



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

I.A.(IBC)/1577/2022
IN
C.P.(IB)No.177/ND/2019

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

IN THE MATTER OF:

Mr. Devendra Lodha
Resolution Professional of
M/s. Mainframe Energy Solutions Private Limited

... Applicant

AND IN THE MATTER OF:

Integrated Batteries India Private Limited

...Operational Creditor

Versus

M/s. Mainframe Energy Solutions Private Limited

...Corporate Debtor

CORAM:
SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI,
HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 28.11.2025

PRESENT:

For the RP : Mr. Ruchir Batra, Mr. Gourav Saini, Advs.
For the CoC : Mr. Dhruv Gupta, Mr. Avi Mitra, Advs.
For suspended director : Mr. Gautam Singhal, Mr. Rajat Chaudhary, Advs.



ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

1. The present application has been filed by Mr. Ashish Singh, Resolution Professional (RP) of M/s Mainframe Energy Solutions Private Limited ('Corporate Debtor') under the provisions of Section 30(6) read with Section 31(1) of the Insolvency & Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') for approval of the Resolution Plan in respect of M/s Mainframe Energy Solutions Private Limited ('Corporate Debtor') submitted by Successful Resolution Applicant ('SRA') namely Mr. Jitendra Narayan (one of the Suspended Directors of Corporate Debtor) on the ground that since the Corporate Debtor is MSME, the Suspended Board of Director is not ineligible to submit the Resolution Plan under section 240A of the IBC, 2016.

2. Brief Background of the Case:

- i. An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC') was filed by the Operational Creditor i.e., M/s Integrated Batteries India Pvt. Ltd. against the Corporate Debtor M/s. Mainframe Energy Solutions Pvt. Ltd. and the said application was admitted by the order of this Adjudicating Authority dated 11.10.2019 and a moratorium was declared including the appointment of Mr. Deepak Kumar Gupta as an Interim Resolution Professional (IRP). It is pertinent to mention that the copy of the said order dated 11.10.2019 came into the knowledge of the Erstwhile IRP only on 08.01.2020, as such, vide its order dated 07.02.2020, the Adjudicating Authority ordered the commencement of CIRP to be considered from 08.01.2020. Subsequently, an application bearing I.A. No. 3778/2020 for change of Erstwhile IRP was filed and the same was allowed by the Adjudicating Authority and thereby the erstwhile IRP-Mr. Deepak Gupta was replaced with Mr. Devendra Lodha as the Resolution Profession for Corporate Debtor.



- ii. Thereafter, the Resolution Plan was submitted by the Successful Resolution Applicant namely Mr. Jitendra Narayan (one of the Suspended Directors of Corporate Debtor) which was approved by the CoC on 06.01.2022 after the deliberations in the 13th CoC meeting held on 05.01.2022 under section 30(4) of the IBC by 100% voting share in respect of the CIRP of the Corporate Debtor after considering its feasibility and viability.

3. Background of the Corporate Debtor

- i. The Corporate Debtor i.e. Mainframe Energy Solutions Private Limited was incorporated on 08.01.2014 having CIN: U51101DL2014PTC263233 under the provisions of the Companies Act, 2013 having its registered office at 47, 2nd Floor, Rani Jhansi Road, Jhandewala, Delhi-110055.

4. Collation of claims by RP

- i. In terms of Section 15, 17 & 18 of the Code, the Erstwhile IRP made the Public Announcement which was published in newspapers i.e., Financial Express (English) and Jansatta (Hindi) Delhi dated 12.01.2020 in Form-A to invite the stakeholders for submission of their claims and the last date for submission of the claims was 21.01.2020.
- ii. Meanwhile, one of the Suspended Directors of the Corporate Debtor filed an appeal before the Hon'ble NCLAT against the order dated 11.10.2019. The Hon'ble NCLAT vide order dated 03.02.2020 issued notice to the Respondents and also directed the IRP not to constitute the CoC and also ensure that the Company remains as an on-going concern and take assistance of the (suspended) Board of Directors, paid Director and the employees" and adjourned the matter for 04.03.2020.
- iii. Further, vide order dated 04.03.2020, the Hon'ble NCLAT apprised about the settlement/MOU being executed between the Suspended Directors of the Corporate Debtor and the Operational Creditor.



