

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

I.A/1745/ND/2023 A/W I.A/6183/ND/2023
IN

CP IB-3173/ND/2019

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

IN THE MATTER OF

SWASTIK PIPE LIMITED

... Operational Creditor

Versus

M/s EMKAY AUTOMOBILE INDUSTRIES LIMITED

... Corporate Debtor

AND

IN THE MATTER OF I.A. 1745/ND/2023:

Hemant Sethi
Resolution Professional of
M/s Emkay Automobile Industries Limited

... Applicant

AND

IN THE MATTER OF I.A. 6183/ND/2023:

Mr. Mahendra Kumar Jajoo

...Applicant

Versus

Hemant Sethi & Ors.

...Respondent

Order Delivered on: 23.08.2024

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Vishal Sharma, Ms. Priyanka Mandal, Adv. in IA/1549/2023

For the Respondent
For the RP

:
: Mr. Arvind Nayyar, Sr. Adv. Mr. Akshay, Mr. Amar Vivek, Ms. Ritika Gaur, Ms. Damini Srestha, Mr. Aditya Gauri, Mr. Anant Jain, Adv. in IA/1745/2023

For the SBI : Mr. Kunal Tandon, Ms. Bhavna Vijay, Adv.
For the EPFO : Mr. BB Pradhan, Mr. Ravindra Vikram, Adv. in IA/1549/2023

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. The Present application i.e., I.A/1745/2023 has been filed under Section 30(6) read with section 31(1) of the Insolvency and Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations') on behalf of Mr. Hemant Sethi, Resolution Professional ('Applicant') of M/s Emkay Automobile Industries Limited ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by M/s Belrise Industries Limited ('Successful Resolution Applicant') and approved by the Committee of Creditor ('CoC') in its 18th meeting through e-voting on 21.02.2023 with 85.79% voting in favor.

2. Facts as averred by the Applicant in I.A./1745/ND/2023

a) The Applicant submits that the Corporate Insolvency Resolution Process was initiated against M/s Emkay Automobile Private Limited ('Corporate Debtor') by this Adjudicating Authority vide order dated 12.10.2021 in C.P IB-3173/ND/2019, an application filed by Union Bank of India under Section 7 of

the Code and Mr. Hemant Sethi was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor.

- b) The Applicant made Public Announcement in Form A on 17.10.2021 and pursuant to the same the Applicant received twenty-one claims from the Financial Creditors till 26.10.2021. Further, a resolution was passed by the CoC with a voting share of 92.20% in the 2nd CoC meeting for appointed of the applicant as the Resolution Professional. Further, in the 2nd meeting of the CoC dated 19.01.2022, the Applicant proceeded to publish Form-G. Thereafter, the Applicant after duly considering the best offer as submitted, background and the strong financials of Badve Engineering Limited, found it appropriate to assign award the Job Work Assignment to Badve Engineering Limited in order to keep company as a going concern. It is pertinent to mention that Badve Engineering Limited is also one of the Financial Creditors of the Corporate Debtor.
- c) Further, in the 4th meeting of the CoC dated 19.04.2022, the members were apprised of the fact that the last date for the submission of the Resolution Plan had been extended till 08.04.2022. Thereafter, in the 5th meeting of the CoC dated 05.05.2022, the Applicant herein apprised the members, that the last date to submit the Resolution Plan pursuant to 4th CoC meeting was 30.04.2022. However, no additional resolution plan had been received by the Applicant herein. While a revised Resolution Plan had been received from United Biotech Limited. The three Resolution Plans received by the Applicant are as follows:
- i. Belrise Industries Ltd. (previously known as "Badve Engineering Ltd.")
 - ii. Jajoo Family (Ex-Directors of the Corporate Debtor)
 - iii. United Biotech Pvt. Ltd.
- d) Therefore, the CoC exercising its commercial wisdom, unanimously decided to proceed with opening the Resolution Plans received. The 7th Meeting of the CoC was conducted on 31.05.2022, wherein the Applicant herein apprised the members that it shall proceed with the due diligence of the Resolution Plans received. Upon the completion of the same the Resolution Plans could be placed for further discussion before the CoC. The PRAs who had successfully submitted

the Resolution Plan had been invited for one-on-one meeting with the members of CoC.

