

**NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH - V
IA No. 4631/2021
In
Company Petition No. (IB)-3434 (PB)/2019**

In the main matter of:

Indian Delco Private Limited

.... Financial Creditor

Versus

S N JEE Build Well Private Limited

.... Corporate Debtor

AND

In the matter of:

Rakesh Kumar Jain
Resolution Professional
M/s S.N. JEE Build Well Private Limited

.... Applicant

Order pronounced on: 25.11.2022

SECTIONS: u/s 30(6) OF INSOLVENCY AND BANKRUPTCY CODE.

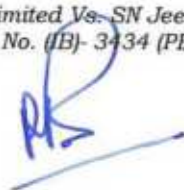
Coram:

**SHRI P.S.N. PRASAD, HON'BLE MEMBER (J)
SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (T)**

Present:

For Applicant : Dr. MK Pandey adv. for Resolution Applicant
For the RP : Mr. Sudhir Makkar, Sr. Adv
For Landowners : Adv. Vatsala Kak & Adv. Raghav Dembla
For the Objector : Adv. Abhishek Anand & Adv. Pathik Choudhary

*Indian Delco Private Limited Vs. SN Jee Build Well Private Limited
IA. 4631/2021 IN CP No. (IB)- 3434 (PB)/ 2019*

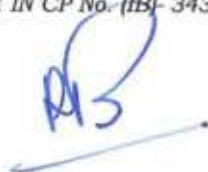


ORDER

PER- P.S.N. PRASAD, MEMBER (JUDICIAL)

PER- RAHUL BHATNAGAR, MEMBER (TECHNICAL)

1. The application has been filed by the Resolution Professional, under Section 30 (6) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code"), seeking approval of the Resolution Plan, submitted by Mr. Rakesh Kumar Jain ('Resolution Professional'), under Section 31 of the Code, read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, in respect of the corporate debtor M/s. S.N. Jee Build Well Private Limited.
2. The facts in brief are as follows:
 - i. Indian Delco Private Limited, the Financial Creditors, had preferred an application under Section 7 of the Code, for initiation of Corporate Insolvency Resolution Process ("CIRP") against M/s. S.N. Jee Build Well Private Limited (hereinafter referred to as the "Corporate Debtor"). The said Company Petition was admitted vide order dated 07.01.2021, imposing moratorium under Section 14 of the Code and thereby, initiating CIRP, against the Corporate Debtor. Further, the applicant herein, Mr. Rakesh Kumar Jain, was appointed as the Interim Resolution Professional ("IRP").
 - ii. Thereafter in terms of Regulation 6(1) of the CIRP regulations, 2016 the applicant made Public Announcement in Form-A in the



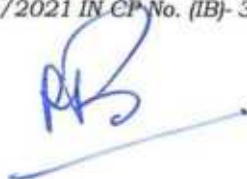
newspaper, "Financial Express", English Edition and "Jansatta" Hindi Edition on 14.01.2021, inviting claims from the creditors of the Corporate Debtor. The copy of public notice was duly uploaded on the website of IBBI

- iii. Pursuant to public announcement, in terms of Section 18(1) (a) of the Code, the IRP collated all claims submitted by the creditors and constituted a Committee of Creditors ("CoC") on 01.02.2021. Thereafter filed its first status report about the constitution of the CoC before this Adjudicating Authority under Section 21(1) of the Code in compliance with Regulation 17(1) of the CIRP Regulations. The Applicant also filed an application being I.A. No. 1470/2021 for appointment of authorized representative for real estate allottees being creditors in the class.
- iv. The first meeting of the CoC was convened on 10.02.2021, wherein the IRP informed the members that in total, claims of Rs. 2,29,32,16,513/- (Two Hundred Twenty-Nine Crore Thirty-Two Lakhs Sixteen Thousand Five Hundred and Thirteen only) were received from financial creditors out of which Rs. 3,39,60,241/- (Rupees Three Crore Thirty-Nine Lakhs Sixty Thousand Two Hundred and Forty-One Only) were of real-estate allottees and there was no claim of operational creditors or workmen/employees. The real-estate allottees being financial creditors in a class proposed appointment of Mr. Kamlesh Kumar Gupta as their Authorised Representative. The IRP further informed that he had visited the registered office of the corporate debtor and sought documents and information from the members of the



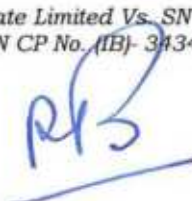

suspended board of directors. In the said meeting CoC deferred the decision to appoint the Applicant as the Resolution Professional and the Applicant continued to discharge its duties as per the provisions of the Code.

- v. The second meeting of the COC was convened on 01.03.2021, wherein the Applicant circulated the updated list of creditors for inspection by members of CoC which was inspected and taken on record. Accordingly, the CoC was reconstituted, and respective voting shares were intimated. The Applicant apprised the CoC that the members of the suspended board of directors were not co-operating in the CIRP and therefore he has filed an application bearing No. 1089/2021 under section 19(2) of the Code before the Adjudicating Authority. The Applicant further informed the members of CoC that one of the suspended directors had raised allegations on few members of the CoC to be related parties of the corporate debtor, however, have failed to file any proof to support this allegation. The Applicant further stated that all members of CoC have submitted an affidavit along with their claim stating that they are not related parties. Further, the Applicant informed that he is taking an independent opinion to determine the relationship of such members of CoC with the corporate debtor. The Applicant further apprised the CoC that two sets of valuers for obtaining valuation of Land & Building, Plant & Machinery and Security & Financial Assets were appointed after following due process in accordance with Regulation 27 of CIRP Regulations. The CoC approved the remuneration and appointment of such valuers by 100%



voting. The Applicant informed the CoC that there were certain bank guarantees which were issued to Government Authorities which were due for renewal but there was no money in the bank account of the corporate debtor, and there was a need to raise interim finance to keep the corporate debtor as a going concern.

- vi. The third meeting of CoC was convened on 17.03.2021 wherein the Applicant circulated the updated list of creditors for inspection by members of CoC which was inspected and taken on record. Accordingly, the CoC was reconstituted, and respective voting shares were intimated. The Applicant apprised the members of CoC that one financial creditor, M/S UGRO Capital Limited had assigned its debt to Alchemist Asset Reconstruction Company Limited ("AARC") through an assignment deed dated 05.02.2021, which was intimated to the Applicant on 12.03.2021. On 15.03.2021, the assignee, AARC, had filed its claim in Form-C and accordingly notice of the third meeting of CoC was sent to AARC on 16.03.2021 and AARC was included in CoC in place of UGRO Capital Limited. The Applicant also filed the status report to the Adjudicating Authority intimating the reconstitution of CoC.
- vii. The Applicant informed the members of CoC that the members of suspended board had given incomplete accounting data and records and were blaming each other for the non-cooperation. The Applicant further apprised that the independent professional had submitted his report on the related-party allegations on certain members of CoC and opined that such allegations had no basis. The Applicant discussed

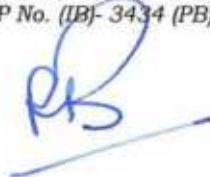


the issue of raising interim finance to meet the day-to-day expenses of the corporate debtor and to keep it as a going concern by renewing the bank guarantees given to the Government authorities. The CoC instructed the Applicant to obtain quotations for raising interim finance before the next meeting of CoC. The CoC confirmed the appointment of Applicant as Resolution Professional ("RP") with 100% voting in its 3rd meeting. The CoC further approved the eligibility criteria for Proposed Resolution Applicant ("PRA"), the Request for Resolution Plan ("RFRP") and evaluation matrix and publication of Form-G inviting Expression of Interest ("EoI") from PRAs. The Applicant also sought ratification from AARC on the resolutions passed in second meeting of CoC, which were duly approved.

