



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**  
**COURT-IV**

**I.A. (IBC)(PLAN) NO. 17/ND/2024**  
**IN**  
**C.P. No. IB- 907/ND/2020**

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

**IN THE MATTER OF:**

**MELANGE SYSTEM PRIVATE LIMITED**

**.... Operational Creditor**

**Vs.**

**SMARTERING INFRATECH PVT. LTD**

**.... Corporate Debtor**

**AND**

**IN THE MATTER OF:**

**MR. SANJAY MEHRA**  
**RESOLUTION PROFESSIONAL OF**  
**M/S. SMARTERING INFRATECH PVT. LTD**

**...APPLICANT**

**Order Delivered On: 04.04.2025**

**CORAM:**

**SHRI MANNI SANKARIAH SHANMUGA SUNDRAM,**  
**HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI,**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant : Adv. Kunal Godhwani, Adv. Kinjal Chadha  
for Resolution Applicant  
Adv. Mithilesh Kumar Pandey for COC  
(Punjab and Sindh Bank)

For the RP : Adv. Aditi Sharma for RP



For the Suspended Director : Adv. Milan Singh Negi,  
Adv. Nikhil Kumar Jha, Adv. Aakriti Gupta  
for Suspended Director

## ORDER

### **PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)**

1. The present application has been filed by Mr. Sanjay Mehra, Resolution Professional (“**RP**”) of M/s Smartering Infratech Private Limited (“**Corporate Debtor**”) under the provisions of Section 30(6) read with Section 31 of the Insolvency & Bankruptcy Code, 2016 (“**the Code**” or “**IBC**”) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (‘Regulations’) for approval of the Resolution Plan in respect of M/s Smartering Infratech Pvt. Ltd. (‘Corporate Debtor’) submitted by Successful Resolution Applicant (‘SRA’) namely Mr. Parmjit Gandhi.
2. **Brief Background of the Case:**
  - i. An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC”) was filed by the Operational Creditor i.e., M/s Melange System Private Limited against the Corporate Debtor i.e., M/s Smartering Infratech Private Limited and the said application was admitted by the order of this Adjudicating Authority dated 29.09.2022 and a moratorium was declared including the appointment of Mr. Prassan Navin Kumar as an Interim Resolution Professional (“IRP”). Subsequently, the 3<sup>rd</sup> CoC meeting was convened on 11.11.2022, wherein CoC decided the replacement of IRP and proposed Mr. Sanjay Mehra as Resolution Professional. His appointment was confirmed by this Adjudicating Authority vide order dated 21.12.2022.
  - ii. Thereafter, the Resolution Plan was submitted by the Successful Resolution Applicant namely Mr. Parmjit Gandhi which was approved by the CoC in its 17<sup>th</sup> CoC meeting dated 19.03.2024 under Section 30(4) of the IBC by 100% voting share in respect of the CIRP of the Corporate Debtor after considering its feasibility and viability.



## **Background of the Corporate Debtor**

- i. The Corporate Debtor is a private limited company which was incorporated on 23.06.2003 having CIN: U32109DL2003PTC121038 under the Companies Act, 1956 with its Registered office situated at 15A/5 W E A Karol Bagh, New Delhi-110005. The Corporate Debtor was incorporated for the business of manufacturing, trading and job work of electronic metres and other electronic components, etc. The stock and plant & machinery of the corporate debtor are lying at 40 DLF Industrial Area, Basement, Kirti Nagar, New Delhi-110015.

## **4. Collation of claims by RP**

- i. In terms of Section 13 and Section 15 of the Code, the IRP made the public announcement which was published in newspapers i.e., Financial Express (English) and Jansatta (Hindi) Delhi on 02.10.2022 in Form-A to invite the stakeholders for submission of their claims. The IRP in response to the said public announcement dated 02.10.2022 received claims and collated till 14.10.2022 and formed the CoC.
- ii. The RP has submitted that a total of Seventeen CoC meetings have been held during CIRP period as follows:

<b><u>Particulars</u></b>	<b><u>Date of CoC Meeting</u></b>
1 <sup>st</sup> CoC Meeting	20.10.2022
2 <sup>nd</sup> CoC Meeting	26.10.2022
3 <sup>rd</sup> CoC Meeting	11.11.2022
4 <sup>th</sup> CoC Meeting	05.01.2023
5 <sup>th</sup> CoC Meeting	07.02.2023
6 <sup>th</sup> CoC Meeting	14.03.2023
7 <sup>th</sup> CoC Meeting	10.05.2023
8 <sup>th</sup> CoC Meeting	07.06.2023
9 <sup>th</sup> CoC Meeting	04.07.2023
10 <sup>th</sup> CoC Meeting	01.08.2023
11 <sup>th</sup> CoC Meeting	08.08.2023
12 <sup>th</sup> CoC Meeting	16.08.2023
13 <sup>th</sup> CoC Meeting	25.08.2023