Pursuant to the order dated 04.03.2020, the Suspended Directors of Corporate Debtor and Operational Creditor filed an I.A. No. 1907 of 2020 under section 12A of the Code before this Tribunal for withdrawal of the (C.P. (IB) 177/ND/2019) and for closing the CIRP against the Corporate Debtor. However, with the change of events, the terms of settlement/MOU arrived at between the Suspended Directors of Corporate Debtor and Operational Creditors were breached and the payments were not received by the Operational Creditor from the Suspended Directors of Corporate Debtor, as such, the Operational Creditor withdrew its consent given for the filing of application under Section 12A of the Code. The same application accordingly became redundant and thereby was dismissed vide order dated 24.07.2020.

- iv. Meanwhile, the IRP had been receiving and verifying claims and the Erstwhile IRP as per the provisions of the Code, constituted the Committee of Creditors on 16.03.2020 and accordingly filed a Report on Constitution of CoC before this Adjudicating Authority.
- v. It is pertinent to mention that the CoC raised objection against each CoC meeting that was conducted by the Erstwhile IRP and being dissatisfied with the conduct of the Erstwhile IRP, one of the then Financial Creditors of CoC, HDFC Bank Limited filed an application bearing I.A. No. 3778/2020 for change of Erstwhile IRP. That while hearing the said application, this Tribunal vide its order dated 17.09.2020 directed the Erstwhile IRP to file reply with report of Reconstitution on CoC as except HDFC Bank, other four CoC members were private parties who had advance deposits with the Corporate Debtor company.
- vi. In 4th CoC meeting conducted on 25.09.2020, Erstwhile IRP reconstituted the CoC with only HDFC Bank Limited as the sole Financial Creditor and having 100% voting rights.



- vii. The total of 13 CoC meetings have been held during CIRP period as follows:

<u>PARTICULARS</u>	<u>DATE OF COC MEETING</u>
1 st CoC Meeting	
2 nd CoC Meeting	
3 rd CoC Meeting	
4 th CoC Meeting	25.09.2020
5 th CoC Meeting	05.11.2020
6 th CoC Meeting	13.11.2020
7 th CoC Meeting	07.12.2020
8 th CoC Meeting	14.01.2021
9 th CoC Meeting	20.02.2021
10 th CoC Meeting	
11 th CoC Meeting	27.03.2021
12 th CoC Meeting	02.11.2021
13 th CoC Meeting	05.01.2022

5. Valuation of the Corporate Debtor

The appointed registered valuers have submitted their reports providing the average fair value and average liquidation value of the Corporate Debtor as per the valuation report, whereby the Fair Value of the Corporate Debtor is Rs. 13,10,386/- and the Liquidation Value was Rs. 10,50,506/-.

6. Evaluation and Voting

- i. The RP published Form-G i.e., Invitation of Expression of Interest (EoI) on 01.03.2021 and fixed the following dates:



S. No.	Particulars	Relevant Date
1.	Date of invitation of expression of interest	01.03.2021
2.	Last date for receipt of expression of Interest	16.03.2021
3.	Date of issue of provisional list of prospective resolution applicants	19.03.2021
4.	Last date for submission of objections to provisional list	24.03.2021
5.	Date of issue of final list of prospective resolution applicants	27.03.2021
6.	Date of issue of Information memorandum, evaluation matrix and request for resolution plan to prospective resolution applicants	24.03.2021
7.	Last date for submission of resolution plans	23.04.2021
8.	Estimated date for submission of Resolution Plan to the Adjudicating Authority for	28.04.2021

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approval

- ii. Pursuant to the publication, the Applicant received around 7 inquiry mails for required document/eligibility criteria for submission of Expression of Interest, however no expression of interest was received from anybody.
- iii. 10th CoC meeting was held on 23.03.2021 wherein the Applicant proposed to reissue Form G, however, the said agenda was rejected by the CoC due to the reason that there was no further scope to run the company as there were no other asset of the Corporate Debtor in the custody of either the suspended director or the Applicant RP.
- iv. 11th CoC meeting was held on 27.03.2021 wherein agenda for filing of Application for Liquidation of the Corporate Debtor Company u/s 33 of IBC, 2016 to allow early disposal of the Corporate Debtor company was put up before the CoC and was unanimously passed by the CoC with HDFC Bank (being sole Financial Creditor) having 100% voting rights.
- v. During the course of proceedings, one of the suspended directors- Jitendra Narayan showed his interest in giving Resolution Plan to the CoC as the Corporate Debtor was an MSME company. Though the said submissions were first objected by the Resolution Professional, as the CIRP period had ended and also no EOI was submitted by the Suspended Director-Mr. Jitendra Narayan when the EOI was issued,



however, this Bench vide its order dated 06.10.2021 gave a last chance to the Suspended Director-Jitendra Narayan to place his proposal of Resolution Plan and orally directed the Resolution Professional to place the proposal of the Suspended Director-Mr. Jitendra Narayan before the COC.

