

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH**  
**(Exercising powers of Adjudicating Authority under**  
**The Insolvency and Bankruptcy Code, 2016)**

**I.A No. 199/2022 &**  
**I.A No. 127/2023**  
**in**  
**CP (IB) No.36/BB/2021**  
**U/s. 10 of the IBC, 2016**  
**R/w Rule 7 of the IBC (AAA) Rules, 2016**

**IN THE MATTER OF:**

**Mr. Raghunathan Krishnasamy,**  
Interim Resolution Professional of  
Royaloak Furniture India LLP.

... Applicant/Petitioner

**In the matter of:**

Royaloak Furniture India LLP

... Corporate Applicant

Versus

Union of India

... Respondent

**Order delivered on: 15.09.2023**

**Coram:** Hon'ble Justice (Retd) T. Krishnavalli, Member (Judicial)  
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

**PRESENT:**


For the RP : Shri. Gokul R.

**O R D E R**

**Per: Manoj Kumar Dubey, Member (Technical)**

1. This Application is filed by Mr. Raghunathan Krishnasamy (hereinafter referred to as 'Applicant/ Resolution Professional') of Royaloak Furniture India LLP (RFIL) under section 31(1) of the IBC, 2016 seeking approval of the Resolution Plan filed by the IRP/RP.
2. Brief facts of the case are given hereunder:
  - (a) The main Company Petition bearing CP(IB) No. 36/BB/2021 filed by Corporate applicant i.e Royaloak Furniture India LLP u/s 10 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP)

I.A No. 199 of 2022 &  
I.A. No. 127 of 2023 in  
CP(IB) No. 36/BB/2021



was admitted by this Adjudicating Authority, vide order dated 08.04.2021, and appointed Mr. Raghunathan Krishnasamy 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) It is stated that IRP made a public announcement on 17.07.2021 in the prescribed form about the commencement of CIRP against Corporate Debtor in accordance with the provisions of Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Claims were invited by public announcement and the last date for submission of claims was 30.07.2021.
- (c) It is submitted that First Media print advertisement for Form G was released on 15.11.2021 and second advertisement on 07.02.2022. Further, during the 6<sup>th</sup> meeting of the CoC held on 07.04.2022, the CoC approved the resolution plan with 100% voting share of the Financial Creditors.
- (d) It is submitted by the Registered Valuer that the average Fair Value for Plant and Machinery of the Corporate Debtor is INR 11.53 Lakhs and the average of Liquidation value of the Plant and Machinery of the Corporate Debtor is INR 8.60 Lakhs.
- (e) Further, it is stated that the claims received by the RP and which were reflected in the Information Memorandum were addressed herein in this plan. Hence, any future claims on account of this & any existing/ fresh/ future claims under any of the Statutory Authorities like Income Tax, Provident Fund, ESI, VAT, GST, Excise Duty, Service Tax, Municipal Taxes, etc. and any claims of any known or unknown creditors to be waived off and liability of such is not binding on Resolution Applicant. Further, Payment of dues to various Government Departments, have not been considered for payment in the Resolution Plan. RA requests to waive off / nullify all these claims, if any, including those that may arise in the future.
- (f) It is submitted that during the 6<sup>th</sup> CoC meeting five consortium members duly authorized Shri.D.Suresh as a Lead Member of the

consortium. Further, they reviewed the financial plan and feasibility of implementation of financial settlement as stated in the Resolution Plan as below:

(a) CIRP Expenses INR 30 Lakhs as priority settlement within 30 days from the date of Order from the Hon'ble NCLT

(b) Financial creditors dues of INR 5.19 Lakhs as 100% claim as priority settlement

(c-1) Operational Creditors (Other than Government Departments) submitted and accepted claim as INR 106.14 Lakhs as periodical financial settlement with in the periods of one year from the date of Order

(c-2) (i) Operational Creditors (Government Departments) submitted and accepted claim as INR 12013.97 Lakhs or 120.14 Crores and the Resolution Applicant has explained in the meeting that it cannot afford such huge financial burden of the CD and requested to waive off the entire claim from the Government Departments such as (a) customs Department (b) Income Tax Department