- e) Further, the 3rd, 4th, 5th 6th and 7th rounds of Bidding were conducted on 14.09.2022. Thereafter, the RP confirmed if there is any further scope of negotiations or bidding to which the bidders suggested that the bid as submitted in the 7th round should be considered as the final bid and the bidding process can be closed. The last date to submit the revised Resolution Plan by the PRAs was decided to be 24.09.2022. Therefore, the Applicant herein had received the revised Resolution Plan from three of the PRA's, and the Applicant had appointed Mr. Sanjeev Chaudhary, who is an Insolvency Professional, Chartered Accountant and an Advocate, to review and vet the Resolution Plan with the mandatory contents of the RFRP as well as Legal requirements as per Insolvency and Bankruptcy Code, 2016.
- f) Thereafter, the Applicant received request from the representative of the State Bank of India on 12.10.2022 stating that a time period of one month was required by the for seeking internal approvals in order to be able to conduct the voting on the Resolution Plans. Further, the members of the CoC suggested certain changes required to be made in the Resolution Plan submitted by the Highest Bidder, Belrise Industries Limited (earlier known as Badve Engineering Limited) with regards to the contents of the Plan. Therefore, the Applicant herein had received the revised Resolution Plan from the H1 Bidder, Belrise Industries Ltd. Further, in the 15th CoC Meeting dated 12.01.2023, the Applicant herein apprised the members of the CoC that the e-voting on the Resolution Plans commenced on 21.12.2022 pursuant to the modified Resolution Plan submitted by the H1 Bidder, Belrise Industries Ltd. Further during the course of meeting negotiations pertaining to the terms and conditions were carried out.
- g) Further, in the 16th Coc Meeting dated 18.01.2023, the Applicant herein apprised the CoC of the fact that the State Bank of India vide an email submitted its grievance regarding the non-submission of the revised Resolution Plan by the H1 bidder. It was duly informed by the Applicant herein that the clarifications sought by the State Bank of India shall form a part and parcel of the Resolution

Plan itself. Hence, there was no requirement for a revised Resolution Plan. That pertinently, the Applicant apprised the members that while the e-voting was live, the State Bank of India requested that the other two PRA's should also be allowed to submit a revised financial bid. In order to remove the grievance of the other 2 (Two) PRAs the same was allowed. Accordingly, an email had been issued to all the three PRAs asking them to submit the revised financial Bid.

h) Thereafter, in the 18th Meeting of the CoC dated 06.02.2023, the Applicant proceeded to discuss the communications received from the 3 PRAs. The Applicant apprised the members that an email to all the 3 PRAs and given them final time till 06.02.2023, 01:00 PM to submit the revised Financial Bid. The RP also clarified in the email that considering the strict timeline and the Corporate Insolvency Process Period was coming to an end on 21.02.2023, the time shall not be extended and in case no revert is received from the PRA, the last plan submitted shall be considered as the final Plan. The e-voting conducted the Resolution Plan submitted by the H1 Bidder (Belrise Industries Ltd.) was approved with a voting percentage of 85.79%. Pursuant to the same the Applicant herein issued the Letter of Intent on 23.02.2023. Consequently, in accordance with Regulation 36B (4A) of the CIRP Regulations, the Resolution Applicant, has provided a Performance Bank Guarantee equivalent to 10% of the Resolution Plan value offered to all the creditors on 02.03.2023. Hence, the present Application.

3. Objections to the Resolution Plan bearing I.A./6183/ND/2023

While the Applicant sought approval of the Resolution Plan submitted by Belrise Industries Ltd so approved by the CoC in its 18th CoC meeting through e-voting on 21.02.2023 with 85.79% voting, the Promoter/Director (with suspended powers) of the Corporate Debtor, which is an MSME had raised objections against the approval of the Resolution Plan, seeking directions to the CoC to reconsider the plan of the Objector, vide I.A. 6183/ND/2023. The objections raised by the Promoter/Director (with suspended powers) of the Corporate Debtor are as under: -

a) The Objector in the instant case is seeking directions to the committee of creditors to reconsider the plan of the applicant. The Objector is the promoter/

Director (with suspended powers) of the Corporate Debtor, which is an MSME and was therefore qualified to submit a Resolution Plan. That in lieu of the Form G published by the Respondent No. 01, the Objector had submitted its EOI and was successfully included in the final list of PRAs.