- vi. Pursuant to the directions of this Adjudicating Authority, the Suspended Director-Mr. Jitendra Narayan gave his proposal on 22.10.2021 through mail. However, the RP identified certain prima facie objections in the said proposal, which were duly conveyed to the said Resolution Applicant- Mr. Jitendra Narayan (one of the Suspended Directors of the Corporate Debtor) and he was instructed to remove the same. Thereafter, the Resolution Applicant submitted the revised Resolution Plan on 27.10.2021 through mail and submitted the physical copy of the same alongwith EMD of Rs. 3,00,000/- (Rupees Three Lakhs only) on 28.10.2021.
- vii. 13th CoC meeting was held on 05.01.2022 wherein the CoC again discussed the Resolution Plan in detail and decided to intimate their final decision over mail on the next day. Thereafter, on 06.01.2022, the CoC through mail intimated its decision to the Resolution Professional unanimously approving the Resolution Plan and also intimated its decision on the other agendas.

7. Details of Resolution Applicant/Payment Schedule

- i. As per the Resolution Plan, the Resolution Applicant is Mr. Jitendra Narayan, Suspended Director of the Corporate Debtor having its residential address at 4/312, Ashok Mohalla Nangloi, Delhi-110041. The promoters started this company after working with leading companies like Motilal Oswal, Nirmal Bang securities & Reliance with a view of joining the league of environment friendly project inspired by National Solar Mission.



- ii. The timeline for the implementation of the Resolution Plan is produced as follows: -

S No	Activity	Time line (days)
PHASE I - APPROVAL PROCESS OF THE PROPOSED PLAN		
1	Presentation of Proposed Plan to the CoC	X
2	Approval of Proposed Plan by CoC	X+ 7
3	Application to NCLT	X+ 15
4	Approval by NCLT ('Effective date')	E
5	Notice on the Company's Website	E+ 14
6	Intimation to the Stock Exchanges, CoC , IBBI, SEBI, RBI, Tax authoritie s and various other statutory authorities (as applicable)	
7	Intimation to all Creditors, existing shareholders and other stakeholders of the Company	
PHASE II - SETTLEMENT OF CREDITORS		
8	Payment of CIRP Costs as approved by CoC	As per the plan
9	Payment to Operational Creditors	As per the plan
10	Payment to Financial Creditors	As per the plan
PHASE III - IMPLEMENTATION OF PROPOSED PLAN		
11	Change in Memorandum and Articles of Association and other documentation as required under the proposed plan.	E+ 75
12	Management of Company:	
	(i) Constitution of new Board;	E+ 30
	(ii) Appointment of key managerial personnel; and	E+ 30
	(iii) Resolution Applicant shall appoint statutory auditors of their choice, subject to applicable regulations.	E+ 90

- iii. The Resolution Applicant has proposed a total plan value of **INR Rs.26,03,258/- (Rupees Twenty-six lakh three thousand two hundred fifty-eight Only)** for the Corporate Debtor, to be infused and disbursed on the Payment Date in accordance with the provisions of the Resolution Plan.
- iv. Strategy proposed by SRA as given in Resolution Plan is as follows:



3.1 Strategy Proposed by Resolution Applicant

A. Current Situation & Resolution Required

1. The Corporate Debtor is currently undergoing corporate insolvency resolution proceedings under the Code and Regulations. As part of this process, the Resolution Professional has invited proposals for a resolution plan for the Corporate Debtor.
2. This Resolution Plan is being submitted pursuant to the Information Memorandum and is intended to address the interest so fall stakeholders such that a holistic, long-term and balanced resolution emerges in the process. The key elements of the insolvency resolution include equity infusion, debt restructuring, addressing dues of creditors, future working capital requirements, organizational and operational strategies.
3. Financial Arrangement : RA will induct funds by taking loan from relative and business friends to run the said company . if the required more fund the same will be arranged by taking loans from relative & business Funds

