

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(Through Web-based Video Conferencing Platform)

I.A. No.50 of 2021 in
 CP (IB) No.166/BB/2019
U/s 30(6) of IBC, 2016
R/w Reg. 39(4) of CIRP Regulations, 2016 &
Section 60(5)(c) R/w Section 12 of IBC, 2016
R/w Rule 11 of NCLT Rules, 2016

In the matter of IA No.50 of 2021:

Mr. Konduru Prasanth Raju
 Resolution Professional for
 KNK Construction Pvt. Ltd. - Applicant/Petitioner

Versus

1. Suspended Board of Directors of
 KNK Construction Pvt. Ltd. - Respondent No.1

2. Committee of Creditors (CoC) of
 KNK Construction Pvt. Ltd. - Respondent No.2

3. Mr. Darshan Pushparaj and
 Mr. Ashish Krishnaswamy - Resolution Applicants/
 Respondent No.3

In the matter of:

RDC Concrete (India) Pvt. Ltd. - Operational Creditor

Versus

KNK Construction Pvt. Ltd. - Corporate Debtor

Order delivered on: 05th April, 2022

Coram: 1. Hon'ble Shri Ajay Kumar Vatsavayi, Member (Judicial)
 2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Present:

For the Applicant in
 IA No.50 of 2021 : Shri V. Srinivasa Raghavan, Sr. Adv.
 a/w Ms. Sahana Devanathan
 Shri L. Srinivas, Adv.

For the Objector in
IA No.50 of 2021

: Shri Shrikara J., Adv.

ORDER

Per: Ajay Kumar Vatsavayi, Member (J)

1. This Application is filed by Mr. Konduru Prasanth Raju (hereinafter referred to as 'Applicant / Resolution Professional') under section 30(6) of the Insolvency and Bankruptcy Code, 2016 ('IBC/Code') r/w Regulation 39(4) of CIRP Regulations, 2016 and section 60(5)(c) r/w section 12 of IBC, 2016 r/w Rule 11 of the National Company Law Tribunal Rules, 2016, seeking approval of the Resolution Plan as approved by the entire CoC Members.
2. Brief facts of the case are given hereunder:
 - (a) The main Company Petition bearing CP (IB) No.166/BB/2019 filed by the Operational Creditor i.e. RDC Concrete (India) Private Limited u/s 9 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP) in the case of M/s. KNK Construction Private Limited was admitted by this Adjudicating Authority, vide order dated 11.12.2019, and the CIRP of the Corporate Debtor was initiated by appointing Mr. Konduru Prasanth Raju as the Interim Resolution Professional and he was directed to take necessary actions in accordance with relevant provisions of the Code and Regulations made thereunder.
 - (b) As per Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations') r/w Section 15 of the Code, the IRP issued a public announcement in Form A in two newspapers i.e. 'Financial Express' of an English Newspaper and 'Hosa Diganta' of a Kannada Newspaper both dated 19.12.2019 thereby inviting claims from the Creditors of Corporate Debtor. Pursuant to Regulation 13 of CIRP Regulations, the RP diligently verified the claims received from Financial Creditors, Operational Creditors and ex-employees.

- (c) In compliance with Regulation 17, the RP constituted the Committee of Creditors (CoC) comprising of two Financial Creditors and called the 1st CoC meeting on 17.01.2020. Subsequently, three Financial Creditors were constituted from 2nd CoC meeting onwards. Further, CoC has approved the appointment of the said IRP as the Resolution Professional and the same was confirmed by this Adjudicating Authority vide its order dated 14.02.2020 passed in IA No.80 of 2020.
- (d) The RP appointed two Valuers for each asset class. The RP submits that the Valuers namely, Umesha, SJ Ranganatha, Santhakumar, K.G. Ramesh, Joisa Lakshminarayana, Madhugiri, have been appointed in accordance with Regulation 27 r/w Regulation 35 of the CIRP Regulations to determine the Fair Value and the Liquidation Value of the Corporate Debtor. As per the Valuation Reports, the Average Fair Value has been Rs.45.45 Crores & Average Liquidation Value has been Rs.29.07 Crores. The said reports were submitted to CoC for the review.
- (e) In compliance with Regulation 36A, applications seeking Expression of Interest (EoI) in Form-G was published on 25.03.2020 in '*Financial Express*' and also in '*Hosadiganta*' Kannada newspaper and also in the websites of the Corporate Debtor and the IBBI. It is stated that the prospective Resolution Applicants (PRA) have submitted an affidavit and also an undertaking in compliance with Regulation 39(1)(a), (c).
- (f) Further, in compliance with Section 29A of the Code & Regulation 38(2) of CIRP Regulations, a declaration is submitted stating that the Resolution Applicant do not suffer from any of the disqualifications contemplated. The Resolution Applicant Mr. Ashish Krishnaswamy being a suspended director of the Corporate Debtor has submitted the Resolution Plan citing eligibility u/s 240A of the Code as applicable to MSME Enterprise and the same is in order.
- (g) Pursuant to the issue of Form-G, EoIs were received from two PRAs namely, Mr. Sudhakar and Mr. Darshan Pushparaj along with