- b) Further, in the 18th meeting of the CoC held on 06.02.2023, the Resolution Plan submitted by the Objector was discussed and deliberated upon. In the 18th meeting of the CoC, the revised Resolution Plan submitted by the Objector was discussed and the members of the CoC were informed that the Objector had introduced 2 new investors namely Mrs. Archana Rajendra Jasud (Proprietor of Siddhi Vinayak Enterprises) and Mr. Rajendra Ashok Jasud (Proprietor of Bhakti Steel). The said investors were invited to provide financial support to Mr. Mahendra Kumar Jajoo for acquisition of Emkay Automobiles Industries Limited. That after deliberations, the members of the CoC were of the view that the meeting be adjourned to 09.02.2023 at 2:30pm so that the RP can do verification of the documents received from the PRA, and accordingly, the meeting was rescheduled to 09.02.2023 at 2:30 P.M.
- c) Thereafter, the Objector was requested to modify the evaluation matrix with regard to qualitative parameters as a special case since they are participating under special class of IBC being promoters of MSME Corporate Debtor. The request was duly discussed among the members of COC that parameters cannot be changed at this later stage of CIRP, however in this case if investor confirms through agreement/MOU participation as equity partners then relative value under qualitative parameter can be modified for rating purpose.
- d) Further, since certain documents were not provided by the Objector, the Objector requested the members to allow submission of the said documents on 10-02-2023 till 05:00 P.M. The Representatives of HDFC and J. C. Flowers ask for clarification regarding the implication regarding waiver of performance guarantee clause. The Resolution Professional mentioned that the plan submitted by Objector's family with condition of, waiver of performance guarantee clause, violates the conditions mentioned in RFRP as approved by COC. Hence, the resolution plan submitted by Jajoo family is non-complaint.

The Chairman further mentioned that, for consideration of this clause approval of COC is required.

- e) Furthermore, after deliberations and discussion, the members of the COC were of the view that Objector Jajoo family shall provide the comfort to the members of COC by way of personal guarantee of the investors and performance security to ensure the trust of the Committee of Creditors and also provide the other documents as requested by the Resolution Professional so that the verification can be done properly. Further members were of the view that considering the strict timeline since the CIRP period ending on 21-02-2023, the Jajoo family shall submit all the documents with the Resolution Professional on or before 10-02-2023 by maximum 02:00 P.M. and voting shall start accordingly. Thereafter, the voting on the Resolution Plan took place and the Plan submitted by Belrise Industries Limited was thereby approved. That it becomes pertinent to mention that the Plan submitted by the Objector is much higher than the plan submitted by Belrise Industries Limited.
- f) That the Corporate Debtor is an MSME and therefore the Objector is eligible to submit its Resolution Plan before the CoC. That it is pertinent to mention that the Resolution Plan submitted by the Objector was in compliance with the provision of the Insolvency and Bankruptcy Code, 2016 and the regulations therein. That it becomes pertinent to mention that the Objector herein has provided all the documents as were requested by the Resolution Professional. It is pertinent to mention that the Revised Resolution Plan submitted by the Objector was to the tune of Rs. 60 Crores, whereas the amount proposed by the successful bidder is to the tune of Rs. 55.16 Crores. That by allowing the Objector herein to present its plan before the CoC will result in maximization of value.
- g) Further, prior to the commencement of the CIRP of the Corporate Debtor, the Objector preferred a Writ Petition bearing W.P.(C) 6401 / 2021 before the Hon'ble High Court of Delhi seeking directions against the Banks from whom loans were taken to issue NOC in order to enable the Appellant to sell the immovable assets mortgaged with the Bank to pay the dues towards the outstanding loans.

