



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IA. NO. 611/ND/2021

IN

Company Petition No. (IB)- 1164 (ND)/2019

IN THE MATTER OF:

M/s. Punjabi Accessoriezz Private Limited

D- 605, Neel Khanth Business Park

Nathani Road, Vidya Vihar (West)

Mumbai, Maharashtra - 400086

... Applicant/Operational Creditor

VERSUS

M/s. Kredo Beauty Private Limited

... Respondent

AND IN THE MATTER OF IA NO. 611/2021:

1. M/s. Punjabi Accessoriezz Private Limited

Through its Resolution Professional

D- 605, Neel Khanth Business Park

Nathani Road, Vidya Vihar (West)

Mumbai, Maharashtra – 400086

... Applicant No. 1

2. M/s. Crickxon Trade and Export Private Limited

Address – 1st Floor, Ganga Jamuna Building,

28/1, Shakespeare Sarani, Kolkata – 700017

... Applicant No. 2

3. M/s. Swift Builders Limited

Address – 1st Floor, Ganga Jamuna Building,

28/1, Shakespeare Sarani, Kolkata – 700017

... Applicant No. 3

4. Ms. Vanshika Raheja

Address - CU-49, Pitampura

Delhi – 110034

... Applicant No. 4

5. Ms. Mridula Mangla

Address – Flat No. 111, Jamna Apartment

Sector – 09, Rohini, Delhi – 110085

... Applicant No. 5



Section: 30(6) of the IBC, 2016

Order Delivered on: 17.03.2023

CORAM:

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

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the RP : Mr. Ravi Bansal RP along with Mr. Vedant Chahal,
Adv. and Ms. Veenu Darall, Mr. Ravi Prasar

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present IA No. 611/2021 has been filed by Mr. Ravi Bansal, the Resolution Professional of Kredo Beauty Pvt. Ltd. (**hereinafter referred as "Applicant/RP"**) for approval of the Resolution plan submitted by Ms. Vanshika Raheja jointly with Ms. Mridula Mangla (**hereinafter referred to as 'Resolution Applicant'**) seeking the following main relief:

- 1) *pass an order for approval of Resolution Plan submitted by Resolution Applicant- Ms. Vanshika Raheja jointly with Ms. Mridula Mangla as approved with 100% voting under section 30(4) of Insolvency & Bankruptcy Code, 2016 vide item no.8 of the 13th Meeting of Committee of Creditors of Corporate Debtor held on 12.01.2021."*



2. To put the facts succinctly, the Operational Creditor M/s Punjabi Accessoriezz Pvt. Ltd. filed an Application bearing No. IB-1164 (ND)/2019 under Section 9 of the IBC, 2016 for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, Kredo Beauty Pvt. Ltd. The said Application was admitted by this Tribunal vide Order dated 16.01.2020 and Mr. Ravi Bansal was appointed as the Interim Resolution Professional (IRP), who was further confirmed as the Resolution Professional of the Corporate Debtor.

3. In terms of Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the said Interim Resolution Professional made a public announcement in Form-A on 21.01.2020. The public announcement was also uploaded on the website of the Insolvency and Bankruptcy Board of India (IBBI). The publication was made in the newspapers Financial Express (English edition) and Jansatta (Hindi Edition) on 21.01.2020.

4. The Interim Resolution Professional constituted the Committee of Creditors, which comprised the following financial creditors with a voting share given against each:

Name of Creditor	Amount claimed (In Rs.)	Amount admitted (In Rs.)	Percentage of Voting Right
Crickxon trade & export private limited	2,54,99,700	2,53,18,052	70.13%
Swift Builders Limited	1,08,46,111	1,07,84,169	29.87%
TOTAL	3,63,45,811	3,61,02,221	100%



5. It is submitted by the Applicant/RP that Form 'G' was published on 29.10.2020 in the newspapers namely, Financial Express (English edition) and Jansatta (Hindi edition). It is further submitted that in response to the publication, an Earnest Money Deposit (EMD) of Rs 25,000/- was received from one Prospective Resolution Applicant (PRA) Mr. Ashutosh Tiwari. However, the said PRA did not submit the supporting documents, therefore, the RP returned the amount of EMD submitted by Mr. Ashutosh Tiwari.

6. It is stated by the Applicant/RP that it was resolved, with 100% voting share, in the 9th meeting of CoC held on 10.12.2020 for re-issuance of Form G, and pursuant to that the Applicant/RP made an Announcement on 12.12.2020 in the newspapers namely "Financial Express" & "Jansatta" for inviting EOIs. In response, RP received an EOI on 19.12.2020 from Ms. Vanshika Raheja jointly with Ms. Mridula Mangla for submitting the Resolution Plan.

7. It is submitted by the Applicant/RP that in the 13th meeting of the CoC held on 13.01.2021, the following resolutions were put before the CoC for consideration and approval of the Resolution Plan:

"RESOLVED THAT the Resolution Plan dated 06th January 2021 submitted by Ms. Vanshika Reheja and Ms. Mridula Mangla (VRMM) (read together with other document dated 7th January 2021) submitted with Resolution Plan and as amended from time to time by the Resolution Applicant, with the consent of CoC) are hereby approved by the Committee of Creditors (CoC) of Kredo Beauty Private Limited (KBPL) pursuant to Section 30(4) of the Insolvency and Bankruptcy Code, 2016 and the rules and regulations there under, subject to all the terms and conditions of 'Request For Resolution Plan' (RFRP).



RESOLVED FURTHER THAT without prejudice to the rights of the Committee of Creditors under applicable law and the Request For Resolution Plans dated 26th December 2020 (the "RFRP"), the Resolution Professional (RP) (on behalf of the Committee of Creditors (CoC) of Kredo Beauty Private Limited) be and is hereby authorised to issue a Letter of Intent to the Successful Resolution Applicant as per the terms of the Request for Resolution Plan (RFRP) dated 26th December, 2020 subject to:

- (a) the fulfillment of the conditions mentioned above to the satisfaction of the Committee of Creditors of Kredo Beauty Private Limited, or a waiver of such condition (in each case, as notified to the Resolution Professional by for and on behalf of the Committee of Creditors(CoC) in writing; and
- (b) that deviations to the RFRP, if any, and disclosed to the Committee of Creditors being: (i) waived by the Committee of Creditors or (ii) being remedied, in each case, prior to the issuance of the letter of Intent.