14 <sup>th</sup> CoC Meeting	18.09.2023
15 <sup>th</sup> CoC Meeting	22.09.2023
16 <sup>th</sup> CoC Meeting	07.03.2024
17 <sup>th</sup> CoC Meeting	19.03.2024

## 5. **Valuation of Corporate Debtor**

The appointed registered valuers have submitted their reports providing the average fair value and average liquidation value of the Corporate Debtor as per the valuation report, whereby the Fair Value of the Corporate Debtor was Rs. 4,64,44,336.00/- and the Liquidation Value was Rs. 3,86,33,771.00/-.

## 6. **Evaluation and Voting**

- i. Further, invitation for Expression of Interest (EoI) in Form-G was issued on 22.01.2023 by way of public notice in Asian Age (English)\_and Amar Ujala (Hindi), whereby prospective resolution applicants (PRAs) were invited to submit the EoI on or before 06.02.2023 and the last date for submitting the resolution plan was 24.03.2023. Pursuant to the publication of Form G, the Applicant received Expression of Interest from seven parties and they were found eligible and emerged as Prospective Resolution Applicants. As per the minutes of the 5<sup>th</sup> CoC Meeting, the members of CoC unanimously resolved that the Information Memorandum, RFRP and Bid Evaluation Matrix be circulated with the PRA's. The minutes of the 5<sup>th</sup> CoC Meeting dated 07.02.2023 is annexed to this application.
- ii. Thereafter, out of 7 PRAs only one resolution plan was received from Mr. Parmjit Gandhi. Further, the sealed envelope containing the Resolution Plan was opened on 11.04.2023 and the specification of plan was discussed in the 7<sup>th</sup> CoC meeting dated 10.05.2023.
- iii. Thereafter in the 9<sup>th</sup> CoC meeting held on 04.07.2023, the revised resolution plan with better financial proposal was submitted by the PRA and the COC sought certain clarification from the PRA as well as the valuers, accordingly the voting on the said agenda was deferred.
- iv. Pursuant thereto, the RA visited the office of the sole financial creditor, Punjab and Sindh Bank on 12.07.2023, however the bank during the



- 10<sup>th</sup> meeting informed the RP to seek the said clarification from the RA in writing on email. Further the clarification sought from the valuers was also placed before the CoC, to which the CoC demanded to provide such additional documents to verify the valuation arrived in the valuation report.
- v. In the 11<sup>th</sup> CoC meeting held on 08.08.2023, the Applicant requested the CoC to expedite the process of voting on the plan, to which the representative of the Punjab & Sind Bank apprised the Applicant that the resolution plan has to be put for consideration before the higher authorities and it will take 7-10 days for them to vote on the plan, in the said light the meeting stood deferred.
- vi. Thereafter, the CIRP period stood expired on 10.10.2023 and the member of CoC could not vote on the resolution plan till the last date of the CIRP period which ended on 10.10.2023 after all extensions. The Applicant filed an application for liquidation of Corporate Debtor bearing I.A. No. 5498 of 2023 in compliance with the directions of this Adjudicating Authority vide order dated 27.09.2023.
- vii. However, the promoters/ex-management of the Corporate Debtor being aggrieved with the order of this Adjudicating Authority dated 27.09.2023 filed an appeal bearing CA(AT)(Ins) No. 1555 of 2023 before the Hon'ble NCLAT.
- viii. While adjudicating the appeal, the Hon'ble NCLAT vide order dated 12.12.2023 duly granted a stay on the liquidation proceedings. Further, on the hearing held on 29.02.2024 in the said appeal, the Hon'ble NCLAT directed that it would be just and expedient if some more time is granted for the purpose of completion of CIRP by giving last opportunity to the SRA to submit addendum to the plan by 04.03.2024 and CoC to take into consideration the resolution plan by 21.03.2024.
- ix. The Applicant conducted the 17<sup>th</sup> CoC meeting on 19.03.2024, wherein the Resolution Plan along with addendum was put to vote and the sole CoC member casted its vote in favour of the Resolution Plan and the Resolution Plan was approved by 100% voting share and the same was placed before this Adjudicating Authority vide I.A./17/ND/2024 and the



same was taken up for consideration within the timeline prescribed by Hon'ble NCLAT.