Mr. Ashish Krishnaswamy and they were provided all required details like Information Memorandum, Evaluation Matrix and Request for Resolution Plan. Subsequently, the PRA namely, Mr. Sudhakar has withdrawn from the Resolution Process citing various reasons and thereafter only Mr. Darshan Pushparaj has submitted the Resolution Plan. The CoC has felt that the Resolution Plan amount is not sufficient and hence asked for submission of the revised Resolution Plan and directed the RP to seek extension of 90 days for the CIRP timelines.

- (h) The eligibility criteria, Balance Sheet and Profit and Loss Statement, Net worth Statement, Background Verification was duly perused by the RP. Upon compliance with the conditions u/s 30(2) of the Code and based on the Forensic Audit Report, the RP disclosed to the CoC that no transactions under sections 43, 45, 50 and 66 were observed, found or determined and thereafter RP submitted the Plan to CoC for its consideration. After having several discussions by the RP, the Resolution Applicants have submitted the last and binding Resolution Plan. The Techno Economic Viability Report is also provided to the CoC regarding the feasibility and viability of the Resolution Plan.
- (i) It is submitted that as on the insolvency commencement date of 17.12.2019, the major Financial Creditor was Corporation Bank and later on 01.04.2020, the Corporation Bank along with Andhra Bank was merged with the Union Bank of India.
- (j) On 03.09.2020, the Resolution Applicant sought for additional time for submission of Resolution Plan citing the Covid-19 pandemic as their due diligence team was unable to complete the same within the deadlines. Union Bank of India (*erstwhile Corporation Bank*) and Tata Capital Financial Services Pvt. Ltd. have carefully persuaded the Resolution Plan and put forth certain conditions for the successful approval of the Plan and the same were also agreed upon by the Resolution Applicants.

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- (k) Pursuant to the Form-G published, the initial version of Resolution Plan submitted by the Resolution Applicants was not satisfactory in relation to the financial, technical proposal offered by the Resolution Applicants. Hence, several revisions were made to the Resolution Plan. Since the Resolution Plan is binding and has significant impact on the Corporate Debtor's business ecosystem, the CoC members sought liberty to modify the submitted Resolution Plan and subsequently the Resolution Applicants also agreed to submit the revised final and binding Resolution Plan.
- (l) It is stated that the Corporate Debtor is under the MSME category and provides direct & indirect employment to more than 250 people. Sec. 240A of the Code allows MSME Sector to apply as a Resolution Applicant. Hence, the promoter of the Corporate Debtor Mr. Ashish Krishnaswamy has submitted Resolution Plan as a Resolution Applicant along with Mr. Darshan Pushparaj. The amount proposed for the Financial Creditors towards the Corporate Debtor is Rs.2366 lakhs. The Resolution Plan has considered the interests of all stakeholders and it is in compliance with the mandatory contents of the Resolution Plan u/s 30(2) of the Code.
- (m) It is also submitted that the CoC has amicably agreed for the amount to be paid for the Personal Guarantees provided by the Corporate Debtor in this Resolution Plan as the suspended director of the Corporate Debtor is one of the Resolution Applicants.
- (n) A copy of the Final and Binding Resolution Plan dated 16.10.2020 submitted by Mr. Ashish Krishnaswamy and Mr. Darshan Pushparaj along with the Addendums has been placed on record as Annexure-B of the Application. Vide Regulation 39(4) of the CIRP Regulations, a Compliance Certificate in Form-H has also been placed on record as Annexure-C of the Application.
- (o) In the light of the detailed reproduction of the Resolution Plan, one of the justifications for approval of the Resolution Plan is that the

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Liquidation Value is less comparing to the proposals made in the Resolution Plan.