RESOLVED FURTHER THAT the Resolution Plan be combined for the purpose of submission to the National Company Law Tribunal (NCLT) New Delhi for approval, and implementation of these Resolution Plans in respect of Kredo Beauty Private Limited.

RESOLVED FURTHER THAT, the Committee of Creditors (CoC) of Kredo Beauty Private Limited authorizes the Resolution Professional to file an application through an Advocate & Solicitor before the National Company Law Tribunal (NCLT) New Delhi Bench for approval of the Resolution Plan of the Successful Resolution Applicant (SRA) (determined in accordance with Regulation 39(3B) of the CIRP Regulations) as approved by the Committee of Creditors Kredo Beauty Private Limited through 100% Voting of Financial Creditors of the Company in terms of Section 30(6) of the Insolvency and Bankruptcy Code, 2016, as amended and that the Resolution Professional(RP) be and is hereby authorised to take all necessary steps and execute all necessary documents as may be required for the purpose of filing the Application for approval of the Resolution Plan of the Successful Resolution Applicant in terms of Section 30(6) of the Insolvency and Bankruptcy Code, 2016.

RESOLVED FURTHER THAT the Committee of Creditors (CoC) of Kredo Beauty Private Limited and Resolution Professional authorizes jointly to negotiate and finalize the definitive documents or any other documents, deed, agreement, undertaking required to be entered into with the Successful Resolution Applicant (SRA), as may be required to give effect to and implement the Resolution Plan of the Successful Resolution Applicant, and in general to do all such acts, deeds or things for and on behalf of the Committee of Creditors (CoC) as may be required or considered necessary under or in connection with the implementation of the Resolution Plan of the Successful Resolution Applicant and the matter which are subject to the foregoing resolutions and to give legal and binding effect to matter connected therewith or incidental thereto; and Committee of Creditors shall enter into and execute definitive documentation on the terms finalized aforesaid."



8. The matter was earlier heard and reserved for orders. However, while going through the case record, it was observed by this Adjudicating Authority that the applicant did not annex the following with the application:

- a) Formal Memo of Parties.
- b) Voting sheet or proof of approval of the Resolution Plan by the CoC.
- c) Affidavit of the Successful Resolution Applicant (SRA) stating that they are not barred under Section 29A of IBC, 2016 for submitting the Resolution Plan.
- d) A Legible copy of the Performance Guarantee.

9. Accordingly, vide order dated 03.03.2021, the matter was de-reserved and RP was given an opportunity to cure these defects by filing an additional affidavit within 07 days.

10. The RP, in compliance with the aforesaid directions, filed its affidavit dated 10.03.2021. During the hearing on 19.10.2022, it was further observed by this Adjudicating Authority that the Performance Bank Guarantee had expired and as of 19.10.2022, the Resolution Plan was not backed by any financial instrument. Accordingly, RP was directed to file a valid performance guarantee to be submitted by the SRA. It was further observed that the voting sheet filed by the RP was not clear as the signatures of the members of the CoC could not be identified. Accordingly, for the lack of due diligence and repeated lapses, a cost of Rs. 10,000/- was imposed on RP and he was directed to cure the defects



within 10 days. The copy of the order dated 19.10.2022 is reproduced below, for immediate reference:

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT - II)**

Item No. 208
(IB)-1164(ND)2019
IA-611/2021

IN THE MATTER OF:
M/s. Punjabi Accessoriez Pvt. Ltd. ... Applicant/Petitioner

Versus

M/s. Kredo Beauty Pvt. Ltd. ... Respondent

Under Section: 9 of IBC, 2016 (R. Plan)

Order delivered on 19.10.2022

CORAM:

**SHRI. BACHU VENKAT BALARAM DAS,
HON'BLE MEMBER (J)**

**SHRI. L.N. GUPTA,
HON'BLE MEMBER (T)**

PRESENT:

For the RA : Mr. K.D. Sharma, Adv.
For the IT Dept. : Mr. Ruchir Bhatia, Sr. Standing Counsel along
with Mr. Shlok Chandra, Jr. Standing Counsel
and Ms. Mansic Jain, Advocate
For the RP : Mr. Ravi Bansal RP along with Adv Atanu
Mulherjee, Adv Vedant Chahal and Adv
Prashant Yadav

ORDER

IA-611/2021: Heard the Ld. Counsel appearing for the RP. From the record, we find that the application for Resolution plan was heard on 03.03.2021 and the matter was de-reserved for want of certain lapses on the part of the Applicant namely, absence of formal Memo of the Parties, voting sheet in support of approval of the Resolution Plan not being placed on record, Affidavit that the SRA is not barred under Section 29A of IBC not being part of the Application, and the FDR towards the performance bank guarantee not being legible.

Ld. Counsel appearing for the RP submits that they have filed the Compliance Affidavit dated 10.03.2021, which is on record. While going through the Compliance Affidavit, we find that though they have filed the legible copy of the FDR in support of the performance guarantee, however, while going through the same, we notice that the said FDR has already matured as back as on 04.01.2022, which implies that the performance guarantee, as on date, is not backed by any financial instrument. We further notice that the voting sheet, filed and shown by the Applicant during the hearing, is still not clear as the signatures are not identified in terms of the full initials, designation and position in the Company represented in the CoC. Hence, the Applicant needs to identify the signatories and certify the voting sheet and its signatories by filing an additional affidavit. At this stage, the Ld. Counsel appearing for the RP seeks to file the Convenience Compilation along with the renewed/fresh performance bank guarantee on behalf of the SRA. Ld. Counsel Mr. K.D Sharma appearing for the SRA submits that they will provide the updated performance guarantee. Liberty is granted to the Applicant to file the Additional Affidavit with requisite details within a period of 10 days, as the last chance.

However, we are of the view that the application for the Resolution Plan has not been filed with due diligence for which the matter has lingered. We are constrained to impose a cost of Rs.10,000/- to be deposited by the Applicant /RP in the Prime Minister's Relief Fund within a week.

