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

I.A. No. 65/ND/2025
IN
CP(IB)-556/ND/2023

IN THE MATTER OF:

(Under Section: 9 of IBC, 2016)

Praveen Kumar Garg **... Petitioner/ Operational Creditor**

Versus

APS Infra Engineers Private Limited **... Respondent/ Corporate Debtor**

AND IN THE MATTER OF I.A. No. 65/ND/2025:

Mr. Arvind Mittal
H. No. 1900, Phase-3, J J Colony,
Madanpur Khaddar, Sarita Vihar, New Delhi- 110076 **... Applicant/RP**

Under Section: 30(6) of IBC, 2016

Order delivered on: 10.07.2026

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. ATUL CHATURVEDI, HON'BLE MEMBER (T)

PRESENT:

For the CoC	**:**	CS Suraj Sharma for the CoC Member, Rich Credit Finance Private Limited
For the SRA	**:**	Mr. Ashish Mohan, Sr. Adv., Mr. Milan Singh Negi, Mr. Nikhil Kumar Jha, Mr. Katyayani and Mr. Utkarsh, Advocates for SRA

ORDER

PER: SHRI ASHOK KUMAR BHARDWAJ, MEMBER (J)

IA-65/ND/2025: Present application has been preferred by Mr. Arvind Mittal, Resolution Professional qua APS Infra Engineers Pvt. Ltd. (hereinafter referred to as **"RP/Applicant"**), under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39 of the CIRP Regulations, 2016, seeking approval of the Resolution Plan under Section 31 of the Code already approved by the Committee of Creditors in its 13th CoC meeting held on 11th July, 2025.

2. The CIRP had been initiated in terms of the order dated 09.08.2024 passed by this Tribunal. The order also provided for moratorium under Section 14 of the Code. Mr. Sumit Shukla was appointed as Interim Resolution Professional ("IRP"). The IRP made requisite announcement in Form A published in Jansatta (Hindi) and Financial Express (English). Subsequently, after collation and verification of claims received pursuant to public announcement he constituted the Committee of Creditors ("CoC").

3. In the 2nd CoC meeting held on 19.10.2024, the CoC deliberated on publication of Form G and finalization of other essential documents, including the Request for Resolution Plan (RFRP), eligibility criteria for Prospective Resolution Applicants (PRAs), and the bid evaluation-matrix. Agenda for appointment of Resolution Professional was also placed before the CoC wherein the CoC appointed Mr. Arvind Mittal as RP. The RP/Applicant then convened 3rd CoC meeting on 11.12.2025 wherein appointment of Registered Valuers and transaction auditor were discussed and the decision regarding publication of Form G was finalized which was consequently published on

18.12.2025. The last date for submission of Resolution Plans was fixed as 18.02.2025.

4. The RP/Applicant convened 4th CoC meeting on 19.12.2024 in terms of which valuers and transaction auditor were appointed for the purpose of valuation and transaction audit. In the 6th CoC meeting convened on 22.01.2025, the Applicant/RP apprised the CoC of the EoI alongwith EMD received and that two PRAs sought extension of timeline for submission of Resolution Plan, which the CoC extended by 20 days. As on 10.03.2025, the RP/Applicant had received four Resolution Plans from the following PRAs:-

a. Raj Kumar Singh
b. Neeta Goyal
c. Liverbird International Private Limited
d. SPG Infraprojects Private Limited

5. Thereafter the Applicant in 7th CoC meeting convened on 13.03.2025 opened the Resolution Plans received and on 8th CoC meeting convened on 27.03.2025, the proposal to raise interim finance of Rs. 25,00,000/- at interest rate of 20% was approved by CoC alongwith extension of CIRP period by 90 days.