- x. Pursuant to Regulation 36B sub-regulation 4A of IBBI (CIRP) Regulations, 2016, it is mentioned in clause 5 of the RFRP that the SRA shall provide a Performance Security in the form of deposit equivalent to 10% of the total resolution plan. The same has been duly deposited by the SRA on 06.04.2024 via bank guarantee dated 05.05.2024.
- xi. In the CoC meeting held on 05.01.2023, the committee decided upon the eligibility criteria to be fulfilled by the SRA in order to make them eligible to participate in the CIRP of the CD by submission of resolution plan. The criteria set out for an individual was as under:
- “Minimum tangible net worth of Rs 50 lakh as on 31.02.2022 as certified by practicing chartered accountant submitted along with income tax return for the Financial Year 2020-21 and 2021-22.” Accordingly, the RA submitted his EOI as an individual along with the necessary annexures as required for submission of EOI along with the net worth certificate as on 31.03.2022 certified by N R & Company, chartered accountants on 17.01.2023 duly reflecting the net worth of the SRA as Rs. 57,07,95,404/- thus satisfying the net worth requirements for submission of the resolution plan.*
- xii. The resolution plan in hand has been evaluated by the applicant being the resolution professional of the corporate debtor and it has been observed that the resolution plan along with the addendum is not in contravention to any law for the time being in force.
- xiii. Pursuant to Regulation 39(4) of IBBI (CIRP) Regulations, 2016, a compliance Certificate in Form-H of the Schedule B is annexed as Annexure A-4
- xiv. That pursuant to Section 30(6) of the Insolvency and Bankruptcy Code, 2016 read with Regulations 37 to 39 of IBBI (CIRP) Regulations, 2016, Resolution Professional by filing the present application is praying for approval of the Resolution Plan submitted by Resolution Applicant – Mr. Parmjit Gandhi as approved by the Committee of Creditors of the



Corporate Debtor with 100% voting under Section 30(4) of I & B Code,2016 in the 17<sup>th</sup> CoC meeting held on 19.03.2024.

## 7. **Details of Resolution Applicant/Payment Schedule**

- i. As per the Resolution Plan, the SRA, Mr. Parmjit Gandhi is an engineering graduate in Mechanical Production from University of Madras and has done Masters from United States in Industrial Engineering. He belongs to a business family which owns several companies (known as PTC Group). PTC Group has an overall turnover of more than Rs. 125 crores. Mr. Parmjit Gandhi had joined M/s Progressive Tools & Components Private Limited (“PTC”) in 1988 as management trainee and thereafter worked at various levels of management. Prior to Joining of Mr. Parmjit Gandhi as Director of the company, PTC was only engaged in tools and dyes manufacturing with one unit and turnover was less than one crore. In the year 1996, he spearheaded the Joint-venture collaboration with M/s F-Tech Inc. Japan (a renowned name in automobile industry) and established new manufacturing unit at C-222, BSR Industrial Area, Ghaziabad in 2001.
- ii. This Adjudicating Authority vide order dated 13.03.2025 directed the Applicant/ Resolution Professional to file an affidavit with regard to gratuity dues. In compliance to Order dated 13.03.2025, RP filed an Affidavit dated 21.03.2025 and submitted that the SRA vide email dated 19.03.2025 has submitted to the RP an addendum to the resolution plan proposing to infuse additional funds of Rs.6.81 lakhs allocated for employees/workmen, being 100% of the amount of the Gratuity provision mentioned in the financial statement of the Corporate Debtor for the financial year 2021-22. Further the amount proposed under the addendum is over and above the total amount proposed under the resolution plan including the financial creditors and other operational creditors, which stood as Rs. 550 lakhs earlier and is now increased to Rs. 556.81 lakhs, with an additional amount of Rs.6.81 lakhs allocated for employees/workmen. The addendum dated 19.03.2025 was further submitted before the COC comprising of sole Secured financial creditor



namely Punjab and Sindh Bank, the same was approved vide email dated 20.03.2025.

