IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI SPECIAL BENCH (COURT – II)

IN THE MATTER OF C.P.(IB) – 20(PB)/2021:

ICICI BANK **...Financial Creditor**

Versus

K V AROMATICS PRIVATE LIMITED **...Corporate Debtor**

AND IN THE MATTER OF I.A. 1183/2023:

PAYAL AGGARWAL
Flat No. 801, 8th Floor
Earth Court – 1, Jaypee Greens,
Greater Noida, Gautam Budh Nagar – 201306 **...Applicant**

Versus

ANIL KOHLI
Resolution Professional
K V Aromatics Private Limited
Office at:
409, 4th Floor, Ansal Bhawan,
K.G. Marg, Connaught Place,
New Delhi – 110008 **...Respondent No. 1**

COMMITTEE OF CREDITORS
In the matter of CIRP of K V Aromatics Private Limited

...Respondent No. 2

Order Delivered on: 12.03.2025

UNDER SECTION: 60(5), IBC, 2016 r/w Rule 11 of NCLT Rules, 2016

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant	:	Adv. Naveen Pahwa, Adv. Abhishek Bhardwaj, Adv. Ajay Kumar Pandey, Adv. A. Agarwal
For the Respondent	:	Adv. Abhishek Anand, Adv. Karan Kohli, Adv. Ishaan Dhingra

For the CoC	:	Adv. Avrojyoti Chatterjee, Adv. Rajiv S. Roy, Adv. Abhishek Bose, Adv. Abhishek Mishra, Adv. Siddharth Dhingra, Adv. Zoheb Khan, Adv. Jaysree Saha

ORDER

The present application has been preferred by one of the Prospective Resolution Applicant(s), namely, Ms. Payal Aggarwal, under Section 60(5) of the IBC, 2016 read with Rule 11 of NCLT Rules, 2016 against the Resolution Professional/Respondent of K V Aromatics Private Limited (hereinafter referred to as the "**Corporate Debtor**") seeking the following reliefs:

"1) Declare the process of approval of Resolution Plan by the COC wholly capricious, arbitrary, irrational and de hors the provisions of the statutes.

2) Direct the COC and the RP to invite fresh financial proposals and consider them in a fair and transparent manner keeping in mind the basic purpose of IBC for Maximization of the Value of Corporate Debtor.

3) Pass such other directions as this honourable Tribunal may deem necessary to meet ends of justice."

2. The Principal Bench of this Tribunal, in terms of order dated 15.03.2022 had directed the commencement of the Corporate Insolvency Resolution Process (hereinafter referred to as "**CIRP**") against the Corporate Debtor and Mr. Anil Kohli was appointed as the Insolvency Resolution Professional.

3. In pursuance of the CIRP, when the Resolution Professional (hereinafter referred to as "**RP**") invited PRAs to submit their plan, Mrs. Payal Aggarwal, i.e. Applicant also submitted a resolution plan with Resolution Professional on 02-12-2022.

4. The brief facts as stated by the Applicant are as under: -

4.1. The last date for submission of the Final Resolution Plan was 21.11.2022, and in pursuance of it, the Applicant submitted the same on 21.11.2022, and further requested the RP not to allow the change in Financial Proposal to any PRA.

4.2. After deliberations on these financial proposals in the 9th Meeting of CoC, the last date for submission of plans was extended to 02.12.2022. The Financial Proposal submitted by the Resolution Applicant, Mr. Saket Aggarwal (Consortium of Mr. Saket Aggarwal and M/s Fortuna Holdings Private Limited) offered Rs. 26.25 crores and did not pass over any benefit of the contingent Asset Insurance Claim to the COC, and his offer, along with all other offers, was discussed in the 9th COC on 21st November, 2022.

4.3. It is further stated that, in the final resolution plan, Mr. Saket Aggarwal passed over benefit to the extent of 35% of Insurance Proceeds to the COC, which was specifically not allowed to any other RA. It was vehemently argued that breaching his own commitment, RP deliberately favoured one RA and allowed the Resolution Applicant viz. Mr. Saket Aggarwal, to change the Financial Proposal, which makes the conduct of RP "totally arbitrary and contrary to the provisions of law" as the Resolution Applicant, Mr. Saket Aggarwal (Consortium of Mr. Saket Aggarwal and M/s Fortuna Holdings Private Limited) has offered Rs. 26.25 crores along with only 35% passover of the Insurance Claim, whereas the applicant has offered Rs. 25.26 crores and had offered 100% passover of the Insurance Claim. It clearly shows that the

CoC gave away significant contingent assets of Rs. 128.52 crore (plus interest, etc.) against Rs. 99 lacs only.

4.4. Further, the counsel for the applicant submitted that the final Financial Proposal was sent to the RP by the Applicant *vide* email dated 21.11.2022. The email also listed out the curings made in the earlier plans in compliance with the vetting report of advocate received from the RP earlier.

4.5. It is further submitted that in the 10th CoC meeting, the final version of all the resolution plans submitted by the five Prospective Resolution Applicants, including the Applicant herein, were put for e-voting. It is contended that RP and the COC have not followed due process established by the law and approved the resolution plan of Mr. Saket Aggarwal (Consortium of Mr. Saket Aggarwal and M/s Fortuna Holdings Private Limited), as RP has allowed said Resolution Applicant to change his financial proposal, which was otherwise not permissible in view of the decision taken in the 9th CoC meeting. This way, the RP and the COC have favoured one RA over the others.

5. In reply to the above contentions, the learned counsel for the RP submitted that he had disclosed the highest offer to all the PRAs under the 'Swiss Challenge Mechanism' and further requested all the RA's including the Applicant to submit their improved offer/ draft document post incorporating discussion points of the 7th CoC meeting of the Corporate Debtor on 28.10.2022. The revised offer received after the 1st round of negotiation reads thus: -

S. NO.	PROSPECTIVE RESOLUTION APPLICANT	Total Amount Offered
1.	PANKAJ SARAOGI	25.70 Cr
2.	**PAYAL AGARWAL**	**21.75 Cr**
3.	SAKET AGARWAL & FORTUNA HOLDINGS PVT LTD	21.25 Cr
4.	HIMANSHU AGARWAL & VIKAS GUPTA	15.85 Cr
5.	SANJEEV SINGHAL	25.90 Cr
6.	DINESH PAREKH	17.20 Cr

5.1. It is further submitted that in the 8th CoC meeting of the Corporate Debtor on 15.11.2022, it was decided that the highest offer among all received would be disclosed to all PRAs, and they would be asked to improve their offers as a 2nd round of negotiation under the swiss challenge mechanism. The relevant portion of the meeting and summary of the resolution plan submitted by Mrs. Payal Agarwal as submitted by the RP is reproduced below:

> **"3**. ***To consider, discuss and negotiate on Resolution plan(s) received from Resolution Applicants.***
>
> *The RP re-encapsulated that as discussed and decided in the previous COC meeting held on 28.10.2022, the vetting of compliance was to be conducted for all the revised documents received, following which the RP appointed M/s Chiramrit Legal LLP at the professional fee of Rs. 25,000 per resolution plan/revised document. Pursuant to which, all the due- diligence reports pertaining to the revised documents of RAs, have been duly received and have been circulated with respective RA and the members of CoC. The appointment and fee payable to M/s Chiramrit Legal LLP is to be ratified by the CoC for its inclusion in CIRP cost thereof. However the CoC requested to defer the voting on the agenda for the next meeting post their consideration of the reports.*
>
> *The RP further apprised that the resolution applicants will be called in the meeting individually for CoC to discuss and negotiate on the plans. <u>It was deliberated that the highest offer among all received will be disclosed to all RAs and RA would be asked to improve their offers in plan as a challenge mechanism since the CoC is guided by the objective of O Maximization of value for all stakeholders within four corners of the Code and has to exercise its commercial wisdom.</u> Further the law has also recognized this fact and has incorporated a provision in the regulation 39 of CIRP regulation providing for a challenge mechanism to improve the*

plans. Under the challenge mechanism, the highest offer is disclosed to the RAs and they are asked to improve their offers. A provision to this effect i.e. challenge has also been specified in the Request for resolution plan (RFRP). <u>They would be requested to submit their final offers in a password protected document which would then be opened in the CoC.</u> The final documents will be vetted for compliance if any pending and post that final signed plans will be obtained. All compliant plans will then be submitted before CoC for approval in terms of provisions of Sec 30(3). It was further decided strictly by CoC that this would be the last round of negotiation. <u>The resolution applicants were then invited to the meeting in seriatim and informed all the above process descriptively in detail</u>.

The discussion/negotiation with Resolution Applicants held in the meeting are annexed with the minutes and are marked as Annexure-A."

5.2 The summary of the financial proposal in the resolution plan submitted by Mrs. Payal Agarwal is reproduced below: -

<u>RA- MRS. PAYAL AGARWAL</u>

<u>Mr. Sidhant Agarwal was present through Video Conferencing</u>

- Summary of Resolution Plan was presented before the members along with the observations of RP, as follows:

Particulars		**MS. PAYAL AGARWAL**	
Effective Date		**is defined as the date of receipt of the order approving this Resolution Plan passed by the Hon'ble NCLT, Delhi Bench**	
		Proposed Amount	**Payment terms**
Financial Proposal (in Crores)	**unpaid CIRP Costs**	0.75 Cr.	As CIRP cost is dynamic, the RA has made a provision of Rs. 75 lakhs for unrecovered CIRP cost wit 60 days
	Payment to secured Financial Creditors	20.75 Cr.	within 60 days from the effective date
	payment to workmen/ Employees	0.25 Cr	within 60 days from the effective date
	Payment to Operational Creditors		
	Payment towards Government Dues		
	TOTAL	**21.75 Cr.**	
	Working capital & Capex	-	-
Payment terms		within 60 days from the effective date	

Source of funds	The RA has a Net Worth of Rs.20.20 crores as on 31.03.2022. In addition to the above Glentech Ventures Pte Ltd which is a Singapore based company and is a venture of her son Mr. Sidhant Agarwal (who is also proposed to be part of the Reconstituted Board), is ready to give business loan to Mrs. Payal Agarwal to the extent of Rs.25 crores. Apart from this RA is a respectable name in the industry and society and is fully capable of arranging funds as and when required.

- It was enquired from RA that what Rationale and the base was the consideration reduced from what was offered earlier. The RA clarified that the present consideration is based on the following observations of RA:
  - i. One property of Corporate Debtor has been sold and does not form part of assets of the Corporate Debtor.
  - ii. There may be the cost of stamp duty and transfer fee to be paid to the Authority and the RA will have to bear the same.

- **Provision regarding treatment of Personal Guarantee:** The RA proposed that the Resolution Plans will in no way affect the validity & enforceability of personal guarantees.

- **Treatment of proceeds received from Insurance claim:** The RA proposed that the proceeds from the insurance claim form part of Corporate Debtor.

- **Treatment of proceeds received from Avoidance transaction application:** The RA proposed complete pass over of the proceeds from litigation pertaining to Avoidance Application to the Secured Financial Creditors.

- RA clarified that the revised financial proposal is based on his assessment of value of assets (which includes the proceeds from insurance claim) and timeline of payment. The further requested the CoC to clarify their stand on how they want the RAs to treat the proceeds from Insurance Claim so that it becomes an equal/level playing field for all the RAs. To this, the RP clarified that it is only a preference of the CoC that the proceed of insurance proceeds be passed on to them however, there no such mandatory condition that can be imposed on the RAs.

- The RP further apprised that list of creditors with respect to Government dues have been updated and circulated with the Resolution applicants and requested him to incorporate provisions for the same in the final resolution plan accordingly.

RA took note of the same.

5.3. It is further submitted that subsequently, the RP convened the 9th CoC meeting of the Corporate Debtor on 21.11.2022, wherein the financial offers submitted by the PRAs in the second round of challenge were presented before the CoC.

5.4. The plans were discussed in the 9th CoC meeting. The relevant part of the minutes is extracted below for reference:

> ***To consider and discuss on Resolution plan(s) received from Resolution Applicants***.
>
> *The RP re-encapsulated that the last round of negotiation was conducted in the last meeting and all the RAs were requested to share their final signed financial offers in password protected format and the document incorporating curings suggested via various mails. Accordingly, the RP apprised that the final signed financial proposal and cured document have been received by the RAs which shall be discussed by inviting the RAs one-by-one to the meeting.*
>
> *The discussion with Resolution Applicants held in the meeting are annexed with the minutes and are marked as Annexure-A.*

5.5. Further, the financial proposal submitted by the Applicant as discussed at the 9th CoC meeting is reproduced below: -

iv. **RA- MRS. PAYAL AGARWAL [Representative: Mr. Sidhant Agarwal was present through Video Conferencing]**

Effective date:	date of receipt of Certified order by AA
CIRP Cost	Rs. 0.75 Cr
Consideration offered to Secured Creditors	Rs. 24.26 Cr.
Consideration offered to Operational Creditors	Rs. 0.25 Cr
Total Consideration offered to Creditors	Rs. 24.51 Cr
Terms of Payment for Secured Creditors	* Rs. 24.26 Cr within 60 days of effective date
Terms of Payment for Operational Creditors	within 60 days of effective date
Treatment of Proceeds from Insurance Litigation	100% Pass over to FC
Treatment of proceeds from Avoidance litigation'	100% Pass over to FC

iv. RA- MRS. PAYAL AGARWAL [Representative: Mr. Sidhant Agarwal was present through Video Conferencing]

Effective date:	date of receipt of Certified order by AA
CIRP Cost	Rs. 0.75 Cr
Consideration offered to Secured Creditors	Rs. 24.26 Cr.
Consideration offered to Operational Creditors	Rs. 0.25 Cr
Total Consideration offered to Creditors	Rs. 24.51 Cr
Terms of Payment for Secured Creditors	* Rs. 24.26 Cr within 60 days of effective date
Terms of Payment for Operational Creditors	within 60 days of effective date
Treatment of Proceeds from Insurance Litigation	100% Pass over to FC
Treatment of proceeds from Avoidance litigation'	100% Pass over to FC
Change of management and control as proposed by RA	Management of the Corporate Debtor will vest with the Resolution Applicant from the effective date + complete handover of all the records, assets and information, business operations, assets, claims, contingent assets, filings, on formation of Monitoring Committee
Sources of Funds	The RA has a Net Worth of Rs.20.20 crores as on 31.03.2022 + Glentech Ventures Pte. Ltd. (venture of her son) Is ready to give business loan to the RA

On due perusal of the financial proposal and document, the CoC clarified the following:

Clause	Clarification by RP	Comments of RA
Financial Proposal	Sources of funds states that Glentech Ventures Pte. Ltd. (venture of her son) is ready to give business loan to the RA The CoC clarified that RA should provide details of liquid funds available with them. The RP further enquired if there is any undertaking given by the Glentech to this effect.	The RA agreed that they shall further provide details of liquid funds as well as the undertaking.
Draft Document	The RA proposes Monitoring Committee" means a Committee to be formed for monitoring the Implementation of Resolution Plan and shall comprise of 1 (one) representative of the Financial Creditor and 1 (One) representative of Resolution Applicant. The CoC clarified that 3 members be part of the Monitoring committee comprising of 1 member of FC, 1 member of RA and the RP for effective implementation of the plan.	The RA Agreed

The RA further assured that they have incorporated all the statements and curings shared by the RP and further is agreeable on the preposition that the handover of assets and control of the Corporate Debtor shall be done on the complete payment.