- viii. The Applicant published Form-G on 21.03.2021 in Jansatta & Financial Express, inviting Expression of Interests (EOIs) for submission of resolution plans of corporate debtor by 05.04.2021.
- ix. The fourth meeting of CoC was convened on 12.04.2021 wherein the Applicant circulated the updated list of creditors for inspection by members of CoC which was duly inspected and taken on record. Accordingly, the CoC was reconstituted, and respective voting shares were intimated. After publication of Form-G, 5 PRAs have submitted their EoIs. Meanwhile, the Applicant received requests from certain prospective applicants seeking extension of last date for submission of EoIs due to the second wave of Covid-19 pandemic. The Applicant informed the members of CoC regarding such requests and convened the CoC meeting to discuss the matter. The Applicant tabled the

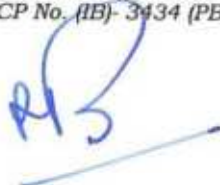
revised Form-G along with revised timelines for approval of CoC, and the CoC approved the said proposal keeping in mind the Covid pandemic.

- x. The Applicant published second Form-G with revised timelines as approved by CoC on 14.04.2021 with last date for submission of EoI as 25.04.2021.
- xi. Upon receipt of 10 EoIs in pursuance to publication of Form-G on 21.03.2021 and 14.04.2021, the Applicant as per Regulation 36A (10) of CIRP Regulations, issued a provisional list of PRAs on 29.04.2021 and sought for any objection on the provisional list. Since none of the PRAs objected to the provisional list by 04.05.2021, a final list of PRAs was issued by the Applicant on 07.05.2021.
- xii. The fifth meeting of CoC was convened on 27.05.2021. The Applicant proposed to extend the last date for submission of resolution plan by 30 days due to Covid related lockdown. After deliberation the members of CoC approved with 100% voting, additional time of 15 days for PRAs to submit resolution plan.
- xiii. Due to an unprecedented rise in the number of Covid cases in Delhi, the Delhi Disaster Management Authority under the Government of NCT of Delhi, vide order dated 15.04.2021 imposed a weekend curfew on movement of individuals in the territory of NCT till 19.04.2021 and thereafter vide order dated 19.04.2021, imposed a complete curfew till 26.04.2021. The said order was extended on several occasions and the curfew ended on 07.06.2021. The Applicant filed an application bearing no. I.A. No. 2851/2021 on 05.06.2021 to the Adjudicating



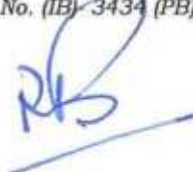
Authority being seeking exclusion of 53 days from computation of period for CIRP.

- xiv. As required, the Applicant provided the Information Memorandum, Evaluation Matrix and RFRP as per Regulation 36B of CIRP Regulations to the PRAs on 04.05.2021 and time was granted till 31.05.2021, to submit a Resolution Plan. The Applicant addressed various queries of the PRAs as per the information made available to him by the suspended board of directors. Since there was curfew imposed by the State Government from 17.04.2021 till 31.05.2021 due to second wave of Covid pandemic, many PRAs requested the Applicant to extend the last date for submission of resolution plan. The Applicant called CoC meeting to discuss the same.
- xv. The sixth meeting of CoC was convened on 24.06.2021 wherein the Applicant circulated the updated list of creditors for inspection by members of CoC which was duly inspected and taken on record. Accordingly, the CoC was reconstituted, and respective voting shares were intimated. The Applicant informed the CoC that only one PRA i.e. CRS Towers Private Limited has submitted a binding resolution plan within time and the same is under legal vetting. The Applicant also informed the CoC that two notices were received from Department of Town & Country Planning, Haryana. One was regarding renewal of Bank Guarantees and other being show-cause notice for cancellation of license. The Applicant apprised the need to raise interim finance for renewal of Bank Guarantees and for hiring professional to liaise with competent authorities. The CoC members agreed to the proposal of



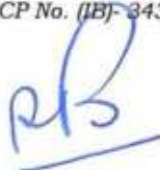

raising interim finance. The CoC was also informed that the valuers had submitted their valuation reports to the Applicant. The Applicant also opened the sealed plan before the members of CoC. The Applicant further proposed to file an application to Adjudicating Authority seeking extension of 90 days for period of CIRP as the exclusion application was still not listed before the Adjudicating Authority and the time of 180 days would expire on 05.07.2021. The CoC approved the resolution for extension by 100% voting.

- xvi. The Applicant filed an application under section 12 of the Code seeking extension of CIRP period by 90 days. The said application being I.A. no. 2771/2021 was allowed vide order dated 16.07.2021 by the Adjudicating Authority. Vide the same order, the Adjudicating Authority also allowed I.A. no. 2851/2021 thereby approving exclusion of 49 days i.e. from 19.04.2021 to 06.06.2021 for calculating the CIRP period.
- xvii. The seventh meeting of CoC was convened on 12.08.2021. The Applicant apprised the members of CoC that after approval of the Adjudicating Authority, the last date for completion of CIRP is 21.11.2021. The Applicant also apprised that another show-cause notice was received from Department of Town & Country Planning dated 16.06.2021, Haryana and the Applicant attended the virtual hearing on 13.07.2021 and informed the competent authority that moratorium is in place and that no adverse orders should be passed against the corporate debtor. The Applicant also apprised that he had received a registered assignment deed on 10.08.2021 regarding the



assignment of debt from UGRO Capital Limited to AARC. The Applicant further apprised the members that the registered assignment deed dated 04.08.2021 is applicable from 05.02.2021 however since it was registered on 04.08.2021, he expressed his desire to seek directions from the Adjudicating Authority.

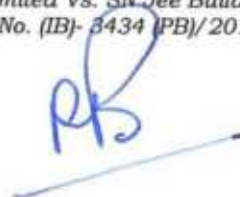
- xviii. The Applicant filed an application being IA No. 3609/2021 to put on record the registered assignment deed dated 04.08.2021 and to seek directions from the Adjudicating Authority. The Adjudicating Authority took the assignment deed on record and disposed off the application vide order dated 23.08.2021.
- xix. The eighth meeting of CoC was convened on 27.08.2021 wherein the Applicant informed that he had received two show-cause notices dated 05.08.2021 & 09.08.2021 from Department of Town & Country Planning, Haryana which were under discussion with legal persons. The members of CoC discussed the plan with the director of CRS Towers Pvt. Ltd. and asked them to revise the offer. The CoC further ratified all resolutions approved in third, fourth, fifth and sixth CoC meetings with 100% voting. Further, the CoC approved raising interim finance to meet day to day expenses of corporate debtor and approved financial proposal of one NBFC. The Applicant also apprised the members that another claim of Rs. 20.27 lacs of real estate allottee was received which is under verification.
- xx. Subsequent to the negotiations held in the eighth CoC meeting, the PRA i.e. CRS Towers Private Limited submitted a revised plan with



improved offer which was circulated to the members of CoC for their consideration.

- xxi. The ninth meeting of CoC was convened on 14.09.2021 wherein the Applicant circulated the updated list of creditors for inspection by members of CoC which was duly inspected and taken on record. Accordingly, the CoC was reconstituted, and respective voting shares were intimated. The Applicant apprised the members that interim finance of Rs. 15 lacs had been disbursed on 31.08.2021, as per terms and conditions approved by CoC. The Applicant informed the CoC that due diligence and vetting of the Resolution Plan has been conducted by the Applicant and an independent legal expert and the plan was found compliant with legal provisions of the Code. The Applicant apprised the members of CoC that he is unable to make any opinion on avoidance transactions in absence of books of accounts as there are two separate sets of books submitted by the suspended directors.
- xxii. Thereafter, after deliberations and discussions, CoC requested the Applicant to put the matter to E-voting and resolved as under:

“Resolved that the Resolution plan submitted by the resolution Applicant, ‘M/s CRS Towers Private Limited’ under the applicable provisions of the Insolvency and Bankruptcy Code, 2016 for the revival of the Corporate Debtor, be and hereby is approved.”
 “Resolved further that the resolution Professional, be and hereby, is authorized to submit the application to the Hon’ble NCLT for approval of Resolution Plan under the applicable provisions of Insolvency and Bankruptcy Code, 2016.”