- iii. Accordingly, with the addition to Payment to Operational Creditors (Workmen/employees) the summary of which consolidated payments as specified in the addendum dated 19.03.2025 to be made under the CIRP is produced as follows:

<b>PARTICULARS</b>	<b>AMOUNT RS. IN LAKHS</b>	<b>TIMELINE FROM THE EFFECTIVE DATE I.E. DATE OF APPROVAL OF RESOLUTION PLAN</b>
Estimated CIRP cost	30.00	90 days
Payment to FC – Punjab & Sind Bank(secured)*	179.00 339.00	90 days 180 days
Payment of Statutory dues	1.00	90 days
Payment to Operational Creditors (Workmen/employees)	6.81	90 days
Payment to Operational Creditors (other than Workmen/employees and other Statutory Dues)	1.00	90 days
Payment to Equity Shareholders	0.00	
<b>TOTAL</b>	<b>556.81</b>	

- iv. Sources of Fund as stated in the Addendum to the Resolution Plan is extracted below for reference:

<b>PARTICULARS</b>	<b>AMOUNT IN INR LAKHS</b>
Equity Share Capital	25.00
Infusion of funds by the Resolution Applicant or relatives or friends or investor co-promoter or financier or banks after adjusting internal accrual of the CD, if any. (To be used for payment of CIRP cost, settlement of the Financial	531.81



Creditors and for repayment of Operational Creditors)	
<b>Total</b>	<b>556.81</b>

**8. Compliance of the Resolution Plan with various provisions:**

- i. The Applicant has submitted the details of various compliances as envisaged by Sections 30(2) of the Code and Regulation 38 & 39 of CIRP Regulations are as under: -

<b>Section</b>	<b>Provisions under Section 30(2) of the Code</b>	<b>Compliance under Resolution Plan</b>
30(2)(a)	provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;	YES  Clause 6.1, Page No. 32
30(2)(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	YES  Clause 6.4 & 6.5 (Page Nos. 34 to 36)



30(2)(c)	provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;	YES Clause 7.2 (Page No. 40 to 42)
30(2)(d)	the implementation and supervision of the resolution plan;	YES Clause 7.2A and 7.2D (Page No. 41, 43-44)
30(2)(e)	does not contravene any of the provisions of the law for the time being in force	YES Clause 5.2.7, Page 30)

<b>Regulation</b>	<b>Provisions under Regulation 38 of IBBI CIR Regulations, 2016</b>	<b>Compliance under Resolution Plan</b>
38(1)(a)	The amount payable under a resolution plan – (a) to the operational creditors shall be paid in priority over financial creditors; and (b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.]	YES  Clause 5.2.2, Page No. 27 Clause 6.7 of Addendum



38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.	YES  Clause 6.7 of addendum
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.	NO  Clause 5.2.14 Page No. 31
38(2)(a)	A resolution plan shall provide the term of the plan and its implementation schedule;	YES  Clause 7.1 and 7.2A Page No. 40 to 41
38(2)(b)	A resolution plan shall provide the management and control of the business of the corporate debtor during its term; and	YES  Clause 7.2 Page No. 40 to 42
38(2)(c)	A resolution plan shall provide adequate means for supervising its implementation	YES  Clause 7.2D Page No. 43
38(2)(d)	provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code,	RP sought section 45 reversal of transaction amount of Rs. 1,20,478/-. The Ld. counsel of suspended management handed



	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:	over DD of Rs. 118800/ and cash of Rs. 2,000 to counsel of RP. The application closed.
38(3)(a)	A resolution plan shall demonstrate that – it addresses the cause of default;	YES Clause 5.1 Page No. 26
38(3)(b)	A resolution plan shall demonstrate that – it is feasible and viable;	YES Clause 6.7 Page No. 38
38(3)(c)	A resolution plan shall demonstrate that – it has provisions for its effective implementation;	YES Clause 7.2A Page No. 41 to 44
38(3)(d)	A resolution plan shall demonstrate that – it has provisions for approvals required and the timeline for the same; and	YES Clause 9.1 Page No. 58
38(3)(e)	A resolution plan shall demonstrate that – the resolution applicant has the capability to implement the resolution plan.]	YES Clause 5.2.13 along with Chapter 4 Page No. 16 to 25, 31
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him	Yes and amount is recovered from the suspended management.