5.6. For the sake of clarity, the relevant extract of the 9th CoC meeting with regard to discussion with the Resolution Applicants is also extracted below: -

General Discussion after the discussion with RAs:

Besides the individual discussions with the respective RAs, the CoC then had a discussion among themselves on other issues pertaining to the resolution plans. The CoC sought RP's opinion on the case of another company under insolvency in case of M/s. SMS Paryavaran Ltd undergoing CIRP and in consideration of the NCLT, Principal Bench, New Delhi wherein a resolution plan had been approved by CoC in the case and had filed with NCLT for approval. In the captioned case due to certain developments, some avoidance application was filed against the successful PRA and NCLT took course to referring the matter to CoC for reconsidering their options. A reference to the same was necessitated in view of the similar situations in the case at hand as two promoters / related parties namely Mr. Himanshu Agarwal (director of CD) and Mrs. Payal Agarwal (Wife of Mr Sudhanshu Agarwal who is also a director of CD) have submitted their resolution plans for the CD under exemption from rigors of Sec 29A under MSME provisions u/s 240A of the Code and avoidance applications have been filed against them in the present case along with two other group companies namely KV Developers Pvt. Ltd. and Arhan Infratech Pvt. Ltd. Further, a fact about the investigation being conducted against the directors by EOW (Economic offences wing) has also been brought to notice of the CoC by RAs recently, though no source/evidence provided. To this, the RP stated that the position of the law is clear on the same that they cannot be held to be ineligible due to either the dance applications or complaint under investigation under provisions of Sec 29A unless and until an order has been passed against them. The NCLT also in the above case has not given any clear finding. However, CoC may in their wisdom take all factors into consideration like the ones above deliberated upon along with others like release of personal guarantee as demanded in his plan by Mr. Himanshu Agarwal, consideration offered to creditors, manner of distribution, factors like sharing/pass through of benefits from insurance claim and avoidance application, terms of plans, implementation schedule etc. The CoC also has to get their views on the viability and feasibility of the resolution plans recorded, as required by law, during approval of the plan once the plans have been placed before them under Section 30(3) for their approval.

With respect to way forward for the resolution plan, i<u>t was deliberated that now that the financial proposals have been freezed, the RP shall share with the RAs the respective curings</u>

suggested to them during the meeting to make their plans comply with the Code and its regulations, removing the anomalies & errors therein and incorporating a few important things like the sources of funds being mentioned clearly, so as to make them feasible & viable and post that final signed resolution plans will be sought.

5.7. Thereafter, the emails dated 29.11.2022 were sent by the RP to all Prospective Resolution Applicants, including the Applicant herein, in response to which said PRAs submitted their final resolution plan. The content of said email reads thus: -

> *"Dear Sir*
>
> *As discussed in the 9th COC held on 21.11.2022, you are requested to submit the final signed resolution plan (Not password protected) latest by 01.12.2022 after incorporating the curings discussed in the meeting and the Due Diligence report, both of which are attached herein for your kind reference.*
>
> *Kindly note,* ***the there cannot be any change in the financial figures submitted by you in the final financial offer dated 21.11.2022 and the curings from the banks, if any, shall be shared in due course for Incorporation in the final plan***
>
> *Apart from the above, you are requested to provide a board resolution authorizing Mr. Sidhant Agarwal to attend the COC meetings in place of the RA along with the final resolution plan.*
>
> *Further, the updated list of creditors is attached herein for your kind consideration for submission of the final resolution plan"*

5.8. Subsequently, the RP convened the 10th CoC meeting on 07.12.2022. The relevant portion of the minutes of said meeting is extracted below for reference: -

> ***"To consider and discuss on Resolution plan(s) received from Resolution Applicants.***
>
> *The RP apprised that the final revised plans have been received and accordingly, the RP has vetted the Resolution Plan vis-à-vis the legal*

compliances in order to issue Compliance certificate following which the compliant resolution plans are being placed before the COC under section 30(3) for their due consideration and voting.

The discussion on the Compliant Resolution Plans held in the meeting are annexed with the mimites and are marked as Annexure-A.

Further, considering that this is the final revised resolution plan and there is no scope of further modifications to the resolution plan as per the provisions of Insolvency and Bankruptcy Code, 2016, the resolution plan submitted by Mr. Pankaj Saraogi being non-compliant with the provisions of RFRP cannot be placed before the CoC for their consideration and voting.

The RP further apprised that the final revised resolution plans of the following RAs are compliant with the law and accordingly, compliance certificates have been duly issued for these resolution plans:

i. Mr. Dinesh Parekh through BGP 11 Analytics Pvt. Ltd.

ii. Mr. Himanshu Agarwal & Mr. Vikash Gupta

iii.Mrs. Payal Agarwal

iv.Mr. Sanjeev Singhal

v.Mr. Saket Agarwal & Fortuna Holdings Pvt. Ltd.

Further, the RP submitted these plans under section 30(3) for approval of CoC along with a compliance certificate. The Compliance Certificates of all the RAs are annexed as A1, A2, A3, A4, AS and A6 (Colly).

Discussion on Feasibility and Viability of the Resolution Plans:

As per Section 30 (4) of the Insolvency and Bankruptcy Code, 2016, the CoC may approve a resolution plan by a vote of not less than 66% of voting share of the financial creditors, after considering its feasibility and viability and such other requirements as may be specified by the board.

Accordingly, the COC assessed the feasibility and viability of each compliant Resolution Plan by going through the experience of the RA in mentha industry and sources of funds as stated in respective Resolution Plan."

5.9. During the voting window for approval of Resolution Plan, the Applicant received a revised claim from State Bank of India ("SBI") on 12.12.2022 and in pursuance of which, the Applicant convened the 11th CoC meeting of the Corporate Debtor on 14.12.2022.

5.10. Thereafter, the Resolution Plan was put to vote by members of the CoC and accordingly, the scoring of Evaluation Matrix was revised. As per the evaluation matrix, the score of each PRA after the first round of negotiation was as follows: -

Rank	Prospective Resolution Applicants	Total Score
H1	Sanjeev Singhal	25.90.
H2	Saket Agarwal and Fortuna holdings Pvt. Ltd.	21.25
H3	Payal Agarwal	21.75
H4	Dinesh Parekh	17.20
H5	Himanshu Agarwal and Vikash Gupta	15.85

The same was revised based on the revised amount of claims admitted, and the final and revised evaluation matrix scoring is as follows: -

Rank	Prospective Resolution Applicants	Total Score
H1	Sanjeev Singhal	34.77.
H2	Saket Agarwal and Fortuna holdings Pvt. Ltd.	33.01
H3	Payal Agarwal	31.57
H4	Dinesh Parekh	11.46
H5	Himanshu Agarwal and Vikash Gupta	10.54

5.11. It is submitted by the Respondent that in the 10th CoC meeting, all the compliant resolution plans by five PRAs, including the Applicant herein, were put for e-voting, and the Resolution Plan of Mr. Saket Agarwal and Fortuna Holdings Private Limited has been approved unanimously, i.e., 100% voting share by COC and as a result of the same, rest of the four plans have been rejected by the COC in their commercial wisdom. Thus, the Resolution Professional followed the provisions of the Code read with the Regulations thereunder, and conducted the CIRP in transparent and fair manner. Therefore, the Unsuccessful Resolution Applicant i.e. the Applicant has no *locus standi* to assail an approved resolution plan by the CoC before this Adjudicating Authority.

5.12. Reliance has been placed by the Respondent/ RP on the decision of the Hon'ble NCLAT in the matter of ***IMR Metallurgical Resources AG v. Ferro Alloys Corporation Limited — Company Appeal (AT) (Ins) NO. 272 OF 2020*** in which it has been held that:

> *"5. It is essential to mention that the Resolution Applicant has no vested right that his Resolution Plan must be considered. It is settled position of law as laid down by Hon'ble Supreme Court in (2019) 2 SCC 1 in case of Arcelor Mittal India Pvt Ltd v. Satish Kumar Gupta that the resolution applicant does not have any vested right that his Resolution Plan must be considered."*
>
> *6. The commercial wisdom of the CoC is paramount, and it has the absolute prerogative to decide the viability and feasibility of the Resolution Plans presented before them and the same is not to be interfered even by the Adjudicating Authority"*

5.13. Further, the learned Counsel for the Respondent also referred to the matter of ***Kalinga Allied Industries Ltd. v. Hindustan Coils Limited —***

Company Appeal (AT) (Ins) No. 518 of 2020 at para 15 to 17 of which it has been observed that: -

> *"15. There is no provision in the Code or regulation which provides that while exercising the power under Section 31 of the IBC, the Adjudicating authority can direct the CoC to consider the resolution plan of such person who has not been part of CIRP. Otherwise also if such procedure adopted, then the CIRP will be frustrated. Once the resolution plan has been opened and fundamentals and financials of the plan and offer made therein were disclosed to all the participants including RP. Then anyone can enhance its offer before the Adjudicating Authority in the guise of maximization of realization. Therefore, no further fresh bid or offer would have accepted or considered...*
>
> *16. This Appellate Tribunal in the case of Chhattisgarh Distilleries Ltd. v. Dushyant Dave and Ors. - Company Appeal (AT)(Ins.) No. 461 of 2019 in the light of the pronouncement of Hon'ble Supreme Court in the case of Committee of Creditors Essar Steel India Ltd. v. Satish Gupta & Ors. 2019 SCC Online SC 1478 held that:*
>
>> *"In the light of the above pronouncement of Hon'ble Supreme Court we have examined the issues raised in these appeals. Admittedly, the A-1 filed its Resolution Plan before the Adjudicating Authority on 13.02.2019 whereas, the last date for submission of Resolution Plan before RP was 15.10.2018. Resolution Plan of Successful Resolution Applicant ie. Dera Finvest Pvt. Ltd. (R2) was approved by 98.72% of the Committee of Creditors in e-voting conducted on 1.11.2018 and on 2.11.2018. When the Resolution Plan is filed before the Adjudicating Authority than the Authority has to satisfy that the Resolution Plan approved by the Committee of Creditors fulfils the requirements as specified in sub-section 2 of Section 30. However, the Adjudicating Authority cannot direct the CoC to consider the second Resolution Plan submitted before the Authority although the second Resolution Applicant is ready to invest more amount in comparison to the first Resolution Applicant. Ld. Adjudicating Authority has rightly held that the Adjudicating Authority cannot suo moto direct the CoC to consider new Resolution Plan and reconsider already approved Resolution Plan. The Hon'ble Supreme Court in the above referred judgement held*

that u/s 30(2) of I&B Code, decision of Committee of Creditor is purely commercial and cannot be adjudicated by the Authority. Thus, we are of the view that the Adjudicating Authority is well within its jurisdiction while rejecting the application of A-1."

17. With the aforesaid, we are of the considered view that the Adjudicating Authority has erroneously entertain the application and Resolution Plan of the Respondent No. 1 and directed the RP to put up the same before CoC for consideration."

5.14. The counsel further relied in the matter of ***Shrawan Kumar Agrawal Consortium v. Rituraj Steel Private Limited in Company Appeal (AT)(Ins) No. 1490 of 2019 dated 05.03.2023,*** wherein the Hon'ble NCLAT held that:

"14. In the instant case, the Adjudicating Authority has overturned the decision of the CoC regarding approval of the Resolution Plan despite being approved by 84.70 percent of the vote share of the CoC, on the pretext of maximisation of value of the corporate debtor. The provisions investing jurisdiction and authority in the NCLT has not made the commercial decision exercised by the CoC of not approving the resolution plan or rejecting the same, justiciable. In the circumstances as stated above, it is clear that the Adjudicating Authority cannot interfere with the commercial wisdom of CoC. The direction for rebidding for maximisation of the value of the corporate debtor also amounts to an interference in the business decision of the CoC, which is not permitted in law.

[…]

18. It is pertinent to mention that the Adjudicating Authority has a very limited power of judicial scrutiny, and the statutory provision does not permit the Adjudicating Authority to interfere with the commercial wisdom of the CoC. Even for maximisation of value of the assets of the Corporate Debtor, the Adjudicating Authority is not entitled to overturn the business decisions of the Corporate Debtor."

6. In its rejoinder, the Applicant has referred to the email dated 29.11.2022 sent by the Resolution Professional wherein it was mentioned, *inter-alia,* that though the Resolution Professional clearly stated no Resolution Applicant was allowed to make changes in the financial figures, Still Resolution Applicant Fortuna Holding Pvt. Ltd. and Saket Aggarwal changed the financial figures by offering 35% of the pass-through insurance proceeds, which comes to Rs. 69.20 crores, whereas initially they had not offered any amount from the insurance proceeds.

6.1. The assertion by Resolution Professional and the CoC that 35% of the insurance proceeds of Rs. 197.72 crores (which comes to Rs. 69.20 crores) will not be considered while evaluating the offer, is not tenable.

6.2. It is also pointed out that in the Evaluation Matrix, one Resolution Applicant viz. Mr. Sanjeev Singhal, was having a total score of 34.41 as against the Successful Resolution Applicant i.e., Mr. Saket Aggarwal through Fortuna Holding Pvt. Ltd. which had a score of 32.65. However, the RP allowed Mr. Saket Aggarwal/Fortuna Holding Pvt. Ltd. to change the financial figures and thereby getting higher scores than others in the Evaluation Matrix (Original Evaluation Matrix). It is also stated that the Resolution Professional and CoC have not given any weightage to the offer of an insurance claim.

6.3. Reliance has been placed on the decision of the Hon'ble Supreme Court ***Vallal Rck v M/s Siva Industries and Holdings Limited [Civil Appeal Nos-1811-1812 of 2022]*** and also on the judgement of the Hon'ble Apex Court in the case of "Essar Steel India Limited through Authorised Signatory", wherein it is held, *inter alia*, that the decision of the CoC must reflect the fact that "it is taken into account maximising the value of assets of the CD and the fact that it has adequately balanced the interests of all stakeholders, including Operational Creditors".

ANALYSIS:

7. We heard the parties at length and have considered the submissions made and also pursued the material on record (*ibid).*

7.1 The allegations of the Applicant are as under: -

I. **Favoritism and Undue Benefit:** The Applicant has alleged that the RP favored another resolution applicant viz. Mr. Saket Aggarwal, by allowing him to change his financial proposal after the deadline, which was not permitted for other PRAs. This allegedly breached the RP's commitment and caused a loss to the Corporate Debtor.