B. Operational Business Plan

- (i) The Resolution Applicant submits the Resolution Plan with the strategic vision to provide outstanding quality services to its customers by reviving the operations of the Corporate Debtor.
- (ii) Action plan
 1. We shall start off with existing resources available & try to start the business partner which were doing business with Corporate debtor before CIRP
 2. RA will try to complete the pending work with the customers as per the willing ness of the customers
 3. Try to activate the empanelment with different nodal agencies for Roof top solar plants
 4. Sales Arrangement
 - We shall be bringing back, old prestigious customers who have moved away in the past due to financial derailment of the Corporate Debtor. Further new additions will be made as per market credentials and market standing of customers.

v. On perusal of the Casefile, we record that vide order dated 05.03.2025, the Adjudicating Authority had directed Mr. Devender



Lodha, Resolution Professional, to remain personally present on 24.03.2025. However, on that date, Learned Counsel appearing for Mr. Devender Lodha/RP, was physically present and sought a pass over, which was allowed. Upon recall at 03:30 p.m., none appeared and a second pass over was granted. Later, at 04:13 p.m., on further recall, Mr. Ruchir Batra again requested a pass over on behalf of the RP, while the RP remained absent, thereby demonstrating non-compliance of the directions dated 05.03.2025 and contributing to continued deferment of the Resolution Plan application, which was remaining pending due to multiple interlocutory applications requiring his personal participation. In view thereof, this Adjudicating Authority directed that his conduct be reported to the IBBI for appropriate action, and further directed him to remain personally present on the next date of hearing and to file an affidavit explaining his absence and the reasons for such conduct.

- vi. The matter was then listed before this Adjudicating Authority on 05.05.2025, wherein the prior directions of this Adjudicating Authority dated 05.03.2025 remained non-compliant; subsequently, on 19.05.2025, the Adjudicating Authority reiterated in its order that the role of the Resolution Professional is to facilitate and assist the Corporate Insolvency Resolution Process, while the Resolution Plan Application, IA/1577/ND/2022, continues to



remain pending since 2022, primarily on account of the repeated and continued non-appearance of Mr. Devender Lodha/RP, despite express directions for his personal and physical presence issued on 05.03.2025, 24.03.2025, and 05.05.2025. Thereupon this Adjudicating Authority determined that such conduct amounts to persistent and willful non-compliance necessitating reference to the IBBI for initiation of strict regulatory action; accordingly, while reporting the conduct of the Resolution Professional to the IBBI, the Tribunal directed the Committee of Creditors, comprising HDFC Bank with 100% voting share, to place the Resolution Plan for consideration, and further directed HDFC Bank to file revised Form-H for effective adjudication and convenience. Accordingly, HDFC Bank Limited in its capacity as 100% Financial Creditor of Corporate Debtor placed on record the revised Form-H.

8. Compliance of the Resolution Plan with various provisions:

- i. The HDFC has submitted the details of various compliances as envisaged by Sections 30(2) of the Code and Regulation 38 & 39 of CIRP Regulations as under: -



Section of the Code/ Regulation No.	Requirement with respect to Resolution Plan	Compliance (Y/N)	Relevant clause of resolution plan
Section 25(2)(h)	The Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD	Yes	Clause A sub clause a, b, and c at page 5-6
Section 29A	The Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority	Yes	Yes, vide order dated 06.10.2021 of this Hon'ble Tribunal.
Section 30(1)	The Resolution Applicant has submitted an affidavit stating that it is eligible as per Code	Yes	As duly notarized affidavit has been submitted by the Resolution Applicant at Page 58-60 of the Resolution Plan.
Section 30(2)	The Resolution Plan- (a)provides for the payment of		A Clause 3.8.2 at Page 24



	insolvency resolution process costs	Yes	B Clause 3.8.2 at Page 25
	(b)provides for the payment to the operational creditors	Yes	C NA
	(c)provides for payment to the financial creditors who did not vote in favour of the resolution plan	NA	D Clause 1.6 and 3.8.3 at Pages 12-13 and 25-27 respectively.
	(d)provides for the management of the affairs of the corporate debtor		
	(e)provides for the implementation and supervision of the resolution plan	Yes	E. Clause 3.8.1 – 3.8.3 at Page 22-27
	(f)does not contravene any of the provisions of the law for the time being in force	Yes	F. No
		No	
Section 30(4)	The Resolution Plan	Yes	NA
	(a)is feasible and viable, according to the CoC	Yes	NA
	(b)has been approved by the CoC with 66% voting share		
Section 31(1)	The Resolution Plan has provisions for its effective implementation plan, according to the CoC	Yes	Clause 3.8.1 at Pages 22-23
Regulation 38 (1)	The amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors	Yes	Clause 3.8 at Pages 22-23
Regulation 38(1A)	The resolution plan includes a statement as to how it has dealt with the interests of all stakeholders	Yes	Clause 3.8.2 at Page 24-25