However, vide order dated 21.03.2022, the said Petition was disposed of as not maintainable subsequent to commencement of CIRP of the Corporate Debtor. That it becomes pertinent to mention that the Objector herein had taken every endeavour to pay back the dues of the Corporate Debtor prior to commencement of CIRP. Further, the State Bank of India (one of the creditors of the Corporate Debtor) had vide sanction letter dated 28.04.2020 sanctioned a credit facility to the tune of Rs. 42.50 Crores wherein the fund-based limit was to the tune of Rs. 38.50 Crores and non-fund-based limit to the tune of Rs. 4 Crores. That the State Bank of India had vide the aforesaid letter given its approval for the sale of assets. That by allowing the Objector herein to present its plan before the CoC will result in maximisation of value. Hence, the present objection has been filed.

4. The Applicant (Resolution Professional) responded to the objections raised by the objector vide its reply dated 26.02.2024, wherein the Applicant had made the following submissions to the objections raised by the Objector (i.e., the Promoter/Director):

a) The Resolution Professional made a public announcement in Form A on 07.10.2021, inviting claims from the creditors of the Corporate Debtor, published in four newspapers: Financial Express (all India edition), Jansatta (all India edition), Aj Di Awaz (Punjab Area), and Punyanagari (Nashik Area). The last date for submission of claims was 26.10.2021. That after collating all claims in accordance with Section 18(1)(c) of the Code and Regulations 13(2)(d) and 17(1) of the CIRP Regulations, the CoC was constituted. Further, the Resolution Professional issued Form-G Inviting Expression of Interest (EOI) from prospective resolution applicants (PRAS) and published the same on 19.01.2022 in four circulated newspapers.

b) Thereafter, the Resolution Professional on 13.02.2022 issued the provisional list of eligible PRAS and issued them RFRP, Information Memorandum, and Bid Evaluation Matrix. Thereafter, in the 9th CoC Meeting, the members discussed the Resolution Plans submitted by three Prospective Resolution Applicants (PRAs) namely, Belrise Industries Limited (earlier known as Badve Engineering Limited), United Biotech Private Limited, and Mahendra Kumar Jajoo (Objector

herein) wherein it was decided to give 7 days to the PRAs to submit their revised plans.

- c) Furthermore, in the 3rd, 4th, 5th, 6th, 7th rounds of bidding, the Objector was ranked as H3 bidder. That in the 18th CoC meeting on 09.02.2023, the Objector was requested to provide additional documents for verification, including agreements, balance sheets, and affidavits of compliance under Section 29A of the Code. The Objector was further requested to modify the evaluation matrix with regard to qualitative parameters as a special case since they are participating under a special class of MSME corporate debtor. It was discussed that parameters cannot be changed at this later stage of CIRP, however in this case if the investor confirms through agreement/MOU participation as equity partners then relative value under qualitative parameters can be modified for rating purposes.
- d) Since, the Objector is a promoter of MSME Corporate Debtor, it was discussed that the Objector shall provide comfort to the members of the CoC by way of personal guarantee of the investors and performance security to ensure the trust of the CoC and to provide additional documents as requested by the Resolution Professional. Further it is imperative to note that the Resolution Plan submitted by the Objector had a condition of waiver of the performance guarantee clause which violates the conditions mentioned in RFRP as approved by COC and the resolution plan submitted by the Objector was non-compliant.
- e) Thereafter, on 01.02.2023, the Resolution Plan sent an email to the Objector proposing to revise the financial bid submitted to which the Objector sought an extension of time till 07.02.2023 to submit the revised Resolution Plan. Further, the Resolution Professional extended the time to submit the revised Resolution Plan till 06.02.2023. Upon submission of the revised Resolution Plan by the Objector, the Resolution Professional sought certain documents from the Objector such as CIBIL Report, PAN Card, Valuation report of the assets which have been considered for the purpose of the Resolution Plan, Net worth certificate with UDIN number. Furthermore, the Resolution Professional sent another email

to the Objector on 07.02.2023 informing the non-submission of the abovementioned documents.

f) Further, on 22.02.2023, the Resolution Professional intimated via email to the Objector about the rejection of the Resolution Plan submitted by the Objector and further sought bank details to refund the amount of EMD to which the Objector did not object but sought a refund of EMD amount with interest. It is pertinent to mention that the Resolution Plan of Belrise Industries Limited, Successful Resolution Applicant, whose plan was found to be viable and feasible, was approved by the members of the CoC. The Resolution Profession hence, seeks to uphold the decision of the CoC as the decision taken in the Commercial wisdom of the CoC is of paramount importance.