List the matter for final arguments on 23.11.2022.


(L.N. GUPTA)
MEMBER (T)


(BACHU VENKAT BALARAM DAS)
MEMBER (J)



11. In compliance, the Applicant/RP filed the additional affidavit dated 11.11.2022, which is reproduced below:

Additional Affidavit in compliance with
the order dated 19.10.2022

I, Ravi Bansal son of Late Shri Chiranji Lal aged about 61 years working for gain at 308, Adarsh Complex, 03 Community Centre, Wazirpur Industrial Area, Delhi -110052, hereby solemnly affirm and declare as under:

1. I am the Resolution Professional (RP) appointed on 24-02-2020 by the Committee of Creditors (CoC) for the purpose of Corporate Insolvency Resolution Process (CIRP) qua M/s Kredo Beauty Pvt. Ltd.
2. I say that I am fully conversant with the facts and circumstances of the case and competent to swear this affidavit in compliance of the order dated 19.10.2022 passed by the Hon'ble Adjudicating Authority. I say that in compliance of the order dated 19.10.2022, I have made an online deposit of an amount of Rs Ten Thousand only in the Prime Ministers' Relief Fund at <https://pmrfl.gov.in/en/online-donation> on 26-10-2022. Copy of the proof of payment in the Prime Ministers' Relief Fund is annexed herewith and marked as **ANNEXURE – A**.
3. I say that the Hon'ble Adjudicating Authority vide its order dated 3-3-2021 pointed out few curable defects and in compliance of the said order, the Resolution Professional (RP) filed its supplementary affidavit dated 10.3.2021, which is on record. Copy of order dated 03.03.2021 along with a copy of the supplementary affidavit dated 10.03.2021 is annexed and marked as **Annexure -B**.
4. I say that the legible copy of the FDR in support of the Performance Guarantee filed along with the Supplementary Affidavit matured on 14.01.2022. I say that the said FD stands renewed by the Successful Resolution Applicant. Copy of the renewed Fixed Deposit(s), which are annexed herewith and marked as **ANNEXURE – C**.
5. I say that the voting sheet/proof of the Resolution Plan approved in the 13th COC meeting held on 12.1.2021 was annexed at Page 8 of the Supplementary Affidavit along with the minutes of the 13th COC meeting held on 12.1.2021 @Page 10 of the said supplementary affidavit. This Hon'ble Adjudicating Authority vide its order dated 19.10.2022 held that:

"...we further notice that the voting sheet, filed and shown by the Applicant during the hearing, is still not clear as the signatures are not identified in terms of full initials, designation, and position in the company represented in the CoC. Hence, the



Applicant needs to identify the signatories and certify the voting sheet and its signatories by filing an additional affidavit....."

6 I say that in compliance of the foregoing directions, I do hereby Certify that:

(a) Two Financial Creditors namely (1) M/s Crickxon Trade and Export Private Limited, and (2) M/s Swift Builders Limited comprise the COC.

(b) M/s Crickxon Trade and Export Private Limited having a voting share of 70.13% was represented through Shri Naresh Kumar Rajgaria at the 13th COC Meeting. M/s Swift Builders Limited having a voting share of 29.87% was represented through Shri Ravendra Singh in the 13th COC meeting. (Refer to Item No.3 i.e. Quorum of Meeting @pg 12 of the supplementary affidavit).

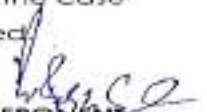
(c) The Minutes of the 13th COC meeting capture the respective signature(s) of the Members of COC alongwith their respective names & their presence @Pg no. 10 & 11 of the said supplementary affidavit.

(d) The Voting sheet @Pg 8 of the Supplementary affidavit refers to the 'Agenda' to be discussed and/or voted upon. I say that Sl. no. 8 of the said list of Agenda refers to **"To approve the resolution plan from Smt. Vanshika Raheja"**; wherein both the representative(s) of the Financial Creditors namely Shri Naresh Kumar Rajgaria and Shri Ravendra Singh have put their respective signatures. (refer to page no. 9 of the supplementary affidavit).

(e) I identify the signatures of the authorised representatives of Financial Creditors i.e. Shri Naresh Kumar Rajgaria and Shri Ravendra Singh at page no. 9 of the Supplementary affidavit.

Copy of the Minutes of the 13th COC meeting held on 12-1-2021 along with the voting sheet and copy of the Minutes of 14th COC meeting held on 22-9-2021 where the minutes for the 13th COC meeting were ratified are annexed herewith and marked as **ANNEXURE – D**.

7. I say that the instant affidavit has been drafted under my instructions and the contents thereof are true and correct to the best of my knowledge derived from the records of the case and the legal submissions are based on advice received.


DEPONENT

VERIFICATION

I, the above-named deponent, do hereby verify that the contents of my foregoing affidavit are true and correct and nothing material has been concealed there from.

Verified at New Delhi on this day of November 2022


DEPONENT



12. Accordingly, the matter was finally heard on 22.12.2022 post the clarifications submitted by the RP, and reserved for orders.

13. At this juncture, we refer to the Compliance Certificate in “Form H” submitted by the RP, which is reproduced below for immediate reference:

**FORM H
COMPLIANCE CERTIFICATE**

(Under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

I, RAVI BANSAL, an insolvency professional enrolled with Indian Institute of Insolvency Professionals of ICAI and Registered with the Board with registration number IBBI/IPA-001/IP-P00162/2017-18/10331, I am the resolution professional for the corporate insolvency resolution process (CIRP) of KREDO BEAUTY PRIVATE LIMITED the corporate debtor (CD).