Regulation 38(1B)	Neither the Resolution Applicant nor any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. If applicable, the Resolution Applicant has submitted a statement giving details of any such non-implementation.	Yes	Declaration given by the RA at Page 19
Regulation 38(2)	The Resolution Plan provides: (a) the term of the plan and its implementation schedule (b) for the management and control of the business of the corporate debtor during its term (c) adequate means for supervising its implementation	Yes	Clause 3.8.1 to 3.8.3 at Page 22-27
Regulation 38(3)	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 resolution applicant has the capability to implement the resolution plan	No Yes Yes Yes Yes	Refer to Section 3 of the Resolution Plan
Regulation 39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Yes	Yes, the applications have been filed on 10.05.2021 and are pending adjudication.
Regulation 39(4)	Provide details of performance security received, as referred to in the COC as the	Exempted by the COC as the	Exempted by the COC as the SRA has



	sub-regulation (4A) of regulation 36B)	SRA has provided 3 Lacs EMD which was adjusted after approval of the Resolution Plan towards payment due as per the said Resolution Plan. Further, the said exemption is subject to approval of this Hon'ble Tribunal.	provided 3 Lacs EMD which was adjusted after approval of the Resolution Plan towards payment due as per the said Resolution Plan. Further, the said exemption is subject to approval of this Hon'ble Tribunal.
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(ii) the resolution plan does not contravene any of the provisions of the law for the time being in force.

(iii) that the contents of this certificate are true and correct to the best of my knowledge and belief, and nothing material has been concealed therefrom.

- ii. Sources of Funds as stated in revised Form-H Compliance Certificate stated that RA will induct funds by taking loan from relative and business friends to run the said company. If more fund are required, the additional fund requirement will be met by taking loans from relative & business funds.
- iii. The Resolution Applicant confirms that, as on the date of the Plan and on the basis of the records of the Resolution Applicant, the Resolution Applicant is eligible under Section 29A of the Code to submit the Plan. In this regard, an affidavit dated 03.06.2022 providing the undertaking as per Section 29A of the Code has been duly submitted. The same has been annexed with the application.
- iv. This Adjudicating Authority vide order 19.05.2025 & 04.06.2025 directed the HDFC bank to file revised Form-H. In compliance of order dated, HDFC has filed a Compliance Certificate in prescribed



revised Form-H in compliance with Regulation 39(4) of IBBI (CIRP) Regulations, 2016 and with an Interlocutory Application No. 3252 of 2025.

9. Details on Term, Management, Implementation and Supervision of the Resolution Plan

9.1 The Proposed Settlement of Dues Under the Proposed Plan are provided in Clause 3.8.2 which is as follows:

3.8.2. Proposed Settlement of Dues Under the Proposed Plan

Appropriation of the Bid value in Case along with car & other Material										
S.No		Total Amount Admitted	Upfront Payment with in 45 Days of NCLT approval	with in 90 days from NCLT Approval	with in 150 days from NCLT Approval	with in 210 days from NCLT Approval	with in 250 days from NCLT Approval	with in 290 days from NCLT Approval	Final amount to be decided by NCLT or its superior court (to be paid in three instalment of 45 days each after the payment of six instalment) * (Additional 135 Days)	Total Amount (INR)
	Instalment		1	2	3	4	5	6	7,8,9	
1	CIRP Cost of RP till 22.05.2021 was Rs. 693,258/- & out of the said amount Rs. 1,72,000 paid from CD bank Account & rest amount of Rs. Was paid by COC member (HDFC bank) Thus the RA will reimburse the said amount directly to HDFC bank Rs. 5,21,258	5,21,258	0	20000	321258					521258
2	*RP remuneration from 23/05/2021 till the approval of liquidation application is 75,000/- month , However RA proposed to pay in Lumpsum an amount 4,00,000 till final Approval of Resolution plan by Adjudicating authority	4,00,000	400000	0	0					400000
3	Legal cost & out of pocket expenditure of RP from may 2021 till final approval of Adjudicating authority	60,000	60000	0				0		60000
4	**CIRP Cost of IRP was Disputed cost between COC & IRP and matter is pending before the Hon'ble NCLT to adjudicate the same. As per the direction Hon'ble NCLT, IBBI assessed the same at the Rs. 10,34,450/- as against the proposed approval of 1,64,450 /- , Thus RA will pay the CIRP cost of IRP as per the direction of Adjudicating authority, However in this plan the same is taken assessed by IBBI.	10,34,450	0	0	0	0			10,34,450	10,34,450