OUR ANALYSIS

5. We have heard the submissions made by the Ld. Counsel for the Applicant and have carefully gone through the documents produced on record. Before, examining the Resolution Plan vis-à-vis with the mandatory compliance under the Code and the Regulations made thereunder, the objections raised against the approval of resolution plan need to be determined.
6. The Applicant (Resolution Professional) responded to the objections raised by the objector vide its reply dated 26.02.2024, wherein the Applicant had dealt with the issues raised by the Objector against the approval of the Resolution Plan. In the instant objection, the Objector contends that the Objector is the promoter/ Director (with suspended powers) of the Corporate Debtor, which is an MSME and was therefore qualified to submit a Resolution Plan. The main contention of the Objector is that the Objector is seeking to direct the CoC to reconsider the Resolution Plans, as the Objector contends that Resolution Plan submitted by the Objector will result in garnering better value as the Resolution Plan submitted by the Objector was to the tune of Rs. 60 Crores, whereas the amount proposed by the SRA is to the tune of Rs. 55.16. Crores. The Objector further contends that the Resolution Plan submitted by the Objector will result in maximization of value.

7. On perusal of records, we observe that, Objector failed to submit the necessary documents such as CIBIL Report, PAN Card, Valuation report of the assets which have been considered for the purpose of the Resolution Plan, Net worth certificate with UDIN number, which the Applicant/Resolution Professional was seeking. It is further observed that, vide email dated 07.02.2023, the Applicant also informed the Objector about non- submission of the documents sought. Moreover, the Resolution Plan submitted by the Objector had a condition of waiver of the performance guarantee clause which violates the conditions mentioned in RFRP as approved by CoC.
8. It is the contention the Resolution Professional stated that Resolution Plan submitted by the Objector was non-compliant. Resolution Professional has further stated that vide email dated 22.02.2023, the Resolution Professional intimated the Objector about the rejection of the Resolution Plan submitted by the Objector and further sought bank details to refund the amount of EMD to which the Objector did not object but sought a refund of EMD amount with interest. Therefore, we are of the view that the Objector was himself not vigilant in submitting all the documents with the Resolution Professional, when the opportunity was given. Thus, the contention of the Applicant with this regard does not hold ground.
9. Moreover, it is pertinent to mention that the Resolution Plan of Belrise Industries Limited, Successful Resolution Applicant, whose plan was found to be viable and feasible, was approved by the members of the CoC. Further, the Hon'ble NCLAT in the judgment **Rajesh Kumar Damani v. CoC of Pami Metals Pvt. Ltd. and Ors., Company Appeal (AT) (I) 91/2024**, upholds decision of Hon'ble NCLT Kolkata Bench in which Tribunal ruled that commercial wisdom of CoC in rejection of Resolution Plan of MSME Promoter cannot be called into question unless there are glaring omissions, and the deficiencies are stark. The relevant extract of the said judgment reproduced below for ready reference:

“16. ... the plan value which has been offered by Respondent No.16 (SRA) and various payments offered in both the plans are in the domain of the commercial wisdom of the CoC and this Court shall not

sit in appeal over the said decision, nor it is jurisdiction of this Court to compare the plan offers submitted by the Respondent No.16 and Appellant and come to a contrary conclusion. The plan submitted by the Appellant has been duly considered and voted upon which could not muster the requisite vote, there is no error in the order passed by the Adjudicating Authority...”