II. **Acceptance of a lower valued offer:** The Applicant has contended that the CoC ignored a significant contingent asset, an insurance claim worth Rs. 197.72 crores, and gave it away for a meagre Rs. 99 lakhs. This decision, according to the Applicant, is irrational and against the principles of the IBC.

III. **Significant Haircut and Loss to Public Money:** The Applicant argues that the approved plan involves a substantial haircut of 91.84% on the total claims of Rs. 321.48 crores, resulting in a loss to the public exchequer, as a significant portion of the claims belongs to PSU banks and revenue authorities.

7.2 As regards the allegation of allowing the SRA to change their offer even after the email dated 29.11.2022 which clearly stated that the financial offers of PRAs dated 21.11.2022 were frozen and no change in the same would be allowed, we note that the consortium of Fortuna Holdings and Saket Agarwal i.e. the SRA had initially not included any proceeds from the insurance claim but later, after 29.11.2022, offered 35% of it, which amounted to Rs. 69.20 crores. The RP, however, has clarified that the offer of the pass-through insurance amount claim, which was not a part of the financial plan, is not material for the selection of the SRA. We also note the fact that the Evaluation Matrix used to assess the Resolution Plan did not assign any weightage to such insurance pass-through amount, thus, rendering it irrelevant in choosing the SRA. Herein below are the proposals by the Applicant and the SRA: -

Resolution Applicant	**Total Amount Offered**	**Treatment of Contingent asset (Insurance Claim) of Rs. 197.72 crore**
Payal Agarwal	Rs.25.26 crore	100% to COC i.e. Rs. 197.72 crore
Fortune Holdings Private Limited and Saket Agarwal	Rs.26.25 crore	35% to COC i.e Rs.95.90 crore

7.3 Furthermore, the RP has clarified that there had been no change in the financial proposals by the PRAs after the 9th CoC dated 21.11.2022, as he had not taken any cognisance of the pass-through insurance amounts offered at the time of consideration of the proposals. In this connection, a reference may also be made to the Evaluation Matrix deployed for choosing the SRA, which reads thus: -

Evaluation Matrix

Quantitative parameters

Particulars	Range	Max Score
Consideration for creditors (upfront payment + NAV of the deferred payments) (Scores will be awarded on a scale of 0 – 70 in proportion of above consideration offered to the admitted claims for e.g. PRA offering consideration of 100% claims to get 70, 10% to get 7 and so on) Rate of discounting for calculating NPV of deferred payments 0 - 12 months - 12% per annum 0 - 24 months - 20% per annum (Payment up to 2 months will be considered in upfront payment)	0–70	70
Incentive for upfront payment within 60 days (Upfront payment offered by respective PRAs in proportion to the highest consideration calculated above i.e. Cash upfront + NAV of the deferred payments, among all PRAs, will be awarded marks out of 20)	0-20	20
Qualitative parameters	0 - 10	10
Total	-	100

Qualitative parameters

Experience in manufacturer, exporter and supplier of Mint Products and activities similar in nature to the Corporate Debtor	0 - 4
Experience in taking over stressed asset or company under IBC / SARFAESI / RDDBor by way of merger / acquisition etc.	0 - 2
Capability to honour the financial commitments under the plan	0 - 2
Credit rating / CIBIL Profile score of the applicant	0 - 2

Notes:

- Payment above 2 years will not be considered for scoring.
- Deferred payments to be made only in form of money and not by way of any equity / debt / instrument.
- Scoring on the qualitative parameters is only for the purpose of the resolution plan and is in no way the comparison of one with other. Further scoring on the qualitative parameters would be done keeping in view the objective of judging the capability of the resolution applicant in context of implementing resolution plan of the corporate debtor and is the prerogative of CoC and shall not be open to challenge.

7.4 The RP in paragraph 4 of his affidavit has also provided the score of each PRA as per the evaluation matrix, which are as follows: -

RANK	RESOLUTION APPLICANT	TOTAL SCORE
H1	MR. SANJEEV SINGHAL	34.77
H2	MR. SAKET AGARWAL THROUGH FORTUNA HOLDINGS PVT LTD	33.01
H3	MRS. PAYAL AGARWAL	31.57
H4	MR. DINESH PAREKH THROUGH BGP 11 ANALYTICS PVT LTD	11.46
H5	MR. HIMANSHU AGARWAL & MR. VIKAS GUPTA	10.54

8. Thus, the issue before us is whether, by allowing the SRA to add a pass-through insurance amount to his offer after the freezing of the financial offers by all PRAs, the RP has committed a material irregularity in exercise of his powers and also whether a question can be raised against the Evaluation

Matrix deployed to select the SRA in the present case, where the pass-through insurance offer has not been considered.

9. After going through the facts narrated in the aforementioned paragraphs, we are of the view that the financial offers by the PRAs stood frozen as of 21.11.2022, as intimated by the RP by his email dated 29.11.2022, and there is no irregularity in the addition of an offer of 35% pass-through insurance by the SRA beyond the said date, as this was not an item considered as part of the financial proposal and was also not given any weightage in the Evaluation Matrix.

10. Hence, we hold that the financial offers submitted by the Prospective Resolution Applicants (PRAs) were frozen as of 21.11.2022, as communicated by the Resolution Professional (RP) in his email dated 29.11.2022. The subsequent inclusion of a 35% pass-through insurance amount offer by the Successful Resolution Applicant does not constitute an irregularity, as this element was not a component of the financial plan. Therefore, the pivotal issue is whether the RP/CoC acted appropriately by excluding pass-through insurance amounts from their considerations and whether their decision on this matter can be challenged before this Adjudicating Authority.

10.1. On the issue of whether this Adjudicating Authority has jurisdiction to interfere with the commercial decision of the CoC on the weightage to be given to various components of an offer by a Resolution Applicant, a reference is made to the ratios of following judicial decisions directly on the same issue. The Hon'ble Supreme Court in ***K. Sashidhar v. Indian Overseas Bank and Others [Civil Appeal No. 10673 of 2018]*** has laid down that:

“the role of the CoC in accepting or rejecting the Resolution Plan as well as the role of the Adjudicating Authority while considering the Application from approval or rejection of the Resolution Plan. There is an intrinsic assumption that the ‘Financial Creditors’ are fully informed about the viability of the ‘Corporate Debtor’ and the feasibility of the Resolution Plan.<u>The opinion expressed after due deliberations in the CoC meeting through voting, is a collective business decision. The legislature, consciously, has provided only limited grounds to challenge the commercial wisdom or their collective decision by the Adjudicating Authority.</u>”

(Emphasis Supplied)

10.2. The Hon’ble Supreme Court in ***Kalpraj Dharamshi & Anr. v. Kotak Investment Advisors Ltd. and Anr. [2021 SCC Online SC 204]*** in para 148 has referred to the observations made by it in the matter of *K. Sashidhar (supra)* and held that: -

“57. ...Indubitably, the remedy of appeal including the width of jurisdiction of the appellate authority and the grounds of appeal, is a creature of statute. The provisions investing jurisdiction and authority in NCLT or NCLAT as noticed earlier, have not made the commercial decision exercised by CoC of not approving the resolution plan or rejecting the same, justiciable. This position is reinforced from the limited grounds specified for instituting an appeal that too against an order "approving a resolution plan" Under Section 31. First, that the approved resolution plan is in contravention of the provisions of any law for the time being in force. Second, there has been material irregularity in exercise of powers "by the resolution professional" during the corporate insolvency resolution period. Third, the debts owed to operational creditors have not been provided for in the resolution plan in the prescribed manner. Fourth, the insolvency resolution plan costs have not been provided for repayment in priority to all other debts. Fifth, the resolution plan does not comply with any other criteria specified by the Board. Significantly, the matters or grounds--be it Under Section 30(2) or Under Section 61(3) of the I&B Code--are regarding testing the validity of the "approved" resolution plan by CoC; and not for approving the resolution plan which has been disapproved or deemed to have been rejected by CoC in exercise of its business decision.”

[…]

"149. It will therefore be clear, that this Court, in unequivocal terms, held, that the appeal is a creature of statute and that the statute has not invested jurisdiction and authority either with NCLT or NCLAT, to review the commercial decision exercised by CoC of approving the resolution plan or rejecting the same.

150. The position is clarified by the following observations in paragraph 59 of the judgment in the case of K. Sashidhar (supra), which reads thus:

> *"59. In our view, neither the adjudicating authority (NCLT) nor the appellate authority (NCLAT) has been endowed with the jurisdiction to reverse the commercial wisdom of the dissenting financial creditors and that too on the specious ground that it is only an opinion of the minority financial creditors….."*

*151. This Court in Committee of Creditors of **Essar Steel India Limited through Authorised Signatory** after reproducing certain paragraphs in K. Sashidhar (supra) observed thus:*

> *"Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of Section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and Section 32 read with Section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar"*

152. It can thus be seen, that this Court has clarified, that the limited judicial review, which is available, can in no circumstance trespass upon a business decision arrived at by the majority of CoC."

10.3. The Hon'ble Supreme Court in the matter of ***Maharashtra Seamless Ltd. & Ors. Vs. Padmanabhan Vantekesh & Ors. [Civil Appeal No. 4242 of 2019]*** at para 28 held that: -

> *"28. The Appellate Authority has, in our opinion, proceeded on equitable perception rather than commercial wisdom. On the face of it, release of assets at a value 20% below its liquidation value arrived at by the valuers seems inequitable. Here, we feel the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative*

analysis. Such is the scheme of the Code. Section 31(1) of the Code lays down in clear terms that Company Appeal (AT) (Ins) No. 143 of 2020 23 of 26 for final approval of a resolution plan, the Adjudicating Authority has to be satisfied that the requirement of sub- section (2) of Section 30 of the Code has been complied with. The proviso to Section 31(1) of the Code stipulates the other point on which an Adjudicating Authority has to be satisfied. That factor is that the resolution plan has provisions for its implementation. <u>The scope of interference by the Adjudicating Authority in limited judicial review has been laid down in the case of Essar Steel (supra)</u>, the relevant passage (para 54) of which we have reproduced in earlier part of this judgment. The case of MSL in their appeal is that they want to run the company and infuse more funds. In such circumstances, we do not think the Appellate Authority ought to have interfered with the order of the Adjudicating Authority in directing the successful Resolution Applicant to enhance their fund inflow upfront."

(Emphasis Supplied)

10.4. Further Hon'ble NCLAT in the case of ***PNC Infratech Ltd. Vs. Deepak Maini Company Appeal (AT) (Ins) No. 143 of 2020 dated 22.08.2022*** also held that: -

In view of the decisions of the Hon'ble Supreme Court, it is the settled proposition of law that the commercial wisdom of the Committee of Creditors in approving or rejecting a resolution plan is essentially based on a business decision which involves evaluation of resolution plan based on its feasibility besides the Committee of Creditors being fully informed about the viability of the Corporate Debtor. The Committee of Creditors invariably examine the Resolution Plan and an assessment is made through their team of experts in that regard.

***39**. Further, <u>there is no such mechanism under the Code that gives the right to the Unsuccessful Resolution Applicant to challenge the score granted as per the evaluation matrix prepared by the CoC and the Resolution Professional as per the provisions of CIRP Regulations</u>. Though, Section 61 of the Code provides Appeals against the orders of the Adjudicating Authority and Sub-section (3) thereof provides an Appeal against an order approving a Resolution Plan under Section 31 which may be filed on the following grounds namely* *(i) The approval resolution plan is in contravention of the provisions of any law for the time being enforce.*

(ii) There has been material irregularity in exercise of the powers by the Resolution Professional during the Corporate Insolvency Resolution Period.

[…]

(Emphasis Supplied)

11. As regards the COC's approval, it is noted in the minutes of the 10th CoC meeting that the plan submitted by the SRA viz. the consortium of Saket Agarwal and Fortuna holdings Private Limited, was approved unanimously with a 100% voting share, whereas the plan submitted by the Applicant scored only 10.79%. The voting results on the plan submitted by the Applicant as well as the SRA, as appearing in the minutes of 10th COC meeting, reads thus: -

2. To consider and approve compliant Resolution Plan as submitted by by Mrs. Payal Agarwal and authorize RP to file CoC approved Resolution Plan before Hon'ble NCLT in terms of Section 30(6) of the Code.

The matter was decided to be resolved as under:

*"**RESOLVED THAT** in accordance with sections 30(4) and 30(6) of the Code read with regulations made thereunder, the approval of the members of the CoC be and is hereby accorded to the cured/amended/revised Resolution Plan submitted by Mrs. Payal Agarwal (RA) and RP is authorised to issue LOI to RA.*

RESOLVED FURTHER THAT Resolution Professional is authorised to file the CoC approved resolution plan with the Hon'ble Adjudicating Authority i.e. NCLT."

S. No.	Name of Financial creditor	Voting Share (%)	Voted in Favour (%)	Voted Against (%)	Abstained from Voting (%)	Remarks
1	State Bank of India	79.82	-	79.82	-	Rejected
2	ICICI Bank	10.79	10.79	-	-	
3	Bank of Baroda	9.39	-	9.39	-	
	Total	**100**	**10.79**	**89.21**	**0**	

5. To consider and approve compliant Resolution Plan as submitted by Mr. Saket Agarwal & Fortuna Holdings Pvt. Ltd. and authorize RP to file CoC approved Resolution Plan before Hon'ble NCLT in terms of Section 30(6) of the Code.

The matter was decided to be resolved as under:

*"**RESOLVED THAT** in accordance with sections 30(4) and 30(6) of the Code read with regulations made thereunder, the approval of the members of the CoC be and is hereby accorded to the cured/amended/revised Resolution Plan submitted by Mr. Saket Agarwal & Fortuna Holdings Pvt. Ltd. (RA) and RP is authorised to issue LOI to RA.*

***RESOLVED FURTHER THAT** Resolution Professional is authorised to file the CoC approved resolution plan with the Hon'ble Adjudicating Authority i.e. NCLT."*

S. No.	Name of Financial creditor	Voting Share (%)	Voted in Favour (%)	Voted Against (%)	Abstained from Voting (%)	Remarks
1	State Bank of India	79.82	79.82	-	-	Approved
2	ICICI Bank	10.79	10.79	-	-	
3	Bank of Baroda	9.39	9.39	-	-	
	Total	**100**	**100**	**0**	**0**	

12. After perusing the minutes of the final CoC Meeting, we are of the considered view that the issues raised in this application need to be decided on the touchstone of the principles laid down by the Hon'ble Supreme Court and the Hon'ble Appellate Tribunal in the aforementioned judgements. The commercial wisdom of the COC is of paramount consideration, and there is no such provision under the Code that gives the right to an unsuccessful Resolution Applicant to challenge the score granted as per the evaluation matrix prepared by the CoC and the Resolution Professional under the provisions of CIRP Regulations. The issue of an offer by the SRA of a percentage of the insurance pass-through, which is not considered in evaluating the financial offers by the CoC after the freezing of the financial proposals, appears to be irrelevant as it was not a part of the Financial Plan, and thus, cannot be held to be a material irregularity. The Applicant's other assertion regarding a substantial haircut leading to a loss of public money, and the CoC's acceptance of a lower-valued offer are unsubstantiated, as no material irregularities have been found in the SRA's approval of the Plan.