(ii) The meeting decided to go for financial settlement of INR 2 Crores on the proportionate claim of Governmental Departmental basic claim amount (exclusive of interest and penalty) from the CD's ICICI Bank – HRBR Layout Branch – Term Deposit (TD) account such as INR 6.96 Crores as on 31.03.2022 and INR 0.04 Crores totally rounded off as INR 7 Crores Only

(iii) The balance amount of INR 5 Crores will be retained in fixed deposit as Future Business Plan expansion and lock in period decides as minimum 2 years from the date of the Order

The Basic claim 1 & 2 as INR (2584.06 + 879.89) Lakhs total as INR 3463.95 lakhs and proportionate sharing of claim (2584.06/3463.95) as 75% & (879.89/34653.95) as 25% (or) claim settlement ratio as 3:1

(g) It is submitted that the Resolution Plan is based upon business highlights and features as below:

a) New Employment Opportunity to the Rural and urban areas in Bangalore: The business at full-fledged operational level is

expected to have employment opportunity estimated as 150 Female & Male employees

b) The projected sales Turnover based – Estimated Revenue Generation to Government Departments such as GST & Income Tax INR 2036.45 Lakhs & INR 292.61 Lakhs respectively as overall basis of average of five years Revenue Generation per annum as INR 465.81 Lakhs

c) Estimated Revenue Generation Per Annum – Department wise Break-up


(1) GST – Revenue Generation per annum as INR 407.30 Lakhs

(2) Income Tax – Revenue Generation Per Annum as INR 58.52 Lakhs

(d) Estimated Revenue Generation per annum – state & other local government departments the major central/state/local authorities & government departments will get statutory and compliance based various revenue linked support from the new business operations.

(e) The projected sales are in growth phase in YOY (Year-over-year) basis and sales turnover in five (5) years total as INR 11315.00 Lakhs and average sales turnover as INR 2263.00 Lakhs per annum.

- (h) It is submitted that in accordance with Section 30(1) of the Code, Mr. D. Suresh designated as a lead member of the consortium declaring that the resolution applicant is eligible under Section 29A of the Code to submit the Resolution Plan.
- (i) In the Resolution Plan it was explained that as on 31.03.2017, RFIL, the Corporate applicant reported a turnover of Rs. 136.5 Crores. However, due to large Custom Duties demand and working capital issues, RFIL became defunct since 2018.
- (j) It is submitted that the Resolution Plan provides for payment of the CIRP costs of Rs. 30 Lakhs within 30 days from the approval of the plan. Further, the total claims admitted by the IRP is Rs. 5.19 Lakhs to Financial creditors and the total claims received from the Government departments are Rs 12,013.97 Lakhs (Rs.80.81 Crores Customs duty and Rs. 39.32 Crores Income Tax) is requested to be waived off. Later,



there is a proposal to settle these amounts by payment of Rs. 1.50 crores to Customs and Rs. 50 Lakhs for Income Tax; with the balance requested to be waived off. The claims received from the other operational creditors is Rs. 106.14 lakhs out of which the claim from the operational creditors amounting to Rs. 62.52 lakhs is requested for waive off and the balance creditors shall be paid their claims which shall stand at Rs. 43.62 lakhs based on the resolution plan and which will be paid as per the payment term. As per the Resolution Plan there will be payment to financial creditors and the payment to operational creditor will be made according to the payment terms specified in para 5 of the resolution plan. The distribution of assets in terms of Section 53 of the Code is required to make any payment to the creditors. Hence, the Resolution Plan fulfils the requirements of Section 30(2)(b) of the Code.

- (k) It is submitted that the Resolution Plan (Para 9) provides for the management and control of the affairs of the corporate debtor after approval of the Resolution Plan under section 30(2)(c) as the resolution applicant being in the same industry/sector will rope in Management experts and senior staff members from the technical , financial, marketing fields from similar industries, which have already been identified.
- (l) Further, in accordance with Regulation 38(2)(c), the Resolution professional is proposed to be the Monitoring Agent during the implementation of the plan period. The monitoring committee consists of three members (a) Shri Supreeth (FC), (b) Shri Suresh (Lead Member of RA) (c) Shri CS Raghunathan Krishnasamy IRP/RP will be the chairman to supervise the financial settlement and other administrative/legal assistance for the period of 1 year from the date of approval of resolution plan.
- (m) It is submitted that in accordance with Section 30(2)(e) of the Code the Resolution Plan does not contravene any of the provisions of the; law for the time being in force, as has been declared in Section 16 of the Resolution Plan.