- (p) It is certified by the RP in para 4 of Form-H that the aforesaid Resolution Plan complies with all the provisions of the I&B Code, 2016, the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and does not contravene any of the provisions of the law for the time being in force. It is also stated in para 4(ii) of Form-H that the Resolution Applicant (Mr. Darshan Pushparaj and Mr. Ashish Krishnaswamy), 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 and that the contents of the said affidavit are in order.
- (q) It is stated that CoC in its 11th meeting held from 05.12.2020 to 16.12.2020, have unanimously approved the Resolution Plan submitted by Mr. Ashish Krishnaswamy and Mr. Darshan Pushparaj, with 100% E-voting,
- (r) The Applicant has relied upon the decision of Hon'ble Supreme Court in the case of *K. Sashidhar vs. Indian Overseas Bank and Ors.* in Civil Appeal No.10673 of 2018, order dated 05.02.2019.
- (s) It is stated that the CoC authorised the RP to submit the Resolution Plan to this Adjudicating Authority u/s 30(6) of the Code for its approval. Hence, this Application.
- 3.** Heard Shri V. Srinivasa Raghavan, learned Senior Counsel along with Ms.Sahana Devanathan and Shri L. Srinivas, learned Counsels appearing for the Applicant / Resolution Professional, Shri Shrikara J., learned Counsel for the Objector / HDFC Bank and carefully perused the pleadings on record.
- 4.** The Corporate Debtor herein, namely, M/s. KNK Construction Private Limited was incorporated on 12.04.2006 and the CIRP proceedings were initiated against the Corporate Debtor by this Adjudicating Authority, vide order dated 11.12.2019 passed in C.P. (IB) No.166/BB/2019. The present application is filed for approval of the Resolution Plan submitted by Mr.

Ashish Krishnaswamy and Mr. Darshan Pushparaj (Resolution Applicant).
The approval has been sought under the provisions of Section 31(1) of the Code.

5. In pursuant to the public announcement inviting claims from the Creditors of the Corporate Debtor, the RP herein has constituted the Committee of Creditors. The details of the Financial Creditors, the distribution of voting share among them and the position of voting for the resolution plan is as under (Para No.5 of Form H):

| Sl. No. | Name of Creditor | Voting Share (%) | Voting for Resolution Plan (Voted for / Dissented / Abstained) |
|---------|---|------------------|--|
| 1. | Union Bank of India (Erstwhile Corporation Bank) | 95.18 | Voted for |
| 2. | Tata Capital Financial Services Ltd. | 03.79 | Voted for |
| 3. | HDFC Bank | 01.03 | Voted for |
| | Total | 100 | Approved |

6. The details of stakeholders and the amounts provided for them under the Resolution Plan given in Para No.7 of Form H are 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 | 0 | 0 | 0 | 0.00% |
| | | (b) Other than (a) above: (i) who did not vote in favour of the Resolution Plan (ii) who voted in favour of the Resolution Plan | 9117.66 | 9117.66 | 6993.00 | 76.69% |
| | | Total [(a) + (b)] | 9117.66 | 9117.66 | 6993.00 | 76.69% |
| 2. | | (a) Creditors not having a right to vote under sub-section (2) of section 21 | 0 | 0 | 0 | 0.00% |

| | | | | | | |
|--------------------|-------------------------------|---|--|--|---|---|
| | Unsecured Financial Creditors | (b) Other than (a) above: (i) who did not vote in favour of the Resolution Plan (ii) who voted in favour of the Resolution Plan Total [(a) + (b)] | 0 0 | 0 0 | 0 0 | 0.00% 0.00% |
| 3. | Operational Creditors | (a) Related Party of Corporate Debtor (b) Other than (a) above: (i) Government (ii) Workmen (iii) Employees (iv) Statutory Dues ** (v) Operational Creditors Claims Filed & Admitted (vi) Operational Creditors Claims not filed (vii) Loans from Directors Total [(a) + (b)] | 0 53.56 0 1115.72 53.56 14148.99 0 1572.30 16944.13 | 0 53.56 0 610.33 53.56 9535.59 0 1572.30 11825.34 | 0 0.00 45.00 12.00 101.00 0.00 0.00 158 | 00.00% 00.00% 00.00% 04.03% 22.40% 00.71% 00.00% 00.00% 00.93% |
| 4. | Other debts and dues | Other Liabilities and Dues Equity Shareholders All other claims of any other person including but not limited to financial creditor, operational creditor (government, non- government etc., without any exclusion or exception) | 0 0 0 | 0 0 0 | 0 0 0 | 00.00% 00.00% 00.00% |
| 5. | CIRP | | 15.00 | 160.00 | 160.00 | 100% |
| Grand Total | | | 26076.76 | 21103.00 | 7311.00 | 28.04% |

