

- (iv) The liquidation value of the Corporate Debtor is Rs.20.30 crore and claim admitted of the secured Financial Creditor is Rs.312.59. Since the amount provided in the Resolution Plan is Rs.33.40 crores, which is less than the admitted claim of the Financial Creditor, the Operational Creditors are not likely to get anything in case of distribution under section 53 of the IBC. However, the Resolution Plan provides for Rs.10 lakh for the Operational Creditors and thus, the payment to the



Operational Creditors complies with the provision of section 30(2)(b) of IBC.

- (v) The liquidation value available for the Operational Creditors (other than workmen) is nil, as the claim of the secured creditors is more than the liquidation value of the Corporate Debtor. Further, there are no claims of the workmen for twenty-four months preceding the insolvency commencement date.
- (vi) The RP at page 1 of the Convenience Proforma dated 03.02.2023 has mentioned the votes of the CoC members casted in favour/ against the Resolution Plan as below:

Name of the financial creditor	Amount claimed	Amount admitted	Percentage of voting share(%)	Voting Resolution for Plan (Voted for/Dissented/Abstained)
State Bank of India	1497630568	1497630568	47.91	Voted for
Union Bank of India	438418190	438418190	14.03	Voted for
Canara Bank	399326694	399326694	12.77	Voted for
IDBI	306246693	306246693	9.80	Voted for
UCO Bank	251553112	251553112	8.05	Dissented
PNB (Erstwhile Oriental Bank of Commerce)	232713832	232713832	7.44	Voted for
TOTAL	3125889089	3125889089	100	100

It may be seen from the above, that UCO Bank is the only dissenting Financial Creditor. Since the Resolution Plan amount available for distribution to the Financial Creditors is Rs.33.00 crore against the liquidation value of the Corporate Debtor amounting to Rs.20.30 crore



and the UCO Bank will get the proportionate share in the amount available to the Financial Creditors, the payment to the dissenting Financial Creditors also complies with the provision of section 30(2)(b) of IBC.

- (c) The resolution plan provides for the management of the affairs of the corporate debtor after approval of the resolution plan;
- (d) The resolution plan provides for the implementation and supervision of the resolution plan;
 - (i) The RP at page 19 of the Convenience Proforma dated 03.02.2023 has referred to clause 7 of the of the Resolution plan (page 433 of the CA), which states as below:

7. MANAGEMENT AND CONTROL OF AFFAIRS OF THE CORPORATE DEBTOR

7.1. Up to Transfer Date

7.1.1. From the submission of Resolution Plan up to the Effective Date, the Resolution Professional shall continue to manage the business and operation of the Corporate Debtor. The Resolution Professional shall ensure that no material adverse change is caused to the business and operations of the Corporate Debtor, the assets of the Corporate Debtor are protected in the existing state and the liabilities of the Corporate Debtor are not increased in any manner.

7.1.2. On the Effective Date a monitoring committee shall be constituted ("Monitoring Committee") which during the period between the Effective Date until the Closing Date, shall comprise of 2 (Two) representatives of the Financial Creditors, 2 (Two) representatives of the Resolution Applicant and the Resolution Professional or the independent person, as the case may be, appointed as stated in Clause 7.3.

7.1.3. On the Effective Date, the Resolution Applicant hereby requests the RP who is experienced in managing the affairs of the corporate debtor during the CIRP Process, to act as a monitoring agent ("Monitoring Agent") on such remuneration as approved by the Monitoring Committee. In the event the resolution professional refuses to, or is unable to continue post approval of this Plan by the NCLT, the Monitoring Committee (as defined below) shall appoint an independent person to act as the Monitoring Agent and such person shall discharge all functions of the Monitoring Agent as envisaged under this Plan.

7.1.4. During the Term: (i) the Monitoring Committee shall supervise the functions of the Board of Directors and the implementation of the Plan; (ii) the Monitoring Committee may decide to appoint advisors, legal and technical consultants, etc. as may be required; (iii) All the major decisions including change in shareholding, transfer of assets of the corporate debtor, all matters which requires special



resolutions, etc, shall be taken only with the prior approval of the Monitoring Committee.