10. Furthermore, in light of the observation above, it shows that the CoC has taken conscious commercial decision, not to accept the plan of the objector. Moreover, it is a well settled law in light of Hon’ble Supreme Court’s judgment in **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019** and **Jaypee Kensington Boulevard Apartments Welfare Association v NBCC (India) Limited, (2022) 1 SCC 401** that there is no scope of interference with regards to the commercial aspects of the decision of the CoC.
11. Therefore, this Adjudicating Authority is satisfied with the reply submitted by the Resolution Professional to the contentions made by the Objector. Moreover, the decision was taken in the commercial wisdom the CoC and it would not be appropriate for this Adjudicating to interfere with the same. In light of the above observation and after hearing both the parties, it is evident that the objections raised by the objector to the Resolution Plan approved by the CoC do not merit any consideration by this Adjudicating Authority. Hence, **I.A./6183/ND/2023 stands dismissed.**
12. It is pertinent to mention that with regard to application under Section 43, 45, 50 and 66, it is clarified in the Convenience Proforma that any cost (including legal costs) in relation to the avoidance transactions shall be paid by the Financial Creditors and any recovery from the litigation in relation to the avoidance transactions shall be received by the Financial Creditors. Further, this Adjudicating Authority vide order dated 23.07.2024, had directed the Applicant to clarify that who will pursue the application for avoidance transactions, in case, the

resolution plan is approved by this Adjudicating Authority. Therefore, in compliance of our order, the Resolution Professional has clarified vide affidavit dated 30.07.2024 that the Resolution Professional will pursue proceedings in respect of avoidance transactions and the cost shall be paid by Financial Creditors in terms of Resolution Plan. The above said clarification was approved by the CoC in its 25th meeting held on 29.07.2024 by passing a resolution in this regard. Further, the affidavit dated 30.07.2024 shall be treated as an addendum to the Resolution Plan, as recorded in order dated 02.08.2024.

13. Therefore, the resolution plan as approved by the CoC in its 18th COC Meeting held on 06.02.2023 through e-voting, results of which were declared on 21.02.2023 and which has 85.79% voting by the members of CoC is placed before this Adjudicating Authority vide I.A./1745/ND/2023 is taken up for consideration. The salient features of the resolution plan submitted by Belrise Industries Limited ('Successful Resolution Applicant') and approved by the Committee of Creditor ('CoC') in its 18th meeting with 85.79% voting in favour, are as follows: -

a) The amount proposed to be paid towards the Corporate Insolvency Resolution of the Corporate Debtor pursuant to the implementation of the proposed Resolution Plan is as under:

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 subsection (2) of section 21	NA	NA	NA	NA
		(b) Other than (a) above:	794982 92	791095 65	54028 000	67.96
		(i) who did not vote in favour of the resolution Plan	681909 230	681909 230	46547 2000	68.26
		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	761407 522	761018 795	51950 0000	
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under subsection (2) of section 21	NA	NA	NA	NA
		(b) Other than (a) above:	351092 04	349334 64	0	NA
		(i) who did not vote in favour of				

		the resolution Plan	7554248	7554248	0	NA
		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	42663452	42487712	0	NA
3	Operational Creditors	(a) Related Party of Corporate Debtor	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				
		(i)Government	100643212	13016153	13016153	12.9368.26
		(ii)Workmen	28008652	28008652	19119754	NA
		(iii)Employees	80129437	20091510	0	NA
		(iv)other Operational Creditors	478753051	419972328	0	
		Total[(a) + (b)]	687534352	481088643	32135907	
4	Other debts and dues	NA	NA	NA	NA	NA
Grand Total			1491605326	1284595150	551635907	

*If there are sub categories in a category, please add rows for each sub

- b) The average fair value and liquidation value of the Corporate Debtor is Rs. 76.86 Crores and Rs. 55.08 Crores, respectively.
- c) In view of Section 31 of the Code, this Adjudicating Authority before approving the Resolution Plan is required to examine whether the Resolution

Plan which is approved by the CoC under Section 30 (4) of the Code meets the requirements as referred to under Section 30 (2) of the Code.

Section 30 (2) is quoted below: -

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

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

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

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

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

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

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

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

- (i) where a Resolution Plan has not been approved or rejected by the Adjudicating Authority;
- (ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or
- (iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a Resolution Plan;]
- (c) provides for the management of the affairs of the Corporate debtor after approval of the Resolution Plan;
- (d) The implementation and supervision of the Resolution Plan;
- (e) does not contravene any of the provisions of the law for the time being in force
- (f) conforms to such other requirements as may be specified by the Board.