Accordingly, the COC with a voting strength of 100% approved the Resolution Plan submitted by CRS Towers private Limited ("Successful Resolution Applicant")

3. As per the approved Plan, the operations of the Corporate Debtor will be supervised by a Monitoring Committee till the constitution of new Board of Directors of the Corporate Debtor and will consist of three representatives, one nominated by Resolution Applicant, one nominated by the Lenders, and one nominated by the Allottees. Upon constitution of new Board of Directors, the Monitoring Committee's scope shall be limited to implementation of the Resolution Plan and the new Board will be responsible for the operations of the Corporate Debtor.

4. The Applicant has submitted a compliance certificate in Form-H stating that the Resolution Plan is compliant of the provisions of the Code.

5. Pursuant to the approval of the Resolution Plan by the CoC, the Applicant has informed the Successful Resolution Applicant that the plan submitted was approved by the CoC vide Letter of Intent (LoI) dated 18.09.2021. Accordingly, the Successful Resolution Applicant is required to comply with the RFRP and submit the Performance bank Guarantee. The Successful Resolution Applicant has complied with the LoI and submitted the Performance Guarantee deposit of INR 5,00,00,000 on 24.09.2021 in the account of designated lender.



6. **The amounts as admitted are summarised below:**

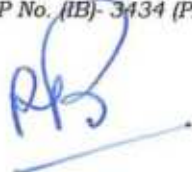
Particulars	Approved Claim (INR)	Payment proposed as per Plan
Secured Financial Creditors	1,91,87,73,527	16,75,00,000
Unsecured Financial Creditors (except related party)	34,04,82,745	19,92,55,271
Allottees	22,65,12,442	14,68,71,611
Staff & Workmen	Nil	Nil
Statutory Liabilities	Nil	Nil
Operational Creditors	Nil	Nil
Promoters Group Claims	-	Nil
Total	2,48,57,68,714	51,66,26,882
Total Infusion (INR)		25,00,00,000
Total Resolution Amount		76,66,26,881

a. Financial Creditors

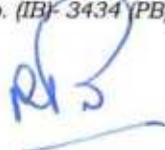
Name of the Lenders	Claim Amount Admitted Rs. in Cr.	Settlement Amount
Alchemist Asset reconstruction Company Limited	1,91,87,73,527	16,75,00,000
India Delco Pvt. Ltd.	6,52,85,301	17,96,225
Prerana International Pvt. Ltd.	10,07,84,383	17,50,000
Garner Finance and Securities Private Limited	9,11,57,425	33,20,169
Aashrit Capital limited	6,11,97,944	22,92,500
Sindhvani Metal Engineering Pvt. Ltd.	2,20,57,692	8,03,870
Real estate Allottees	22,65,12,442	
Total	2,48,57,68,714	17,74,62,764

7. The Applicant submitted details of various compliances as envisaged within the Code and the CIRP Regulations which are required by a Resolution Plan to adhere to. These are reproduced hereunder:

I. Submission of Resolution Plan in terms of sub-section (2) of section 30 of the Code (as amended vide Amendment dated 16 August 2019):

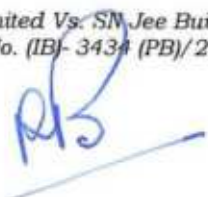



Clause of s.30(2)	Requirement	How dealt with in the Plan
(a)	Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	Yes Para 1, part -II of the Plan
(b)	(i) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53; or (ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall be not less than 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	Yes, Para 2, Part- II of the Plan
	(iii) provides for 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.	Yes, Para 3, Part-II of the Resolution Plan
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Yes, Para 5, Part-II of the Resolution Plan
(d)	Implementation and Supervision.	Yes, Para 4& 5, Part-II of the Resolution Plan
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Yes, Para 7, Part-II of the Resolution Plan
(f)	Conforms to such other requirements as may be specified by the Board.	Yes




II. Mandatory contents of Resolution Plan in terms of Regulation 38 of CIRP Regulations:

Reference to relevant Regulation	Requirement	How dealt with in the Plan
38(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	Yes, Para 2, part-II of the Resolution Plan
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, Para 6, Part-II of the Resolution Plan
38(1B)	(i) The resolution Applicant or its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved under the code. (ii) If so, the resolution plan shall include a statement giving details of such non implementation.	Yes, Para 10, Part-II of the Resolution Plan N.A.
38(2)	A resolution plan shall provide: (a) the term of the plan and its implementation schedule;	Yes, Para 4, Part-II of the Resolution Plan

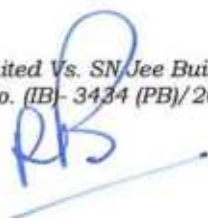



Reference to relevant Regulation	Requirement	How dealt with in the Plan
	(b) the management and control of the business of the corporate debtor during its term; and	Yes, Para 5, Part-II of the Resolution Plan
	(c) adequate means for supervising its implementation.	Yes, Para 5, Part-II of the Resolution Plan
38(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.	Yes, Para 11, Part-II of the Resolution Plan

8. That an undertaking in compliance of Regulation 39(1) of CIRP Regulations and affidavit stating that the Resolution Applicant is eligible under Section 29A has been submitted to the Applicant.

9. **Details of Resolution Plan/Payment Schedule:**

*Indian Delco Private Limited Vs. SN Jee Build Well Private Limited
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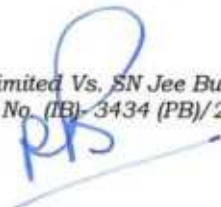



a) Summary of the financial proposal/payment under the Resolution Plan dated 14.06.2021 of CRS Towers Private Limited is tabulated hereunder:

Particulars	Approved Claim (INR)	Payment Proposed as part of plan
Admissible Debt to be paid upfront as CIRP Costs	-	As per actual dues, estimated at 30.00 Lacs
Admissible Debt to be paid upfront to the Operational Creditors	1,91,87,73,527	16,75,00,000
Admissible Debt to be paid to Financial Creditors	34,04,82,745	19,92,55,271
Admissible Debt to be paid to the Allottees	22,65,12,442	14,68,71,611
Operational Creditor		Priority over financial creditors Nil
Workmen and Employees		Priority over financial creditors Nil
Capex/Working Capital		

10. The member of the Suspended Board of Corporate Debtor, Mr. Avneesh Kumar Singh, has filed her reply dated 10.12.2021 and submitted that:

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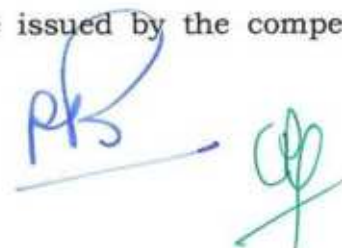



- i. Resolution Plan is a conditional plan:
As per clause 3.7 of the resolution plan, wherein the resolution Applicant has clearly subjected the resolution plan to grant of certain assistance, reliefs and concessions set out in the clause 6.5 of part I.
- ii. The reliefs sought are beyond the jurisdiction of this Hon'ble Tribunal.
- iii. The resolution applicant, while creating an illusion in clause 6.5.14 to the effect of portraying as if the resolution plan is not a conditional plan, malafide has reiterated similar condition precedent in clause 11 and 12 and has also made the entire resolution plan subject to fulfilment of conditions mentioned in the said clauses.
- iv. The Resolution Applicant has, by way of clause 14.2, sought directions against the Income Tax Department and GST, thereby seeking directions to the effect that the resolution applicant shall not be barred or restricted by any statutory authority, including Income Tax Department and GST. Such relief is in contravention of the relevant laws under which the said departments are governed.
- v. The resolution applicant has made the plan applicable on mandatory fulfillment of the conditions as set out in clause 11 ad 12 of the Plan and in the absence of said condition being met, the resolution plan shall be ineffective and shall have no obligations.
- vi. The member of Suspended Board has referred the judgment of the Hon'ble Supreme Court in the matter of ***Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Ltd. And Anr. Bearing Appeal No. 3324 of 2020 dated 13.09.2021*** wherein the Court held that a resolution plan approved by CoC cannot be



modified at any stage, more particularly when such modification is sought by the resolution applicant based on certain on-grant o relief, concessions or waivers.