13. As a sequel to the above, we are of the view that there is no material irregularity in the exercise of power by the Respondent/ Resolution Professional, and the CoC approved resolution plan is not in contravention of any law for the time being in force.

14. In the wake, we hold that this IA is devoid of merits and deserves to be dismissed. Ordered accordingly.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI SPECIAL BENCH (COURT – II)

IN THE MATTER OF C.P.(IB) – 20(PB)/2021:

ICICI BANK **...Financial Creditor**

Versus

K V AROMATICS PRIVATE LIMITED **...Corporate Debtor**

AND IN THE MATTER OF I.A. 6131/ 2022:

ANIL KOHLI
Resolution Professional
K V Aromatics Private Limited
409, 4th Floor, Ansal Bhawan,
K.G. Marg, Connaught Place,
New Delhi – 110008

...Applicant

Versus

Uttar Pradesh State Industrial Development Authority

...Respondent

Order Delivered on: 12.03.2025

UNDER SECTION: 60(5), IBC, 2016 r/w Rule 11 of NCLT Rules, 2016

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the UPSIDA	:	Adv. Rajesh Raina, Rehmat Ali, Adv. Shubham Sharma
For the RP	:	Adv. Abhishek Anand, Adv. Karan Kohli, Adv. Ishaan Dhingra

ORDER

The present application has been filed by Mr. Anil Kohli, Resolution Professional for M/s KV Aromatics Limited (hereinafter, referred to as "**Corporate Debtor**") under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter, referred to as the "**Code**") read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking appropriate directions against Uttar Pradesh State Industrial Development Authority (hereinafter, referred to as "**UPSIDA**"), i.e., direction to not terminate Lease Deed as entered into between the Corporate Debtor and Respondent and to exclude period from 25.03.2022 (date of issuance of notice by UPSIDA) till effective implementation of Resolution Plan, if any, for making Plot No. D-216, D-217, D-218, and D-219 functional and thereby complying with the time stipulated to make the said Plots function as per UPSIDA norms.

2. In summary, the Applicant states that the CIRP was initiated against the Corporate Debtor by the order of this Adjudicating Authority on 15.03.2022 and the Applicant was informed about the same by email dated 22.03.2022. The Applicant has made compliance with the provisions for making public announcements, and the Resolution Professional was appointed by the CoC in its 1st meeting on 12.05.2022. Pursuant to the announcement, claims were received from the Financial Creditor and the Applicant has also published Form G for Expression of Interest (EOI) after deliberation with the CoC on 22.06.2022. In pursuance to the same proposals had been received from the Prospective Resolution Applicants (PRAs).

2.1. Long before the initiation of CIRP, the Corporate Debtor had entered into several land lease agreements with the UPSIDA previously known as UPSIDC, for the following plots of land: -

a. Plot No. D-219, Industrial Area, GNEPIP, KASNA Greater Noida (Gautam Budh Nagar)	The Corporate Debtor entered into a lease deed with U.P. State Industrial Development Corporation for 79 years at a rental of Rs. 2246.00 per year with a premium of Rs. 32,67,930.00.
b. Plot No. D-218, Industrial Area GNEPIP, KASNA Greater Noida (Gautam Budh Nagar)	The Corporate Debtor entered into a lease deed with U.P. State Industrial Development Corporation for 79 years at a rental of Rs. 2426.00 per year with a premium of Rs. 35,29,830.00.
c. Plot No. D-212, D-213, D-214, D-215, Industrial Area GNEPIP, Kasna, Greater Noida (Gautam Budh Nagar)	The Corporate Debtor entered into a lease deed with U.P. State Industrial Development Corporation for 87 years at a rental of Rs. 9,432.00 per year with a premium of Rs. 82,53,000.00.
d. Plot No. D-43, Industrial Area GNEPIP, Kasna, Greater Noida (Gautam Budh Nagar)	The Corporate Debtor entered into a lease deed with U.P. State Industrial Development Corporation for 82 years at a rental of Rs. 2,210.00 per year with a premium of Rs. 15,69,497.00.
e. Plot No. D-216 and D-217, Industrial Area GNEPIP, Kasna, Greater Noida (Gautam Budh Nagar)	The Corporate Debtor entered into a lease deed with U.P. State Industrial Development Corporation for 81 years at a rental of Rs. 4800/- per year with a premium of Rs. 53,16,000.00/-.

f. Plot No. D-44, Industrial Area GNEPIP, Kasna, Greater Noida (Gautam Budh Nagar)	The Corporate Debtor entered into a lease deed with U.P. State Industrial Development Corporation for 83 years at a rental of Rs. 3025.00/- per year with a premium of Rs. 25,33,437.50/-.

2.2. On 25.03.2022 i.e. during the CIRP period, the Respondent through its Regional Manager had sent notices to the Corporate Debtor having reference no. 12012/SIDA/RMS, 12013/SIDA/RMS, 12015/SIDA/RMS in respect of Plot No. D-216, D-217, D-218, and D-219. Through these notices, the Respondent apprised the Applicant about the allotment of respective plots. On 22.08.2022, the Applicant also received a claim from Respondent, through its Regional Manager, claiming a total amount of Rs. 4,51,71,078.46/- as per calculation sheet for Plot No. D-212 to 215, D-216 to 217, D- 218, D-219 & D-43, D-44. A bifurcation of claim submitted by UPSIDA is as follows:

a. Plot No. D-43, 44- Rs. 62,75,262.35/-
b. Plot No. D-212 to 215 - Rs. 2,87,62,087.83/-
c. Plot No. D-216, 217 - Rs. 58,61,271/-
d. Plot No. D-218 - Rs. 21,72,506.40/-
e. Plot No. D-219 - Rs. 20,99,950.99/-

Total - Rs. 4,51,71,078.46

2.3. The claim form submitted by the Respondent has included several charges, such as maintenance charges up to 31.03.2023, interest on maintenance charges, and time extension functional charges for all the plots, being Plot No. D-43, 44, D-212 to 215, D-216, 217, D-218, and D-219.

2.4. Further, in terms of email dated 13.10.2022, the Applicant has partially admitted the claim of Respondent to the extent of Rs. 1,18,35,835/- out of a total amount of Rs. 4,51,71,078/- of UPSIDA and also sent a letter dated 03.11.2022 to the Regional Manager, UPSIDA, thereby apprising the Respondent about the functionality of Plot No. D-212 to D-215 and D-43 to D-44.

2.5. The Corporate Debtor is undergoing CIRP since 15.03.2022 and it is the prospective Successful Resolution Applicant who will functionalise Plot Nos. D-216, D-217, D-218, and D-219. Further, it is submitted that termination of lease on or after expiry of 24.03.2023 will be in complete violation to moratorium as provided under Section 14 of the Code.

2.6. The Section 238 of the Code contains an overriding clause that mandates that the provisions of the Code shall override the provisions of any other law.

2.7. As per the notice issued by the Respondent for termination of lease deeds, a one-year period has been given w.e.f. 25.03.2022 to make the allotted plots functional, which will expire on 24.03.2023. However, the Corporate Debtor is undergoing CIRP and there is a possibility of resolution of the Corporate Debtor. In the event, a resolution plan is approved, then as per Section 31(4) of the Code, it is the prospective Successful Resolution Applicant who will functionalise Plot No. D-216, D-217, D-218, and D-219.

3. In rebuttal to the above, the learned counsel for the Respondent submitted that, as per the lease deed executed on 16.04.2014, the allotted plots are to be utilised and made functional within a period of three years from the date of allotment, and if the plots are not utilised then the time extension fee is levied.

3.1. Despite several notices to the allottee, i.e. M/s K.V. Aromatics Pvt. Ltd., the plots were not utilised. Thereafter, the State of U.P. came out with a notification bearing no. 1117/79-D-1-2022-K-17-2022 dated 28.07.2020 whereby it was intimated that all the allottees, who do not utilise the allotted plots within a period of one year from the notice to utilise the allotted plots, would face consequences of the cancellation of the plots. Subsequent to this, the notice dated 25.03.2022 was issued to the allottee i.e. the Corporate Debtor giving last opportunity to make the allotted plots functional and bring the same to production within a period of one year from the date of notice, i.e., 25.03.2022 failing which the plots would be considered as cancelled.

3.2. The plots in question were allotted to the CD for speculative purposes only, and it had no intention to use the same for a very long time, as is revealed form the allotment letters and lease deeds which were issued in 2014 and in 2017 respectively.

3.3. The letter dated 25.03.2022 sent to the CD mentions only about the cancellation of the plot in case of non-utilization within 1 year and does not anywhere mention that the lease deeds were being cancelled for reasons of insolvency of the CD. Therefore, the provisions of Section 14 of the Code are not applicable in the present case.

4. Per contra, the Applicant has submitted that the Corporate Debtor is undergoing CIRP initiated in terms of order dated 15.03.2022 and a moratorium has been imposed. Further reference has been made to Section 14(1) read with Section 5(12) of the Code. The explanation to Section 14 and the provisions of Section 5(12) are extracted below for reference: -

> ***14. Moratorium:***
> *[…]*
> *Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or* ***a similar grant or right during the moratorium period;]***
>
> (Emphasis supplied)
>
> ***Section 5(12) of IBC:***
> *(12) "<u>insolvency commencement date</u>" means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be:*
>
> (Emphasis supplied)

4.1. It is further contended that on a plain reading of Section 14 read with Section 5(12) of the Code, it is clear that as moratorium was imposed w.e.f. 15.03.2022, for a period thereafter, licenses, permits, registration, quota, concession, clearance, or a similar grant or right given by the Central

Government, State Government, Local Authority, Sectoral Regulator, or any other authority constituted under any other law for the time being in force could not have been terminated as per the explanation of Section 14 subject to the condition therein.

4.2. The learned counsel for the Applicant relied upon the judgement of Hon'ble Supreme Court in the matter of ***P.Mohanraj & Ors. vs. Shah Brothers Ispat Private Limited, 2021 SCC Online SC 152,*** wherein it was held that: -

> *"10. A cursory look at Section 14(1) makes it clear that subject to the exceptions contained in sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall mandatorily, by order, declare a moratorium to prohibit what follows in clauses (a) to (d). Importantly, under sub-section (4), this order of moratorium does not continue indefinitely, but has effect only from the date of the order declaring moratorium till the completion of the corporate insolvency resolution process which is time bound, either culminating in the order of the Adjudicating Authority approving a resolution plan or in liquidation"*

4.3. Further reliance has been placed upon the judgement of ***Alchemist Asset Reconstruction Company Limited vs Hotel Gaudavan Private Limited & Ors. [2018 16 SCC 94]***, wherein it has been held that: -

> "*the mandate of the Code is that the moratorium comes into effect the moment the insolvency petition is admitted which expressly bars the intuition or continuation of pending suits or proceedings against Corporate Debtors."*

4.4. The Applicant convened the 10th meeting of the CoC on 05.12.2022 wherein the CoC unanimously approved the Resolution Plan submitted by Saket Agarwal and Fortuna Holdings Private Limited *vide* e-voting which concluded on 02.02.2023.

4.5. The Section 31(4) of the Code expressly provides that the Resolution Applicants shall mandatorily obtain necessary approvals required under any law within a period of one year from the date of approval of the plan by the Adjudicating Authority. Section 31(4) of the Code reads thus: -

> *"**31. Approval of resolution plan. –***
>
> *[…]*
>
> *(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), o<u>btain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:</u>*
>
> *Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors."*
>
> (Emphasis supplied)

4.6. In the reply dated 05.08.2024, the Respondent has raised no substantial arguments or contentions other than the fact that the Government of Uttar Pradesh has sent similar notices to other allottees who have not utilised the plot allotted to them. Notification bearing no. 1117/79-D-1-2022-K-17-2022 dated 28.07.2020 directs all allottees who did not utilize the plots to do so within a period of one year from the notice to utilize the allotted plots. However, it is submitted that this notification is based on Section 7 of the Uttar Pradesh Industrial Area Development Act, 1976, but the provisions of the Insolvency & Bankruptcy Code (IBC) as laid down in Section 238 of the Code override the provisions of the aforesaid Act.

ANALYSIS:

5. We have heard the Ld. Counsels and perused the relevant records. It is noted that in the present matter, the CIRP was initiated on 15.03.2022 and the plots were allotted to the Corporate Debtor much before i.e. in the period between 2014 and 2016, but the Corporate Debtor has not put the land to industrial use as per the terms of the lease deed issued by the UPSIDA. In view of such non-compliance with the clauses of the lease deed, a letter dated 25.03.2022 was sent by the Respondent to the CD, after the initiation of the CIRP, giving the allottee a last opportunity to commence construction on the plot and bring the same to production within a period of one year from the date of notice.

6. The outer limit of the period of one year given for compliance with the said notice expired on 24.03.2023. In the meantime, on 05.12.2022, the CoC unanimously approved the Resolution Plan, which is awaiting the approval of this Adjudicating Authority.

7. We also note that the CD has taken several plots on lease from UPSIDA. The CD had received a claim from the Respondent for a total amount of Rs. 4,51,71,078.46/- as per the calculation sheet for Plot No. D-212 to 215, D-216 to 217, D- 218, D-219 & D-43, D-44. In the letter dated 03.11.2022, sent by the Applicant/ CD to the Regional Manager, UPSIDA, it was clarified that Plot No. D-212 to D-215 and D-43 to D-44 have been made functional. The plots for which notices are received for cancellation are D-216, D-217, D-218 and D-219.

8. We further note that THE UTTAR PRADESH INDUSTRIAL AREA DEVELOPMENT ORDINANCE, 2022 (U.P. ORDINANCE NO. 3 OF 2022) brought an amendment in Section 7 of The Uttar Pradesh Industrial Area Development Act, 1976, giving discretion to the government to extend the date of termination by laying down that *"The State Government may, by a general or special order, extend the date of such cancellation and vesting as mentioned in the above proviso, <u>in the interest of promotion of investment and employment generation.</u>"*

9. In this connection, the UPSIDA had clearly mentioned in the notices that action would be taken for non-compliance with the terms of the lease deed under the Uttar Pradesh Industrial Area Development Act, 1976. It is, however, argued that the same would be subject to the provisions of IBC as the latter superseded the former in view of the provisions of Section 238 of the IBC, 2016, which is extracted here below: -

> "***238. Provisions of this Code to override other laws.*** *- The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."*

10. After going through the facts narrated above, we note that the three-year period for making the leased plots functional, after the execution of the deed, had expired way back on 16.02.2016. In the present case, the CIRP was initiated against the Corporate Debtor on 15.03.2022. The notification of the Government intimating the Corporate Debtor regarding the consequences of not making the Government plots functional was dated 28.07.2020 and actual notice was issued only on 25.03.2022 i.e., after the initiation of CIRP.