- (n) Further, the plan deals with the interest of the stakeholders, including financial creditors and operational creditors of the corporate debtor in accordance with Regulation 38(1A) (a) of the CIRP Regulations. The Resolution Plan confirms that none of the resolution applicants or any of its related parties have failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past in accordance with Regulation 38 (1B) of the CIRP Regulations.
- (o) It is submitted that the Resolution Plan provides that the term of the plan would be 30 days, within which CIRP cost would be paid and further the Resolution Plan provides for the implementation schedule in accordance with Regulation 38(2)(a) of the CIRP Regulations.
- (p) The Resolution Plan provides for the management and control of the business of the corporate debtor during its term in accordance with Regulation 38(2)(b) of the CIRP Regulations. Further, the Resolution Plan provides for adequate means for supervising its implementation through appointing of an resolution professional as a monitoring agent during the implementation of the plan period in accordance with Regulation 38(2)(c) of the CIRP Regulations.
- (q) It is submitted that the Resolution Plan, in accordance with Regulation 38(2)(b) of the CIRP Regulations, demonstrates that it has the capacity to implement the Resolution Plan.
- (r) It is submitted that the COC has passed a unanimous resolution with 100% of the voting share approving the resolution in the 6<sup>th</sup> meeting of the COC and as such, hence the requirements of Section 30(4) have been complied with.
- (s) It is submitted that the period of completion of the CIRP of the Corporate Debtor has not expired and as such the present Application is filed within time. Further, all requirements under the Code and CIRP Regulations have been duly complied with, and that the Resolution Plan may be approved in accordance with law. Moreover, in accordance with Regulation 36B(4A) of the CIRP Regulations, the Resolution Applicant has furnished the performance security of Rs. 50,00,000 by way of a Bank Guarantee.

- (t) It is submitted that in the resolution plan in Point 4, details of source of funds is as follows:

The proposed Resolution Plan (explained as under) has been drawn considering the claims of the creditors as admitted by the Resolution Professional provided in the Information Memorandum and explore the possibility of the partnership's economic revival under the given assumptions set out in the Plan.

**SOURCES OF FUNDS:**

<b>Sources of funds/ Securities</b>	<b>Amount/ Security available</b>	<b>Remarks</b>
Cash and bank balance	₹92,189	The cash and Bank Balance existing at the Balance sheet date as on 30 <sup>th</sup> September 2021.
New partners contribution	₹1,50,00,000	It shall be raised in a phased manner according to the requirement.

3. Heard the learned Counsel for the RP and carefully perused the pleadings on record.
4. The Corporate debtor herein, namely, M/s Royal Oak Furniture India LLP, CIRP proceedings were initiated against the Corporate Debtor by this Adjudicating Authority, vide order dated 08.04.2021 passed in CP(IB) No. 36/BB/2021. The present application is filed by the RP for approval of the Resolution Plan submitted by Mr. D.Suresh, Lead Member of consortium. The approval has been sought under the provisions of Section 31(1) of the Code.
5. Pursuant to the public announcement inviting claims from the creditors of the Corporate Debtor, the Resolution Professional has constituted the COC. 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 5 of Form H) :-

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
01	Capfloat Financial Services Private Limited.	100% (One Hundred Percentile)	The Resolution Plan was approved with 100% (One Hundred Percentile) voting share of Capfloat Financial Services Private Limited.

6. The details of stakeholders and the amounts provided for them under the Resolution Plan given in Para No. 7 of revised Form H filed on 02.01.2023 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	NA	NA	NA	NA
		(b) Other than (a) above: (i) who did not vote in favor of	NA	NA	NA	NA



		the resolution Plan	NA	NA	NA	NA
		(ii) who voted in favor of the resolution plan				
		<b>Total[(a) + (b)]</b>				
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under subsection (2) of section 21	5.19	5.19	5.19	100%
		(b) Other than (a) above:	NA	NA	NA	NA
		(i) who did not vote in favor of the resolution Plan	NA	NA	NA	NA
		(ii) who voted in favor of the resolution plan	NA	NA	NA	NA
		<b>Total[(a)+ (b)]</b>	<b>5.19</b>	<b>5.19</b>	<b>5.19</b>	<b>5.19</b>
3	Operational Creditors	(a) Related Party of Corporate Debtor	NA	NA	NA	NA
		(b) Other than (a) above:				