- vii. The project proposed was to be developed by the Corporate Debtor, on land belonging to different landowners, with whom the Corporate Debtor had entered into collaboration agreement. It is pertinent to mention that the said farmers/ land owners have revoked the collaboration agreement by way of termination and demand notices duly issued upon the corporate debtor, however, the resolution applicant, while proposing to develop the project under the resolution plan, has failed to take into account the vital factor of cancellation of collaboration agreements by the farmers/ land owners.
- viii. In the above regard, certain civil suit has been filed by farmers/ land owners against the corporate debtor, which are pending adjudication, however, there is no whisper of the said proceedings in the resolution plan.
- ix. If the lands, where farmers/ land owners have revoked the collaboration agreement, are not available for the project, the project cannot be developed/ erected in any manner whatsoever. Yet, the resolution plan is silent on such vital aspect.
- x. The Corporate Debtor had entered into a Memorandum of Understanding dated 20.04.2011 inter alia with Lok Nath Farms Pvt. Ltd. ("Lok Nath"), wherein parties to the said agreement were to jointly develop the project on their respective lands along with collaboration with farmers' land under a single license issued by the competent

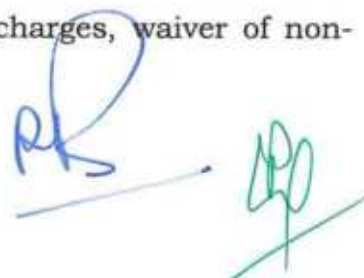


authority in favour of the corporate debtor. The purpose and object to execute the said MOU was to ensure a continuing and wide chunk of land, as the lands/ plots owned by the corporate debtor were in piecemeal.

- xi. The resolution applicant has failed to even refer to the said MOU, without which the project, sought to be developed by the resolution applicant, cannot be taken forward. Such non-consideration makes the entire resolution plan non-viable.
- xii. The answering respondent has obtained a report on related parties from a Practicing Company Secretary dated 28.09.2021. The said report discloses the relation between the Aarone Group and certain members of the CoC, who have induced the resolution applicant to submit a resolution plan in the instant case and have further malafidely approved the said resolution plan.

11. The member of the Suspended Board of Corporate Debtor, Ms. Ritika Arora, has filed her reply dated 16.12.2021 and submitted that:

- i. For any resolution plan to succeed, it must be unconditional. However, the plan sought to be approved by the Resolution Professional seeks various concessions and reliefs which are out of the scope of this Ld. Adjudicating Authority.
- ii. In Clause 6.5.1 of Part-I (Business Plan of the Resolution Applicant in relation to the Corporate Debtor) reliefs like extinguishment of dues, waiver of stamp duty, registration charges, waiver of non-

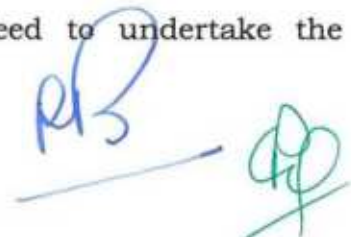


compliances, waiver of taxes etc. is sought which is outside the jurisdiction of this Adjudicating Authority.

- iii. Clause 11 of Part-I (Business Plan of the Resolution Applicant in relation to the Corporate Debtor) of the plan starts with a non-obstante clause and states that obligations of Resolution Applicant under the plan are subject to prior fulfillment of conditions set out in Clause 11 & 12, meaning thereby, that only after the conditions set forth in Clause 11 & 12 are fulfilled that the Resolution Applicant will implement the plan making it a conditional plan.

12. The landowners have filed their objections dated 14.03.2022 and submitted that:

- i. The Resolution Plan submitted by the Resolution Professional for the approval of the Adjudicating Authority is not in compliance with Section 30(2) of the Code and Regulation 38 of the CIRP Regulations, 2016.
- ii. The Landowners are the exclusive owners of the Land admeasuring 18 Acres approx. at Sector 3 of the Village Dharuhera, District Rewari, and Haryana (hereinafter referred to as "the Land").
- iii. In 2006, the Landowners herein entered into a Collaboration Agreements with the Corporate Debtor and with Lok Nath Farms Pvt. Ltd. which in turn entered into the agreement with the Corporate Debtor for the purpose of developing the Plotted/ Colony/Flatted Colony Commercial Complex under the name of Country Walk, Dharuhera on the said land ("the project"). In terms of the Collaboration Agreements, the Corporate Debtor had agreed to undertake the



execution and completion of the project on the said land at its own costs and expenses and to obtain the requisite licenses, permissions and sanctions etc. from the competent authority as required to develop the land. As per terms of the said Collaboration Agreements, in consideration of the said land, the Landowners shall be entitled to possess a residential plot measuring on the basis of 1450 sq. yards developed area per acre in the proposed project. The said developed residential areas had to be allotted by the Corporate Debtor to the Landowners within 36 months from the date of Agreement.

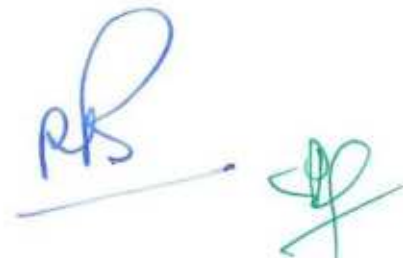
- iv. The Corporate Debtor in terms of the Collaboration Agreement has obtained the license bearing License No. 34 of 2013 for the total land of 53.837 acres to be developed by the Corporate Debtor. Out of the total land of 53.837 acres on which the license has been obtained by the Corporate Debtor, a land of approx. 18 acres belongs to the Landowners herein.
- v. Thereafter, since the Corporate Debtor was unable to develop the project within 36 months in terms of the Collaboration Agreements, the Landowners entered into a Supplementary Agreements with the Corporate Debtor and Lok Nath Farms Pvt. Ltd. for extending the time period of allotment of share of developed residential areas to the Landowners to on or before 30.09.2016.
- vi. Since the Corporate Debtor failed to develop the project and thereby failed to allocate the Landowners their share of developed residential area in terms of the Collaboration Agreement on or before 30.09.2016




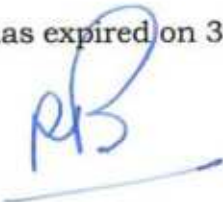
- and further failed to renew/revive the Collaboration Agreement, therefore, the Collaboration Agreement expired on 30.09.2016.
- vii. This Hon'ble Adjudicating Authority vide Order dated 07.01.2021 in Company Petition No. 3434(ND) of 2019 filed by the Indian Delco Private Limited under section 7 of the Code, initiated Corporate Insolvency Resolution Process of the Corporate Debtor. Pursuant to the admission of CIRP, the Resolution Professional of the Corporate Debtor conducted several meetings of the Committee of Creditors of the Corporate Debtor ("COC") for deliberation on the Resolution Plans submitted by Resolution Applicants for resolution of the Corporate Debtor, however, there were no discussions held in the meeting with respect to the rights of the Landowners.
- viii. Further, it is stated that the Committee of Creditors of the Corporate Debtor in the 9th Meeting dated 14.09.2021 approved the Resolution Plan submitted by the CRS Towers Limited with voting strength of 100%.
- ix. In furtherance of the resolution passed by the Committee of Creditors in 9th meeting dated 14.09.2021, the Resolution Professional filed the instant application 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) 2016 before the Hon'ble Adjudicating Authority for the approval of Resolution Plan approved by the CoC.
- x. On perusing the Resolution Plan only then Landowners came to know that the land belonging to the Landowners is also dealt in the resolution

plan in a way contrary to the Collaboration Agreement dated 29.09.2006 and provision of the law.