6. It is noted that the CoC in its 9th meeting held on 11.06.2025 unanimously resolved to adopt Swiss Challenge Mechanism for fair maximisation of value, which thereby resulted in enhancement of the resolution plan value by 42.89% bringing the final value of the plan at Rs. 2.75 Crores. However, at this stage it is noted that while 12th CoC meeting was conducted on 02.07.2025 to review the outcome of auction held on 01.07.2025, two PRAs namely SPG Infra Projects Pvt. Ltd. and Liverbird

International Pvt. Ltd., submitted their password protected excel through E-mail for the remaining parameters, while Raj Kumar Singh did not submit any response. Liverbird International offered 100% sharing of avoidance transaction benefits and 50% sharing of arbitration proceeds, whereas SPG Infra Projects offered 0% for both. It is espoused by the Applicant that negotiation was held with the H1(SPG Infra) bidder regarding the payment timeline, who sought time to consult his management for possible improvements. Eventually, after evaluation on quantitative and qualitative parameters and conduct of the Challenge Mechanism, the revised Resolution Plan submitted by SPG Infra Products Pvt. Ltd. emerged as the highest and was placed for CoC's approval which stood approved by the CoC with 100% voting share in its 13th CoC meeting. The relevant excerpt of the resolution passed by the CoC reads thus:-

> **Resolution No. 1**
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> **To approve the Resolution Plan Submitted by PRAs.**
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> **Facts and Explanatory Statement**
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> The Chairman apprised the members of the Committee of Creditors (CoC) that, pursuant to the publication of Form G, four Prospective Resolution Applicants (PRAs) had submitted their resolution plans.
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> The submitted plans were opened and deliberated upon over several CoC meetings. To facilitate negotiations and maximise value, the CoC had formulated a process note, which was shared with all PRAs. In accordance with this process, a bidding exercise was conducted on 20.06.2025, and again on 01.07.2025 in which two PRAs participated actively. Following the bidding, SPG Infra Projects Pvt Ltd emerged as the H1 bidder.
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> The H1 bidder was subsequently invited to further CoC meetings, where additional negotiations were held. The CoC successfully negotiated improvements to the resolution plan, for enhancing its overall value. Accordingly, all PRAs were requested to submit their revised resolution plans, incorporating the revised financial proposals as per the bids and negotiations

conducted with the CoC, along with other modifications as notified by the Resolution Professional. These revisions were to be made in alignment with the Request for Resolution Plan (RFRP) document. The PRAs were also required to ensure that their resolution plans were in compliance with the provisions of the Insolvency and Bankruptcy Code (IBC) and the regulations framed thereunder. Further, scoring of the revised resolution plans, using the Evaluation Matrix as approved by the CoC, was undertaken in the CoC meeting. The scoring based on both quantitative and qualitative parameters was completed in consultation with the CoC members. After due consideration of all resolution plans submitted by the PRAs, the CoC resolved to place the resolution plans for voting. The following Resolution is therefore placed before the Members of the CoC for consideration:

Resolution 3A:

To consider and if found fit, to pass with or without modification the following Resolution.

"**RESOLVED THAT** the members of the Committee of Creditors be and hereby approve the resolution plan submitted by the PRA namely, **SPG Infra Projects Private Limited.**"

"**FURTHER RESOLVED THAT** the members of the CoC be and hereby authorize the RP to file necessary application before the Hon'ble NCLT for the approval of the resolution plan."

Copy of resolution plan of SPG Infra Projects Pvt Ltd is attached herewith as Annexure-3.

The aforementioned resolution was subjected to e-voting and was approved unanimously with 100% voting share.

Resolution 3B:

To consider and if found fit, to pass with or without modification the following Resolution.

"**RESOLVED THAT** the members of the Committee of Creditors be and hereby approve the resolution plan submitted by the PRA namely, **Liverbird International Pvt Ltd**"

"**FURTHER RESOLVED THAT** the members of the CoC be and hereby authorize the RP to file necessary application before the Hon'ble NCLT for the approval of the resolution plan."

Copy of resolution plan of Liverbird International Pvt Ltd is attached herewith as Annexure-4.

The aforementioned resolution was subjected to e-voting and was rejected unanimously with 100% voting share.

Resolution 3C:

To consider and if found fit, to pass with or without modification the following Resolution.

"**RESOLVED THAT** the members of the Committee of Creditors be and hereby approve the resolution plan submitted by the PRA namely, **Rajkumar Singh**"

"**FURTHER RESOLVED THAT** the members of the CoC be and hereby authorise the RP to file necessary application before the Hon'ble NCLT for the approval of the resolution plan."

Copy of resolution plan of Rajkumar Singh is attached herewith as Annexure-5.

The aforementioned resolution was subjected to e-voting and was rejected unanimously with 100% voting share.