11. By way of the aforementioned notice dated 25.03.2022, the Corporate Debtor was given "a last opportunity" to make the allotted plots functional and further stated as follows: -

> *"it is expected from you that from the issuance of the notice dated (25.03.2022 till 25.03.2022) i.e. within one year as per conditions specified in the allocation/transfer letter/lease deed by constructing in minimum area of the land and operating the unit as per rule of Authority and if not make it useable, the information is not provided to the office after the completion of the period of one year from the date of issuance of notice dated 25.03.2022 then the allocation and lease deed shall consider to be cancelled."*

12. In the course of the present proceedings, the parties have not reported any further action from the UPSIDA in this regard. We also note that the U.P Ordinance No. 3 of 2022 referred to above gives the flexibility to the Government to pass by a general or special order extending the date of such cancellation in the interest of promotion of investment and employment generation.

13. On a combined reading of the aforementioned Ordinance as well as the notice issued to the Corporate Debtor, we are of the view that this was an opportunity given to the Corporate Debtor to rectify a non-compliance committed by it, and the issuance of notice can by no stretch of imagination be construed as any violation of the provision of moratorium as laid down in Section 14(1) of the Code.

14. In view of the aforementioned discussion, we refuse to issue any specific direction to the Respondent i.e. Uttar Pradesh State Industrial Development Authority. The Applicant is, however, at liberty to approach the said authority for any relief in this regard. **In the wake, the IA No. 6131/2022 stands disposed of.**

Sd/-	Sd/-
(SUBRATA KUMAR DASH)	**(ASHOK KUMAR BHARDWAJ)**
MEMBER (T)	**MEMBER (J)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI SPECIAL BENCH (COURT – II)

IN THE MATTER OF C.P.(IB) – 20(PB)/2021:

ICICI BANK **...Financial Creditor**

Versus

K. V. AROMATICS PRIVATE LIMITED **...Corporate Debtor**

AND IN THE MATTER OF I.A. 662/ 2023:

ANIL KOHLI
Resolution Professional
K. V. Aromatics Private Limited
Office at:
409, 4th Floor, Ansal Bhawan,
K.G. Marg, Connaught Place,
New Delhi – 110008 **...Applicant**

Versus

HIMANSHU AGARWAL
Board of Directors (Power suspended)
For K. V. Aromatics Private Limited
101, Tower 2, Earth Court,
Jaypee Greens, Greater Noida,
Uttar Pradesh – 201310 **...Respondent No. 1**

AMAN AGARWAL
Board of Directors (Power suspended)
For K. V. Aromatics Private Limited
V-2/1, LAND 2, BLOCK G,
Jaypee Greens, Noida,
Uttar Pradesh – 201308 **...Respondent No. 2**

SAKET AGARWAL & FORTUNA HOLDINGS PRIVATE LIMITED
F. No. 506, Plot No. 66, Agrasen Apartment
Indraprastha, New Delhi – 110092 **...Respondent No. 3**

Order Delivered on: 12.03.2025

UNDER SECTION: 30(6) of IBC, 2016

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the RP	**:**	**Adv. Abhishek Anand, Adv. Karan Kohli, Adv. Ishaan Dhingra**
For the COC:	**:**	**Adv. Avrojyoti Chatterjee, Adv. Rajiv S. Roy, Adv. Abhishek Bose, Adv. Abhishek Mishra, Adv. Siddharth Dhingra, Adv. Zoheb Khan, Adv. Jayashree Saha**
For the COC	**:**	**Adv. Harish Taneja, Adv. Parul**

ORDER

The present I.A. No. 662 of 2023 has been preferred by Mr. Anil Kohli, Resolution Professional qua K.V. Aromatics Pvt. Ltd. (hereinafter referred to as the **'Applicant/RP'**) under Section 30(6) of IBC, 2016, seeking the following reliefs:

"a. Allow the present Application;

b Allow the present application and approve the Resolution Plan dated 02.12.2022 submitted by Saket Agarwal and Fortuna Holdings Private Limited which was presented before the Committee of Creditors in its 10th CoC meeting convened on 05.12.2022 and the plan was unanimously approved by the Committee of Creditors vide E-Voting dated 02.01.2023;

c. Declare that upon approval of the Resolution Plan by this Hon'ble Adjudicating Authority, the provisions of the Resolution Plan shall be binding on the Company, its creditors, guarantors, members, employees, Statutory Authorities and other stakeholders in accordance with Section 31 of the Code, and shall be given effect to and implemented pursuant to the order of this Hon'ble Adjudicating Authority;

d. Approve the appointment of the monitoring agency as stated in the Resolution Plan and approved by the Committee of Creditors;

e. Approve and grant reliefs and directions sought under the Resolution Plan by the Resolution Applicant;

f. Any other relief as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the case."

2. PRELIMINARY

2.1. To put the facts concisely, the underlying main petition C.P.(IB)-20/(PB)/2021 was filed by ICICI Bank Limited (hereinafter referred to as the "**Financial Creditor**") against K.V. Aromatics Private Limited (hereinafter referred to as the "**Corporate Debtor**") under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "**Code**") which was admitted in terms of order dated 15.03.2022 of this Adjudicating Authority. Consequently, the Corporate Insolvency Resolution Process (hereinafter referred to as "**CIRP**") in respect of the Corporate Debtor was initiated, and Mr. Anil Kohli was appointed as the Interim Resolution Professional (IRP).

2.2. Subsequently, the Committee of Creditors (CoC) resolved to appoint the IRP as Resolution Professional (RP) in the 1st CoC meeting convened on 10.05.2022, and the same was confirmed by this Tribunal in terms of order dated 08.06.2022.

3. COLLATION OF CLAIMS BY RP

3.1. It is stated by the Applicant that in terms of Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Applicant made a Public Announcement in Form-A on 13.04.2022 to invite claims from creditors of the Corporate Debtor. The Applicant further stated that after due verification of the claims received, the list of creditors was prepared.

3.2. It is further stated by the Applicant that after collating the claims, a Committee of Creditors (CoC) was constituted in terms of Section 21(1) of the

Code. The updated list of claimants, as mentioned in page 13 of the Application, reads thus: -

Sl.No	Name of the Financial Creditors	Amount Claimed	Amount Admitted	Voting %
1.	State Bank of India	172,72,89,231	172,72,89,231	79.82%
2.	ICICI Bank Limited	23,34,97,467	23,34,97,467	10.79%
3.	Bank of Baroda	20,30,84,433	20,30,84,433	9.39%
	TOTAL	**2,16,38,71,131**	**2,16,38,71,131**	**100%**

3.3. The RP has got the assets of the Corporate Debtor valued in terms of Regulation 27 of the CIRP Regulations, 2016 and the Fair Value and Liquidation Value are as under: -

Sl. No.	Name of valuer	Fair Value	Liquidation Value	Average	
				Fair Value	**Liquidation Value**
A.	**LAND & BUILDING**				
1.	Mr/. Dhiraj Jiaswal	15,70,75,000	10,20,98,750	16,94,68,906	10,59,23,413
2.	Mr. Yatendra Paliwal	18,18,62,812	10,97,48,076		
B.	**PLANT AND MACHINERY**				
1.	Mr. Brahmpal Bhardwaj	6,31,57,688	4,36,26,874	6,19,45,907	4,30,70,380

2.	Mr. Ompal Singh	6,07,34,126	4,25,13,886		
C.SECURITIES AND FINANCIAL ASSETS					
1.	Mr. Vishnu Upadhyay	3,37,80,057	1,04,56,423	3,46,06,529	1,10,75,712
2.	Mr. Gautam Maurya	3,54,33,000	1,16,95,000		
	Total			**26,60,21,342**	**16,00,69,505**

4. EVALUATION AND VOTING

4.1. The Applicant further stated that in compliance of Regulation 36A(1) of CIRP Regulations, 2016, 'Form-G' was published by the Applicant on 22.06.2022, thereby inviting Prospective Resolution Applicants (PRAs) to submit their Expression of Interest (EOI). In terms of Form G, the last date of submission of EOI was 07.07.2022, and the last date for submission of Resolution Plan was 20.08.2022. The Applicant submitted that in pursuance of the publication for Form G, resolution plans had been received from six PRAs.

4.2. Subsequently, all six plans were deliberated and discussed by COC in its 6th COC meeting held on 26.09.2022 and all the PRAs were requested to submit their improved offer.

4.3. It has been further submitted by the Applicant that the prescribed period of expiry of 180 days from the commencement of CIRP for the purpose of Section 12 of the Code was going to expire in the first week of October, 2022. Therefore, in the 6th meeting of the CoC, which was convened on

26.09.2022, it was resolved to extend the CIRP period by 90 days. Accordingly, I.A. No. 4888/2022 was moved by the Applicant before this Tribunal seeking said extension, and the same was allowed in terms of order dated 12.10.2022.

4.4. The Applicant has further stated that at the 7th meeting of the CoC, convened on 28.10.2022, the Applicant informed the members that the revised offers from the PRAs had been received. The members of the CoC requested the Applicant to conduct legal vetting of the document. Thereafter, the RP disclosed the highest offer to all the PRAs under the Swiss Challenge Mechanism, and they were further requested to improve their offers and submit their final Resolution Plan in a password protected document which would be placed before the CoC.

4.5 Subsequently, the 9th CoC meeting was held on 21.11.2022, which focused on the presentation and discussion of the final financial offers from the Prospective Resolution Applicants (PRAs). The financial offers were presented and subsequently frozen. The next step was for the Applicant/ RP to share suggested modifications with each PRA to ensure their plans comply with the Code and the regulations thereunder. This was aimed to remove any existing anomalies or errors in the plans before their final submission. The final financial offers received from the PRAs, as stated at para 22 of the application, reads thus: -

S. NO.	PROSPECTIVE RESOLUTION APPLICANT	Total Amount Offered
1.	PANKAJ SARAOGI	26.20 Cr

2.	PAYAL AGARWAL	24.51 Cr
3.	SAKET AGARWAL & FORTUNA HOLDINGS PVT LTD	25.95 Cr
4.	HIMANSHU AGARWAL & VIKAS GUPTA	16.11 Cr
5.	SANJEEV SINGHAL	25.71 Cr
6.	DINESH PAREKH	24.31 Cr

4.6. It is further stated in the application that after due discussions and deliberations on various occasions, in the 10th CoC meeting held on 05.12.2022, the Applicant apprised the CoC that the PRAs had submitted their final resolution plan and the same was placed before them for consideration. The Applicant further apprised the members of the CoC that the Resolution Plan submitted by one of the PRAs viz. Mr. Pankaj Saraogi, was conditional in nature and hence, the same was non-compliant with the provisions of the Code. Thus, the resolution plans of the remaining five PRAs were discussed and deliberated by the members of the CoC. After assessing the feasibility and viability of the Resolution Plans submitted by the PRAs, all the plans were evaluated as per the evaluation matrix, and the resolution plan submitted by Mr. Sanjeev Singhal was declared as H1. The score of each PRA in terms of the aforesaid evaluation matrix, as stated at para 23 of the application, reads thus: -

Rank	**Prospective Resolution Applicants**	**Total Score**

H1	Sanjeev Singhal	34.77
H2	Saket Agarwal and Fortuna holdings Pvt. Ltd.	33.01
H3	Payal Agarwal	31.57
H4	Dinesh Parekh	11.46
H5	Himanshu Agarwal and Vikash Gupta	10.54

4.7. It is averred in the application that on 26.12.2022, the resolution plans were put before CoC for voting and the resolution plan submitted by Saket Agarwal and Fortuna Holdings Pvt. Ltd. was unanimously approved with 100% voting share by the CoC. The voting result of the successful Resolution Applicant is extracted below: -

5. **To consider and approve compliant Resolution Plan as submitted by Mr. Saket Agarwal & Fortuna Holdings Pvt. Ltd. and authorize RP to file CoC approved Resolution Plan before Hon'ble NCLT in terms of Section 30(6) of the Code.**

The matter was decided to be resolved as under:

*"**RESOLVED THAT** in accordance with sections 30(4) and 30(6) of the Code read with regulations made thereunder, the approval of the members of the CoC be and is hereby accorded to the cured/amended/revised Resolution Plan submitted by Mr. Saket Agarwal & Fortuna Holdings Pvt. Ltd. (RA) and RP is authorised to issue LOI to RA.*

***RESOLVED FURTHER THAT** Resolution Professional is authorised to file the CoC approved resolution plan with the Hon'ble Adjudicating Authority i.e. NCLT."*

S. No.	Name of Financial creditor	Voting Share (%)	Voted in Favour (%)	Voted Against (%)	Abstained from Voting (%)	Remarks
1	State Bank of India	79.82	79.82	-	-	Approved
2	ICICI Bank	10.79	10.79	-	-	
3	Bank of Baroda	9.39	9.39	-	-	
	Total	**100**	**100**	**0**	**0**	

5. DETAILS OF RESOLUTION PLAN/PAYMENT SCHEDULE

5.1. The brief outlines of the Resolution Plan, as mentioned by the Applicant at para 35 of the application, reads thus: -

a) Financial Creditors (Secured):-

The total claims filed by the Financial Creditors i.e., State bank of India, ICICI Bank and Bank of Baroda in respect of the Corporate Debtor is to the tune of Rs. 2,16,38,71,131/- which has been admitted in full by the Applicant/ Resolution Professional. The Resolution Applicant proposes a sum of ***Rs. 25,75,00,000/-*** *to the Financial Creditors as a full and final settlement within a period of 60 days from the Resolution Plan approval date by this Adjudicating Authority.*

b) Operational Creditors (Employees/Workmen)

The total as per the Information Memorandum and List of Creditors of the Corporate Debtor no claim was received from the Operational Creditors (Employees/ Workmen) therefore, the amount proposed by the Resolution Applicant is ***NIL****.*

c) Operational Creditor (including statutory dues)

The total claims filed by the Operational Creditor i.e., Dy Collector, Khand 3, Commercial Tax, G.B. Nagar, UP in respect of the Corporate Debtor is to the tune of Rs. 97,03,38,864/- which has been admitted in full by the Applicant/Resolution Professional. The Resolution Applicant proposes a sum of ***Rs. 20,00,000/-*** *to the Operational Creditors as a full and final settlement within a period of 15 days from the approval of the Resolution Plan by this Adjudicating Authority.*

5.2. TERM OF THE RESOLUTION PLAN

The Regulation 38(2)(a) of CIRP Regulations, 2016 provides that the plan should contain provisions for the term of the plan and its implementation schedule. The Applicant has stated that the term of the Resolution Plan will be 60 days from the approval of the Resolution Plan by this Adjudicating Authority and the implementation of the plan will commence from the date when the Adjudicating Authority approves the Resolution Plan. Relevant excerpt of the term of the plan/ implementation schedule as stated in the plan reads thus: -

IMPLEMENTATION SCHEDULE

The Term of the Plan/ implementation schedule shall be 60 days from the effective date. The Implementation Period shall be the period from the Effective date till the date of making payment to all stakeholders be made as per the Plan.