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

- d) That the final resolution plan and its addendum submitted by M/s SA Infrastructure Consultants Private Limited meets the requirements of Section 30(2) of the Code as under: -

Section	Provisions under Section 30(2) of the Code	Compliance under Resolution Plan
30(2)(a)	provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the	YES Chapter IV-Clause C- (I) Page-31

	payment of other debts of the corporate debtor;	
30(2)(b)	<p>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-</p> <p>(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or</p> <p>(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53</p>	<p>YES</p> <p>Chapter IV-Clause C-(III)</p> <p>Page-35 and 36</p>
30(2)(c)	provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;	<p>YES</p> <p>Chapter VI-Clause 3</p> <p>Page-50</p>
30(2)(d)	the implementation and supervision of the resolution plan;	<p>YES</p> <p>Chapter V- Clause 11- Page- 47</p> <p>Chapter VI- Clause 2- Page 48-50</p>
30(2)(e)	does not contravene any of the provisions of the law for the time being in force	<p>YES</p> <p>Chapter- VIII</p> <p>Page-58</p>

30(2)(f)	conforms to such other requirements as may be specified by the Board.	Yes Chapter VIII- Page-59
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e) That the Resolution Applicant has provided the indicative timeline of events for implementation of the Resolution Plan at Page No. 47, which is reproduced as under: -

Action	Timeline
NCLT approval Date	X
Effective date	Y
Submission of EMD of Rs. 100 Lakhs	At the time of submission of this Resolution Plan
Formation of monitoring committee	X+10days
Resignation of existing directors, appointment of new directors in the board of corporate debtor	X+1 month
Submission of PBG	As per RFRP.
Transfer of all existing Shares and issue of fresh shares in f/o new Resolution Applicant or the persons nominated by him	X+1 month
Payment of unpaid CIRP cost till the approval of the Resolution plan by Hon'ble NCLT	Y+60 days
Payment to Workmen/Employees	Y+60 days
Payment to operational Creditors	Y+60 days
Payment to Financial Creditor	Y+14 months

f) Mandatory Contents as specified under Regulation 38 of IBBI CIRP Regulations 2016 are as under: -

Regulation	Provisions under Regulation 38 of IBBI CIRP Regulations 2016.	Compliance under Resolution Plan
38(1)(a)	The amount payable under a resolution plan – (a) to the operational creditors shall be paid in priority over financial creditors; and (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.]	YES Chapter IV- Clause C-(III)- Page 35

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 creditors, of the corporate debtor.]	YES The Resolution Plan has been prepared considering the applicable provisions of IBC Code and taking care of interest of the entire stakeholder. Details- Chapter IV
38(1B)	A resolution plan shall include a statement giving details 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 plan approved by the Adjudicating Authority at any time in the past.	NO Chapter II- Page 12
38(2)(a)	A resolution plan shall provide the term of the plan and its implementation schedule;	YES Chapter V- Clause 11- Page 47
38(2)(b)	A resolution plan shall provide the management and control of the business of the corporate debtor during its term; and	YES Chapter VI- Clause 3- Page 50
38(2)(c)	A resolution plan shall provide adequate means for supervising its implementation	YES Chapter VI- Clause 2- Page 48-50
38(2)(d)	provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and	YES Page 27 of Convenience Proforma of Resolution Plan Clarified vide affidavit dated 30.07.2024

	the manner in which the proceeds, if any, from such proceedings shall be distributed.	which shall be treated as addendum to the Resolution Plan, as recorded in order dated 02.08.2024 Page No. 2
38(3)(a)	A resolution plan shall demonstrate that – it addresses the cause of default;	YES Chapter- III- Clause 11- Page 27
38(3)(b)	A resolution plan shall demonstrate that – it is feasible and viable;	YES Reasons have been recorded in the 18 th meeting of CoC dated 06.02.2023 Clause VI Chapter II- Page 14
38(3)(c)	A resolution plan shall demonstrate that – it has provisions for its effective implementation;	YES Chapter IV- Page 41- Chapter V- Clause 11- Page 47 Chapter VI- Clause-2 Page 48-50
38(3)(d)	A resolution plan shall demonstrate that – it has provisions for approvals required and the timeline for the same; and	YES Chapter VII Page 51 to 57
38(3)(e)	A resolution plan shall demonstrate that – the resolution applicant has the capability to implement the resolution plan.]	YES Chapter- II Page 10-21

14. In view of the Final Resolution Plan and its addendum submitted by the Successful Resolution Applicant along with the mandatory compliances filed by the Applicant herein, we are of the view that the mandatory requirements as laid down under Section 30(2) of the Code are complied with.