- 7.1.5. During the period between the Effective Date and the Transfer Date, the Monitoring Agent shall have the right to appoint an observer on the Monitoring Committee who will be entitled to receive all notices, agendas, explanatory statements, minutes of meetings sent to the members of the Monitoring Committee and participate in all meetings of the Monitoring Committee but not vote in any such meetings. During the Term, the Monitoring Agent may appoint advisor(s) or legal or other professional(s) to assist and advise the Monitoring Committee as may be necessary, and such advisor(s)/legal or other professional(s) shall receive such fee that the Monitoring Committee may, at their discretion decide as deemed fit. All fees payable to the observer appointed by the Monitoring Agent and advisors/legal or other professionals (including costs and expenses and legal costs which have arisen or may arise out of or in connection with the corporate insolvency resolution process of the Company) shall be met out of the accruals of the Company.
- 7.1.6. During the Term, all the decisions which could otherwise have been taken by the Corporate Debtor's board shall be taken by the Monitoring Committee and that the Corporate Debtor's board shall have no authority whatsoever to conduct the business of the Corporate Debtor. Any decisions taken by the Corporate Debtor's board during the Term shall be null and void and not be binding on the Monitoring Committee and/or the Corporate Debtor. All decisions of the Monitoring Committee shall be taken with minimum 66 % voting in favour of all members present and/or voting.
- 7.1.7. Further, the Monitoring Committee shall be required and entitled to do all such acts, deeds, matters and things as may be necessary, desirable or expedient to supervise the implementation and give effect to this Plan in accordance with its terms and shall act under the ultimate supervision of the NCLT.
- 7.1.8. Upon the Effective Date, the Monitoring Committee shall be considered to be authorized by the NCLT to implement the Plan in accordance with its terms. The Monitoring Committee or its members or the entities nominating such members shall not in any manner be implicated in, or in any manner adversely affected by, or have any liability in relation to any actions and/or omissions.
- 7.1.9. The existing Board of the Corporate Debtor ("Suspended Board") shall be and remain suspended post the Effective Date and all powers and duties of the Board shall vest with the Monitoring Committee.
- 7.1.10. The Monitoring Committee shall be deemed to have been carrying on and shall carry on the business and activities of the Corporate Debtor in trust for the Resolution Applicant and strictly as provided in the Resolution Plan, through the Monitoring Agent.
- 7.1.11. The Monitoring Committee shall have full and final authority to decide all matters relating to the business of the Corporate Debtor arising during the Term or incidental thereto.
- 7.1.12. Upon and with effect from the Transfer Date, the Monitoring Committee shall cease to have any powers, duties or obligations in terms of this Plan and the Suspended Board of the Corporate Debtor shall stand replaced by the Board of Directors as nominated by the Resolution Applicant.
- 7.2. From the Transfer date**
- 7.2.1. On and from the effective date, upon implementation of Resolution Plan, the total Equity Shareholding of the Restructured Corporate Debtor shall be held by RA as follows:



Shareholder	Percentage of Total Capital	paid up Equity Share
Resolution Applicant	100 %	
Other	NIL	
Total	100%	

7.2.2. RA will reconstitute the Board of Restructured Corporate Debtor immediately after effective date who will take care the of operation of Restructured Corporate Debtor with the consent of monitoring committee. RA will also constitute Audit committee for monitoring revival and rehabilitation of Restructured Corporate Debtor.

- (e) **The resolution plan does not contravene any of the provisions of the law for the time being in force;**

The RP at page 19 of the Convenience Proforma dated 03.02.2023 has stated that the Resolution Plan contravene none of the provisions of the law for the time being in force.

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

(i) The Applicant has submitted the details of various compliances as envisaged by the Code and the CIRP Regulations, which a Resolution Plan is required to adhere to, as follows:

Section of IBC/ Regulation of CIRP Regulations	Compliance in the Resolution Plan
Section 25(2)(h) Whether the SRA meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the Corporate Debtor?	Clause 2(6)
Section 29A Whether the SRA is eligible to submit Resolution Plan as per final list of RP or Order, if any, of the Adjudicating Authority?	Yes, as per affidavit of the SRA attached at Page 456
Section 30(1) Whether the SRA has submitted an affidavit stating that it is eligible?	Clause 15 affidavit of the SRA attached at Page 450 & 456
Section 30(4) Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	Clause 14 Approved with 91.95% votes as per minutes of CoC passing of Resolution Plan attached at Page 401