7. The compliance of the Resolution Plan has been given in Para No.9 of Form-H as follows:

| 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? | Addendum Pg. No.36 Point No.1 | 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? | Addendum Pg. No.36 Point No.2 | Yes |
| Section 30(1) | Whether the Resolution Applicant has submitted an affidavit stating that it is eligible? | Clause 1(d) in Page No.6 of 35 | Yes |
| Section 30(2) | Whether the Resolution Plan – (a) Provides for the payment of insolvency resolution process costs? | Clause 6 in Page No.15 of 35 | Yes |

| | | | |
|-------------------|--|--|------|
| | (b) Provides for the payment to the operational creditors? | Clause No.11.3 in Page No.21 of 35 | Yes |
| | (c) Provides for the payment to the financial creditors who did not vote in favour of the resolution plan? | N.A. | N.A. |
| | (d) Provides for the management of the affairs of the corporate debtor? | Clause No.19 in Page No.26 of 35 | Yes |
| | (e) Provides for the implementation and supervision of the resolution plan? | Clause No.20 in Page No.26 of 35 along with ADDENDUM-4 | Yes |
| | (f) Contravenes any of the provisions of the law for the time being in force? | Addendum Pg. No.36 Point No.3 | Yes |
| Section 30(4) | Whether the Resolution Plan | CoC has approved along with the TEV Report | Yes |
| | (a) Is feasible and viable, according to the CoC? | Minutes of Meeting of 11 th CoC Pg. No.10 of 18 | Yes |
| | (b) Has been approved by the CoC with 66% voting share? | | |
| Section 31(1) | Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC? | Pg. No.8 of 18 in Minutes of Meeting of 11 th CoC | Yes |
| Regulation 35A | Whether 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? | N.A. | N.A. |
| Regulation 38(1) | Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors | Clause 11.3 of Pg. No.21 of 35 | Yes |
| Regulation 38(1A) | Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders? | Addendum Pg. No.36 Point No.4 | 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. | Addendum Pg. No.36 Point No.5 | No |
| | (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation? | | N.A. |
| Regulation 38(2) | Whether the Resolution Plan provides: | Clause No.18 in Page No.25 of 35 | Yes |
| | (a) The terms of the plan and its implementation schedule? | | |
| | (b) For the management and control of the business of the corporate debtor during its term | Pg. No.8 of 18 in Minutes of Meeting of 11 th CoC | Yes |
| | (c) Adequate means for supervising its implementation? | Implementation and Monitoring Committee | Yes |
| | | Pg. No.8 of 18 in Minutes of Meeting of 11 th CoC along with ADDENDUM-4 | |

| | | | |
|------------------|--|---|---|
| Regulation 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 timelines for the same? (e) The resolution applicant has the capability to implement the resolution plan? TEV Report. | Clause 2.4 in Pg. No.8 of 35 Clause 4(h) in Pg. No.12 of 35 ADDENDUM Pg. No.36 Point No.6.(I) Clause No.18 in Pg. No.25 of 35 Clause No.18.8 in Pg. No.25 of 35 Addendum Pg. No.35 Point No.6.(ii) | Yes Yes Yes Yes Yes |
| Regulation 39(2) | Whether the RP has filed applications in respect of transactions observed, found or determined by him? | N.A. | N.A. |
| Regulation 39(4) | Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B. | Addendum Pg. No.36 Point No.7 | Yes |

8. The approval of the resolution plan has been sought under Section 31(1) of the Code, which reads as under:

“If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation”

9. The conditions provided for in Section 31(1) of the I&B Code, 2016 for approval of Resolution Plan are therefore:

- (a) The Resolution Plan is approved by the CoC under Section 30(4) of the Code;
- (b) The Resolution Plan so approved meets the requirements as referred to in Section 30(2) of the Code;

(c) The Resolution Plan has provisions for its effective implementation. The satisfaction of the conditions is discussed below.

10. It is submitted by the RP that, the entire CoC Members in its 11th Meeting held from 05.12.2020 to 16.12.2020, have unanimously approved the Resolution Plan with 100% E-Voting and therefore, the conditions provided for by Section 30(4) of the Code are satisfied.