- xi. The Resolution Plan filed for approval before this Hon'ble Adjudicating Authority is contrary to the terms and condition of the Collaboration Agreement as the Resolution Applicant in its Resolution Plan proposed to revive the said Collaboration Agreement by paying certain extension cost of Rs. 10 Crores to the Landowners. Further, the Resolution Applicant has proposed to renew the expired license bearing No. 34 of 2013 and to migrate the project into Din Dayal Jan Awas Yojana ("DDJAY").
- xii. The Resolution Applicant failed to mention in its Resolution Plan that the Collaboration Agreement had expired on 30.09.2016 and has rather proposed to revive the Collaboration Agreement without the consent of the Landowners by providing some meager amount to the Landowners as an extension cost, without providing any details to the same. Such an act is not only contrary to law but also contrary to the obligations under the Collaboration Agreement.
- xiii. The Resolution Applicant in its Resolution Plan sets forth certain conditions in paragraph 11 and 12 of Part 1 of the Resolution Plan, which states that if the conditions precedent is not met to the reasonable satisfaction of the Resolution Applicant, the Resolution Plan shall not be effective or operative as against the Resolution Applicant and the Resolution Applicant shall have no obligations whatsoever under this Plan or otherwise to any person.

The image shows two handwritten signatures. The first is in blue ink, appearing to be 'RS' with a long horizontal line extending to the right. The second is in green ink, appearing to be a stylized signature with a long horizontal line extending to the right.

- xiv. Paragraph 12 of the Resolution Plan mentions various conditions precedent which includes renewal or revival of License bearing no. 34/2013 and migration of License No. 34/2013 to DDJAY License.
- xv. It is submitted that the above stated conditions with respect to the License No. 34/2013 cannot be fulfilled until and unless the Landowners herein give assent to renewal or revival the said Collaboration Agreements. Therefore, even if the Resolution Plan of the Resolution Applicant is approved by this Hon'ble Adjudicating Authority, then also in the absence of renewal or revival of the Collaboration Agreement by the Landowners, the Corporate Debtor would be left with no land in hand to develop and thus it will become impossible for the Resolution Applicant to ensure effective implementation of the Resolution Plan, which will ultimately lead to the withdrawal of the Resolution Plan by the Resolution Applicant and the same is not permissible in the code. Further for the purpose of renewing the requisite license the Resolution Applicant shall have to seek the in-principle approval/ no objection of Haryana RERA.
- xvi. Further, objector placing reliance on the judgment of Hon'ble Supreme Court in the matter of ***Ebix Singapore Private Limited Versus Committee of Creditors of Educomp Solutions Limited & Anr., 2021 SCC OnLine 707*** wherein it has been observed that a resolution plan once approved cannot be allowed to be withdrawn or modified by the successful Resolution Applicant. Therefore, the Collaboration Agreement executed between the Applicant and the Corporate Debtor being separate contractual agreement, which has expired on 30.9.2016



and could not be revived/modified as part of the Resolution Plan under the pretext of a resolution of the Corporate Debtor without the approval of the Landowners. The Resolution Applicant by way of its Resolution Plan cannot unilaterally revive / modify the expired contractual obligation.

- xvii. The plan is not in compliance with the terms of Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- xviii. The formation, novation or alteration of the contract must be in accordance with Section 30(2)(e) of the Code, which provides that the Resolution Plan cannot contravene any provision of law which is in force. It is submitted that the provisions of the Indian Contract Act, 1872 require mutual agreement of the parties for such a revival/modification and therefore the Resolution Applicant cannot unilaterally revive/modify the terms and conditions of the contracts executed between the Corporate Debtor and the third party through a resolution plan.
- xix. It is stated that Hon'ble Supreme Court in the matter of **Jaypee Kennington Boulevard Apartments Welfare Association & Ors. Versus NBCC (India) Ltd and Ors., 2021 SCC Online SC 253** has observed that the terms of the resolution plan which were effectively modifying the contractual terms of the Concession Agreement are deemed unacceptable. The Hon'ble Supreme Court held that any alterations to the terms of the Concession Agreement would require consent from YEIDA, the concessionaire. The Hon'ble Supreme Court

also noted that the terms of the Concession Agreement cannot be extended or altered by way of reliefs and concessions sought under the resolution plan.


Accordingly, the land owners seek rejection of resolution plan.

13. The Resolution Professional / Applicant filed rejoinder dated 07.01.2022 to the objections filed by Objector Mr. Avneesh Kumar Singh and submitted that:

- i. The Applicant relying on the judgment of the Hon'ble Supreme Court in the matter of **"Committee of Creditors of Essar Steel India Ltd. V. Satish Kumar Gupta & Ors. (2020) 8 SCC 531"** stated that commercial wisdom of COC ought not to be lightly interfered with. As in the said case the Supreme court had re-emphasized the primacy of the commercial wisdom of the COC by holding that scope of judicial review of NCLT and NCLAT was required to be within the parameters of the code. The SC further observed that NCLAT/NCLT can under no circumstances trespass upon the commercial decision of the Majority of the COC. Also laid down the parameters and the decision were reaffirmed in the matter of **"Maharashtra Seamless Ltd. V. Padmanabhan Venkatesh & Ors. (2020) 11 SCC 467"**.
- ii. The RP stated that the resolution plan has been examined in accordance with Section 30(2) of the code and found it to be compliant. Further got it verified by an independent legal professional Mr. Vinod Kumar Chaurasia, Advocate and obtained a compliance report dated 26.06.2021 on its compliance with the applicable laws. After receiving

- the aforesaid compliance report finding the said plan to be compliant with Section 30(2) and CIRP Regulations, the RP put it for voting before the CoC on 14.09.2021. After negotiations, the said plan was approved with 100% voting by CoC on 16.09.2021.
- iii. Further also stated that the objector has filed the present set of objections only to delay the resolution of the Corporate Debtor. The objection sought is misconceived and the entire exercise is oriented to defeat the insolvency resolution process.
 - iv. The Resolution Applicant has sought approval of the Adjudicating Authority on various reliefs and concessions which shall significantly aid the revival of the Corporate Debtor.
 - v. The Plan is unconditional and even if the reliefs as sought in Clause 6.5 are not granted, the Resolution Applicant shall continue to implement the Resolution Plan.
 - vi. On a bare reading of Clause 11, it is evident that the reliefs sought are routine in nature. Further in Clause 12, no-objection of Department of Town & Country Planning, Govt. of Haryana and Haryana RERA are sought for implementation of the resolution plan. If Clauses 11 & 12 are read harmoniously with Clause 6.5.14, then it will be clear that the Resolution Plan is unconditional.
 - vii. The Applicant has referred the judgment of the Hon'ble NCLAT in the matter of **Santosh Wasantrao Walokar v. Vijay Kumar V. Iyer and Anr. in Company Appeal (AT)(Ins.) No. 871-872 of 2019 dated 24.01.2020** wherein it was held that even a conditional plan approved

- by CoC in its commercial wisdom can be approved by the Adjudicating Authority.
- viii. That the approval of resolution plan is not misuse of order of Adjudicating Authority, it is submitted that once a resolution plan is approved by the Adjudicating Authority, it is binding on all concerned stakeholders and overrides other laws in accordance with Section 238 of the code. The Hon'ble Apex Court in the case of ***Innoventive Limited Vs. ICICI bank & Anr. (2018) 1 SCC 407***, held that non-obstante clause of IBC will prevail over any other state laws. Further in the case of ***Principal Commissioner of Income Tax Vs. Monnet Ispat and Energy Ltd. (2018) 1 SCC 407***, the Supreme Court held that Sec. 238 shall have overriding effect including anything inconsistent contained in any other enactment, including Income Tax Act.
- ix. The Resolution plan as per Clause 14.1 reserved the right to restructure the holding in the Corporate Debtor in accordance with business requirements, changes in economic circumstances or pursuant to its business decisions. It has been averred that if any other legislation restricts the restructuring in accordance with the business plan of the Resolution Applicant, it will indeed be difficult to implement the Plan and resolve the Corporate Debtor. There is no contravention of any law as alleged by the objector.
- x. As regards the modification sought in Resolution Plan, this objection is based on misinterpretation and has no legal founding. As per Clause 6 Schedule 2 (Implementation Provisions) the RA seeks for an opportunity to revise acquisition structure in case of any change in Applicable laws



or under any material circumstances, without prejudice to the financial commitment and obligation set forth in the Plan with respect to each creditor of the Corporate Debtor including quantum and timelines of such payment, by intimating the COC. Hence, it is not seeking modification of plan but only change in acquisition structure as proposed in the plan to meet the commercial objectives if there is any change in material particulars. The judgment of Ebix Singapore as referred to by the objector is not applicable in the present case as the Resolution Plan is not sought to be modified or withdrawn.