Section of IBC/ Regulation of CIRP Regulations	Compliance in the Resolution Plan
Section 31(1) Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Clause 11 and Clause 7 of Resolution Plan attached at Page 446 & 433
Regulation 35A Where the RP made a determination, if the Corporate Debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	-
Regulation 38 (1) Whether the amount due to operational creditors under the Resolution Plan has been given priority in payment over financial creditors?	Clause 12 of Resolution plan attached at Page 448
Regulation 38(1A) Whether the Resolution Plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause 13.1.5 of Resolution Plan attached at Page 449
Regulation 38(1B) (i) Whether the SRA or any of its related parties have failed to implement or contribute to the failure of implementation of any Resolution Plan approved under the code. (ii) If so, whether the SRA has submitted the statement giving details of such non implementation?	Clause 10.7.2 Page 444
Regulation 38(2) Whether the Resolution Plan provides: (a) the term of the Resolution Plan and its implementation schedule? (b) for the management and control of the business of the Corporate Debtor during its term? (c) adequate means for supervising its implementation?	(a) Clause 11 and 12 of Resolution plan attached at Page 446 (b) Clause 7 Page 433 (c) Clause 7 and 11.2 Page 433 & 446



Section of IBC/ Regulation of CIRP Regulations	Compliance in the Resolution Plan
Regulation 38(3) Whether the Resolution Plan demonstrates that – (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the SRA has the capability to implement the resolution plan?	(a) Clause 4 (Page 419) (b) Clause 14 (Page 450) (c) Clause 11 and Clause 7 (Page 446 & 433) (d) Nil (e) Clause 14 Page 450
Regulation 39(2) Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Yes, the RP determined the transactions and filed an application for the same with the NCLT Chandigarh CA No. 82 & 30 of 2019 IN CP (IB) No. 46/Chd/Pb/2018 and the same is pending for adjudication.
Regulation 39(4) Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	The SRA shall pay Rs.75 lakh and existing EMD of Rs.25 Lacs together amounting to Rs.1 Crores as performance security as provided under Regulation 36B(4A) of CIRP Regulations as per minutes of CoC passing of Resolution Plan attached at Page 401

(ii) The RP has submitted requirements of Regulation 37(1) of CIRP Regulations as under:

Regulation 37	Compliance in the Resolution Plan
(a) Transfer of all or part of the assets of the corporate debt to one or more persons;	No such measures have been proposed
(b) Sale of all or part of the assets whether subject to any security interest or not;	No such measures have been proposed



Regulation 37	Compliance in the Resolution Plan
(ba) Restructuring of the Corporate Debtor, by the way of merger, amalgamation and demerger.	No such measures have been proposed
(c) The substantial acquisition of shares of the Corporate Debtor, or the merger or consolidation of the Corporate Debtor with one or more persons;	After the effective date all the existing shareholders holding of the equity shares shall be fully extinguished and the new shares shall be issued to the Resolution Applicant. (Clause 10.8.1, Page 44)
(ca) Cancellation or delisting of any shares of the Corporate Debtor, if Applicable	
(d) Satisfaction or modification of any security interest;	After receiving entire payment as provided under the Resolution Plan, the Financial Creditor shall relinquish all their rights from the Corporate Debtor exists as on insolvency commencement date. (Clause 3(12) Page18)
(e) Curing or waiving of any breach of the terms of any debt due from the corporate debtor;	The plan does not provide for curing or waiving of any breach of the terms of any debt due from the Corporate Debtor.
(f) Reduction in the amount payable to the creditors;	The Resolution Applicant has proposed reduction in amount payable to the Creditors. (Clause 3(6), Page-16)
(g) Extension of a maturity date or a change in interest rate or other terms of a debt due from the Corporate Debtor;	No such measures have been proposed
(h) Amendment of the constitutional documents of the Corporate Debtor	No such measures have been proposed
(i) Issuance of securities of the Corporate Debtor, for cash, property, securities, or exchange for claims or interests or other appropriate purpose	No such measures have been proposed
(j) Change in portfolio of goods or services produced or rendered by the corporate debtor	No such measures have been proposed
(k) Change in technology used by the Corporate Debtor and	No such measures have been proposed



Regulation 37	Compliance in the Resolution Plan
(l) Obtaining necessary approvals from the Central and State Governments and other authorities;	The Resolution Applicant has not provided for any approvals from the Central and State Governments and other authorities.