2. The details of the CIRP are as under:

Sl. No.	Particulars	Description
1.	Name of the CD	Kredo Beauty Private Limited
2.	Date of Initiation of CIRP	16-01-2020
3.	Date of Appointment of IRP	16-01-2020
4.	Date of Publication of Public Announcement	21-01-2020
5.	Date of Constitution of CoC	15-02-2020
6.	Date of First Meeting of CoC	24-02-2020
7.	Date of Appointment of RP	24-02-2020
8.	Date of Appointment of Registered Valuers	06-03-2020
9.	Date of Issue of Invitation for EoI	First Time: 29-10-2020 Second Time: 12-12-2020
10.	Date of Provisional List of Eligible Prospective Resolution Applicants	First Time : 18-11-2020 Second Time: 20-12-2020
11.	Date of Final list of Eligible Prospective Resolution Applicants	First Time: 26-11-2020 Second Time: 25-12-2020
12.	Date of Invitation of Resolution Plan	First Time: 23-11-2020 Second Time : 24-12-2020
13.	Last Date of Submission of Resolution Plan	First Time : 22-12-2020



		Second Time:06-01-2021
14.	Date of Approval of Resolution Plan by CoC	12-01-2021
15.	Date of Filing of Resolution Plan with Adjudicating Authority	21-01-2021
16.	Date of Expiry of 180 days of CIRP	14-07-2020
17.	Date of Order extending the period of CIRP	25-11-2020
18.	Date of Expiry of Extended Period of CIRP	17-01-2021
19.	Fair Value	Rs. 1,37,84,843
20.	Liquidation value	Rs. 98,21,582
21.	Number of Meetings of CoC held	13

3. I have examined the Resolution Plan received from Resolution Applicant Ms.Vanshika Raheja jointly with Ms Mridula Mangla and approved by Committee of Creditors (COC) of Kredo Beauty Private Limited.

4. I hereby certify that-

(i) the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.

(ii) the Resolution Applicant (Ms. Vanshika Raheja jointly with Ms Mridula Mangla) has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.

(iii) the said Resolution Plan has been approved by the COC in accordance with the provisions of the Code and the CIRP Regulations made there under. The Resolution Plan has been approved by 100% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

(iv) The voting was held in the meeting of the COC on 12-01-2021 where all the members of the COC were present.

5. The list of financial creditors of the CD(Kredo Beauty Private Limited) being members of the COC and distribution of voting share among them is as under:

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	Crickxon Trade and	70.67%	Voted in favour of resolution plan



	Export Private Limited		
2	Swift Builders Limited	29.33%	Voted in favour of resolution plan

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 there under.

Yes, Page 9 (Refer Clause 2.1)

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

(Amount in Rs. Lakhs)

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	N A	N A	N A	N A
		(b) Other than (a) above:	N A	N A	N A	N A
		(i) who did not vote in favour of the resolution Plan	N A	N A	N A	N A
		(ii) who voted in favour of the resolution plan	N A	N A	N A	N A
		Total[(a) + (b)]	N A	N A	N A	N A
2	Unsecured Financial	(a) Creditors not having a right to vote under sub-	N A	N A	N A	N A



	Creditors	section (2) of section 21				
		(b) Other than (a) above:				
		• Crickxon Trade and Export Private Limited	255.00	253.18	2.53	0.99%
		• Swift Builders Limited	108.46	107.84	1.08	0.99%
		(i) who did not vote in favour of the resolution Plan	NA	NA	NA	NA
		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	363.46	361.02	3.61	0.99%
3	Operational Creditors	(a) Related Party of Corporate Debtor	NA	NA	NA	NA
		(b) Other than (a) above:				
		• Manju Choudhary	0.10	0.10	0.001	
		• M/s Deepak K Thakkar & Associates	0.12	0.12	0.001	
		• Head,GMB H (AUSTRIA)	20.83	20.83	0.21	
		(i)Government				
		(ii)Workmen				



		(iii)Employees: Mr. Pankaj Kumar	0.91	0.91	0.25	
		Total[(a) + (b)]	21.97	21.97	0.46	0.07%
4	Other debts and dues		NIL	NIL	NIL	NIL
Grand Total			385.43	382.99	4.07	1.06%

Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.

8. The interests of existing shareholders have been altered by the Resolution plan as under:

Sl. No	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity	10,000	Nil	100%	Nil
2	Preference	Nil	Nil	Nil	Nil

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

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause 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	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?	Page 29	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Such Affidavit was provided by the Resolution Applicant at the time submission of EOI	Yes



Section 30(2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment to the operational creditors? (b) provides for the payment to the financial creditors who did not vote in favour of the resolution plan? (c) provides for the management of the affairs of the corporate debtor? (d) provides for the implementation and supervision of the resolution plan? (e) contravenes any of the provisions of the law for the time being in force?	Page 6 Page 6 Page 7 Page 7 Page 7 Page 8	Yes Yes Yes Yes No
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?		Yes, approved with 100% voting
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?		Yes
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?		The RP require report from independent Transaction Auditor as the RP could not form an opinion under Regulation 35A of IBBI (CIRP) Regulations. Therefore, the Resolution Professional in 3 rd COC meeting



			held on 10.07.2020 appointed a transaction auditor to determine the violation if any under section-43, 45, 50 or 56.
Regulation 38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Page 9	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Page 9	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; (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	Page 10	Yes
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?	Page 10	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?	Page 11	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		In the 5 th CoC meeting held on 15.09.2020, the Transaction Auditor has furnished its



		report and the CoC discussed and deliberated on the transaction Audit Report of M/S AKG & Associate u/s 43, 45, 50 or 66 of IBC, 2016 and directed the Resolution Professional to keep it on records without further action for future reference as the transaction Audit Report does not bear any adverse observations under Section-43, 45, 50 or 66 of IBC 2016.
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Yes

10. The CIRP has been conducted as per the timeline indicated as under:

Section of the Code / Regulation No.	Description of Activity	Latest Timeline under regulation 40A	Actual Date
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	16-01-2020
Regulation 6(1)	Publication of Public Announcement	T+3	21-01-2020
Section 15(1)(e) / Regulation 12 (1)	Submission of Claims	T+14	03-02-2020