5	Operation Creditor*** (detailed summary at page no 7)	2,45,64,546.00	0	0	0	0	0	50000	50000
6	****Secured Financial Creditor HDFC 2 Cars DL8CAS3139 & DL8CAS3180	9,84,503.00	0	200000	400000	30000	0	84503	984503
7	****Unsecured Financial Creditor HDFC Business Loan	14,06,755.00	0	0	0	0	415497	0	415497
	Total Amount	0	460000	0	521258	400000	0	1034450	3465708
	% Age payment received		13.27	5.77	15.04	11.54	11.54	12.98	29.85
									100.00

*First instalment of 4.6 lakh would be adjusted from the refundable security of 3 lakh after the approval of adjudicating authority, Hence the remaining amount of 1.6 lakh to be paid with in 45 days of approval of resolution plan by the adjudicating authority,

**Rs 2 lakhs already paid by Applicant operational creditor (M/s Integrated battery Pvt. Ltd) out of 10,34,450 /- , Hence if applicant OC will demand the said amount of 2 lakhs the same will be pay by RA. Further its pertinent to mention here suspended director / RA has also paid an amount of Rs. 2.5 lakh to the OC applicant on account of settlement of account related to CD.

***The detail of operational creditor and claim submitted is mention on page number 18 of resolution plan submitted

****In terms of the aforementioned payment schedule, first instalment to hdfc bank will be paid with in 150 days and last instalment is proposed to be paid with in 290 days from the effective date, however the resolution applicant proposes that hdfc bank is allowed to sell the hypothecated vehicles immediately upon the approval of the resolution plan on best effort basis on the best rate as applicable in the market and shall appropriate the said said sale proceeds against the proposed payment of Rs. 14 lakhs, In case of any short fall (if any) observed post sale of the said vehicles, The resolution applicant shall pay the balance amount in equal monthly instalments starting from the 150th day and shall complete the payment by 250th day. The resolution applicant shall not dispute the value / proceeds that may realised from the sale of vehicles via e-auction on the portal Viz. Car trade exchange, All The guarantee issue by ex-promoters /director toward the financial creditor would be extinguished after the approval of this Resolution plan by adjudicating authorities.

Note

• The amount shall carry an interest of 12% per annum with effect from approval of resolution plan by adjudicating authority in case of delay; the interest shall be paid by Bidder along with the Final payment

• In case of any lockdown in Delhi state, time period would be extended in same manner

9.2 Further, Mechanism Regarding Management Control & Supervision of the affairs of the company is provided in Clause 3.8.3 of the Resolution Plan

3.8.3. Mechanism Regarding Management, Control & Supervision of The Affairs Of The Company

(i) Phase I Period – from date of approval of Committee of Creditors till the NCLT Approval Date



The Phase I Period as appearing in this Resolution Plan shall mean the period from the date of approval of the Resolution Plan by Committee of Creditors till the NCLT approval date. The Resolution Professional shall continue to manage the affairs of the Corporate Debtor. The Resolution Professional shall facilitate, in accordance with the Code and Applicable Law, access to information, systems, employees and contractual counterparties of the Corporate Debtor to the Resolution Applicants.

(ii) Phase II Period – from the NCLT Approval Date till the Transfer Date

The Phase II Period as appearing in this Resolution Plan shall mean the period from the NCLT Approval Date till Transfer Date.

(iii) Phase III Period- After Transfer Date

On and from the Transfer Date, the Resolution Applicants shall constitute the board of the Corporate Debtor and appoint key managerial personnel, which may include independent professionals ("New Company Management").

a. Control & Supervision of the New Company Management

- (i) The New Company Management shall define organization structure, policies, procedures, records and methods of reporting that are necessary to collectively ensure that the financial and non-financial operations of the Corporate Debtor is conducted in an orderly and efficient manner to achieve the Corporate Debtor's objectives.
- (ii) Assessing and containing the risks faced by the Corporate Debtor to acceptable level.
- (iii) Preventing and correcting irregularities.
- (iv) Safeguarding assets against the loss /misuse.
- (v) Ensuring financial and other records are complete in all respects and accurately and reliably reflect the conduct of the Corporate Debtor.
- (vi) Preventing the misuse or appropriation of resources.
- (vii) Resources are acquired economically and employed efficiently, qualify business processes and continuous improvement are emphasized.
- (viii) The action so fall officers of the Corporate Debt or including Directors , Key Managerial Personnel, Senior Management and Staff are in compliance with the Corporate Debtor's policies standard compliance and procedures and also relevant laws and regulations.