11. The provisions of Section 30(2) of the I&B Code, 2016 are as follows:

“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 3 [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) *confirms to such other requirements as may be specified by the Board.”*

12. The compliance of Section 30(2) of the Code is given in Para No.9 of Form-H (supra). The same is being further examined as under:

Section 30(2)(a): The Resolution Plan (at Clause 6 of the Resolution Plan) states that all CIRP cost other than those which are been paid off shall be first paid out of cash flows of the CD and to the extent of any short falls, the same shall be paid by the RA. The PRA after discussions with RP has determined that an amount of Rs.160 lakhs has become due inclusive of amounts towards unpaid dues to vendors and service providers for essential supplies and services rendered to the CD during the RP period. Under the IBC the entire amount unpaid as above qualifies as CIRP Cost and they have to be paid in priority. The payments shall be released after verification of the bills underlying the transactions.

Section 30(2)(b): The Resolution Plan (at Clause 11.3 of the Resolution Plan) states that the amount due to the operational creditors as above shall be paid in proportion to the amount released to financial creditors and accordingly, they are being planned to be paid as under:

| By End of | Amount (Rs. In Crores) |
|-------------------------------|-------------------------------|
| March 31 st , 2021 | 0.05 |
| Jun 30 th , 2021 | 0.05 |
| Sep 30 th , 2021 | 0.10 |
| Dec 30 th , 2021 | 0.20 |
| Jun 30 th , 2022 | 0.20 |
| Dec 31 st , 2022 | 0.20 |

| | |
|-------------------------------|-------------|
| March 31 st , 2023 | 0.21 |
| Total | 1.01 |

Section 30(2)(c): In Clause 19 of the Resolution Plan, it is stated that the management and control of the Corporate Debtor shall vest with the RA / SPV who by virtue of deep domain expertise of the business will engage high-skilled professionals in the key-management positions such as finance, marketing, project management, commercial functions and other areas of operations. Mr. Darshan Pushparaj, one of the RAs shall be designated as the Executive Director in-charge of overall operations of the Corporate Debtor.

Section 30(2)(d): In Clause 20 of the Resolution Plan, it is *inter alia* stated that the new management will form a Monitoring Committee which consists of the following members for monitoring the activities of the PRA and/or Corporate Debtor during the plan implementation period:

- Any one of the members of consortium of the PRA
- Representative from Union Bank of India
- Aharnisha Consultings Private Limited, who have facilitated the Resolution Plan.

The Monitoring Committee would meet in such intervals as may be decided by them to review the progress of implementation of the Resolution Plan. The representative from Union Bank of India shall preside over the meeting. The Monitoring Committee shall file quarterly reports of the status of implementation with NCLT.

Section 30(2)(e): Vide Addendum dated 16.12.2020 to the Resolution Plan dated 16.10.2020 submitted by the Resolution Applicants, at Point No.3, it is stated that the Resolution Plan does not contravene any of the provisions of the law for the time being in force.

- 13.** We are now examining the compliance of the proviso to Section 31(1) of the I&B Code, 2016 that the Resolution Plan has provisions for its effective implementation. The Resolution Plan states that the Monitoring Committee

as defined in Clause 20 of the Resolution Plan monitors and reviews the progress of implementation of the Resolution Plan and shall file quarterly reports of the status of implementation with NCLT from the date of order of approval of Resolution Plan by the Adjudicating Authority.

14. Clause 13 of the Resolution Plan provides for the Sources of Funds, wherein it is *inter alia* stated that the proposed Resolution Debt of Rs.73.74 Crores (Rupees Seventy Three Crores and Seventy Four Lakhs only) as reduced by the live Bank Guarantees of Rs.13.72 Crores amounts to Rs.60.02 Crores (Rupees Sixty Crores Two Lakhs only) shall be funded as under by the Resolution Applicant:

(Rs. In Crores)

| Particulars | Amount |
|---|---------------|
| Fresh Infusion as Equity by the RA. This amount will be introduced as equity capital into the CD. | 10.00 |
| Infusion by way of debt / equity | 35.00 |
| Margin money available with the Bank in respect of live bank guarantees | 2.70 |
| IT Refund | 7.00 |
| Balance Amount to be infused by way of equity / debt and / or internal generation from CD. The projected reserves and surplus consisting of retained earnings as at end of March 2023 is Rs.11.41 Cr. of which an amount of Rs.5.32 Cr. has been year marked towards clearance of Resolution Debt. The balance in the internal generation accrued as well as any short fall in the working capital or any reduction in internal accruals as allocated would be infused by the RA. | 5.32 |
| Total | 60.02 |

Further, the RA/SPV undertakes that RA/SPV shall infuse any short-fall from the plough-back amount that is expected to be generated from CD as mentioned above.