15. In respect of compliance regarding Regulation 39(4) of the CIRP Regulations, the Applicant has filed a compliance certificate in Form-H annexed as Annexure A-31 at Page 583-596 of the application, certifying that the Resolution Plan submitted by the Successful Resolution Applicant meets the requirements as laid down in various sections of the Code and the CIRP Regulations and there are sufficient provisions in the Plan for its effective implementation as required under the Code. Further, an affidavit has been obtained from the Successful Resolution Applicant stating that he is eligible under the provisions of Section 29A of the Code, 2016.
16. The applicant has prayed for number of waivers, reliefs and concessions in the Resolution Plan as mentioned in Chapter VII, Page 51-57 of the Resolution Plan. As to the relief and concessions sought in the resolution plan, by taking into consideration the decision of the Hon'ble Supreme Court in the matter of **Embassy Property Development Private Limited v. State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019**, we direct the Successful Resolution Applicant to file necessary application before the necessary forum/ authority in order to avail the necessary relief and concessions, in accordance with respective laws. The relevant part of the judgement is reproduced herein below:

*“39. Another important aspect is that under Section 25 (2) (b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:
“25. Duties of resolution professional –
(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.
(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions:-
(a).....
(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings.”
This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional*

cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

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

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

17. In so far as the approval of the resolution plan is concerned, this Adjudicating Authority is not sitting on an appeal against the decision of the Committee of Creditors and this Adjudicating Authority is duty bound to follow the judgment of the Hon’ble Supreme Court in the matter of **K. Sashidhar v. Indian Overseas Bank (2019) 12 CC 150**, wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as follows: -

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

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

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

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

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

'273.1. The adjudicating authority has limited jurisdiction in the matter of approval of a resolution plan, which is well-defined and

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

The above view of the Hon'ble Supreme Court in **Jaypee Kensington Boulevard Apartments Welfare Association v NBCC (India) Limited (Supra)** is reaffirmed by the Hon'ble Supreme Court in its recent decision dated 21.11.2023 in the case of **Ramkrishna Forgings Limited Vs Ravindra Loonkar, Resolution Professional of ACIL Limited & Anr., 2022 SCC OnLine SC 2142.**

20. Thus, from the judgments cited supra, it is amply clear that only limited judicial review is available to the Adjudicating Authority under Section 30(2) read with Section 31 of the Code, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the committee of the creditors.
21. In view of the above discussion, this Adjudicating Authority is satisfied that the Resolution Plan as filed and explained by the SRA meets the requirement of Section 30(2) of IBC.
22. Therefore, in our considered view, there is no impediment to giving approval to the instant Resolution Plan. Accordingly, we hereby **approve the Resolution Plan**, which shall be binding on the corporate debtor and its employees, shareholders of the corporate debtor, creditors including the Central Government, any State Government or any local authority to whom statutory dues are owed, Successful Resolution Applicant and other stakeholders involved. In view of the above, **I.A. 1745/ND/2023 stands allowed.**
23. It is declared that the moratorium order passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of

pronouncement of this order.

24. While approving the resolution plan as mentioned above, it is clarified that the resolution applicant shall pursuant to the resolution plan approved under section 31(1) of the Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for in such law.
25. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the corporate debtor and the Resolution Plan to IBBI to be recorded in its database in terms of Section 31(3) (b) of the Code. The Resolution Professional is further directed to hand over all the records, premises, and properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.
26. The approved Resolution Plan shall become effective from the date of passing of this order. The Approved Resolution Plan shall be a part of this order, subject to our observations regarding concessions, reliefs and waivers sought therein.
27. The Monitoring Committee is directed to file the monthly status report with regard to the implementation of the approved plan before this Adjudicating Authority.

In view of the above, the **I.A./1745/ND/2023 stands approved** in terms of the aforesaid discussion and is accordingly disposed off.

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

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)