		(i)Government				
		a. Customs Department	8081.61	8081.61	150(*)	02.00%
		b. Income Tax Department	3932.26	3932.26	50.0(*)	01.27%
		(ii)Workmen	Nil	Nil	Nil	Nil
		(iii)Employees	Nil	Nil	Nil	Nil
		(iv)Home Buyers	Nil	Nil	Nil	Nil
		(v) Other Operational Creditors.	94.31	94.31	32.71	40.47%
		(vi)Auditing and Accounting Services	11.83	11.83	10.91	92.22%
		<b>Total[(a) + (b)]</b>	<b>12120.11</b>	<b>12120.11</b>	<b>243.62</b>	<b>0.0036%</b>
4	Other debts and dues	No other dues applicability	NA	NA	NA	NA
		Grand Total	<b>12125.30</b>	<b>12125.30</b>	248.81	0.040%

(\*) Government Departments – (Operational Creditors) – Financial Settlement not covered under Resolution Plan and COC Meeting

decided to do settlement through Corporate Person Term Deposit. (Please see the Approved Resolution Passed in the Sixth CoC Meeting Dt: 07.04.2022)

Annexure to Item No..7 :

(a) The above table item No.1 – Secured Financial Creditors there is no such category of secured financial creditors of corporate person.

(b) The above table item No.3(b).i. Government Dues – (a) Customs Department INR. 8,081.61 Lakhs and (b) Income Tax Department INR 3,932.36 Lakhs.

The Resolution Plan not considered the above claim settlement and the total settlement of INR. 12,013.97 Lakhs, the COC passed the resolution to settle INR 150 Lakhs to customs Department and INR. 50 Lakhs to Income Tax Department and after the settlement the balance claim of INR.11,813.97 requested for waive/nullify.

7. The compliance of the Resolution Plan has been given in Para No. 9 of Form H are 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?	COC Satisfied with the scale of operations of business of the CD	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Affidavit dated 21.03.2022 Resolution Plan Page No.59–63	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Yes	Yes

Section 30(2)	<p>Whether the Resolution Plan-</p> <p>(a) Provides for the payment of insolvency resolution process costs?</p> <p>(b) Provides for the payment to the operational creditors?</p> <p>(c) Provides for the payment to the financial creditors who did not vote in favor of the resolution plan?</p> <p>(d) Provides for the management of the affairs of the corporate debtor?</p> <p>(e) Provides for the implementation and supervision of the resolution plan?</p> <p>(f) contravenes any of the provisions of the law for the time being in force?</p>	<p>INR 30.00 Lakhs</p> <p>INR.43.62 Lakhs</p> <p>Not Applicable</p> <p>Not Applicable</p> <p>Yes</p>	<p>(a) Yes,</p> <p>(b)Yes</p> <p>(c) No</p> <p>(d) No</p> <p>(e) Yes</p> <p>(f) No</p>
Section 30(4)	<p>Whether the Resolution Plan</p> <p>(a) is feasible and viable, according to the COC?</p> <p>(b) has been approved by the COC with 66% voting share?</p>	<p>Viability is satisfying as per the requirements COC approved with 100% of voting share</p>	<p>(a)Yes</p> <p>(b)Yes</p>
Section	Whether the Resolution Plan has		

31(1)	provisions for its effective implementation plan, according to the COC?	Yes	Yes
Regulation 35 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?	Not Applicable	No
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Yes	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.	Not Applicable	No
	(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	Not Applicable	No
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?	(a)Yes (b)Yes (c) Yes	(a)Yes (b)Yes (c) Yes
38(3)	Whether the Resolution plan demonstrates that –	(a) Yes	(a) Yes

	(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?	(b) Yes  (c)Yes (d)Yes  (e)Yes	(b) Yes  (c)Yes (d)Yes  (e)Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Not Applicable	No
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	INR 50.00 (Fifty) Lakhs - HDFC Bank Limited BG Reference No: <b>009-GT-0122-0870-003</b>	Yes Annexure A

8. It is submitted by the Resolution Professional that the COC in its 6<sup>th</sup> meeting held on 07.04.2022 has approved the Resolution Plan with 100% voting share and therefore, the conditions provided for Section 30 (4) of the Code are satisfied.