7. Consequently, the RP/Applicant issued Letter of Intent to the SRA viz. SPG Infra Projects Pvt. Ltd. which was duly executed and accepted by the SRA on 21.07.2025. The SRA could also submit performance security of Rs. 77,50,000/- being 25% of the Resolution Plan amount.

8. The financial proposal under the plan provides for a total payment of Rs. 3,60,00,000/- towards CIRP costs, secured financial creditors, operational creditors, and working capital requirements, with payments scheduled over a period of 360 days from the date of approval. Affidavits and undertakings under Section 29A of the Code confirming eligibility of SRA is also on record at Annexure A-32.

9. The CoC of the Corporate Debtor comprises two secured financial creditors, namely ICICI Bank Ltd. holding 79.80% voting share and Richcredit Finance Pvt. Ltd. holding 20.20% voting share. The total claims of financial creditors stood at Rs. 12.83 Crore, of which Rs. 12.59 Crore was admitted. The operational creditors filed claims of Rs. 278.38 Crore, of which Rs. 207.79

Crore was admitted. Claims of employees amounting to Rs. 28.98 Lakh was there but was not admitted. The financial proposal summary reads thus:-

Sr No	Name of Creditor	Amount Claimed (INR)	Amount Admitted (INR)	Amount Proposed to be paid in Cash (INR)
1	CIRP Cost			35,00,000
2	Financial Creditors			
A	Financial Creditors (Secured)	2,00,60,494	1,25,90,975	2,58,00,000*
B	Financial Creditors (Un-Secured)	11,60,000	NIL	NIL
3	Operational Creditors			
A	Workmen & Employees	28,98,151	NIL	2,00,000
C	Govt Dues	NIL	NIL	
D	Operational Creditors (other than Workmen, Employees and Govt Dues)	29,07,68,963	20,77,94,776	15,00,000
4	Other Creditors	NIL	NIL	
5	For working Capital			50,00,000
	TOTAL			3,60,00,000

***SRA has also made a provision in their resolution plan towards the claim of Axis Bank Ltd to the tune of Rs. 70,92,037 and towards the claim of Kotak Mahindra Bank to the tune of Rs. 1.10 Crore. Axis Bank Ltd has submitted their claim, however, the claim was presented before the CoC and was rejected by the CoC. As regards to the claims of Kotak Mahindra Bank they had not submitted their claim till date.**

10. The Transaction Auditor appointed by CoC submitted the Transaction Audit Report, highlighting certain transactions categorised as Preferential, Undervalued, Extortionate Credit and Fraudulent under Sections 43, 45, 50 and 66 of the Code. Accordingly, the RP has filed multiple PUFE applications before this Adjudicating Authority which are pending adjudication.

11. That during the CIRP, several applications were filed by and against the CD and the RP, some of which have been disposed of (such as applications relating to extension of CIRP, replacement of IRP, condonation of delay, withdrawal of funds by erstwhile management, and placing of progress reports), while certain applications relating to admission of claims, consideration of belated resolution plans, and removal of the RP remain pending adjudication.

12. The RP/Applicant has also submitted revised Form-H compliance certificate in terms of Regulation 39(4) of the CIRP Regulations, certifying that the Resolution Plan is in compliance with the provisions of the Code and Regulations.

13. The Regulation 38(2)(d) of the IBBI (CIRP) Regulations, 2016, stipulate that the Resolution Plan should provide for the manner in which the proceedings in respect of Avoidance Transactions will be pursued after the approval of the Resolution Plan and the manner in which the proceeds if any from such proceedings shall be distributed. The clause (d) of the Regulation 38(2) reads thus:-

> *"**38. Mandatory contents of the resolution plan.***
>
> .....

(2) A resolution plan shall provide:

.....

(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 the manner in which the proceeds, if any, from such proceedings shall be distributed:"

14. A plain and simple reading of the clause reveal that the plan should contain a provision regarding distribution of the proceed. When we talk of distribution, the understanding would be that the same should be distributed amongst the creditors. Could the intention of Regulation be that the proceeds could be retained by the SRA, there could be such provision in the Regulation or the Regulation could say that the Plan will provide that how the proceed would be dealt with.