15. We have discussed above that the requirements under section 31(1) of the Code are satisfied in the present case. In para 4 of Form H the RP has

certified that the 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. The RP has also certified that the Resolution Applicant (Mr. Darshan Pushparaj and Mr. Ashish Krishnaswamy), has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit the Resolution Plan and the contents of the said affidavit are in order. Copies of the Affidavits of the Resolution Applicants regarding their eligibility under section 29A have been placed on record as Document No.2 through a Memo filed by the RP vide Diary No.17 dated 03.01.2022. The RP has submitted that the Resolution Plan has been approved by the CoC with 100% voting share in accordance with the provisions of the Code and CIRP Regulations made thereunder and after considering the feasibility and viability and other requirements specified by the CIRP Regulations.

16. Pursuant to Regulation 38(3)(a) of the CIRP Regulations regarding whether the Resolution Plan demonstrates that it addresses the cause of default, it is *inter alia* stated in Clause 2.4 of the Resolution Plan that the financial debt of the Corporate Debtor was increased by almost 100% due to a series of Bank Guarantees getting invoked. The RA reserves the right to recover moneys from the persons who encashed the Bank Guarantees and unjustly enriched themselves. In addition to other rights retained by the PRA under this plan and notwithstanding anything to the contrary, the PRA retains the right to pursue the legal or other methods to recover the excess amount drawn which represents an unjust enrichment at the cost and resources of the Corporate Debtor.
17. Pursuant to Regulation 38(3)(b) of the CIRP Regulations regarding the feasibility and viability of the Resolution Plan, it is stated in Clause 4(h) of the Resolution plan that in this Resolution Plan, the Resolution Applicant has proposed (i) a detailed financial proposal identifying the pay-outs to the existing Creditors of the Corporate Debtor and the time-lines for the

same in this Resolution Plan; (ii) matters relating to the proposed management of the Corporate Debtor, details of which are set out herein; and (iii) a business plan for a feasible revival and functioning of the Corporate Debtor, as detailed. Further, vide Addendum dated 16.12.2020 to the Resolution Plan, it is stated that the Resolution Plan demonstrates that the Resolution Plan is Feasible and Viable.

- 18.** Pursuant to Regulation 38(3)(c) of the CIRP Regulations regarding whether the Resolution Plan has provisions for its effective implementation, it is *inter alia* stated in Clause 18 of the Resolution Plan that upon approval of the Resolution Plan by the NCLT, this Resolution Plan shall ipso facto form part of the NCLT order approving the plan and that the RA shall take steps on and from the Plan Effective Date (ARP approval date) to take control of the Corporate Debtor and that the RA shall be vested with complete control and ownership of all cash-flows, receivables including cash accruals, bank accounts of the Corporate Debtor from the Plan Approval Date. Further, the RA assumes that the Resolution Professional in consultation with the CoC shall take all necessary actions and execute all documents/agreements as may be required to keep the Corporate Debtor as a going concern. The Implementation Schedule shall be as under:

| Action | Indicating Time-line |
|--|---|
| Incorporation of SPV | Within 15 days from the date of approval of proposed Resolution Plan by CoC |
| Capitalization of SPV | As set forth in paragraph 15.3 above. |
| Capital Reduction of CD and restructuring of the Balance Sheet | Within 30 days from the Plan Effective Date |
| Subscribing to equity shares of CD | As set forth in paragraph 15 of Resolution Plan |
| Availing of Debt/Equity in SPV | As per cash out-flow table and/or on need basis |
| Payment of OCs | As per cash out-flow table |
| Payment of Financial Creditors | As per cash out-flow table |
| Payment to Employees and payment of statutory dues | As per cash out-flow table |