Regulation 13(1)	Verification of Claims	T+21	10-02-2020
Section 26(6A) / Regulation 15A	Application for Appointment of Authorised Representative, if necessary	T+23	NA
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	T+23	17-02-2020
Section 22(1) and regulation 17(2)	First Meeting of the CoC	T+30	24-02-2020
Regulation 35A	Determination of fraudulent and other transactions	T+115	15-09-2020
Regulation 27	Appointment of two Registered Valuers	T+47	06-03-2020
Regulation 36 (1)	Submission of Information Memorandum to CoC	T+54]	23-10-2020
Regulation 36A	Invitation of EoI	T+75	First Time: 29-10-2020 Second Time: 12-12-2020
	Publication of Form G	T+75	First Time: 29-10-2020 Second Time: 12-12-2020
	Provisional List of Resolution Applicants	T+100	First Time: 18-11-2020 Second Time: 20-12-2020
	Final List of Resolution Applicants	T+115	First Time : 26-11-2020 Second Time: 25-12-2020
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	T+105	First Time: 23-11-2020 Second Time: 24-12-2020
Section 30(6) / Regulation 39(4)	Submission of CoC approved Resolution Plan	T+165	21-01-2021
Section 31(1)	Approval of Resolution Plan	T=180	

11. The time frame proposed for obtaining relevant approvals is as under:

In the Resolution plan submitted by Ms. Vanshika Raheja jointly with Ms Mridula Mangla at page 9[(Regulation 37 (1)] which states that all the necessary approval of the Central and State Govt. are already in place for the operation of the business. In case of expiry of approval, such approval shall be extended by Govt. agencies in time bound manner.

Sl. No.	Nature of Approval	Name of applicable Law	Name of Authority who will grant	When to be obtained
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			Approval	
Please see the above paragraph				

12. The Resolution Plan is not subject to any contingency.

13. Following are the deviations / non-compliances of the provisions of the Insolvency and Bankruptcy Code, 2016, regulations made or circulars issued there under (If any deviation/ non-compliance were observed, please state the details and reasons for the same):

No deviation / non-compliances of the provisions of the Insolvency and Bankruptcy code, 2016, regulations made or circulars issued thereunder have been made during CIRP.

Sl. No.	Deviation/Non-compliance observed	Section of the Code / Regulation No. / Circular No.	Reasons	Whether rectified or not
Please see the above paragraph				

NOTE: THE EXTENSION AND EXCLUSION DUE TO COVID-19 WAS ALLOWED BY THE HON'BLE NCLT TILL 17-01-2021 VIDE ITS ORDER DATED 25-11-2020

14. The Resolution was passed by both member of CoC on 12.01.2021 i.e. 5 days before the expiry of period of CIRP on 17.01.2021. The application filed with the Hon'ble NCLT on Thursday, the 21st day of January, 2021 (in between 16.01.2021 being Saturday & 17.01.2021 being Sunday).

15. Provide details of section 66 or avoidance application filed / pending.

In the 5th CoC meeting held on 15.09.2020, the Transaction Auditor has furnished its report and the CoC discussed and deliberated on the transaction Audit Report of M/S AKG & Associate u/s 43, 45, 50 or 66 of IBC, 2016 and directed the Resolution Professional to keep it on records without further action for future reference as the transaction Audit Report does not bear any adverse observations under Section-43, 45, 50 or 66 of IBC 2016.

Sl. No.	Type of Transaction	Date of Filing with Adjudicating Authority	Date of Order of the Adjudicating Authority	Brief of the Order
Please see the above paragraph				

15A. The committee has approved a plan providing for contribution under regulation 39B as under:

- a. Estimated liquidation cost: Rs. 11.50 Lakhs
- b. Estimated liquid assets available: Rs. 14 Lakhs approximately
- c. Contributions required to be made: NIL
- d. Financial creditor wise contribution is as under:



Sl. No.	Name of financial creditor	Amount to be contributed (Rs.)
1	Crickxon Trade and Export Private Limited	Not Required
2	Switt Builders Limited	Not Required

15B. The committee has recommended under regulation 39C that the Liquidator may sell the 'Kredo Beauty Private Limited' the Corporate Debtor as a going concern under clause (e) of Regulation 32 of IBBI (Liquidation Process) Regulations, 2016 or sell the business(s) of the Corporate Debtor as a going concern under clause (f) of Regulation 32 of IBBI (CIRP) Regulations, 2016, had it not been able to be sold under the aforesaid Clauses then the Liquidator appointed by the Hon'ble NCLT may sell the assets of the Corporate Debtor under below mentioned clauses (a) to (d) of Regulation 32 Liquidation Process Regulations:-

- a) an asset on a standalone basis;
- b) the assets in a slump sale;
- c) a set of assets collectively; and
- d) the assets in parcel."

- a. Sale of corporate debtor as a going concern: Yes
- b. Sale of business of corporate debtor as a going concern: Yes

The details of recommendation are available with the resolution professional.

15C. The committee has fixed, in consultation with the resolution professional, the fee payable to the liquidator @ Rs.6.00 Lakhs during the liquidation period under regulation 39D.

16. I Itavi Bansal, hereby certify that the contents of this certificate are true and correct to the best of my knowledge and belief, and nothing material has been concealed there from


(Ravi Bansal)

Resolution Professional
In the matter of Kredo Beauty Private Limited(UnderCIRP)RegistrationnoIBBI/IPA-091/IP-P00162/2017-18/10331 308, Adarsh Complex, 03 CommunityCentre Wazirpur Industrial Area,Delhi-110052 Cell09868543031
Email: -cirn.kredobeaauty@gmail.com
ravibansalca@yahoo.com

PLACE: - DELHI

DATED: - 11.10.2021

14. We have heard the Ld. Counsel appearing for the Applicant/RP and perused the basic compliances of the Resolution Plan. The basic features of the Resolution Plan can be summarized below:

14.1 The total claims of creditors/stakeholders admitted are to the tune of Rs. 382.98 Lakhs, against which the Successful Resolution Applicant had proposed to pay Rs. 4.07 Lakhs only. The Financial Creditors are getting paid 0.99% only of their claim amounts. In other words, the Resolution Plan involves a haircut of 99% plus for the Financial Creditors.