9. At this juncture it is necessary to refer sec 30(2). 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) *Conforms to such other requirements as may be specified by the Board.”*

10. The compliance of Section 30(2) of the Code is given in Para No.09 of Form-H (supra). The same is being further examined as under:

a. **Section 30(2)(a):** The Resolution Plan in Point 8 (a) states that the COC approved CIRP budgeted expenses INR 30.00 Lakhs (Rupees Thirty Lakhs only) will be cleared within 30 days from the date of approval of R-Plan by Adjudicating Authority.

b. **Section 30(2)(b):** The Resolution Plan in Point 8(b),(c),(d) & (e) states as follows

b. Workmen and employees

There were no claims received by IRP/RP and there were no settlements.

c. Financial Creditors



The financial creditors total claim admitted by the Interim Resolution Professional / Resolution Professional is Rs 5.19 lakhs and the total claim amount will be paid within 30 days from the date of approval of the R-Plan by Adjudicating Authority.

d. Operational Creditors (other than Workmen, Employees)

Total claims received from the Government departments are Rs 12,013.97 lakhs is requested for waive off. The claims received from other operational creditors of Rs 106.14 lakhs out of which the claim from the Operational Creditors amounting to Rs 62.52 lakhs is requested for waive off and balance creditors shall be paid their claims which shall stand at Rs 43.62 lakhs based on the resolution plan and which will be paid as per the payment terms specified in Para 5.

There are no other claims received by IRP/RP for any statutory Dues. In addition, there may be other liabilities such as Sales tax, VAT, Service tax, GST, TDS, Income Tax, Customs duty, ESI, PF, etc. which may be under different stages of litigation /disputes/appeals. All amounts under statutory dues (under litigation/appeals) have not been considered for payment in the Resolution Plan. It is proposed that all such claims if any, should be waived off /nullified.

Partners:

No payment is provided to partners.

- c. **Section 30(2)(c)** : The Resolution Plan Point 9(3) deals with management of the affairs of the corporate debtor after approval of the Resolution Plan it is submitted that after approval of the Resolution Plan, Resolution Applicant being into the same industry/sector will rope in Management experts and senior staff members from the technical, financial, marketing fields from similar industries, which have already been identified.
- d. **Section 30(2)(d)**: The Resolution Plan Point 9(4) deals with implementation and supervision of the Resolution Plan. The Resolution Professional is proposed to be the Monitoring Agent during the implementation of the Plan period.



- e. **Section 30(2)(e):** Resolution Plan Point 9(5). The Resolution Plan does not contravene any of the provisions of the law for the time being in force.
- f. The Insolvency and Bankruptcy Board of India has notified the requirements under Regulation 38 of Insolvency and Bankruptcy Board of India (Insolvency resolution process for corporate persons) Regulations, 2016. It is submitted that Resolution Plan complied with all the regulation provided under the Code. The compliance thereof is stated in subsequent paragraphs:
- i) **Regulation 38 (1A):** the regulation provides that resolution plan includes a statement as to how it has dealt with the interests of all stakeholders in Point 8 of the Resolution Plan.
  - ii) **Regulation 38(2)(a):** The Term of the plan would be 30 days, within which CIRP Cost would be paid. Financial Creditor's interests as mentioned above would be made, as explained in Para 5 & 8 of Resolution Plan.
  - iii) **Regulation 38(2)(b):** Management and control of the affairs of Corporate Applicant after approval of the Resolution Plan Resolution Applicant being into the same industry/sector will rope in Management experts and senior staff members from the technical, financial, marketing fields from similar industries, which have already been identified.
  - iv) **Regulation 38(2)(c):** The Resolution Professional is proposed to be the Monitoring Agent during the implementation of the Plan period.
  - v) **Regulation 38(3)(a):** It is submitted that The RFIL was stuck due to reasons that custom duty demands from custom authorities and working capital issues, the RFIL was in the defunct category since 2018.
  - vi) **Regulation 38(3)(b):** The Resolution Plan has been proposed in a manner to take care of the interests of Financial Creditors to the extent possible/ feasible within the available cash-flow sources of the Resolution Applicant as well as the business cash flows projected going forward.