- xi. As regards the objection of non-consideration of termination agreements by farmers and understanding with Lok Nath farms Pvt. Ltd. It is submitted that the said objection is not relevant at this stage and cannot be looked into by the Adjudicating Authority as it falls squarely in the commercial wisdom of CoC who has approved the resolution plan with 100% voting after due negotiations.
- xii. As regards the complete dereliction of duties by the resolution professional, he denied all the allegation levelled by the objector and stated that in the 2nd meeting of CoC dated 01.03.2021 and 3rd meeting of CoC dated 17.03.2021, the Applicant apprised the members of CoC that he has received the report from independent professional and as per the report, the members of CoC were not related parties of the Corporate Debtor in accordance with the Code.
- xiii. The scope of the report dated 28.09.2021 of the Objector goes beyond IBC, 2016 and as per Section 5(24)(a), the relative of present director is considered a related party. The said report is on the basis of data upto



31.03.2020, whereas the insolvency commencement date is 07.01.2021.

- xiv. If the members of CoC which the objector claims to be related parties of the Corporate Debtor and consequently their voting in CoC are nullified, still the resolution plan continues to be approved by 88.94% which is above the threshold of 66% as per the Code. The Applicant has relied upon the case of Hon'ble Supreme Court in the case of **Phoenix ARC Pvt. Ltd. Vs. Spade Financial Services Ltd. & Ors. in Civil Appeal No. 2842/2020** has interpreted Section 5(24) and proviso to Section 21(2) of the code.

14. The Resolution Professional has filed written submissions and stated the following:

- a) The RP states that the Plan of CRS has been approved by 100% of CoC members in their commercial wisdom in letter and spirit. The creditors have no objection to the Plan and the objection raised by the ex-management and collaborators, who have no existing relationship with the Corporate Debtor and appears to be motivated by the ex-management. As regards the Commercial Wisdom of CoC, RP has relied upon the catena of judgments being:

- ❖ K. Sashidhar Vs. Indian Overseas Bank & Ors, of Hon'ble Supreme Court (2019) 12 SCC 150.
- ❖ Committee of Creditors Vs. Essar Steels India Ltd. Vs. Satish Kumar Gupta & Ors, of Hon'ble Supreme Court (2020) 8 SCC 531.



- ❖ Maharashtra Seamless Pvt. Ltd. vs. Padmanabhan Venkatesh & Ors, of Hon'ble Supreme Court (2020) 11 SCC 467.
 - ❖ Ghanshyam Mishra & Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Limited, of Hon'ble Supreme Court (2021) SCC online SC 313.
- b) The objection of Resolution Plan being conditional and hence in violation of Section 30(2) of the code, the applicant has relied upon the case of Hon'ble NCLAT in **Santosh Wasantrao Walokar Vs. Vijay Kumar V. Iyer and Anr. in Company (AT) (Ins.) No.871-872 of 2019 dated 24.01.2020** wherein the NCLAT has held that if COC in its commercial wisdom approved a conditional plan, then AA cannot go against the commercial wisdom of CoC. Further, the RA in its plan has unequivocally undertaken to implement the plan even if the reliefs and concessions are not granted by the AA. Therefore it is not conditional.
- c) That the Resolution Applicant is not misusing the order of approval of resolution plan wherein applicant has relied upon the following cases:
- ❖ Innoventive Industries Limited Vs. ICICI Bank Ltd. & Anr. of Hon'ble Supreme Court (2018) 1 SCC 407.
 - ❖ Principal Commissioner of Income Tax Vs. Monnet Ispat and Energy and Ltd. of Hon'ble Supreme Court (2018) 18 SCC 786.
 - ❖ Ebix Singapore Private Limited Vs. COC of Educop Solutions Ltd. & Anr. of Hon'ble Supreme Court, Civil Appeal No. 3224 of 2020.
- d) The Applicant has stated that CRS has not modified the Plan. Neither any commercial commitments nor the timelines, in which such commitments were to be honored, were altered. The Applicant has relied

upon the case of ***Ebix Singapore Private Limited Vs. CoC of Educomp Solutions Ltd and Anr. of Hon'ble Supreme Court, Civil Appeal No. 3224 of 2020.***

- e) The RP has relied upon the judgment of Hon'ble Apex Court in '***State Tax Officer Vs. Rainbow Papers Limited***' and stated that after publication of Form-A, the RP has sent several letters to Department of Town & Country Planning, Haryana (DTCP). However, the said judgement is not applicable to present case. The observations made in Rainbow papers cannot be regarded as laying the general proposition having application to all statutory dues. Nature of such dues will be regarded on case-to-case basis in the light of specific legislations.
- f) Further reliance is placed on the case of Hon'ble Supreme Court ***Axis Bank Limited Vs. Vidharbha Industries Power Limited. Review Petition (Civil) No. 1043 of 2022.*** It is well settled that the judgments and observations in judgements are not to be read as provisions of statute. Judicial utterances and/or pronouncements are in the setting of the facts of a particular case.

15. The Objector Mr. Avneesh Kumar Singh filed written submissions reiterating the contents of the reply and sated as follows:

- a) The Objector has relied upon the case of Hon'ble Supreme Court of India in the case of ***State officer Vs. Rainbow paper Limited 2022 SCC Online SC 1162***, with regards the statutory demands payable to any state government or a legal authority.



OBSERVATIONS OF THE BENCH: -

16. The present Application has been filed by the Applicant herein, in pursuance of and in terms of the approval of the CoC, of the Resolution Plan submitted by CRS Towers Private Limited, approved by 100% of the voting share of the CoC, after considering the feasibility and viability of the resolution plan and other requirements under CIRP Regulations.

17. The Applicant has submitted that the average liquidation value of the Corporate Debtor, under Regulation 35 of the IBBI (Insolvency Regulation Process for Corporate Persons) Regulations 2016 ("CIRP Regulations"), as valued by two registered valuers is approximately **Rs.15,36,35,984/-**, and the Fair Value of this Resolution Plan is **Rs.21,04,97,353/-**, as provided in the Form H, by the Resolution Professional.

18. The Resolution Professional has submitted its Compliance Report dated 26.06.2021, under Section 39(4) of the Code, along with a copy of the resolution plan, as approved by CoC has been placed on record. The Compliance Certificate, filed by the Resolution Professional in Form H, under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, has also been placed on record.

19. That brief contours as per Form H, of the Resolution Plan, as approved by the CoC, along with the amounts provided for the stakeholders, under the Resolution Plan is detailed herein below: -

(Amount in Rs. Crore)

S. No	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount provided under the Plan	Amount provided to the amount claimed (%)
1.	Secured Financial Creditor	a. Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		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	191.88	191.88	16.75	8.73%
		Total [(a)+(b)]	191.88	191.88	16.75	8.73%
2.	Unsecured Financial creditors	a. Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		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	97.68	56.69	34.61	61.05%
		Total [(a)+(b)]	97.68	56.69	34.61	61.05%




3.	Operational Creditors	b. Related Party of Corporate Debtor	-	-	-	-
		c. Other than (a) above:				
		i. Government	-	-	-	-
		ii. Workmen	-	-	-	-
		iii. Employees	-	-	-	-
	iv. Other Operational Creditors	-	-	-	-	
	Total [(a)+(b)]	-	-	-	-	
4.	Other debts and dues		-	-	-	-
	Grand Total		289.56	248.57	51.36	20.66%

20. In terms of Section 30 (6) of the Code, read with Regulation 39 of the CIRP Regulations, 2016, the resolution professional has submitted the Resolution Plan for seeking an order under Section 31(1) of the Code, for approval of the resolution plan, passed by the committee of creditors, under sub-section (4) of Section 30, with 100% voting share.