- 19.** Pursuant to Regulation 38(3)(d) of the CIRP Regulations regarding whether the Resolution Plan has provisions for approvals required and the timeline for the same it is stated in Clause 18.8 of the Resolution Plan that subject to obtaining required approvals (and in any case no later than the time prescribed under the Code), the Special Purpose Vehicle (SPV) proposes to implement the Resolution Plan as per the above mentioned time-lines subject to receipt of relevant Government approvals. It is reiterated that the SPV shall take over all obligations of the RP upon incorporation and execution of necessary definitive agreements and RA shall not be responsible or liable for the same.
- 20.** Pursuant to Regulation 38(3)(e) of the CIRP Regulations regarding whether the Resolution Applicant has the capability to implement the Resolution Plan, it is stated in Addendum dated 16.12.2020 to the Resolution Plan that, the Resolution Plan demonstrates that the Resolution Applicant's have the capability to implement the Resolution Plan.
- 21.** Further, according to Regulation 39(4) of the CIRP Regulations, the Resolution Applicant shall furnish evidence of receipt of performance security as required under sub-regulation (4A) of Regulation 36B which came into effect from 24.01.2019. In this regard, it is stated in Addendum dated 16.12.2020 to the Resolution Plan, as under:

| Bank | Unencumbered Fixed Deposit Number / Bank Guarantee Details | Amount |
|---------------------|---|--------------------------------|
| Union Bank of India | LOBG801562100848 dt.18-02-2021 (Date of Expiry: 16-02-2022) | Rs.50 Lakhs (Fifty Lakhs only) |

- 22.** It is also stated that upon compliance with the conditions under section 30(2) of the Code and based on the Forensic Audit Report and RP was of the opinion and also disclosed to the CoC that there are no transactions under sections 43, 45, 50 and 66 were observed, found or determined.
- 23.** The RP vide Diary No.532 dated 11.02.2022 has filed a statement detailing the revised time schedule of payments of the Total Resolution Debt of Rs.71.23 Crores, as Annexure-A, and the same has been taken on record.

24. (i) It is seen that one of the Secured Creditor of the CoC, namely, HDFC Bank, has filed its statement of objections dated 03.02.2021 in IA No.50 of 2021, by *inter alia* contending as under:

- (a) It is seen from the Resolution Plan so submitted by the RP that, he just wanted to bail out the Corporate Debtor rather than protecting the interest of the Secured Creditor, Financial Creditor or the employees of the Corporate Debtor. The objector is the Banking institution that is registered under the Companies Act, 1956 and is also a Financial Creditor with regard to the Corporate Debtor, namely, KNK Construction Pvt. Ltd.
- (b) The Corporate Debtor and its sister concern KNK Nexgen Construction Pvt. Ltd. had availed 19 loan facilities of various products / types, namely, Auto Loan, Construction Equipment, Secured Loans from the HDFC Bank. In lieu of the said facilities, the Corporate Debtor had created a mortgage of the following immovable property in addition to the construction equipment's, and vehicle loans etc. for the aforesaid loans, Immoveable Property belonging to M/s.KNK Constructions Pvt. Ltd. located at Flat No.207, 2nd Floor, DS Pride Apartment, No.54, K.Road, Basavanagudi, Bangalore.
- (c) It is submitted that the whole formation of Resolution Plan seems to be with malafide intention and the voting of CoC was done in a very strange manner as follows:

“RESOLVED that pursuant to the above discussion, the LAST and FINAL binding resolution plan of Mr. Darshan Pushparaj, Mr. Ashish Krishnaswamy along with the Addendum's submitted by the Resolution Applicant's have to be voted upon as Approved or rejected requisitely and accordingly as per the extent IBBI Regulation.”

- Yes
- No
- Abstain

— Sd —

Here absolutely there was no provision for mentioning approved or rejected. It had to be answered as either 'yes' or 'no' or 'abstain'. This led to lot of confusions. It was cleverly put in such a way that the voters shall get confused. Even in the text it was mentioned as 'have to be voted as approved or rejected'. But in the column neither of these two were given. Because of this confusion, the Applicant herein had ticked for 'yes'. Hence, in this way the consent was taken and this is nothing but misrepresentation and by creating confusions the consent was taken from this Objector.