19. It has been stated that C.A no. 30/2019 was filed under Sections 43, 45, 49 & 66 of IBC, to bring to the notice of this Tribunal violations of preferential transactions of the Corporate Debtor. The said application was segregated into three applications IA No.205/2023, IA No. 206/2023 and IA No. 207/2023. The RP at page 29-30 of the Convenience Proforma dated 03.02.2023 has given the PUF Transactions filed by RP under Regulation 35A as below:

Sections	Nature of allegation	Amounts (Rs. Lakh)	Documents relied
43, 44	Preferential transaction	2899.05	Transaction Report
45, 46, 47, 48,49	Undervalued transaction	127.04	Transaction Report
66	Fraudulent transaction	10298.27	Transaction Report
50, 51	Extortionate transaction	NIL	Transaction Report
TOTAL		13324.36	
<p>As per the observation of the Independent Transaction Auditors, the Corporate Debtor has not adopted prudent accounting practices because of the following:</p> <p>(a) The Corporate Debtor has neither disclosed the names nor the transactions with the Related Parties in accordance with AS 18- "Related Party Disclosures" in its Financial Statements.</p> <p>(b) The Corporate Debtor used to transfer Year-end Dr and Cr balances of the Related parties to Cheques in Transit and reverse the same in subsequent financial year.</p> <p>(c) The Corporate Debtor has shown Rs.1000 lakhs and Rs 500 lakhs as unsecured loans, whereas these amounts were received from the parties as payment against supply of goods. Further, the Corporate Debtor has classified certain creditors as unsecured loans.</p> <p>(d) The Corporate Debtor has shown all the unsecured loans as from Related Parties, whereas the same also includes the unsecured loans from unrelated parties.</p> <p>(e) The Corporate Debtor disclosed under Non-Current Assets Rs.908.37 lakhs as Insurance claim receivable from National Insurance Company Limited under Non-</p>			



Current Assets, which has already been rejected. However, the Corporate Debtor has filed appeal with National Consumer Forum against the rejection of claim.

- (f) During the course of Audit, the transaction auditor has observed that preferences have been given to the promoters/ creditors, which amounts to Rs.2899.05 lakhs, thus attracting the provisions of Section 43(2) of the IBC.
- (g) During the course of audit, the transaction auditor has observed the undervalued transactions amounting to Rs.127.04 lakhs, thus attracting the provisions of Section 45 of the IBC, 2016.
- (h) During the course of audit, the transaction auditor has observed the transactions amounting to Rs.10,298.27 lakh, which attracts the provisions of Section 66(1) of the IBC.