- vii) **Regulation 38(3)(c):** the resolution applicant has provided for the mechanism to monitor the progress for implementation, which includes engagement of monitoring professional for effective implementation of the Resolution Plan.
- viii) **Regulation 38 (3)(d):** Resolution Applicant being into the same industry/sector will rope in Management experts and senior staff members from the technical, financial, marketing fields from similar industries. They have already been identified. Time frame of induction of Management Experts and Senior Staff Members to be mentioned.
- ix) **Regulation 38(3)(e) :** Additional fund of Rs.1.50 crores will be infused through friends/relatives/well-wishers/associates.

11. On 02.12.2022, the applicant was directed to file Revised Form-H, bank guarantee and affidavit clarifying the treatment of government dues, if any, in view of the Hon'ble Apex Court in the matter of State Tax Officer vs Rainbow Paper Ltd, and whether the claim of PF Gratuity dues considering the judgment of Jet Airways Ltd. are duly included in the plan. The above directions were compiled vide dy no. 04 filed on 02.01.2023, wherein revised Form H and an affidavit by the Resolution Professional declaring that Department of Customs and Department of Income Tax submitted their claim for approval in the COC meeting dated 07.04.2022, and except these two government departments claim no other departments of central/state/local authorities submitted their claim before the COC on or before the Resolution plan approval date. Moreover, the employees of the corporate person or government authorities /department such as ESI or PF have not submitted their claim for verification for consideration before COC. Further it was stated in the Form-H that, no applications under Sections 43,45,49,50 and 66 of IBC 2016 are pending before this tribunal. This tribunal vide order dated 28.03.2023 directed the applicant to file (a) Due diligence report of the RP under section 29A of the IBC for the Successful Resolution Applicant, (b) Source of funds (c) Details regarding concessions and waivers. The compliance of the above direction was made vide diary no. 2612 dated 22.05.2023.



12. It is observed that in Para 4 of Form H, the resolution professional has certified that 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. Further, the Resolution Applicant Shri. D Suresh (Authorized Signatory and Lead Member of the Consortium), Villa No.117, Celebrity Natures Habitat, Sarjapura to Attibe, Bidaraguppe (P.O), Bangalore – 562 107 has submitted an affidavit on behalf of all consortium members, pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The affidavits are attached as Annexure V to the application. It is further stated that the Resolution Plan has been approved by the COC in accordance with the provisions of the Code and the CIRP Regulations made thereunder; and 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.
13. We have carefully considered the application for the approval of the Resolution Plan and perused the plan along with Form-H filed with the application and the revised Form-H filed on 02.01.2023 in compliance to the order dated 02.11.2022. It is noticed that in Para-4 of the Resolution Plan, the Source of Funds of Rs.1.50 Crores for the implementation of the plan was explained *to be the new partners contribution, to be raised in a phased manner according to the requirement.* However, in the same Resolution Plan, at Para-7 under the heading 'TERM, IMPLEMENTATION SCHEDULE AND MONITORING OF THE RESOLUTION PLAN', against the item 'Infusion of additional fund', it has been stated that the additional fund of Rs. 1.50 crores will be infused through friends/relatives/ well-wishes/associates. Therefore, there is a major discrepancy in explaining regarding the Source of Funds, at different places in the Resolution Plan. Accordingly, vide order dated 28.03.2023, the Applicant was again asked to explain the specific Source of Funds. A Compliance Memo was filed vide Dy. No. 2612 dt. 22.05.2023 in which it was explained that the fresh



infusion of the funds to the business to the tune of Rs.1,50,00,000/- was to be contributed by the Consortium Members according to the requirement of the funds.