21. Sub-section 2 of Section 30 casts a duty on the Resolution Professional, to examine the Resolution Plan received by him and to confirm that such Resolution Plan provides for the payment of Insolvency Resolution Process costs, provides for, the payment of the debts of the operational creditors and financial creditors in such manner as specified, provides for the management of the affairs of the corporate debtor, after approval of the Resolution Plan; the implementation and supervision of the Resolution Plan, that the Resolution Plan does not contravene any of the provisions of the law, and that

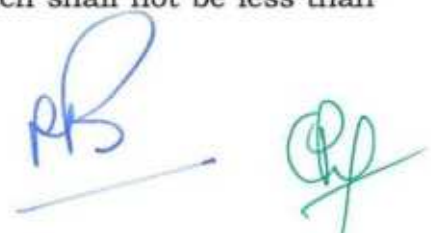
the Resolution Plan conforms to such other requirements as may be specified by the Board.

22. The Resolution Professional has filed compliance certificate in Form H and inter alia, has confirmed that he has examined and verified the Resolution Plan, approved by the CoC of M/s. CRS Towers Pvt. Ltd., in the light of the requirements of the Code and Regulations and that it is compliant to the relevant provisions of the Code and Regulations.

23. It has been submitted in the application and in Form H, duly certified by RP, that the final Resolution Plan, approved by 100% vote share of the members of the Committee of Creditors, meets the requirements as laid down in various clauses of Section 30 (2) of the Code.

24. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in the resolution plan, at Part III which provides for payment of CIRP costs, in priority over payments to any other creditors in accordance with the Code. The Resolution Professional has also confirmed in the compliance certificate, given in Form H, that the Resolution Plan provides for the payment of Insolvency Resolution Process costs.

25. As regards compliance of Section 30 (2)(b) of the Code, the Resolution Professional has certified that the resolution plan provides for the payment of the debts of Secured Financial Creditors and Unsecured Financial Creditors, in such manner as specified under the Board, which shall not be less than



the amount to be paid to the creditors in the event of liquidation of the corporate debtor under Section 53. There appears to be no discrimination in the resolution plan in respective class of creditors, as same treatment is provided to each similarly situated class of creditors. Besides, the resolution plan provides for the payment of the debts of financial creditors in such manner, as may be specified by the Board, which shall not be less than the amount to be paid to the operational creditors in the event of liquidation of the corporate debtor under Section 53. As a sequel to the aforesaid discussion it is seen that clause (b) of sub-section (2) of Section 30 of the Code stands satisfied.

26. In terms of Section 30(2)(c), the Resolution Plan provides for management of affairs of the corporate debtor, after approval of the Resolution Plan. The business plan of the corporate debtor, after approval of the Resolution Plan, has been provided at Part I of the Resolution plan, which, inter alia, provides that the Company shall continue as a going concern and operate in its normal course of business, upon implementation of the Resolution Plan.

27. As regards the requirement envisaged by Section 30(2)(d) it is important to provide for the implementation and supervision of the resolution plan. The Resolution Professional has confirmed, in the compliance certificate given in Form H, that the Resolution Plan provides for adequate means for supervising its implementation.



28. In term of the requirement in clause (e) & (f) of sub-section (2) of Section 30 of the Code, it provides to ensure that the Resolution Plan does not contravene any of the provisions of law and conforms to such other requirements as may be specified by the Board. In this regard the resolution professional has certified that the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016, the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and does not contravene any of the provisions of law, for the time being in force. Be that as it may in terms of clause (e) & (f) of sub-section (2) of Section 30 of the Code, we make it clear that the Resolution Applicant shall comply with all applicable laws under the proposed Resolution Plan, whether or not specifically provided therein.

29. It is pertinent to state here that Section 29A of the Code prescribes certain eligibility criteria and disqualifications, for persons who submit a resolution plan. Resolution Applicant has given adequate declaration and undertaking on their eligibility to submit the Resolution Plan. At para 4(ii) of Form H, Resolution Professional has also certified that the Resolution Applicant, confirmed that the Resolution Applicant is eligible to submit a resolution plan and does not fall under any of the categories as mentioned in Section 29A of the Code.

30. Section 31 of the Insolvency and Bankruptcy Code, deals with the approval or rejection of a resolution plan by the Adjudicating Authority.



Approval of the resolution Plan is accorded under the provisions of Section 31(1) of the Code.

31. Regulation 36B(4A) of the CIRP Regulations requires that the Resolution Applicant shall provide a performance security. Resolution professional has stated that the Resolution Applicant has submitted a Performance Guarantee of Rs. 5,00,00,000 (Rupees Five Crores Only) on 24.09.2021, in compliance of Regulation 36B(4A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

32. After perusing the documents on records and submission made, the bench is of the view that the objections raised by the ex-management and landowners have been satisfied by the resolution applicant/RP as follows:

A. MAIN OBJECTIONS BY SUSPENDED BOARD OF DIRECTORS I.E.,

MR. AVNEESH KUMAR SINGH AND MS. RITIKA ARORA

- a) As to the Reliefs and Concessions stated in Clause 6.5 of Part-I of the Resolution Plan: the exemption as sought for in relation to the payment of registration charges, stamp duty, and applicable fees arising out of the implementation of the Resolution Plan, the same is declined by this Bench and therefore is not granted. As regards the other reliefs and concessions as sought for, they will be given as per CIRP regulations and the other laws as applicable with regard to other concessions and reliefs. Most of them are subsumed in the reliefs above granted. Whichever is beyond the reliefs granted above, they shall not be



construed as granted. The exemptions if any sought in violation of any law in force, it is hereby clarified, that such exemptions shall be construed as not granted.

b) The Resolution Plan is conditional in nature hence in violation of Section 30(2) of the code: The applicant has relied upon the case of Hon'ble NCLAT in Santosh Wasantrao Vs. Vijay Kumar V. Iyer and Anr. Wherein it was specifically held that if COC in its commercial wisdom has approved a resolution plan, the Adjudicating Authority shall not interfere with the decision of CoC. Further the objections of the ex-management refer to specific parts of the plan in isolation and not as whole, which is read in harmony would reflect the real intent of the CRS.

- Clause 6.5 of Plan, seeking reliefs and concessions: The applicant in 6.5.14 has categorically and unequivocally undertaken to implement the plan even if the relief and concessions are not granted. Hence the plan is unconditional
- Clause 11 & 12 of the resolution plan which deals with the routine requirement of preserving the assets of the CD and that CRS will apply for NOC of Department of Town and Country planning, Haryana and RERA. In this regard the applicant has also filed an affidavit waiving off the conditions mentioned in clause 11 & 12 and hence, CRS waived its right to seek enforcement of such relief.

➤ As regard the relief being out of scope of jurisdiction of this bench, if rejected and approval of plan is granted. The Resolution applicant has itself waived off the reliefs and concessions.

c) The approval of resolution plan is misuse of order of Adjudicating Authority as per clause 14.2 of the Plan: The code mandates that once a plan is approved by the AA, it is binding on all concerned stakeholders including government departments and overrides all laws in accordance with Section 238 of the code. In this regards the applicant has relied upon the cases of Innoventive Industries Limited Vs. ICICI Bank Ltd. & Anr. , Principal commissioner of Income Tax Vs. Monnet Ispat and Energy Ltd., Ebix Singapore Private Limited Vs. COC of Educop Solutions Ltd. & Anr. In terms of this clause 14.2 of the Plan does not contravene any provision of law.

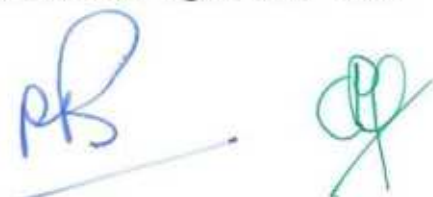
d) As regards the modification sought in Resolution Plan :

The ex-management has objected the waiver as regards the clause 11 of the plan that the said modification is in violation of the judgement in Ebix Singapore Private Limited Vs. CoC of Educop Solutions Ltd. & Anr., (Supreme Court). The applicant stated that by filing affidavit CRS has not modified the Plan, further no commercial commitments nor the timelines in which such commitments were to be honored have been altered. CRS has waived off the alleged conditions stated by him and also waived off its right to seek enforcement of such reliefs. Further the same waiver is also approved by the CoC. Hence it cannot be treated as modification of plan.