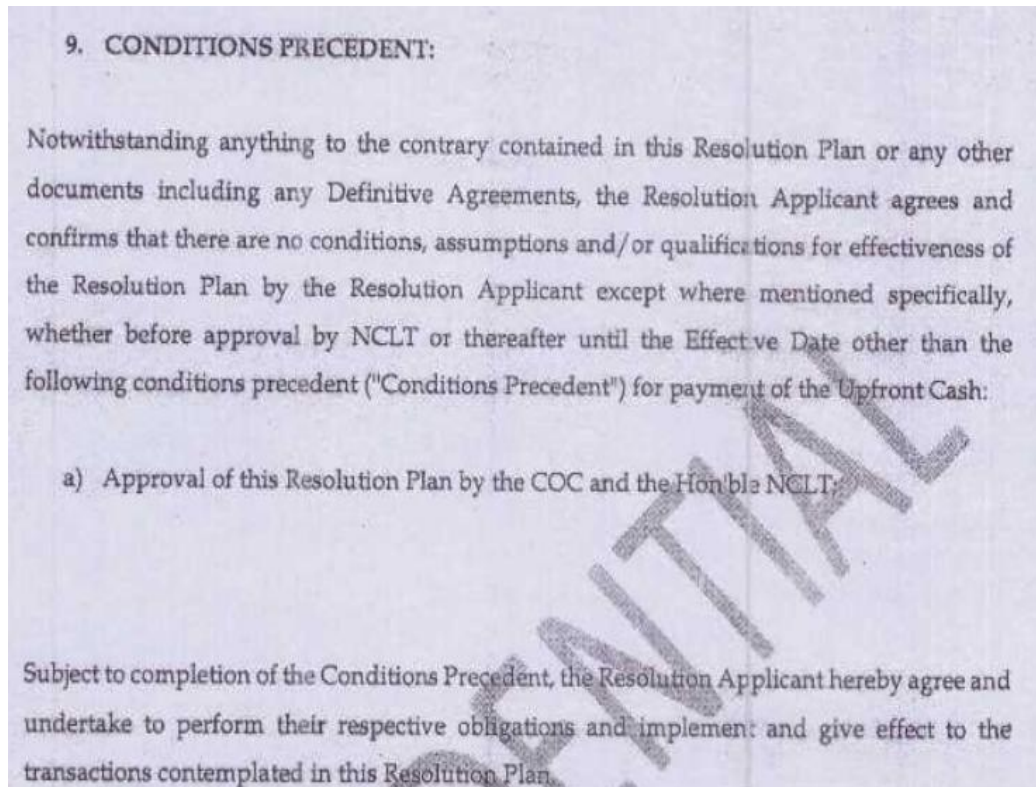
20. The RP at page 30 of the Convenience Proforma dated 03.02.2023 has further stated that the Resolution Plan is silent about the disbursement of amounts recovered from PUFEE transactions to creditors. As there was no provision/ requirement for the same during the period this Resolution Plan was approved. Now in accordance with latest judgement of Hon'ble High Court Delhi in the case of Tata Steel BSL Limited vs. Venus Recruiters P Ltd & Ors dated 13.01.2023, the distribution shall be done to the stakeholders. It is pertinent to note that it was decided in the 16th CoC meeting that in case of any recovery of such a transaction, the proceeds will go to the Banks. In view of the above, **we consider it appropriate to order that the CoC/ Coc members shall pursue the applications for avoidance of transactions and the realization, if any, from the said applications shall be distributed among the Financial Creditors.**

21. It is further mentioned that upon approval of this plan and on payment to all the stakeholders of the amounts as proposed in the Resolution Plan, all the secured financial creditor shall relinquish their charges from the Corporate Debtor's remaining properties existing as on the insolvency commencement date in terms of the decision of the Hon'ble Supreme Court in the case of ***Ghanshyam Mishra and Sons Private***



Limited through Authorised Signatory vs. Edelweiss Asset Reconstruction Company Limited through the Director & Ors. 2021 SCC Online SC 313 and the principle of clean slate under IBC.

22. The conditions precedent applicable as per Clause 9 of the Resolution Plan is produced as under:



23. On perusal of the Resolution Plan, it is seen that the SRA has sought certain waivers, concessions, reliefs, and exemptions, as listed from page 37 to 39 of the Resolution Plan (page 437 to 439 of the application). The waivers, concessions, reliefs, and exemptions with respect to pre-CIRP are concerned, the same are waived of on the basis of the clean-slate principle. However, so far as liability as per Balance Sheet on date of CIRP, no waivers, concessions, reliefs, and exemptions are granted. Thus, no specific waivers, reliefs, concessions and exemptions are granted by this Bench other than what is statutorily provided for and legally permissible under the IBC. Furthermore, waivers, concessions, reliefs, and exemptions specifically



applicable to government dues and taxes for which SRA is entitled to under the laws, the SRA may apply under other laws enacted for facilitating resolution of insolvent corporate. Moreover, SRA is at liberty to approach the concerned statutory authorities seeking certain waivers, concessions, reliefs, and exemptions, if advised so as per the law.

24. On a perusal of the reliefs etc., sought above, it is seen that those are claimed mainly on the ground that the same are essential for keeping the Corporate Debtor as a going concern. Many of the reliefs sought come within the jurisdiction of Government Authorities/ Departments. As regards such claims, it is clarified that under the IBC, this Adjudicating Authority has powers to decide the reliefs claimed which are directly relatable to the resolution process and not over those pertaining to extraneous issues. Thus, the reliefs/ waivers pertaining to the domain of various Departments/ Governmental Authorities, except for those allowed in the foregoing paragraphs specifically considering the need to keep the Corporate Debtor as a going concern, is beyond the powers of this Adjudicating Authority to sanction and the SRA are at liberty to approach the competent authorities/ courts/ legal forums/office(s) Government or Semi-Government/State or Central Government for granting the said relief(s).