15. However, the clause 5.7 of the Resolution Plan says that the recoveries from the avoidance transactions shall be for the benefit of RA. Though it may not be so, but in some remotest possibility, the proceed may be utilised in the interest of the CD subject to conscious approval by all the creditors, nevertheless the same cannot be retained by RA. The clause 5.7 of the plan reads thus:-

5.7 TREATMENT OF RECOVERY FROM PUFE / AVOIDANCE APPLICATIONS

The RA understands that the RP may come across some transactions of avoidance nature as specified u/s 43, 45, 49, 50 or 66 of the IBC for which it shall file application for reversal before Hon'ble NCLT. The RA proposes that it shall pursue the avoidance applications, if any post approval of the Resolution Plan and shall also bear the legal costs thereof. The recoveries from the avoidance transactions shall be for the benefit of the RA. Further to this the RA shall abide by the provisions of Regulation 38 of the CIRP Regulations in this regard as amended till date of submission of plan.

16. Again, maybe in such cases where the plan value is high and in excess of fair value and the amount involved in PUFE applications is meagre/negligible, the technicality maybe ignored in view of larger interest of resolution of insolvency and in the wake of commercial wisdom of CoC. However, in the present case, when the plan is only Rs. 3.6 Crores, the amount involved in PUFE application is Rs. 13 Crores approximately, we cannot countenance the concept where the SRA get the control of CD with possibility to become richer by more than Rs. 9 Crores. Such view may encourage misuse of process in a designed manner by interested parties. The CD/suspended management of the CD may design CIRP to dodge the creditors and in the process park the money in a fraudulent/undervalued/ preferential manner with its fiduciaries, get process initiated through some individual creditor friend like in the present case and manage the plan of some such of his proximate who is not hit by Sec. 29A of the Code. The possibility of such exercise in the present case is very high for the simple reason that there is no transparency in invitation of claims from financial creditors like Kotak Mahindra Bank and Axis Bank Limited. When the claim of Axis Bank was rejected being time barred, the Kotak Mahindra Bank Limited did not submit any claim. Still surprisingly when the resolution plan provides for payment of some amount to these Banks, the Banks were not included in the CoC. Such is quiet weird situation. The entire process is conducted in suspicious and nebulous manner. The same is approved by CoC which did not include such creditors, in whose favour distribution is provided in the plan. **In the totality of the facts, we reject the application preferred for approval of resolution plan.**

17. As a consequence, we order liquidation of the CD and appoint **Mr. Yuvraj Tiwari** having Reg. No: IBBI/IPA-001/IP-P-02903/2024-2025 and e-mail ID: **ipyuvrajtiwari@gmail.com** and phone number: 8860750025, whose name is at serial no. 33 of list of IPs provided by IBBI to this Tribunal for being appointed as IRP/RP/Liquidator/Bankruptcy Trustee to carry out the liquidation process inter alia in terms of the following directions:-

a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 (viz. Sections 35 and 36 thereof) and other relevant rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended up to date, enjoined upon him.

b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.

c) The Liquidator shall continue or institute proceedings in respect of an avoidance transaction or fraudulent or wrongful trading.

d) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.

e) There shall be a moratorium in terms of the provision of Section 33(1)(b)(iv) of the Code.

f) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company applications during the process of liquidation.

g) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further reports as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

h) Copy of this order be sent to the Financial Creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary cooperation in relation to the Liquidation Process of the Corporate Debtor, viz., company-in-liquidation.

18. It goes without saying that fee of the Liquidator would be payable in terms of the provisions of Section 34(8) of the IBC, 2016 read with Regulation 4 of IBBI (Liquidation Process) Regulation 2016.

19. Nevertheless, in due deference to the provision contained in Sec. 33(1A) of IBC, 2016 incorporated in the Code by IBC (Amendment) Act, 2026 it would be open to CoC, which should contain all the financial creditors to restore the CIRP as per such amended provision.

20. Subject to aforementioned, the application preferred for approval of resolution plan is disposed of.

21. The Registry is directed to communicate this order to the Registrar of Companies, having jurisdiction over the Corporate Debtor and the Insolvency and Bankruptcy Board of India.

Sd/-	**Sd/-**
(ATUL CHATURVEDI)	**(ASHOK KUMAR BHARDWAJ)**
MEMBER (T)	**MEMBER (J)**