(ix) Monitoring of systems related to accounting and reporting as also relate to the organization's culture, communication process both internal and external, which include, handling of funds received and expenditure incurred by the Corporate Debtor, preparing appropriate and timely financial report to the Board and Officers, conducting the annual audit of the Corporate Debtor, Corporate Debtor's financial statements, evaluating staff and progress, maintaining inventory records and properties and their whereabouts and maintaining personal and conflict of interest policies.

(x) The Corporate Debtor shall always maintain the highest governance standard sand practices by formulating "Corporate Governance Policies and Code of Conduct". These Policies and Codes hall prescribe asset of systems, processes and principles, which conform to the highest international standards and are reviewed periodically to ensure their continuing relevance, effectiveness and responsiveness to the needs of investors, both local and global, and all other stakeholders.

b. Managerial Competence and technical abilities

The Resolution Applicant shall endeavour to recruit such persons in the Corporate Debtor that may be required to efficiently and effectively handle the current operation and business of the Corporate Debtor. Such persons shall have relevant exposure to the field of operation of the Corporate Debtor and shall be experienced enough to handle the technical aspects of business as well.

c. Appointment of Auditors (Statutory and Internal)

The Resolution Applicant will endeavor to retain the present statutory and internal of the Corporate Debtor, subject to their reassessment and take the decision appropriately in interest of the Corporate Debtor in the due course.

d. Retention of employees

The Resolution Applicant will endeavour to retain the present staff and resources of the Corporate Debtor to effectively manage the business, subject to reassessment of the capability of the employees and take the decision appropriately in interest of the Corporate Debtor and continuity/feasibility of its business.

10. Details on fraudulent and avoidance transaction

- i. The status of PUFÉ and how these are dealt in the resolution plan, if any are as follow:

S.No.	Type of Transaction	Date of filing with Adjudicating Authority	Date of order of the Adjudicating Authority	Brief of the Order	How it is dealt in resolution plan
1.	Preferential transactions u/s 43	10.052021	Pending Adjudication	Pending Adjudication	No value assigned



2.	Undervalued transaction u/s 45	10.05.2021	Pending Adjudication	Pending Adjudication	No value assigned
3.	Extortionate credit transaction u/s 50	10.05.2021	Pending Adjudication	Pending Adjudication	No value assigned
4.	Fraudulent transaction u/s 66	10.05.2021	Pending Adjudication	Pending Adjudication	No value assigned
5.	Combination of PUFEE Transaction	10.05.2021	Pending Adjudication	Pending Adjudication	No value assigned

I.A. 1133/ND/2021: Application seeking directions for remitting/releasing/reversing the funds of the Corporate Debtor.

I.A. 2218/ND/2021: Application in respect of Fraudulent and Wrongful Trading and such other provisions by the Suspended Directors.

11. Waivers, Reliefs and Concessions

- i. As to the relief and concessions sought in the Resolution Plan more specifically set out in 3.8.8 of the Resolution Plan, it is pertinent to refer to the decision of the Hon'ble Supreme Court in the matter of **Embassy Property Development Private Limited v. State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019**. The relevant part of the judgement is reproduced herein below: -

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

“25. Duties of resolution professional –



- (1) *It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.*
- (2) *For the purposes of sub-section (1), the resolution professional shall undertake the following actions: -*
 - a.
 - b. *Represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings.*

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

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

*In the light of the decision of the Hon’ble Supreme Court in the **Embassy Property Development Private Limited (Supra)**, as to the waiver, relief and concessions sought in the Resolution Plan, it is clarified that this Adjudicating Authority is not inclined towards granting any such relief prayed for except for what is provided in the Code itself. However, the Successful Resolution Applicant may approach and file the necessary application before the necessary forum/authority in order to avail the necessary relief and concessions, in accordance with respective laws.*

12. FINDINGS

- i. This Adjudicating Authority finds that the Resolution Plan was submitted by the Successful Resolution Applicant namely Suspended Director Mr. Jitendra which was discussed in 13th CoC meeting held on 05.01.2022



and intimated their final decision over mail on the next day. Thereafter, on 06.01.2022, the CoC unanimously approved the Resolution Plan and no provision of the IBC is contravened.