14. Further, at another place in the Resolution Plan at Para-10 under the heading 'COST OF SCHEME AND SOURCE OF FUNDS (INCLUDING SETTLEMENT OF CLAIMS AND INVESTMENTS IN PROJECT)', it is noticed that apart from the CIRP expenses and Payment to Financial and Operational Creditors, additional working capital requirement is mentioned as 233.94 Lakhs and Capital and Revenue Expenditure for improvement of operations is stated to be Rs. 520 lakhs. Against these requirements, the 'Means of Finances' also show Internal Accruals of Rs. 682.75 Lakhs, which includes the profit after tax accumulated over the future years as per the projections as per Note given below this para. However, subsequently, in the Note No.2 below Para 10, at the end it is mentioned as under:

“FOR WHATEVER REASON (INCLUDING BUT NOT LIMITED TO THE VOTING PATTERN OF COC), THE PLAN OUTLAY BECOMES HIGHER THAN THE AMOUNT MENTIONED AT PARA 3 TO MEET/COMPLY WITH THE VARIOUS PROVISIONS UNDER THE IBC, 2016. THE PLAN WOULD BE NULL AND VOID AS IT CAN NOT BE IMPLEMENTED.”

This shows that the RP and the COC by including the above para in the plan are not at all certain regarding the quantum of requirement of Funds and the Sources thereof, which have been explained to be different at different places in the plan; or else based on some estimation and projections of turnover/profitability, for which no basis or justification have been furnished. In the plan itself it is mentioned that RFIL had substantial turnover till 31.03.2017; but due to the huge Custom Duty demand; it became defunct in 2018. The requirement vide order dated 28.03.2023 to explain the Source of Funds was an opportunity granted to the Applicant to give a proper basis/justification which has not been done. Therefore, in the plan itself they are giving the above condition that plan would become null and void as it cannot be implemented under certain



contingencies. The apprehension expressed regarding the plan implementation outlay becoming higher than the amount mentioned in the plan reflects an inherent uncertainty regarding the plan outlay and the source of funds including estimation/projection for availability of funds for which no basis is given.

15. Further At Para-9 under the heading 'MANDATORY CONTENTS OF THE RESOLUTION PLAN' at Point-2 it is stated '*Term of Plan and its implementation schedule (Regulation 38 (2) (a)*'- the Term of the plan would be 30 days', however in Para 7 of the plan under the heading 'TERM, IMPLEMENTATION SCHEDULE AND MONITORING OF THE RESOLUTION PLAN' the term of the plan has been explained to be 'T+15+X+15+1+90' days, whereas 'X' reflects the number of days for the approval of the Resolution Plan by this Adjudicating Authority. Therefore, in this regard also it is seen that there is a discrepancy between various paras of the Plan. It is pertinent to mention here that in the Regulation 38 of the IBBI (Insolvency Resolution Process for Corporate Persons) 2016, the Mandatory contents of the Resolution Plan has been given. According to Regulation 38 (2) (a), the term of the Resolution Plan and its implementation schedule is a mandatory requirement. On the other hand, the Applicant has given different periods for implementation at different paras in the Resolution Plan. Thus this requirement is not fulfilled.
16. Further, vide order dated 28.03.2023 by this Adjudicating Authority, the RP was asked to furnish the Due Diligence report of the RP under Section 29A of the IBC in respect of the Successful Resolution Applicant (SRA) which is constituted of 5 different individuals forming a consortium. However, in the compliance report filed by the RP vide Dy. No. 2612 dated 02.06.2023 there is no due diligence report filed by the RP after conducting proper due diligence of the background; business, experience and capability etc., of the persons being part of this consortium which is also the mandate of Regulation 38 (3) (e) of the IBBI Regulations. Instead, the RP has merely filed the copy of the Consortium agreement between the five persons, the Power of Attorney for appointing the Lead member, who will act on behalf of the consortium; and self-declaration by those five members. This is not a proper compliance to the requirement and no due



diligence was carried out by the RP himself or by engaging Independent Professionals regarding the background and capability of these persons.

The Regulation 38 (3) reads as under:

**38. Mandatory contents of the Resolution Plan.**

3. A resolution plan shall demonstrate 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;  
and

(e) the resolution applicant has the capability to implement the resolution plan.