The Resolution Plan shall be implemented in the following manner, as per the timelines stated below or as per applicable laws:

S. No.	Activity	Estimated Time Line
1.	Submission of proposed Resolution Plan by the Resolution Applicant	--
2.	Date of Approval of Resolution Plan by Adjudicating Authority	X (effective date)
3.	Formation of monitoring committee	Automatically on the date of approval of Resolution Plan
4.	Payment of 1st tranch of amount proposed	Within X+15 days
5.	Payment of final tranch of amount proposed	Within X+60 days
6.	Dissolution of monitoring committee	The monitoring committee will treated dissolved upon making entire payment and completion of appointment of new Directors, issue of shares, handover of Corporate Debtor and that shall be done within next 60 days from making the entire payment.

5.3. The Applicant/ RP has stated in Form H that the Resolution Plan includes a statement under Regulation 38(1A) of CIRP Regulations, 2016 as to how it has dealt with the interest of all stakeholders in compliance with the Code and the regulations made thereunder. Relevant excerpt of Form H reads thus: -

6. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made thereunder.

7. The amounts provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rs. lakh)

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA
		(b) Other than (a) above:	NA	NA	NA	NA
		(i) who did not vote in favour of the resolution Plan	NA	NA	NA	NA
		(ii) who voted in favour of the resolution plan	2,16,38,71,131	2,16,38,71,131	25,75,00,000	12
		Total[(a) + (b)]	2,16,38,71,131	2,16,38,71,131	25,75,00,000	12
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA
		(b) Other than (a) above:	NA	NA	NA	NA
		(i) who did not vote in favour of the resolution Plan	NA	NA	NA	NA
			NA	NA	NA	NA

		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	-	-	-	-
3	Operational Creditors	(a) Related Party of Corporate Debtor	NA	NA	NA	NA
		(b) Other than (a) above:				
		(i)Government	1,08,39,82,394	1,05,06,47,151	19,99,356	0.18
		(ii) Operational creditors (other than Workmen and Employees and Government Dues)	3,38,240	3,38,240	644	0.19
		Total[(a) + (b)]	1,08,43,20,634	1,05,09,85,391	20,00,000	0.18
4	Other debts and dues		NA	NA	NA	NA
Grand Total			3,24,46,03,898	3,21,12,68,655	25,95,00,000	8.00

6. From the plan, it can be seen that against the unpaid CIRP cost of Rs. 21,55,927/-, the SRA has made a provision of Rs. 30,00,000/- and has further stated that if the CIRP cost exceeds Rs. 30,00,000/-, then the additional CIRP cost shall be adjusted proportionately with the payment to be made to the Financial Creditors. The SRA has further stated that the CIRP costs will be paid in priority over payments to all creditors. With respect to Operational Creditors (including statutory dues), the SRA has proposed a sum of Rs. 20,00,000/- against the admitted claim of Rs. 105,09,85,391/-, to be paid upfront within 60 days of the date of approval of the plan by this Adjudicating Authority. The SRA has further undertaken that the Operational Creditors shall be paid in priority over Financial Creditors. With respect to the Secured Financial Creditors, the SRA has proposed a payment of Rs. 25,75,00,000/- against the admitted claim of Rs. 2,16,38,71,131/-.

7. Further, at para 37 of the application, the Applicant/ RP has indicated that the plan is in compliance with Section 30(2) of the Code. Relevant extract of the same reads thus: -

Provisions under Section 30(2) of the Code	Compliance under Resolution Plan
(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the Corporate Debtor;	Yes, provision has been made for payment of the Insolvency Resolution Process Cost of Rs. 30 Lacs within 30 days from the Resolution Plan approval date by the Hon'ble Adjudicating Authority.
[(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than- the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or 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	Yes, the resolution plan provides for payment of dues of Workmen, Employees and Governmental Dues and other Operational Creditors as follows: The RA states as under: - *"The Ras hereby undertakes that the Operational Creditor shall be paid in priority over the Financial Creditors. The Operational Creditors shall be paid not less than the amount to be distributed under the Resolution plan had been distributed in sub section (1) of Section 53, whichever is higher".*

a liquidation of the corporate debtor. *Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.* *Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor where a resolution plan has not been approved or rejected by the Adjudicating Authority; where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]*	*XXXX* *"Ras proposed lump sum amount of INR 20 lacs upfront (including provision) to all the Operational Creditors i.e., Creditors other than workmen, employees and Statutory dues in proportion to their admitted claim amount as on the date of order of Hon'ble NCLT approving the Resolution Plan."* In respect of dissenting Financial Creditors, the Resolution applicants have stated as under: *"Further, in case of any dissenting Financial Creditors, the RA as required under the provision of Section 30(2)(b) of the IBC, 2016 wherein payments of Debts of Financial Creditors, who do not vote in favour of the plan, will be 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 Liquidation of Corporate Debtor."*

(c) provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;	Yes the Resolution Plan provides for the management of the affairs of the Corporate Debtor. The relevant extract of the Resolution Plan is reproduced hereinunder: - *"As on approval of Resolution Plan, the Board of Directors of the Corporate Debtor shall be reconstituted, wherein all the Directors of the Resolution Applicant will be appointed on the Board of Corporate Debtor upon making payment of INR 5,15,00,000 i.e. 20% of the proposed amount within 15 days from the date of approval of Resolution Plan and all the Directors of Corporate Debtor will cease to be the directors of the Corporate Debtor.*
(d) the implementation and supervision of the resolution plan;	Yes the Resolution Plan provides for the implementation and supervision of the Resolution Plan. The relevant extract of the Resolution Plan is reproduced hereinunder: - *"The Term of the Plan shall be 60 days from effective date i.e.* the Resolution Plan approval date by the Hon'ble Adjudicating Authority.. *The Implementation Period shall be the period from the Effective date till the date of making payment to all stakeholders be made as per the Plan."*

		Further, the Resolution Plan provides that: • *A Monitoring Committee shall be constituted to supervise the implementation of the Resolution Plan by the RA, which consist of one Insolvency Professional, who will be the Chairman of Monitoring Committee; one representative of the Secured Financial Creditors and one representative of the Resolution Applicant.* • *The Resolution Applicant proposes to pay INR 25,000 as sitting fees to chairman of the monitoring committee for each meeting of monitoring committee and out of pocket expenses shall be reimbursed to the members of the committee.*
(e) does not contravene any of the provisions of the law for the time being in force;		Statement has been included in the Resolution Plan on Page 17 of the Resolution Plan.

7.1. Further, compliances under Regulations 37 and 38 of the CIRP Regulations as submitted in the Resolution Plan are extracted here below: -

COMPLIANCE IN TERMS OF REGULATION 37 OF CIRP REGULATIONS:

PARTICULARS	RELEVANT PAGE OF THE RESOLUTION PLAN DEALING AFORESAID COMPLIANCE WITH REGULATION
A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximisation of value of its assets, including but not limited to the following: -	
(a) transfer of all or part of the assets of the corporatedebtor to one or more persons;	The Resolution Applicant will have the liberty to transfer all or part of the Assets of the Corporate Debtor after implementation and complete payment as envisaged in the plan.
(b) sale of all or part of the assets whether subject to any security interest or not;	The Resolution Applicant will have the liberty to sale any part of the Asset of the Corporate Debtor after implementation and complete payment as envisaged in the plan. Charge/security created on the Corporate Debtor's assets will be deemed satisfied/ relinquished upon entire payment which is proposed to be made within 60 days of the effective date on completion of implementation of Resolution Plan.
(c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	No, the RA proposed to restructure the Corporate Debtor by change in shareholding and directors of the Corporate Debtor
(d) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation ofthe corporate debtor with one or more persons;	Restructuring by way cancellation of existing shares and issue of fresh equity share capital to the tune of Rs. 2 Crores comprising of 20,00,000 equity shares of Rs 10 each after complete payment under the plan
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	NA

(f) satisfaction or modification of any securityinterest;	RA purposes that upon entire payment, which is proposed to be made within 60 days, there shall be release of all the security interest including mortgages, charges or any other interest, created. Further all the original documents related to the Corporate Debtor and its assets whether mortgaged or not either in possession to the secured financial creditors or with the Corporate Debtor shall be handed over to the Resolution Applicant upon the complete payment under the Resolution Plan.
(g) curing or waiving of any breach of the terms ofany debt due from the corporate debtor;	The RA does not proposes to cure or waive any breach of the terms of any debt due from the Corporate Debtor.
(h) reduction in the amount payable to the creditors;	As per para 2.1 of the Plan mentioned on page 7 of the Resolution Plan
(i) extension of a maturity date or a change in interestrate or other terms of a debt due from the corporate debtor;	As per para 2.1 of the plan mentioned on page 7 of the Resolution Plan
(j) amendment of the constitutional documents of the corporate debtor;	The constitutional documents will get changes because of the restructuring as the Resolution Applicant proposes to acquire the entire shareholding of the Corporate Debtor causing change in promoters and members shareholding. Eventually, the business of the Corporate Debtor will be taken over by the Resolution Applicant.
(k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	NA
(l) change in portfolio of goods or services produced or rendered by the corporate debtor;	NO
(m) change in technology used by the corporatedebtor; and	NA
(n) obtaining necessary approvals from the Centraland State Governments and other authorities.	Yes

MANDATORY CONTENTS OF RESOLUTION PLAN IN TERMS OF REGULATION 38 OF CIRP REGULATIONS:

RELEVANT REGULATION	REQUIREMENT	HOW DEALT WITH INTHE PLAN
38(1) (a)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	The Resolution Plan provides an undertaking of the RA to pay the Operational creditors in priority over the Financial Creditors. As provided [at Page 15] under heading "**Regulation 38(1)(a)**" of the Resolution Plan
38 (1) (b)	The amount payable under a resolution plan - (b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.	To address the statutory requirement under Section 30 (2) (b) of the Code, the Resolution plan provides as under: *"The RA hereby undertakes that the Financial Creditors who have not voted in favour of the Resolution Plan shall be paid in priority over the Financial Creditors who have voted in favour of the Resolution Plan."* As provided [at Page 15] under the head "**Regulation 38(1)(b)**" of the Resolution Plan.
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditorsof the corporate debtor.	Statement to this effect has been provided in the Resolution Plan. The Resolution Plan contains a statement that: *"Interest of the all the stakeholders have been dealt in para 2.1 of the Resolution Plan and the same is not repeated here for the sake of brevity"*.
38(1B)	A resolution plan shall include a statement givingdetails if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution planapproved by the Adjudicating Authority at any time in the past.	The resolution plan includes a statement: *"The RA hereby undertakes that he or any of its Related Party has never failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority any time in the past."* • As provided at Page 16 of the Resolution Plan.

38(2)	A resolution plan shall provide: (a) the term of the plan and its implementationschedule;	The Resolution Plan proposes the term of 60 days from the Effective Date and has provided an implementation schedule for the same. As provided at Page 8 under the head **"Term of Plan and implementation schedule"** of the Resolution Plan
	(b) the management and control of the business of thecorporate debtor during its term; and	The Resolution Plan provides for the management of the corporate debtor after the approval of the resolution plan. *"As on approval of Resolution Plan, the Board of Directors of the Corporate Debtor shall be reconstituted, wherein all the Directors of the Resolution Applicant will be appointed on the Board of Corporate Debtor upon making payment of INR 5,15,00,000 i.e. 20% of the proposed amount within 15 days from the date of approval of Resolution Plan and all the Directors of Corporate Debtor will cease to be the directors of the Corporate Debtor."* • Action after approval of the plan by NCLT u/s 30(2)(c) at Page No. 8 under the head ***"Details of persons who will be promoters or in management or control of the business of corporate debtor during the implementation of the resolution plan".***
	(c) Adequate means for supervising its implementation.	The Resolution Plan has adequate means for supervising its implementation, which will be through a Monitoring Committee. As provided at Page 9 of the Resolution Plan.
	(d) Provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under	The Resolution Plan states that: *"In the event, any transaction is avoided/set aside by the Hon'ble NCLT in terms of Section 43, 45, 47, 49,*

	Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed.	*50 or 66 of the IBC, 2016 and any amount is received by the Resolution Professional or the Corporate Debtor in furtherance thereof, such sum shall be deemed to have been received for the benefit of the Financial Creditors and shall be paid to the Financial Creditors after deducting all the expenses incurred by the Corporate Debtor to pursue the same. Corporate Debtor shall ensure that all the actions initiated pursuant to Section 43, 45, 47, 49, 50 or 66 of the IBC, 2016 shall be pursued. It is to be noted that any pass through will be allocated to Financial Creditors in proportion to their admitted claims."* As provided at Page 10 under sub-point V under the head "***Other contents of the Resolution Plan***" of the Resolution Plan
38(3)	*A resolution plan shall demonstrate that –* *(a) it addresses the cause of default;*	The resolution plan provides for the same: *" As per our understanding and detailed in Information memorandum and information disseminated through clarificatory emails, the Corporate Debtor suffered from fire that took place in the factory premise due to which significant amount of stock got perished and the management of the Corporate Debtor approached to the Insurance Company namely TATA AIG to claim the Insurance amount which was rejected by the Insurance company and aggrieved by the rejection of insurance claim the Corporate Debtor could not maintain itself as going concern and the account of the Corporate Debtor was classified as Non- performing Asset"* As provided at Page 16-17 of the Resolution Plan.

	(b) it is feasible and viable;	The Resolution Plan states that: *"To make the Resolution Plan feasible and viable, RAs have sufficient funds to meet obligations of creditors of the Corporate Debtor, working capital requirements and capital expenditure to keep the Corporate Debtor as going concern. Moreover, Mr. Saket Agarwal one of the RAs is very accomplished person in the industry of the Corporate Debtor and his experience will add significant value to Corporate Debtor. Further, the Resolution Plan has dealt with interest of all the stakeholders and all the endeavors have been made to maximize the wealth of the Corporate Debtor along with interest of all the stakeholders. RA has demonstrated the Cash flow and business projections to make the plan feasible & viable."* As provided at Page 17 under the head **"Regulation 38(3)(b)"**of the Resolution Plan.
	(c) it has provisions for its effective implementation;	As per the Resolution Plan: *"With the approval of the instant resolution plan, the Management and control of the Corporate Debtor shall vest with the Resolution Applicant as already mentioned above in para 3.9 of the Resolution Plan".* As provided at page no. 18 under the head **"Regulation 38(3)(c)"** of the Resolution Plan.
	(d) it has provisions for approvals required and thetimeline for the same; and	Same as provided hereinabove under Regulation 37 (1).
	(e) the Resolution Applicant has the capability to implement the resolution plan.	The resolution plan demonstrates that the SRA has the capability to implement the resolution plan. Resolution Applicant has stated that they have a rich experience and has the relevant expertise and exhibits forte in the domain of business activity of the
		Corporate Debtor it will enable the RA for complete. • As provided at Page 17 under the head **"Regulation 38(2)(c)"** of the Resolution Plan.