- ii. We find that the Resolution Plan meets the requirement of being a viable and feasible and for revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Bench.
- iii. It is observed that the Successful Resolution Applicant SRA in the Resolution Plan has not made any provision towards payment of the regulatory fee payable to the Insolvency and Bankruptcy Board of India (“IBBI”) under Regulation 31A of the CIRP Regulations, 2016, computed at 0.25% of the realisable value to the creditors. **In view thereof, the Adjudicating Authority hereby directs the SRA to remit the applicable regulatory fee to the IBBI in strict accordance with the provisions of law, within the prescribed timeline.**
- iv. In so far as the approval of the Resolution Plan is concerned, this Adjudicating Authority is duty bound to follow the judgment of the Hon’ble Supreme Court in the matter of **K. Sashidhar v. Indian Overseas Bank (2019) 12 SCC 150**, wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as follows: -

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



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

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

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

- vi. Further, the Hon’ble Supreme Court in the matter of **Jaypee Kensington Boulevard Apartments Welfare Association v NBCC (India) Limited, (2022) 1 SCC 401** has held as under:



‘273.1. The adjudicating authority has limited jurisdiction in the matter of approval of a resolution plan, which is well-defined and circumscribed by Sections 38(2) and 31 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by the Committee of Creditors. If, within its limited jurisdiction, the adjudicating authority finds any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by the Code and expounded by this Court.’ (emphasis supplied)

The above view of the Hon’ble Supreme Court in **Jaypee Kensington Boulevard Apartments Welfare Association v NBCC (India) Limited (Supra)** is reaffirmed by the Hon’ble Supreme Court in its recent decision dated 21.11.2023 in the case of **Ramkrishna Forgings Limited Vs Ravindra Loonkar, Resolution Professional of ACIL Limited & Anr., Civil Appeal No. 1527/2022.**

- vii. Thus, from the judgments cited and the statutory framework of the Insolvency and Bankruptcy Code, 2016, it is evident that the scope of judicial review available to this Adjudicating Authority under Section 30(2) read with Section 31 is limited to assessing the compliance of the Resolution Plan with the prescribed legal requirements. This Authority is neither empowered nor obligated to delve into or evaluate the commercial wisdom of the Committee of Creditors (CoC), which is paramount and binding, provided it aligns with the provisions of the Code. Upon satisfaction that the proposed Resolution Plan adheres to the statutory mandates, including equitable treatment of stakeholders



and compliance with applicable laws, this Bench finds no impediment to granting its approval.

13. ORDERS

- i. Subject to the observations made in this order, the Resolution Plan with total plan value of **Rs.26,03,258/- (Rupees Twenty-six lakh three thousand two hundred fifty-eight Only)** along with affidavit and other documents connected to the Resolution Plan that have been filed by the SRA from time to time) is hereby approved. The Resolution Plan shall form part of this order.
- ii. The approved Resolution Plan as annexed shall be binding on all the stakeholders of the Corporate Debtor and become effective from the date of passing of this Order, and shall be implemented strictly as per the term of the plan and implementation schedule given therein. The Resolution Plan shall form part of the order.
- iii. The Monitoring Agency, as provided in the Resolution Plan shall be set up by the Applicant within 07 days of passing of this order, which shall take all necessary steps for expeditious implementation of the Resolution Plan as per approval;
- iv. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
- v. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- vi. MoA and AoA of the Corporate Debtor shall be amended and filed with the RoC for information and record as prescribed. While approving the Approved Resolution Plan as mentioned above, it is clarified that the Successful Resolution Applicant shall pursuant to the Resolution Plan approved under section 31(1) of the Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for such in law.



- vii. Liberty is hereby granted for moving appropriate application if required in connection with the implementation of this Resolution Plan.
- viii. A copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies, NCT of Delhi & Haryana.
- ix. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.
- x. The Resolution Professional is further directed to hand over all records, licences, plans, approvals of premises/factories/documents and all other relevant records relating to the Corporate Debtor, available with it to the SRA to finalize and co-operate on the further line of action required for starting the operation and implementation of this Plan. The Resolution Applicant shall have access to all the records, documents and the premises through the Resolution Professional to finalize the further course of action required for starting and running the operations of the Corporate Debtor on a clean slate basis.
- xi. The Registry is directed to send copies of the order forthwith to IBBI, all the parties and their Ld. Counsels for information and for taking necessary steps.
- xii. Certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

ATUL CHATURVEDI
MEMBER (TECHNICAL)

MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)