14.2 Further, the SRA has proposed to pay an amount of Rs. 3.61 Lakhs to the Financial Creditors.

14.3 Furthermore, the Corporate Debtor is having Cash and Cash Equivalents of Rs. 6,08,232/- as of 31.03.2019, as evidenced by the following extracts of the Balance Sheet of the Corporate Debtor annexed with the IM and Application for approval of the Plan:

Note : 13 Cash & Cash Equivalents

Particulars	31-Mar-2019	31-Mar-2018
Cash in hand	10,347	19,501
Balances with Scheduled Banks:		
Industrial Bank	348,472	160,417
Kotak Mahindra Bank	55,080	55,764
Indian Bank	194,333	572,585
Total	608,232	808,267

The Successful Resolution Applicant has further proposed, on Page 360 of the application, to pay the bank balance of the Corporate Debtor amongst the Financial Creditors.

regulation 37(1A)	Dealing with interests of all stake holders including financial creditors and operational creditors	<p>The estimated outstanding dues of the Financial Creditors is approx. Rs.361.02 lakhs (technical amount) which is proposed to be paid a consideration of Rs. 3.61 lakhs plus the available bank balance as on the date of NCLT order with the CD on 100% cash basis. Cash and Bank balance as on 6th Jan 2021, date of submission of Resolution Plan, was around Rs. 19 Lakhs as confirmed by RP. The payment of entire crystallised amount to the original financial creditors is proposed within period of 2 months from the date of NCLT approval.</p> <p>Other stake holders are proposed to be paid/ settled as under:</p> <p>I. Financial creditors (related parties to the Corporate Debtor) with dues of Rs Nil – proposed to be paid Nil.</p> <p>II. Operational Creditors (Trade payables Rs. 21.06 Lakhs) are proposed to be paid an amount of Rs. 0.21 Lakhs in aggregate within 30 days of approval of resolution plan by NCLT, as per list enclosed in para 2.3.4.1. The amounts of related party of the promoters / guarantors of the CD is proposed to be waived.</p> <p>III. Workmen and employee dues aggregating Rs 0.91 Lakhs are proposed to be paid an amount of Rs. 0.25 Lakh in 30 days of NCLT approval.</p> <p>IV. Statutory creditors undisputed dues (part of other current liabilities) of Rs Nil proposed to be paid an</p>
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14.4 The payment to all the stakeholders of the Corporate Debtor is proposed to be made as per the following schedule:

7. Snapshot of the Resolution Plan

(Rs In Lakhs)

Sl. No.	Claim Type	Amount Due/ Admitted	Treatment under proposed Resolution Plan		Clause in which discussed
			Payment Proposed	Terms of Payment	
1	Corporate Insolvency Resolution Process Cost			The Resolution Plan provides for payment of resolution process cost on actual basis currently estimated at Rs. Nil as the company has sufficient assets to pay the Resolution Process Cost. Any excess will be paid in priority but the same will be reduced from the payment to be given to Financial Creditors.	Clause 2.3
2	Financial Creditors - Admitted amount	361.03	3.61	Rs. 3.61 of crystallised amount is proposed to be paid in 60 days of NCLT approval.	Clause 2.2.1
4	Operational Creditors - Trade payable (Admitted amount)	21.65	0.21	Within 30 days of NCLT approval	Clause 2.3.3.1
5	Due towards Workmen / Employees (Admitted amount)	0.01	0.25	Within 30 days of NCLT approval	Clause 2.3.8
	Total	382.69	4.07		

14.5 As per "Form H", the Fair Market Value of the Corporate Debtor is Rs.1,37,84,843/- and Liquidation Value is Rs. 98,21,582/-, whereas the creditors are getting Rs. 4.07 lakhs only in the Resolution Plan.

14.6 SRA has proposed the following Shareholding pattern of the Corporate Debtor, after the approval of the Resolution plan:

2.3.2 Capital Restructuring

The existing equity of the company would be same of Rs. 10 per share and re-designating the paid-up equity shares as New Equity Shares.

Existing Equity Structure	10,000 shares of Rs. 10 each
Revised Equity Structure	New Equity Shares - 10,000 shares of Rs. 10 each i.e. Rs. 1.00 Lakhs.

The proposed capital restructuring plan will be taken up immediately on receiving NCLT approval and will be completed within a period of 60 days therefrom.

2.3.2.1 Revised Shareholding Pattern:

Particulars	Amount (Rs Lakhs)	%
Vanshika Raheja	0.50	50%
Mridula Mangla	0.50	50%
Total	1.00	100.00%

*Resolution Applicant / Associates / Investors propose to buy the shares of all the existing shareholders at a price of Rs 1.00 lakhs (i.e. Rs 10 per share).




15. The existing Shareholding Pattern of the Corporate Debtor as annexed at internal Page 3 of the Resolution Plan is reproduced below:

1.3.3 Shareholding Pattern:

The details of members having stake in the Corporate Debtor as on 16.01.2020 as furnished by the RP in the IM are as under

Name	Address	Percentage of Stake in corporate debtor
Shri Aman Aggarwal S/o Sanjay Aggarwal Suspended Director (DIN- 02694916)	Nilay Vihar, 52/23, Vasant Vihar, South West Delhi, New Delhi-110070	45%
Shri Madhu Sudan Chaudhary S/o Kan Singh Chaudhary Suspended Director (DIN- 00246271)	9B, Second Floor, Uday Park, New Delhi -110049	17%
Crickxon Trade and Export Private Limited	1 st Floor, Ganga Jamuna Building, 28/1, Shakespeare Sarani, Kolkata- 700017	19%
Swift Builders Limited	Ganga Jamuna Building, 28/1, Shakespeare Sarani, Kolkata- 700017	19%
Total		100%


: 3 :
Certified True Copy

When we compare the existing “Shareholding Pattern” of the Corporate Debtor with the “Composition of CoC” as given in Paragraph 4 of this order, we find that both the CoC members namely, “Crickxon Trade & Export Private Limited” and “Swift Builders Limited are the Shareholders of the Corporate Debtor. In other words, the entire Committee of Creditors (CoC) of the Corporate Debtor consists of its Shareholders only.