39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]	YES Bank Guarantee of Rs. 55,00,000.00 received from SRA, being 10% of the Plan value
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- iii. The Applicant/Resolution Professional has filed an affidavit dated 21.03.2025 in compliance of the provision of Regulation 31A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 stating that the Liquidation Value of the Corporate Debtor is Rs. 386.34 Lakhs and the amount proposed to the Creditors in the resolution plan dated 15.06.2023 read with addendum dated 04.03.2024 and 19.03.2025 is Rs. 526.81 lakhs. Accordingly, Rs.1,31,703/- shall be payable to the Board, being 0.25% of Rs. 526.81 Lakhs as per the provisions of Regulation 31A(l) of Insolvency and Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 Regulatory Fee. The amount of Rs. 1,31,703/- shall form the part of the Corporate Insolvency Process Cost which shall be paid by the Successful Resolution Applicant as per Clause 6.1 of the aforementioned resolution plan. The RP has shared the details of the amount to be payable to the Board with the sole member of CoC vide email dated 21.03.2025 which has been approved on the same date i.e., 21.03.2025.
- iv. The Resolution Applicant confirms that, as on the date of this Plan and on the basis of the records of the Resolution Applicant, the Resolution Applicant is eligible under Section 29A of the Code to submit the Plan. In the said regard, an affidavit dated 06.02.2023 providing the undertaking as per section 29A of the Code has been duly submitted along with the EOI. The same has been annexed with the application.



- v. The Applicant has filed a Compliance Certificate in prescribed Form i.e., Form 'H' in compliance with Regulation 39(4) of IBBI (CIRP) Regulations, 2016 and the same is annexed with the application.

**9. Details on Term, Management, Implementation and Supervision of the Resolution Plan**

- i. The term and implementation schedule of the Resolution Plan is as follows:

S.No.	Activity	Estimated Time Line
1.	Submission of proposed Resolution Plan by the Resolution Applicant	24/03/2023
2.	AA Approval Date	X (effective date)
3.	Formation of monitoring committee	X + 10 Days
4.	Payment of CIRP Costs	Within X+ 90 days
5.	Payment to Operational Creditors	X + 90 days
6.	Payment to Financial Creditors as per the provisions of the plan	X+ 90 days & X+ 180 days

Effective date shall, however, be shifted to the date of dismissal of appeal (against the resolution plan, if any, filed by any party) by Hon'ble NCLAT or Hon'ble Supreme Court, as the case may be.

- ii. It is submitted that post approval of the Resolution Plan by this bench, an Implementation and Monitoring Committee shall be formed to supervise the implementation of the Resolution Plan by the SRA. The Committee of 3 (Three) persons of which 1 (one) is Resolution Professional of the CD, 1 (one) representative of the Resolution Applicant and 1 person from the Financial Creditors, will be constituted.
- iii. Terms of appointment of the members of, and details of the functioning of the Implementation and Monitoring Committee will be finalised by the Financial Creditors and the Resolution Applicant jointly and any related costs relating to such appointments, and terms thereof, shall be borne by the Corporate Debtor.
- iv. The tenure of the Monitoring Committee will expire on the date of full and final payments to the FCs/ OCs, as per the approved Resolution Plan.



- v. The Resolution Professional shall handover entire control including all records, information, peaceful possession to the new Corporate Debtor management. Credentials of the proposed key managerial personnel of the new Corporate Debtor management are given in the Resolution Plan annexed.

#### 10. **Details on fraudulent and avoidance transaction**

- i. Any recovery made out of the Avoidance transactions, shall be allocated to the financial creditors of the CD (to the extent of their unrecovered admitted dues) after deducting the applicable expenses and taxes and the balance amount, if any, shall be allocated to the Corporate Debtor.
- ii. Since there was only one application filed under section 45 read with section 49 of the Code which has stood settled by the promoters and the said amount has been contributed to the accounts of the corporate debtor and shall be dealt as per the provisions of the resolution plan as and when the same stands approved. After this no avoidance transaction application remains pending before this Hon'ble tribunal.

#### 11. **Waivers, Reliefs and Concessions**

- i. As to the relief and concessions sought in the Resolution Plan more specifically set out in Clause 9 of the Resolution Plan, it is pertinent to refer to the decision of the Hon'ble Supreme Court in the matter of **Embassy Property Development Private Limited v. State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019.** The relevant part of the judgement is reproduced herein below: -

*“39. Another important aspect is that under Section 25 (2) (b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:*

*“25. Duties of resolution professional –*

*(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.*



(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions:-

(a) .....

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings.”

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

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

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

## 12. FINDINGS

- i. This Adjudicating Authority finds that the Resolution Plan was submitted by the Successful Resolution Applicant namely Mr. Parmjit Gandhi which was approved by the CoC in its 17<sup>th</sup> CoC meeting dated 19.03.2024 under Section 30(4) of the IBC by 100% voting share is valid and no provision of the IBC is contravened.
- ii. We find that the Resolution Plan meets the requirement of being a viable and feasible and for revival of the Corporate Debtor. By and



large, there are provisions for making the Plan effective after approval by this Bench.