17. Further, we have to examine whether the Resolution Plan satisfied the requirement of the Code as prescribed under Section 31 r.w.s 30 (2) of the IBC 2016. In this connection, the scope of the judicial review by the Adjudicating Authority u/s. 30 (2) and 31 (1) of the Code has been upheld by the Hon'ble Apex Court. It has been held that the Adjudicating Authority has got jurisdiction in so far as the approval of the Resolution Plan was concerned subject to the scope of the Section 30 (2) and 31 (1) of the Code (*Jaypee Kensinton Soulevard Apartments Welfare Association and others v. NBCC (India) Limited and others, in vviil Appeal No. 3395 of 2020 dated 24.03.2021* and in the matter of *K.Sashidhar v. Indian Overseas Bank and Others (2019) 12 SCC 150*).

18. In view of the discussions made above, it is noticed that various requirements under Section 30(2) of IBC, 2016 r/w Regulation 38 have not been fulfilled. It is already discussed above that there is an issue regarding, the 'Terms of the Resolution Plan and its implementation schedule', which is a mandatory requirement under Regulation 38 (2) (a) of the IBBI (Insolvency Resolution Process for Corporate Persons) 2016. Moreover, the provisions of Regulations 38 (3) (b) and (c) also cannot be held to be satisfied, in view of the discrepancies noted above regarding explaining the Source of Funds and remarks given at para 10 of the



Resolution Plan which is mentioned above at Para 14. Further, the due diligence report was for ascertaining capability of the Resolution Applicant to implement the Resolution Plan which has not been furnished, hence, the requirement of Regulation 38 (3) (e) also cannot be treated to be satisfied. In this regard, it is pertinent to refer to the provisions under Section 30 (2) (e) and 30 (2) (f) of IBC, accordingly to which the Resolution Plan has to meet the requirements specified by the Board and does not contravene any provisions of the law. The Regulations 38 (2) and 38 (3) as stated above are specified by the Board. Thus it is seen that there is a violation of Section 30 (2) (e) and (f) of the Code.

19. Accordingly it appears to us that the Resolution Plan in question is uncertain and contingent, and thus we are of considered view that this Resolution Plan cannot be effectively implemented. Further there are violations of various regulations given under Regulation 38 of the IBBI (Insolvency Resolution Process for Corporate Persons) 2016 as discussed above. It is a settled law that such Resolution Plan which does not have clarification regarding various requirements of the Code and Regulations, uncertainty about the Source of Funds and other stipulation as discussed above as per the regulations, cannot be approved. Consequently, in accordance with the proviso of Section 31 (1) of the IBC, 2016 the proposed Resolution Plan cannot be approved as the requirement of Section 30 (2) (e) & (f) r/w Regulation 38 (2) (a) and 38 (3) (b), (c) & (e) have not been complied with. Therefore, the proposed Resolution Plan is hereby rejected under Section 31 (2) of the Code. **I.A No. 199/2022** is disposed of accordingly.

### **I.A. 127 of 2023**

1. The present application is filed on 02.02.2023 by the “Operational Secured Creditor” interalia seeking to direct the resolution professional to admit the claim of the Department of Commercial Taxes and consider the same in the resolution Plan approved by the COC and to condone the delay in filing the claim by the applicant of 367 days.
2. In the objections filed by the RP vide Diary No. 1083 dated 24.02.2023, it is stated that the resolution plan provides for 100% payment of Rs.5.19,000/-  
I.A No. 199 of 2022 &  
I.A. No. 127 of 2023 in  
CP(IB) No. 36/BB/2021



to the unsecured financial creditor and payment of Rs.43.62 lakhs towards operational creditors (Except government dues). The resolution plan does not provide for any settlement towards government dues. However, the dues of various departments of government were proposed to be settled to the extent of Rs 2 crores; settlement of 150 Lakhs is towards Customs Department and Rs. 50/- Lakhs is towards Income tax department. It is explained that these were proposed to be settled through the Corporate person's term deposit. It is contended that the claim submitted by the Deputy commissioner of Audit 5.1 was considered and their dues were settled. Subsequently, this I.A has been filed by the same Commissionerate by Deputy Commissioner of Audit 5.3 after one year.

3. However, since I.A. 199 of 2022, has already been dismissed today; this I.A. 127 of 2023 becomes infructuous.
4. Hence **I.A. No. 127 of 2023 is dismissed as infructuous.**

-Sd/-

**(MANOJ KUMAR DUBEY)**  
**MEMBER (TECHNICAL)**

-Sd/-

**(T. KRISHNAVALLI)**  
**MEMBER (JUDICIAL)**