- (d) It is further stated that at para (i) sub para (xii) of application, it is mentioned as Union Bank of India (erstwhile Corporation Bank), Tata Capital Financial Services Ltd. has carefully and succinctly perused the resolution plan and has put forth certain condition for successful approval and implementation of Resolution Plan and the same were also agreed upon by the Resolution Applicants. By this it is very clear that this Objector had never consented for any of the conditions that are put forth by the RA and even this Objector was not at all considered by RP for the implementation of the Resolution Plan.
- (e) The resolution plan so submitted can neither be justified in any of the grounds nor done with good intention. It is put forth just in order to bail out and safeguard the Corporate Debtor alone.
- (f) As per the funding ratio, this objector was provided with 1.03% voting right and hence, absolutely there was no say for this objector in the resolution plan so submitted for acceptance. None of the contentions that are raised or the proposals that are put forth by this objector was taken for consideration and as this objector had a very minimum voting right, in toto this objector was sidelined in preparing the resolution plan.
- (g) The Resolution Applicants do not meet the requirement as stipulated under section 29A and even inspite of that the resolution plan so

proposed by the Resolution Applicant was considered and submitted for acceptance before this Adjudicating Authority.

- (h) The present objector had submitted a claim of Rs.93,63,738.72/- as against the Corporate Debtor. It is submitted that a few resolution proposals were put forth by Mr. Darshan Pushparaj and Mr. Ashish Krishnaswamy which culminated in a final resolution plan put forth by them, wherein as against this Applicant's claim, a sum of Rs.58,00,000/- was proposed to be paid out of the 1st instalment i.e., payable within 30 days from the date of approval of the Resolution Plan. It is submitted that a conservative value of the assets of the Corporate Debtor that is mortgaged with the Applicant is at a conservative value in excess of Rs.1 Crore. In light of the same, the amount being proposed for the Objector i.e., Rs.58,00,000/- is far lesser than the admitted claim and the value of the mortgaged assets.
- (i) The objector never intended to approve the resolution plan so submitted by the RP. Later it was brought to the notice of the Objector that pressing 'yes' would amount to the acceptance of the Resolution Plan and on noticing the same, the Objector had immediately called the RP on the same day i.e. 17.12.2020 and informed him of the confusions. Initially, the RP said that he will do the needful in this regard and as nothing happened in respect of the same, an email was sent to the RP on 21.12.2020. However, the RP issued a response dated 22.12.2020 stating that changes cannot be made as the e-voting had already taken place and the same was held to be full and final, and informed that an IA was already filed before this Adjudicating Authority. A copy of the said IA was sent to the Objector much later.
- (j) Further, the RP vide email dated 22.12.2020 issued an additional Minutes of the Meeting for the 11th Meeting. Addition of Minutes on the part of the RP is also in gross violation of the law and viewing

from any angle, the application filed for approval of resolution plan is liable to be rejected.

(ii) The main grievance of the Objector-HDFC Bank was that due to the wrong framing of the Questionnaire while seeking approval for the Resolution Plan by the Resolution Professional, though the Objector wanted to oppose the Plan by marking 'Yes' for rejection but the same was taken by the Resolution Professional as 'Yes' for the approval of the Resolution Plan. Accordingly, the Objector-HDFC Bank prays for dismissal of the instant I.A. filed by the Resolution Professional seeking for approval of the Plan.

(iii) It is seen that the Objector-HDFC Bank was having 01.03% of voting share in the Committee of Creditors as against the 95.18% and 03.79% voting share of the remaining CoC Members i.e., Union Bank of India (*erstwhile Corporation Bank*) and Tata Capital Financial Services Limited respectively. Even if the Objector-HDFC Bank voting is taken as 'No' to the Resolution Plan, still the Resolution would have been passed with 98.97% of voting share. Therefore, the submission of the Objector-HDFC Bank with regard to its voting in the CoC, will not change the required percentage of approval to the Resolution Plan. Accordingly, the said submission of the Objector-HDFC Bank is rejected.

(iv) The other objections raised by the HDFC Bank, which is one of the CoC Member, have already been examined as above and we do not find any illegality or irregularity in the Resolution Plan.

25. In the circumstances and for the aforesaid reasons, the instant I.A. bearing I.A. No.50 of 2021 is allowed, and accordingly the Final & Binding Resolution Plan dated 16.10.2020 submitted by Mr. Ashish Krishnaswamy and Mr. Darshan Pushparaj along with the Addendums thereto (annexed to the Application as Annexure-B), is hereby approved. The Resolution Plan so approved shall be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force such as

authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the Resolution Plan. Under the provisions of section 31(3) of the Code, we also direct as under:

- (a) The Bank Guarantee referred in para 21 above, shall be extended till the complete implementation of the Resolution Plan.
- (b) The moratorium order passed by this Adjudicating Authority under Section 14 of the Code on 11.12.2019 in the main CP shall cease to have effect; and
- (c) The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Board to be recorded on its database.

— sd —

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

— sd —

(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)

Krishna