7.2. The details of compliances made under relevant sections of IBC, 2016 and IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 as stated in the Form-H are extracted below: -

9. The compliance of the Resolution Plan is as under:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause/Page of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether 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
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Annexure 4 and also as per Due Diligence the resolution applicant is eligible to submit the resolution plan	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Annexure 4	Yes
Section 30(2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs?	Page 7	Yes
	(b) provides for the payment to the operational creditors?	Page 8	Yes
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Page 8	Yes
	(d) provides for the management of the affairs of the corporate debtor?	Page 10, 11 and 17	Yes
	(e) provides for the implementation and supervision of the resolution plan?	Page 10	Yes
	(f) contravenes any of the provisions of the law for the time being in force?]	Page 17	Yes
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?	10th Coc Minutes	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Page 10	Yes
Regulation38 (I)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Page 8	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Page 16	Yes
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code.	Page 16	Yes
	(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]	NA	NA

Regulation 38(2)	Whether 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? (d) provides for the manner in which proceedings in respect of avoidance transactions, if any, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed.	(a) Page 9 (b) Page 10, 17 (c) Page 17 (d) Page 12	(a) Yes (b) Yes (c) Yes (d) Yes
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 resolution applicant has the capability to implement the resolution plan?	(a) Page 17 (b) Page 17 (c) Page 9 (d) Page 18 (e) Page 19	(a) Yes (b) Yes (c) Yes (d) Yes (e) Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]		Yes

8. The Applicant has submitted that the Successful Resolution Applicant has submitted an affidavit dated 19.08.2022 in regard to the eligibility under Section 29A of the Code r/w Regulation 39(1)(a) of the CIRP Regulations. An undertaking has also been submitted by the Successful Resolution Applicant, as mandated in terms of Regulation 39(1)(c) of the CIRP Regulations. Further, the Applicant/ RP has also submitted an affidavit dated 27.02.2024 stating that based on the aforesaid affidavit submitted by the SRA as well as on the basis of due diligence conducted by the Applicant/ RP, the SRA has been found to be eligible to submit the Resolution Plan.

9. It is further stated in the application that in the Resolution Plan which has been submitted by SRA, there is change in management and control of the corporate debtor and such change satisfies the conditions stipulated under Section 32A of the Code, therefore the benefit of immunity under Section 32A of the Code will be applicable to the Resolution Applicant.

10. With respect to Provident Fund Dues, it has been categorically mentioned by the Applicant/ RP that he has not received any claim with respect to such dues. As no PF liability on the date of initiation of CIRP was placed before the Resolution Professional, no further direction in this regard is called for. On this issue, we refer to the decision of Hon'ble NCLAT in the matter of ***Employees Provident Fund Organization Vs. Rajat Mukherjee Liquidator of Enviiro Bulk Handling System Private Limited*** [IA No. 2868 of 2024 in Comp. App. (AT) (Ins) No. 804 of 2024] whereby it has been held that: -

> *"When the entire claim which was filed under 7A and 7Q was paid to the appellant, we fail to see any error in the order of the Adjudicating Authority in rejecting the application. It has been noticed by the Adjudicating Authority that claim under Section 14B was assessed by an order dated 16.6.2021 passed after initiation of CIRP proceedings. Adjudicating Authority has noted the judgment of this Tribunal in* ***Regional Provident Fund Commissioner, Vatwa, Employees Provident Fund Organisation vs. Manish Kumar Bhagat in Company Appeal (AT) (Ins) No. 808 of 2022 which has rightly been relied upon <u>for not accepting the claim which was subsequent to the initiation of CIRP</u>."***

[Emphasis supplied]

11. With respect to PUFE transactions pertaining to the Corporate Debtor, the Applicant/ RP has provided details of the IAs filed by him under Section 43, 45 and 66 of the Code. The treatment for the PUFE applications has been dealt with by the Successful Resolution Applicant at page 12 of the resolution plan which reads thus: -

"In the event, any transaction is avoided, set aside by the Hon'ble NCLT in terms of Section 43, 45,47,49,50 or 66 of the IBC, 2016 and any amount is received by the Resolution Professional or the Corporate Debtor in furtherance thereof, such sum shall be deemed to have been received for the benefit of the Financial Creditors and shall be paid to the Financial Creditors ("Pass-Through Amount") net of taxes, if any. These cases shall be pursued by the Financial Creditors in proportion to their admitted claims."

12. With respect to pending litigations pertaining to the Corporate Debtor, the Applicant /RP has provided details of the cases undergoing under different forums. With regard to the treatment for the pending litigations, as per the plan, the SRA has undertaken that any amount realized on account of the pending suits before the Hon'ble Delhi High Court shall be passed on to the Financial Creditors to the extent of 35% and the rest 65% will be kept by the SRA. The relevant excerpt of the plan reads thus: -

"All the recoveries from the Debtors of the Corporate Debtor under any proceedings including insurance claim from the TATA AIG if received, within 5 years (which can be extended with mutual consent) of effective date shall be shared with the financial creditors in the ratio of 35:65, net of taxes and all incidental expenses/ costs. This means that if any amount is recovered from insurance claims then after deducting the expense/ costs incurred and the taxes if any of them, 35% of the balance amount will be passed through to financial creditors. The costs will be borne by the Corporate Debtor. The RA will keep updating the status of proceeding from time to time to Financial Creditors."

13. SCHEME OF RESTRUCTURING

As regards the restructuring of the Corporate Debtor, the Successful Resolution Applicant proposes to restructure the CD by change in its shareholding and directors. It is further stated by the SRA that the restructuring would be by way of cancellation of existing share and by issuing fresh equity shares capital to the tune of Rs. 2 Crores comprising of 2,00,000 equity shares of Rs. 10 each after complete payment has been made under the plan. It is further stated that the constitutional documents of the CD would be changed because of the restructuring as the SRA proposes to acquire the entire shareholding of the Corporate Debtor causing change in promoters and member's shareholding. Eventually, the business of the Corporate Debtor will be taken over by the SRA.

14. SOURCES OF FUNDS

It is averred in the plan submitted by the SRA that it would undertake to infuse a total amount of Rs. 26.25 crores from its internal accruals, own resources, and reserves. The relevant excerpt of the plan reads thus: -

> *"RAs undertakes to infuse the total amount of INR 26.25 Crores from their internal accruals, resources and reserves. Mr. Saket Agarwal one of the RAs is having an investment of Rs. 309 Crores as on 29.11.2022 in shares / stocks of listed companies, and he will liquidate the same to ensure the liquidity of funds for the implementation of Plan."*

15. MANAGEMENT AND CONTROL OF CD

As per Regulation 38(2)(b) of CIRP Regulations, 2016, the Resolution Plan should provide for the management and control of the business of the Corporate Debtor during its term. Further, as per Regulation 38(2)(c) of said Regulations, the plan should also provide for adequate means for supervising its implementation. In this regard, the plan states that the implementation of the plan shall be monitored by a Monitoring Committee consisting of the RP as well as one representative each of the SRA as well as secured financial creditors. Relevant excerpt of the plan reads thus: -

DETAIL OF PERSONS WHO WILL BE PROMOTERS OR IN MANAGEMENT OR CONTROL OF THE BUSINESS OF CORPORATE DEBTOR DURING THE IMPLEMENTATION OF THE RESOLUTION PLAN:

The implementation of the Resolution Plan shall be monitored by the monitoring committee comprising of:

- Resolution Professional – Chairman of Monitoring Committee
- One Representative of Resolution Applicant
- One Representative of Secured Financial Creditors

RA proposes that after the complete payment under the plan, RAs will appoint their Directors in the board of Corporate Debtor. The new Board of the Corporate Debtor shall be constituted with following Directors:

1. Mr. Saket Agarwal – DIN No. 00203084
2. Ms. Gunjan Agarwal- DIN No. 00202902

[***]

MANAGEMENT AND CONTROL OF THE AFFAIRS OF CORPORATE DEBTOR AFTER APPROVAL OF THE RESOLUTION PLAN (SECTION 30(2)(c) / REGULATION 38(2)(b)

It is proposed that after successful implementation of Resolution Plan, the Management and control of the Corporate Debtor shall vest with the Resolution Applicant. The Resolution Applicant proposes to appoint new directors on the Board to replace previous after successful implementation. The Resolution Applicant for day –to- day affairs and management of the Corporate Debtor also proposes to appoint number of officials / employees in the Corporate Debtor as may be required for implementation of Resolution plan.

ADEQUATE MEANS FOR SUPERVISION OF IMPLEMENTATION (REGULATION 38(2)(c)

The RA has rich experience and has the relevant expertise and exhibits forte in the domain of business activity of the Corporate Debtor it will enable the RA for complete.

16. As per the requirement of Regulation 38(3)(a) of CIRP Regulations, 2016, a plan shall demonstrate that it addresses the cause of default by the Corporate Debtor. Further, Regulation 38(3)(b) of CIRP Regulations, 2016, prescribes that the plan shall demonstrate as to how it will be feasible and viable. In respect of the said regulations, it is relevant to refer to page 17 of the plan which reads thus: -

Regulation 38(3)(a):

As per our understanding and detailed in Information memorandum and information disseminated through clarificatory emails, the Corporate Debtor suffered from fire that took place in the factory premise due to which significant amount of stock got perished and the management of the Corporate Debtor approached to the Insurance Company namely TATA AIG to claim the Insurance amount which was rejected by the Insurance company and aggrieved by the rejection of insurance claim the Corporate Debtor could not maintain itself as going concern and the account of the Corporate Debtor was classified as Non- performing Asset.

Regulation 38(3) (b):

To make the Resolution **Plan** feasible and viable, RAs have sufficient funds to meet obligations of creditors of the Corporate Debtor, working capital requirements and capital expenditure to keep the Corporate Debtor as going concern. Moreover, Mr. Saket Agarwal one of the RAs is very accomplished person in the industry of the Corporate Debtor and his experience will add significant value to Corporate Debtor.

Further, the Resolution Plan has dealt with interest of all the stakeholders and all the endeavors have been made to maximize the wealth of the Corporate Debtor along with interest of all the stakeholders. RA has demonstrated the Cash flow and business projections to make the plan feasible & viable and annexed the same as **Annexure-12.**

17. As can be seen from clause 7 of the certificate given by the Applicant/ RP in the prescribed form viz. Form H, the SRA has proposed to pay much less than the amount admitted by the RP and the liquidation value, to the various stakeholders. In this context, reference may be made to the decisions of the Hon'ble Apex Court in the cases of ***Vallal RCK vs. M/s Siva Industries and Holdings Limited and Others***, (Civil Appeal Nos. 1811-1812 of 2022) and ***Ebix Singapore Private Limited Vs Committee of Creditors of Educomp Solutions Limited & Anr.***, (Civil Appeal No. 3224 of 2020) wherein it has been categorically observed that the commercial wisdom of the CoC is to be given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. Thus, it is not open to this Adjudicating Authority to interfere with the same. Hence, we do not deem it proper to comment on the amount offered to be paid by SRA to various stakeholders.

18. The evidence of receipt of Performance Security of Rs. 2,07,50,000/-(Rupees Two Crore Seven Lakh Fifty Thousand Only) deposited by the SRA post adjustment of Rs. 50,00,000/-(Rupees Fifty Lakh) received as EMD as required under regulation 36B(4A) of CIRP Regulations, 2016 is also placed on record as Annexure A-25 of the application.

19. It is pertinent to note that when the matter was listed on 10.12.2024, this Adjudicating Authority had directed the RP to file an affidavit clarifying as to whether the provisions in plan for contingencies would be treated as financial figure or not and that whether all the PRAs were given opportunity for revising their respective resolution plans. In compliance of the same, the SRA filed an affidavit dated 17.01.2025 which reads thus: -

7. I state that this Hon'ble Adjudicating Authority on 10.12.2024 listed the matter for clarification and listed I.A. Nos. 1183 of 2023, 6131 of 2022 & 662 of 2023 on 21.01.2025. However, during the course of the hearing, this Hon'ble Adjudicating Authority had verbally directed the deponent to clarify whether the provisions in plan for contingencies would be treated as financial figure or not and that whether all the PRAs were given opportunity for revising their respective resolution plans or it was specifically allowed only for one PRA. Copy of Order dated 10.12.2024 passed by this Hon'ble Adjudicating Authority is annexed herewith and marked as **ANNEXURE A-6.**

8. I state that in response to the above-mentioned queries and in addition to the documents filed as referred in the above clauses, it is submitted that as per Indian Accounting Standards-29, there is a specific bar on recognition of contingent assets in the financial statements till the said asset becomes certain. I state that the relevant portion of the Accounting Standards is reproduced hereinafter as follows: -

"Contingent Assets

30. ***An enterprise should not recognise a contingent asset***

31. Contingent assets usually arise from unplanned or other unexpected events that give rise to the possibility of an inflow of economic benefits to the enterprise. An example is a claim that an enterprise is pursuing through legal processes, where the outcome is uncertain.

32.Contingent assets are not recognised in financial statements since this may result in the recognition of income that may never be realised. However, when the realisation of income is virtually certain, then the related asset is not a contingent asset and its recognition is appropriate.

33. A contingent asset is not disclosed in the financial. It is usually disclosed in the report of the approving authority (Board of Directors in the case of a company, and the corresponding approving authority in the case of any other enterprise), where an inflow of economic benefits is probable.

34. Contingent assets are assessed continually and if it has become virtually certain that an inflow of economic benefits will arise, the asset and the related income are recognised in the financial statements of the period in which the change occurs."

9. I state that in present case the recovery from passthrough assets i.e., insurance claim pending before the Hon'ble High Court of Delhi/ Hon'ble NCDRC and the Avoidance Applications pending before this Hon'ble Adjudicating Authority are contingent in nature and are subject to orders being passed by the respective Court and the same are further subject to Appeals, if any before the Competent Courts and thus, the same being contingent in nature which are subject to judicial orders cannot form part of the assets of the Corporate Debtor.

10. I state that emails were sent to all the PRAs on 29.11.2022 to submit their final signed Resolution Plan as agreed by the CoC in the 9th CoC meeting.

11. I state that the SRA has duly submitted an additional affidavit detailing the sources of funds, and implementation of the resolution plan as sought by this Hon'ble Court in light of the judgement passed by Hon'ble Supreme Court in State Bank of India vs The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch & Anr. in Civil Appeal No. 5023-5024 of 2024, Copy of Additional Affidavit submitted by the SRA is annexed herewith and marked as **ANNEXURE A-7**.