16. At this stage, when we again peruse the compliances in “Form-H”, it is observed that none of the two Financial Creditors’ (or the members of the CoC) names are reflected under the category of “Unsecured Creditors in Column 2(a)”, which means they are not considered as “related party” and therefore, they have not been debarred



from the voting rights under Section 21(2) of the IBC, 2016. The relevant extract of the “Form-H” is reproduced below:

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	N A	N A	N A	N A
		(b) Other than (a) above:	N A	N A	N A	N A
		(i) who did not vote in favour of the resolution Plan	N A	N A	N A	N A
		(ii) who voted in favour of the resolution plan	N A	N A	N A	N A
		Total[(a) + (b)]	N A	N A	N A	N A
2	Unsecured Financial	(a) Creditors not having a right to vote under sub-	N A	N A	N A	N A

Creditors	section (2) of section 21				
	(b) Other than (a) above:				
	▪ Crickxon Trade and Export Private Limited	255.60	253.18	2.53	0.99%
	▪ Swift Builders Limited	108.46	107.84	1.08	0.99%
	(i) who did not vote in favour of the resolution Plan	N A	N A	N A	N A
(ii) who voted in favour of the resolution plan					
Total[(a) + (b)]	363.46	361.02	3.61	0.99%	



17. Hence, in the given backdrop, we would like to examine, **if the CoC members, namely, M/s Crickxon Trade and Exports Private Limited and Swift Builders Limited, are “unrelated parties” of the Corporate Debtor.**

18. To examine this issue, we refer to the definition of “Related Party” as provided under Section 5(24) of IBC, 2016, which reads thus:

(24) “related party”, in relation to a corporate debtor, means-

(a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;

(b) a key managerial personnel of the corporate debtor or a relative of a key managerial personnel of the corporate debtor;

(c) a limited liability partnership or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner;

(d) a private company in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent. of its share capital;

(e) a public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid-up share capital;

(f) anybody corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;

(g) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;

(h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;

(i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;

(j) any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;

(k) any person in whom the corporate debtor controls more than twenty per cent. of voting rights on account of ownership or a voting agreement;

(l) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;

(m) any person who is associated with the corporate debtor on account of-

(i) participation in policy making processes of the corporate debtor; or

(ii) having more than two directors in common between the corporate debtor and such person; or

(iii) interchange of managerial personnel between the corporate debtor and such person; or

(iv) provision of essential technical information to, or from, the corporate debtor;



19. On perusal of Section 5(24)(j), it is observed that any person who controls more than 20% of voting rights in the CD, comes under the purview of a related party. It is a matter of fact that in the present case, the two CoC members hold a 19% voting share each. Therefore, individually they are not Related Parties to the Corporate Debtor in terms of Section 5(24)(j). However, in order to pass the test of being unrelated parties, the members of the CoC have to still sail through all the criteria stipulated under Section 5(24) of IBC, 2016. Therefore, we would like to examine if they are a related party under any of the other criteria stipulated under Section 5(24) of IBC, 2016.

20. The other criteria, for declaring a person as a related party to the Corporate Debtor, is stipulated under Section 5(24)(l) of IBC, 2016, which is reproduced below:

*“(l) any person **who can control the composition of the board of directors** or corresponding governing body of the corporate debtor;”*

(Emphasis Supplied)

The aforesaid criterion implies that any person, who is capable of controlling the composition of the board of Directors of the Corporate Debtor is a related party to the Corporate Debtor. When we say controlling the composition, it obviously includes the appointment and removal of Directors. In view of the above, we would like to examine at this stage, **whether the two Shareholders/CoC members were in a position or legally capable to appoint or remove a Director in the Corporate Debtor Company i.e., Kredo Beauty Pvt. Ltd.**



21. In order to adjudicate this issue, we would like to examine the provisions regarding the removal and appointment of a Director. First, we refer to the provision relating to the removal of the Director stipulated under Section 169(1) of the Companies Act 2013, which is reproduced below:

169. Removal of directors.— (1) A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard:

Provided that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two-thirds of the total number of directors according to the principle of proportional representation.

(2) A special notice shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.

(3) On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.

(4) Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,—

(a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

(b) send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company),

and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting:

Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

(5) A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board, be filled by the appointment of another director in his place at the meeting at which he is removed, provided special notice of the intended appointment has been given under sub-section (2).

(6) A director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed.

(7) If the vacancy is not filled under sub-section (5), it may be filled as a casual vacancy in accordance with the provisions of this Act:

Provided that the director who was removed from office shall not be re-appointed as a director by the Board of Directors.

(8) Nothing in this section shall be taken—

(a) as depriving a person removed under this section of any compensation or damages payable to him in respect of the termination of his appointment as director as per the terms of contract or terms of his appointment as director, or of any other appointment terminating with that as director; or

(b) as derogating from any power to remove a director under other provisions of this Act.



On perusal of the above, it can be inferred that an Ordinary Resolution is required to be passed by the Members/Shareholders of the Company for the removal of a Director.

22. Similarly, the provisions for Appointing Directors are given under Section 152(2) read with 102 of the Companies Act, 2013, which reads thus:

152. Appointment of directors.—(1) Where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed and in case of a One Person Company an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this section.

(2) Save as otherwise expressly provided in this Act, every director shall be appointed by the company in general meeting.

Xxxx

xxxx

xxxx

102. Statement to be annexed to notice.—(1) A statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:—

(a) the nature of concern or interest, financial or otherwise, if any, in respect of each items of—

(i) every director and the manager, if any;

(ii) every other key managerial personnel; and

(iii) relatives of the persons mentioned in sub-clauses (i) and (ii);

(b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

(2) For the purposes of sub-section (1),—

(a) in the case of an annual general meeting, all business to be transacted thereat shall be deemed special, other than—

(i) the consideration of financial statements and the reports of the Board of Directors and auditors;

(ii) the declaration of any dividend;

(iii) the appointment of directors in place of those retiring;

(iv) the appointment of, and the fixing of the remuneration of, the auditors; and

(b) in the case of any other meeting, all business shall be deemed to be special:

Provided that where any item of special business to be transacted at a meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of every promoter, director, manager, if any, and of every other key managerial personnel of the first mentioned company shall, if the extent of such shareholding is not less than two per cent. of the paid-up share capital of that company, also be set out in the statement.



On perusal of the abovesaid provisions, it is observed that the appointment of Directors in place of those who are retiring is not considered a Special business at the Annual General Meeting of the Company. In other words, the appointment of Directors in place of those retiring is considered “an ordinary business”, and an ordinary resolution is required to be passed for its approval.