- e) Applicability of judgment of Hon'ble Apex Court in 'State Tax Officer Vs. Rainbow paper Limited': The RP states that he has sent several letters to Department of Town & Country Planning, Haryana (DTCP) apprising them about the ongoing CIRP of CD and asking them to file their claim, but no claim has been filed till date. Further in the present case the statutory authority had no charge on property of CD. The application filed by the CD for grant of license prior to initiation of CIRP had been already rejected by DTCP for non-compliances and fees forfeited. Also, in the present case no proceedings for recovery have been initiated by any government department/statutory authority or DTCP prior to CIRP. Further placing reliance on the case of Ghanshyam Mishra, RP submits that the Rainbow papers cannot be regarded as laying general principles for having application to all statutory authorities. Further DTCP has already cancelled the application for migration of license and forfeited the fees deposited on account of non-compliance, hence, have also not filed claims. Further as per Clause 12, CRS shall also take NOC of DTCP and will comply with the conditions prescribed under law.
- f) Also, stated that the allegation leveled by the ex-management of fraud and collusion has been dismissed by the Hon'ble Apex Court in the civil Appeal No. 1911 of 2022.

B. AS REGARDS THE OBJECTIONS OF THE LANDOWNERS: The applicant in response to the objection of the landowner has stated that objectors own only 18 acres of the total out of 53 acres of land licensed for the project. Also stated that the collaboration agreement with



corporate debtor has expired on 30.09.2016 and there exist no other contract the objector landowners. Further CRS has given an undertaking that the rights and title in land owned by the objecting land owners will not be affected and the land will not be dealt with the by CRS, without express consent of the objecting landowners. As per records the land owned by CD is 12 acres and by non-objecting landowners it is 27 owners, who were in collaboration with CD. Further stated that as per the revised DDJAY policy dated 14.07.2020, the minimum area for grant of license in DDJAY is now 5 acres. Therefore it is stated that even if objecting landowners do not give consent to join CRS, the resolution applicant shall go ahead and implement the plan. It is a matter of record that CD had applied for migration of parcels of land out of the total land under license no. 34/2013 prior to initiation of CIRP. If the objecting land owners don't wish to be part of the resolution applicants project they shall go ahead with land owned by CD and other non-objecting land owners.

33. Further, it is observed that the distribution of the amount in the Plan is in compliance of the Regulation 38 of CIRP Regulations. Hence, we find no legal impediment in approving the plan.

34. As a sequel to aforesaid discussions, we are satisfied that all the requirements of Section 30 (2) are fulfilled and no provision of the law, for the time being in force, appears to have been contravened.



35. The Resolution Professional has further certified that 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 Code and IBBI Regulations.

36. The Adjudicating Authority is not expected to substitute its view with the commercial wisdom of the CoC nor should it deal with the technical complexity and merits of the Resolution Plan, unless it is found contrary to express provisions of law and goes against public interest. The object of the Code is to promote resolution and every effort must be made to try and see that resolution is made possible.

37. The Adjudicating authority is empowered only to ensure that the Resolution Plan is advantageous to all the stakeholders and amounts to maximization of the assets of the Corporate Debtor and promotes entrepreneurship and ensures that the Company continues to function as a going concern. However, the right of rejection or approval of a plan is with the CoC. In a particular case, what should be the percentage of claim amount payable to one or other 'Financial Creditor' or 'Operational Creditor' or 'Secured Creditor' or 'Unsecured Creditor', can be decided only by the Committee of Creditors, based on facts and circumstances of each case. The Bench is also to ensure whether the plan approved by CoC meets the requirements as referred to in sub-section (2) of Section 30 of the Code. This bench is empowered with the law laid down in the judgment of Hon'ble Supreme Court in the case of **Kalparaj Dharamshi v. Kotak Investment**



Advisors Ltd, 2021 SCC OnLine SC 204, decided on 10.03.2021, wherein it has been held as follows;

"... the appeal is a creature of statute and that the statute has not invested jurisdiction and authority either with NCLT or NCLAT, to review the commercial decision exercised by CoC of approving the resolution plan or rejecting the same."

"... the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis."

"155. It would thus be clear, that the legislative scheme, as interpreted by various decisions of this Court, is unambiguous. The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided under Sections 30 and 31 of the I&B Code."

38. In the present case the resolution plan has been unanimously approved with 100% voting share of the CoC. Further, even if the allegation of ex-management that the alleged financial creditors are considered to be related parties and their voting of 11.06% is nullified, still the plan continues to be approved by 88.94%, which is much above the statutory requirement of 66%, in terms of Section 30 (4) of the Code and has the requisite statutory voting share. Besides the decision of CoC is a reasoned and self-speaking one, as required under proviso to Regulation 39(3) of the CIRP Regulations, 2016. It is needless to state here that the Resolution Plan cannot take care of total outstanding dues of all the creditors in its entirety. However, it is seen that he will pay the amount reflected in the plan and committed by him.

39. Further, it is a well settled proposition of law that commercial and business decisions of CoC are not open to judicial review. The Adjudicating Authority cannot enquire into the commercial wisdom of CoC. The ground for



rejection is limited to the matter specified under Section 30(2). It is however reiterated that the resolution plan in question meets the requirements specified in Section 30(2) of the Code and the reasoned commercial decision of CoC is neither discriminatory nor perverse.

40. In view of these facts we are satisfied that the requirements, as per the Code and the relevant Regulations, have been complied with. Moreover, the Resolution Plan has been approved by requisite voting share of the members of CoC and has been submitted in compliance with Section 30 of the Code for approval. In view of the aforesaid discussions and as no infirmity has been brought out upon screening of the Resolution Plan; **we hereby approve the Resolution Plan under sub-section (1) of Section 31 of the Code.**

41. In respect of reliefs and concessions sought for in the Plan which are beyond the jurisdiction of this Tribunal, the Monitoring committee can make such a claim before the respective authorities, which shall be considered in accordance with law.

42. The resolution applicant shall obtain the statutory obligations/seeking sanctions from governmental authorities necessary approval required, under any law for the time being in force, within a period of one year, from the date of this order or within such period as provided for in such law, whichever is later.



43. It is clarified that Section 30 (2) (f) of the Code mandates that the resolution plan should not be against any provisions of existing law. The Resolution applicant therefore, shall adhere to all the applicable laws for the time being in force, under the proposed Resolution Plan, whether or not specifically provided therein.

44. We hereby exclude the period spent under adjudication and it is declared that the moratorium order passed by this Bench under Section 14 of the Code shall cease to have effect from the date of this order.

45. On perusal of the documents on record, we are also satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

46. In case of non-compliance of this order or withdrawal of Resolution Plan, the CoC shall forfeit the EMD amount already paid by the Resolution Applicant.

47. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect. The Resolution Professional shall forward all records relating to the CIR Process and the Resolution Plan to IBBI for their record and also handover the relevant documents to the Resolution Applicant or New Promoters.



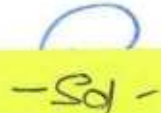
48. The Resolution Professional is further directed to handover all records, premises/factories/documents to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records/premises/factories/documents through the Resolution Professional to finalise the further line of action required for starting of the operation.

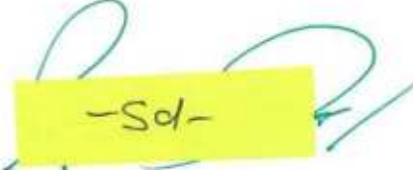
49. The approved 'Resolution Plan' shall become effective from the date of passing of this order.

50. We have also heard the objections raised by the Objectors, Members of the Suspended Board of Directors of the corporate debtor and landowners and perused the documents on record, after considering the relative merits I.A. 4631/2021 is allowed.

51. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.

52. Let the copy of the order be served to the parties. A copy of order be also sent to the ROC for their records.


-Sd-
Rahul Bhatnagar
(Hon'ble Member (T))


-Sd-
P.S.N. Prasad
(Hon'ble Member (J))