25. It is directed that any relief sought in the resolution plan, where the contract/ agreement/ understanding/ proceedings/ actions/ notice etc., is not specifically identified or is a contingent liability, is at this moment not acceded to.

26. For the implementation of the plan following names have been proposed as the members of the Monitoring Committee:



Name(s) of the proposed member(s) of implementation and monitoring committee	Brief description of the Proposed member(s) of the I&M committee
Resolution Professional	Mr. Mohit Chawla, RP, who is experienced in managing the affairs of the corporate debtor during the CIRP Process, to act as a monitoring agent ("Monitoring Agent") on such remuneration as is being currently paid to the RP in terms of the CIRP till the Closing Date, subject to approval of the said remuneration by the Monitoring Committee
Any 2 Representatives of Resolution Applicant	M/s Compact Capital Limited in monitoring committee. 1. Sarthak Jindal S/o Manish Jindal R/o House no.4, Lalkurti Bada Bazar, Meerut Cantt., Meerut, U.P 2. Ankur Rastogi S/o Baldev Sahai Rastogi R/o House no.402, Village & Post Bhainsha, Mawana, Meerut, U.P.
Any Two Representatives of Financial Creditors	2 members of Financial Creditor namely, State Bank of India and Union Bank of India having majority shareholding.

27. On a perusal of the documents on record, we are satisfied that the Resolution Plan dated 20.04.2019 along with the addendum dated 05.11.2019, thereto, are in accordance with Sections 30 and 31 of the Code and complies with Regulations 38 and 39 of the CIRP Regulations. In the result, subject to the observations made in this order, we hereby accord our approval to the Resolution Plan dated 20.04.2019 along with the addendum dated 05.11.2019.

28. It is further directed that the Resolution Applicant, on taking control of the Corporate Debtor, shall ensure compliance under all applicable laws for the time being in force. As far as the question of granting time to comply with the statutory obligations or seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under Section 31(4) of the Code.



- (i) The Resolution Plan as approved shall be binding on the Corporate Debtor and its employees, members, and creditors, including the Central Government, State Government, or 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 owed, guarantors and other stakeholders involved in the resolution plan.
- (ii) The Resolution Plan shall become effective from the date of passing of this Order and shall be implemented by the Monitoring Committee strictly as per the term of the Resolution Plan and Implementation Schedule given therein.
- (iii) The Moratorium imposed under Section 14 shall cease to have effect from the date of this Order.
- (iv) The RP shall stand discharged from his duties with effect from the date of this Order. However, he shall perform his duties in terms of the Resolution Plan as approved by this Adjudicating Authority.
- (v) The RP is further directed to hand over all records and properties to the Resolution Applicant and shall finalize the further line of action required for starting the operation. The Resolution Applicant shall have access to all the records and premises of the Corporate Debtor through the RP to finalize the further line of action required for starting the operation.
- (vi) In case of non-compliance with this order or withdrawal of the Resolution Plan, the performance security amount already paid by the Resolution Applicant shall be liable to be forfeited, in addition to such further action as may be permitted under the law.



(vii) The CoC/ CoC members shall pursue the applications for avoidance of transactions and the realization, if any, from the said applications shall be distributed among the Financial Creditors.

(viii) The Financial Creditors would have liberty to recover the remaining financial debt from the Third-Party Security Provider by way of enforcement of the Third-Party Securities or otherwise, without any liability on the Corporate Debtor.

(ix) Liberty is hereby granted for moving any application, if required in connection with the implementation of this Resolution Plan.

29. The RP shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database.

30. The RP shall file a copy of this order with the concerned Registrar of Companies, inter alia, for updating the status of the Corporate Debtor. Additionally, the Registry shall send a copy of this order to the concerned Registrar of Companies.

31. The application bearing CA No. 1106 of 2019 in the main Company Petition, i.e., CP(IB) No. 46/Chd/Pb/2018, shall stand allowed and disposed of accordingly.

32. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd-
(Umesh Kumar Shukla)
Member (Technical)

Sd-l
(Harnam Singh Thakur)
Member (Judicial)

April 23, 2025

Tamanna

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