20. It is also apt to refer to the affidavit dated 18.01.2025 filed by SRA whereby it has been stated that the plan submitted by it is in compliance of the Code and the Regulations therein and the plan is not unconditional. Relevant excerpt of the same reads thus: -

> *"4. That the Resolution Professional thereafter moved IA- 662 of 2023 u/s 30(6) of IBC, 2016 seeking approval of Resolution Plan in the present matter before this Hon'ble Adjudicating Authority.*
>
> *"5. It is submitted that the undersigned is eligible to submit the Resolution Plan as per Section 29A of the Code. That the Resolution*

Applicant has fulfilled the eligibility criteria as laid down in the Code read along with the Rules and Regulations made thereunder. That the Resolution Plan Approval Application is pending before the Hon'ble Adjudicating Authority and the same is numbered as IA No. 662/2023.

6. It is submitted that the Resolution Plan as submitted by Mr. Saket Agarwal and Fortuna Holdings Private Limited has addressed the cause of default of why the account of the Corporate Debtor was classified as Non-Performing Asset on the page no. 17 of the Resolution Plan & page 212 of the resolution plan application. The relevant extract of which is reproduced herein below:

> *"As per our understanding and detailed in information memorandum and __ information disseminated through clarificatory emails, the Corporate Debtor suffered from fire that took place in the factory premises due to which significant amount of stock got perished and the management of the corporate Debtor approached to the Insurance Company namely TATA AIG to claim the insurance amount which was rejected by the insurance company and aggrieved by the rejection of insurance claim the corporate debtor could not maintain itself as going concern and the account of the corporate debtor was classified as Non-performing Asset."*

7. That the Successful Resolution Applicant has made provisions for the CIRP Cost and the same is elaborated on the page no. 07 of the Resolution Plan & page no. 202 of the resolution plan application. That the SRA has also made provisions for the dissenting financial creditors as mandated under the Section 30 (2) (b) of the Code i.e. the dissenting financial creditors will be paid in priority over the Secured Creditor/Financial Creditor who have voted in favour of the Resolution Plan. That the Resolution Plan has also provided for the payment of Operational Creditors in priority over the financial creditors on the page no. 08 of Sthe Resolution Plan / page no. 203 of the resolution plan application. The relevant extract is reproduced hereinbelow:

> ***Insolvency Resolution Process Costs***
>
> *"As per the information provided by the Resolution Professional INR 21,55,927 has been incurred as CIRP cost as on 16.08.2022 and the same is remaining unpaid. The RAs is seeking to make a provision of INR 30,00,000 as against the aforesaid CIRP as determined under Regulation 31 of the IBBI*

(CIRP) Regulations, 2015. The RAs will arrange the Funds from its internal accruals and its own resources/ reserves without causing any additional burden on CoC members and Corporate Debtor.

Further, as discussed in the CoC meeting, RP has published an EOI for sale of stock of Corporate Debtor and the sale proceeds will be utilized to meet the CIRP cost. We hereby proposes that after meeting CIRP cost from the sale proceeds of the stock, in case any surplus is left from the provisional amount of CIRP Cost je INS 30,00,000 then the same will be distributed to the Financial Creditors.

It is to be noted that if the CIRP cost exceeds to INR 30,00,000 then the additional CIRP cost shall be adjusted proportionately with the aforesaid payment to be made to the Financial Creditors.

The CIRP costs will be paid in priority over payments to all creditors"

Operational Creditors including workmen & employees and Statutory Dues

"RA proposes lump sum amount of Rs. 20 Lacs upfront within 60 days (including provision) to the Operational Creditors (including Statutory dues) in proportion to their admitted claim amount as on the date of order of Hon'ble NCLT approving the Resolution Plan. Further, in case claim of any Operational Creditor not admitted by the RP as on the date of submission of the Plan but later on gets admitted shall be paid proportionately from the proposed amount of Rs. 20 Lacs.

The payment to Operational Creditors if any shall be as per - provision of Section 30 (2) (b) of the IBC and Regulation 38 (1) (b) of the CIRP Regulations, wherein Operational Creditors are required to be paid an amount which is not less than the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under Section 53 or 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. In any case the liability of RA towards Operational Creditors shall not be more than Rs. 20 lacs.

The RAs hereby undertakes that the Operational Creditor's i shall be paid in priority over the Financial Creditors."

8. That the Successful Resolution Applicant has also clearly indicated the source of funds for the implementation of the Resolution Plan and that the same is elaborated at page no. 10 and 11 of the Resolution Plan & page 205 of the resolution plan application. In addition, the SRA hereby submits its latest Net worth Certificate to indicate it's financial capability to successfully implement the Resolution Plan. The copy of Net worth Certificate of Rs. 4,69,21,63,626.29/- (Rupees Four Hundred sixty nine crore twenty one lakh sixty three thousand six hundred twenty six and twenty nine paisa only) (as on 31.03.2024 is attached as Annexure-2). The relevant extract of Source of funds is reproduced herein:

> *"RAs undertakes to infuse the total amount of INR 26.25 crores from their internal accruals, own resources and reserves. Mr. Saket Agarwal one of the Ras is having investment of Rs. 309 crores as on 29.11.2022 in shares/stocks of listed companies and he will liquidate the same to ensure the liquidity of funds for implementation of plan."*

9. That the Resolution Plan has also provided the timeline required for the implementation and management and control of the business of the CD during its term along with adequate means of its supervision on page No. 09,10 of the Resolution Plan & page 204, 205 of the resolution plan application, as mandated under the IBBI Regulation of 38(2) of the CIRP.

[...]

*10. I state that the Performance Bank Guarantee submitted by SRA has expired on 05.01.2025. Thereafter HDFC Bank Limited has renewed the Performance Bank Guarantee of Rs.2,07,50,000.00/- on 16.01.2025 with BG No. 088GT02230060004 with validity up to 05.07.2025 on behalf of the SRA. Copy of letter issued by HDFC Bank for renewal of performance bank guarantee is attached herein and marked as **Annexure 3**.*

11. 1 state that the Resolution Plan submitted by the SRA in this matter is not conditional.

12. I state that the Resolution Plan contains the statement as mandated by Regulation 38 (1B) of the IBBI (Insolvency Resolution

Process for Corporate Persons) Regulations, 2016 that the Successful Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of the implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past.

13. I state that the Resolution Plan as submitted by the SRA fulfils the essentials as enumerated under Regulation 38 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

14. I state that the contents of the present affidavit are true and the to be read in consonance with the Resolution Plan as submitted by the SRA, the contents of which are not repeated for the sake of brevity herein.

[…]"

21. As far as the issue of reliefs and concessions which fall in the jurisdiction of different Government Authorities, and/ or are subjected to the provisions of different laws for the time being in force are concerned, it is made clear that the amount payable by the SRA in terms of the plan to different creditors, stakeholders, and to keep the Corporate Debtor as a going concern cannot be subject to any condition, assumptions, relief/ concessions and/ or qualification. It also needs to be underlined that the provisions of Section 31(4) of IBC, 2016 mandates the Resolution Applicant to obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under Section 31 of the IBC, 2016. In terms of the provisions of Section 14 of the Code even during the period of CIRP, no default in payment of current dues is a precondition for continuation of the License, Permit, Registration and similar rights. Thus, even during the moratorium period, some of the facilities forming part of the reliefs and concessions sought are made available to the CD only when there is no default in payment of the current dues. On approval of the Resolution Plan, the SRA/CD cannot be put on a better footing by exempting it from paying its legitimate dues under the law. For the sake of convenience, the explanation below Section 14 of the code is extracted below:

> ***"14. Moratorium. –***
>
> *(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -*
>
> *(a) .....*
>
> *(b) .....*
>
> *(c) .....*
>
> *(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*
>
> *Explanation.- For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, <u>shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession</u>, clearances or a similar grant or right during the moratorium period;"*
>
> (Emphasis Supplied)

22. In any case, in terms of the provisions of Sections 13 and 15 of the IBC 2016 read with Regulations 6, 6A, 7, 8, 8A, 9 and 9A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, all the claimants such as Operational Creditors, Financial Creditors, Creditors in Class, Workmen and Employees and other Creditors can raise their claims before the IRP/RP. The claims are dealt with by IRP in terms of the provisions of Section 18(1)(b) of the IBC, 2016 and by RP in terms of the provisions of Section 25(1)(b) thereof read with Regulations 12A, 13 and 14 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Thereafter, the RP prepares an Information Memorandum in terms of the provisions of Regulation 36(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Memorandum contains inter alia a list of creditors containing the range of creditors, the amounts claimed by them, the amount of their claim admitted and the security interest if any in respect of such claims. As has been provided in Regulation 36(1) of the Regulations (ibid), the Information Memorandum is required to be submitted in electronic form to each member of CoC, on or before 95th day from the Insolvency commencement date. As has been provided in Regulation 36A of the Regulations the RP publish brief particulars of the invitation for Expression of Interest in Form G of Schedule I to the Regulations at the earliest i.e. not later than 60th day from the Insolvency commencement date, from interested and eligible Prospective Resolution Applicants to submit Resolution Plans. As can be seen from Regulation 36B of the Regulations, the RP shall issue Information Memorandum Evaluation Matrix (IMEM) and request for Resolution Plans, within 5 days of the date of issue of provisional list of eligible Prospective Resolution Applicants (required to be issued under Regulation 36A(10) of the Regulations). It is with reference to such Information Memorandum Evaluation Matrix that the RP issues request for Resolution Plan. The request for Resolution Plan details each step in the process and the manner and purposes of interaction between the Resolution Professional and the Prospective Resolution Applicant. The Resolution Plan submitted after consideration of the IMEM and RFRP is then examined by the Committee of Creditors. Nevertheless, it needs to satisfy the requirements of Regulation 37 and 38 of the extant Regulations. Once the plan is approved by the CoC, in terms of the provisions of Regulations 39 of the aforementioned Regulations, it virtually becomes a contract entered into between the CD represented through RP, SRA and the Creditors of the CD. On being approved by this Adjudicating Authority, by operation of Section 31(1) of the Code, the plan becomes 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 enforced such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the Resolution Plan. Thus, Section 31(1) of IBC, 2016, takes care of most of the relief/concession/waiver solicited by the Resolution Applicant.

23. Besides, in terms of the provisions of Section 32A, for an offence committed prior to the commencement of the Corporate Insolvency Resolution Process, the liability of the CD ceases and the CD is not liable to be prosecuted from the date of approval of Resolution Plan by this Adjudicating Authority, if the Resolution Plan results in change of management or control of the CD to a person who was not promotor or in the management or control of the CD or a related party of such a person or a person with regard to whom the concerned Investigating Agency has reason to believe that he had abated or conspired for the commission of the offence and has submitted or filed a report or a complaint to the relevant statutory authority or Court. In such cases, where the prosecution is instituted against the CD, during CIRP, the CD stands discharged qua the same from the date of approval of the Resolution Plan. Nevertheless, every person who was a designated partner as defined in clause (j) of Section 2 of the Limited Liability Partnership Act, 2008, "an officer who is in default" as defined in Clause (60) of Section 2 of Companies Act, 2013 or was in any manner in charge of, or responsible to the CD for the conduct of his business or associated with the CD in any manner and was directly or indirectly involved in the commission of an offence as per the report submitted or complaint filed by Investigating Agency shall continue to be liable to be prosecuted and punished for such an offence committed by the Corporate Debtor notwithstanding the Corporate Debtors' liability ceases after approval of the plan.

24. In the wake of the provisions of Section 32A(2), no action is taken against the property of the Corporate Debtor in relation to an offence committed prior to the commencement of the Corporate Insolvency Resolution Process of the CD, where such property is covered under Resolution Plan approved by this Authority under Section 31, which result in the change in the control of the CD to a person who was not a promotor or in the management or control of the Corporate Debtor or related party of such person or a person with regard to whom the Investigating Agency has reason to believe that he had abated or conspired for commission of the offence and has submitted or filed a report or complaint to the relevant statutory authority or Court.

25. The action against the property of the Corporate Debtor as referred to in Section 32A of the Code includes the attachment, seizure, retention or confiscation under such law as may be applicable to the CD. One may also be not oblivious of the fact that in the backdrop of provisions of Section 31(3)(a) of the Code, the moratorium order passed by the Adjudicating Authority under Section 14 ceases to have effect. In sum and substance, the SRA/CD would be entitled to no other relief/concession/waiver except those, which are available to it under the provisions of Section 31(1) & 32A of the Code.

26. It is also relevant here to note that the SRA in terms of affidavit dated 18.01.2025 has categorically stated that the plan submitted by it is not conditional.

27. In the backdrop of aforementioned factual position, discussion, analysis and findings, the IA-662/2023 filed by the Applicant/ RP for approval of the Resolution Plan is allowed. The Plan submitted by the SRA, certified by the RP by issuing a certificate in prescribed form viz. Form "H", is approved.

28. As a sequel, we issue the following directions: -

- **i.** The approved Resolution Plan shall 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 in the Plan;
- **ii.** The SRA/CD would be entitled to no other reliefs/ concessions/waivers except those are available/permissible to it as per the provisions of Section 31(1) and 32A of IBC, 2016. The SRA is at liberty to approach the relevant authorities who would consider these claims as per the provisions of the relevant law in an expeditious manner;

iii. Following steps would be taken in terms of the resolution plan: -

SL NO.	STEPS TO BE TAKEN	TIMELINE FROM THE DATE OF RECEIPT OF THIS ORDER
1.	Formation of Monitoring Committee	Automatically on the date of approval of Resolution Plan
4.	Payment of Secured Creditors	20% of the proposed amount within 15 days; 80% of the balance amount within 60 days
5.	Payment of Operational Creditors	Within 60 days
6.	Dissolution of Monitoring Committee	The Monitoring Committee will be treated as dissolved upon making payment and completion of appointment of new directors, issue of shares, handover of Corporate debtor and that shall be done within 60 days from making the entire payment.

iv. The order of the moratorium in respect to the corporate debtor passed by this Adjudicating Authority under Section 14 of the IBC, 2016 shall cease to have effect from the date of passing of this Order;

v. The SRA shall act in terms of the provisions of Section 31(4) of IBC 2016;

vi. The Monitoring Committee shall file progress report regarding implementation of the Plan before this Tribunal, every month;

vii. The RP shall forward all the records relating to the conduct of the CIRP and the Resolution Plan to the IBBI for its record and database;

viii. The RP shall also forthwith send a copy of this order to the participants and the Resolution Applicant. He would also send a copy of this order to the ROC concerned within 15 days of this order;

ix. The RP shall intimate each claimant about the principle or formulae, as the case may be, for payment of debts under the Plan;

29. The Court Officer and Resolution Professional (RP) shall forthwith make available/send a copy of this Order to the CoC and the Successful Resolution Applicant (SRA) for immediate necessary compliance.

30. A copy of this order shall also be sent by the Court Officer and Applicant to the IBBI and RoC for their record.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)