- iii. In so far as the approval of the resolution plan is concerned, this Adjudicating Authority is duty bound to follow the judgement of the **Hon'ble Supreme Court in the matter of K. Sashidhar v. Indian Overseas Bank (2019) 12 CC 150**, wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as follow: -

*“35. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the*



resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.”

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

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

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

‘273.1. The adjudicating authority has limited jurisdiction in the matter of approval of a resolution plan, which is well-defined and circumscribed by Sections 38(2) and 31 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is



*no scope for substituting any commercial term of the resolution plan approved by the Committee of Creditors. If, within its limited jurisdiction, the adjudicating authority finds any shortcoming in the resolution plan vis-a-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by the Code and exposted by this Court.’ (emphasis supplied)*

The above view of the Hon’ble Supreme Court in **Jaypee Kensington Boulevard Apartments Welfare Association v NBCC (India) Limited (Supra)** is reaffirmed by the Hon’ble Supreme Court in its recent decision dated 21.11.2023 in the case of **Ramkrishna Forgings Limited Vs Ravindra Loonkar, Resolution Professional of ACIL Limited & Anr., Civil Appeal No. 1527/2022.**

- vi. Thus, from the judgments cited and the statutory framework of the Insolvency and Bankruptcy Code, 2016, it is evident that the scope of judicial review available to this Adjudicating Authority under Section 30(2) read with Section 31 is limited to assessing the compliance of the Resolution Plan with the prescribed legal requirements. This Authority is neither empowered nor obligated to delve into or evaluate the commercial wisdom of the Committee of Creditors (CoC), which is paramount and binding, provided it aligns with the provisions of the Code. Upon satisfaction that the proposed Resolution Plan adheres to the statutory mandates, including equitable treatment of stakeholders and compliance with applicable laws, this Bench finds no impediment to granting its approval.

### 13. Orders

- i. Subject to the observations made in this order, the Resolution Plan with total plan value of Rs. 556.81 Lakhs (Rupees Five Crore Fifty-Six Lakh and Eighty-One Thousand only) along with affidavits dated 21.03.2025 and other documents connected to the Resolution Plan



that have been filed by the SRA from time to time) is hereby approved. The Resolution Plan shall form part of this order.

- ii. The approved Resolution Plan as annexed alongwith COC approved addendums shall be binding on all the stakeholders of the Corporate Debtor and become effective from the date of passing of this Order, and shall be implemented strictly as per the term of the plan and implementation schedule given therein. The Resolution Plan will form part of the order.
- iii. The Monitoring Agency, as provided in the Resolution Plan shall be set up by the Applicant within 07 days of passing of this Order, which shall take all necessary steps for expeditious implementation of the Resolution Plan as per approval;
- iv. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
- v. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- vi. MoA and AoA of the Corporate Debtor shall be amended and filed with the RoC for information and record as prescribed. While approving the Approved Resolution Plan as mentioned above, it is clarified that the Successful Resolution Applicant shall pursuant to the Resolution Plan approved under section 31(1) of the Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for such in law.
- vii. Accordingly, **IA (IB) No.17/(ND) 2024 is allowed.**
- viii. Liberty is hereby granted for moving appropriate application if required in connection with the implementation of this Resolution Plan.
- ix. A copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies, NCT of Delhi & Haryana.
- x. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties



that are enjoined upon him for implementation of the approved Resolution Plan.

- xi. The Resolution Professional is further directed to hand over all records, licences, plans, approvals of premises/factories/documents and all other relevant records relating to the Corporate Debtor, available with it to the SRA to finalize and co-operate on the further line of action required for starting the operation and implementation of this Plan. The Resolution Applicant shall have access to all the records, documents and the premises through the Resolution Professional to finalize the further course of action required for starting and running the operations of the Corporate Debtor on a clean slate basis.
- xii. The Registry is directed to send copies of the order forthwith to IBBI, all the parties and their Ld. Counsels for information and for taking necessary steps.
- xiii. Certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Sd/-**

**ATUL CHATURVEDI  
MEMBER (TECHNICAL)**

**Sd/-**

**MANNI SANKARIAH SHANMUGA SUNDARAM  
MEMBER (JUDICIAL)**