23. In order to perform various functions in a Company including appointment and removal of directors, the approval of Shareholders is required in the form of an Ordinary Resolution or Special Resolution, as the case may be. The Criteria for passing ordinary and special resolutions are stipulated under Section 114 of the Companies Act, 2013, which reads thus:

114. Ordinary and special resolutions.—(1) A resolution shall be an ordinary resolution if the notice required under this Act has been duly given and it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote, if any, of the Chairman, by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any, cast against the resolution by members, so entitled and voting.

(2) A resolution shall be a special resolution when—

(a) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;

(b) the notice required under this Act has been duly given; and

(c) the votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by

postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.

24. The aforesaid provision implies that in order to pass an ordinary resolution, the assent of more than 50%, of members/shareholders of a company is required and for passing a Special Resolution, the assent of



at least 75% of members/shareholders is needed. Section 114 of the Companies Act, 2013 further recognizes the terms “show of hands” and ‘poll’ as the voting criteria. We would like to examine the difference between the two and in this context, refer to Section 107 of the Companies Act, 2013, which reads thus:

107. Voting by show of hands.—(1) At any general meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under section 109 or the voting is carried out electronically, be decided on a show of hands.

(2) A declaration by the Chairman of the meeting of the passing of a resolution or otherwise by show of hands under sub-section (1) and an entry to that effect in the books containing the minutes of the meeting of the company shall be conclusive evidence of the fact of passing of such resolution or otherwise.

On perusal of the above, it is observed that in the normal course, the voting has to be done through the show of hands only, unless a Poll is demanded under Section 109 of the Companies Act, 2013, or the voting is carried out electronically.

25. Now, we also refer to the provisions under Section 47 of the Companies Act, 2013, which lays down the criteria for “voting by poll”. The contents of the same are reproduced below:

47. Voting rights.—(1) Subject to the provisions of section 43 and sub-section (2) of section 50,—

(a) every member of a company limited by shares and holding equity share capital therein, shall have a right to vote on every resolution placed before the company; and

(b) his voting right on a poll shall be in proportion to his share in the paid-up equity share capital of the company.

(2) Every member of a company limited by shares and holding any preference share capital therein shall, in respect of such capital, have a right to vote only on resolutions placed before the company which directly affect the rights attached to his preference shares and, any resolution for the winding up of the company or for the repayment or reduction of its equity or preference share capital and his voting right on a poll shall be in proportion to his share in the paid-up preference share capital of the company:

Provided that the proportion of the voting rights of equity shareholders to the voting rights of the preference shareholders shall be in the same proportion as the paid-up capital in respect of the equity shares bears to the paid-up capital in respect of the preference shares:

26. Now, if we compare the aforesaid provisions relating to “voting by poll” with “the voting by show of hands”, it can be inferred that a “voting by poll” has to be specifically demanded under Section 109, and if voting



through a “poll” is conducted, then in that situation, the votes of a member shall be in proportion to the paid-up capital held by him. In other words, the higher the paid-up capital held by a member/shareholder in comparison to other members, the higher would be his voting share. In contrast, “voting by show of hands” works on the principle of “one member - one vote”, irrespective of the percentage of paid-up capital held by him in the Company.

27. When we again visit Section 114 of the Companies Act, 2013, we find that both “voting by show of hands” and “voting by poll” are recognized for passing of Ordinary and Special Resolutions. It goes without saying that the criteria of “voting by show of hands” is not excluded for the purpose of passing the resolutions.

28. Now, we sum up the facts of the present case and our findings, as follows:

- a) There are only 04 shareholders in the present Corporate Debtor, and both the Members of the CoC are from amongst them.
- b) To appoint or remove a Director, an Ordinary Resolution is required to be passed.
- c) Voting by Show of Hands, is not excluded as a mode of voting for an Ordinary Resolution for either appointing or removing a Director of the Board.
- d) To pass an Ordinary Resolution by a show of hands, approval of more than 50% of the “shareholders in number” is required, which in the present case comes to 3.



29. In view of the above, if voting by show of hands would have taken place for passing an Ordinary Resolution for the appointment or removal of a Director in the Corporate Debtor i.e., Kredo Beauty Pvt. Ltd., then the same could not have been possible without the participation of any of the CoC members.

30. Therefore, we are of the firm view that the said two shareholders, who are also the members of the CoC of the Corporate Debtor, were capable of controlling the composition of the Board of Directors of the said Corporate Debtor. Hence, by virtue of their capability of controlling the composition of the Board of Directors of the Corporate Debtor, **we conclude that both the CoC members/CoC as a whole comprised of “related parties” to the Corporate Debtor in terms of Section 2(l) of IBC, 2016 and therefore, the entire constitution of CoC is erroneous in the eyes of law.**

31. **We are of the further view that a Resolution Plan passed by a CoC, which is comprised of related parties of the Corporate Debtor, is void ab initio as it violates Section 21(2) read with Section 30(2)(e) of IBC, 2016.**

32. **In view of the above, we have no other option but to dismiss the present Application i.e., IA No. 611 of 2021.**

33. Since the maximum permissible period of the CIRP period has already elapsed, **we have no other option but to order the Liquidation of the Corporate Debtor. Ordered accordingly.** Further, in terms of the



provisions of Section 34(4)(a) of IBC, 2016, the current Resolution Professional, Mr. Ravi Bansal IP, is replaced by Mr. Mukesh Kumar Grover having registration no. IBBI/IPA-001/IP-P00383/2017-2018/10640 (email id: mukesh@mjra.co.in) Mobile No. 9810331606 as the Liquidator of the Corporate Debtor, who shall take steps for Liquidation of the Corporate Debtor in accordance with the law.

34. The Applicant/RP is directed to hand over all the records/assets/information relating to the Corporate Debtor to Mr. Mukesh Kumar Grover, Liquidator within 3 days from the date of this order.

35. Let a copy of this order be sent by the Registry/Court Officer to IBBI for their records.

Sd/-

**(L. N. GUPTA)
MEMBER (T)**

Sd/-

**(ASHOK KUMAR BHARDWAJ)
MEMBER (J)**