

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

**I.A. 36/2024
IN
C.P. No. IB-417/ND/2021**

(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))

State Bank of India

.... FINANCIAL CREDITOR

VERSUS

M/S. JABALPUR MSW PRIVATE LIMITED

.... CORPORATE DEBTOR

AND

AND IN THE MATTER OF:

MR. SAJJAN KUMAR DOKANIA

IBBI Reg. no.- IBBI/IPA-003/IP- 000150/2017-2018/11729.

RESOLUTION PROFESSIONAL OF

STATE BANK OF INDIA

Address: 25, Globus Fab City,

Kolar Road, Chunabhatti

Bhopal-462016.

... APPLICANT/RESOLUTION PROFESSIONAL

Vs.

1. Kundan Care Products Limited

CIN: U27100UR2004PLC032688

(Successful Resolution Applicant)

Address- E-22 Industrial Area Bahadrabad Haridwar

Uttarakhand – 249402.

... RESPONDENT NO.1

2. MR. MILIND KASHIRAM JADHAV

(Suspended Director)
(M/s JABALPUR MSW PRIVATE LIMITED)
Address- B-301, Sai Leela Apartment,
Manvelpada Road, Vasai, Virar East,
Thane, Maharashtra- 401305.

...RESPONDENT NO.2

3. MR. SOORAJ SHANKAR KARKERA

(Suspended Director)
(M/s JABALPUR MSW PRIVATE LIMITED)
Address- White House Room No. 8, Marci,
Near St. Lawrence High School,
Andheri East, J.B. Mumbai,
Maharashtra- 400059.

...RESPONDENT NO.3

4. Ms. POOJA RAMESH SINGH

(Suspended Director)
Address- 23/A.D. Tiwari Chawl, Mogravillage Road,
Mograpada, Andheri, Greater Mumbai,
Mumbai Suburban, Mumbai,
Maharashtra- 400092.

...RESPONDENT NO.4

SH. MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SH. ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT

For the Applicant: Mr. Harsh Parashar, Mr. N. Sai Vinod and
Ms. Kanu Garg, Advs. In IA/5843/2024.

For the SRA: Mr. Prithu Garg, Mr. Shivam Singh,
Mr. Parth Bhatia, Advs.

For the CoC: Adv Siddharth Sangal, Adv Richa Mishra,
Adv Harshita Agrawal, Adv Mushkan
Mangla.

For the RP: Mr. Sumant Batra, Mr. Vinod Chaurasia,

Mr. Sarthak Bhandari, Ms. Nidhi Yadav
And Ms. Ayat Khusheed, Advs. Mr. Sajjan
Kumar Dokania, Resolution Professional.

For the Corporate Debtor: Advocate Sidharth Singh for R2, R-3 and
R-4 in IA no. 36/2024.

ORDER

PER: BENCH

ORDER DELIVERED ON: 04.04.2025

1. The present application has been filed under Section 30(6) read with Section 31(1) of the Insolvency & Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') by Mr. Sajjan Kumar Dokania, Resolution Professional (RP) of M/s Jabalpur MSW Pvt Ltd ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by Kundan Care Products Limited, ('Successful Resolution Applicant') as approved by the Committee of Creditors ('CoC') in its 16th CoC Meeting held on 14.06.2024.
2. Briefly stated, the facts as averred by the applicant in the application are as follows:
 - That the Corporate Insolvency Resolution Process against the Corporate Debtor was initiated vide order dated 14.09.2023 and Mr. Sajjan Kumar Dokania was appointed as IRP in the matter.
 - Public Announcement in 'Form A' intimating the public regarding the commencement of corporate insolvency process against M/s Jabalpur MSW Pvt Ltd and calling the creditors to submit their proof of claim was published on 18.09.2023, in Economics Times, (English) Bhopal Delhi, Patrika (Jabalpur) and Business Standard (Hindi & English) Delhi NCR inviting claims from the creditors of the Corporate Debtor. The last date of submission of claims was 29.09.2023 and not later than 14 days from the date of Insolvency Commencement date, as stated in the Public Announcement.

- As the 180 days of CIRP were to expire on 13/03/2024 Hon'ble Adjudicating Authority (hereinafter as AA) vide order dated allowed extension of 90 days vide order dated 20/03/2024 in IA/1383/2024.
- It is further submitted that the 270 days of CIRP were to expire on 12/06/2024 Hon'ble AA vide order dated allowed another extension of 60 days vide order dated 12/06/2024 in IA/3113/2024.
- In pursuance of the aforementioned public announcement, claims were received by Applicant from the creditors of Corporate Debtor and the Applicant after verification of the claims received from the creditors, constituted Committee of Creditors (CoC) of the Corporate Debtor as detailed below:

S. No	Financial Creditors	Total Value of Claims (INR) (Accepted)	Voting Share (%)
1	State Bank of India	46,86,88,770.30	45.48
2	Bank of Baroda	20,30,52,506.66	19.70
3	IIFCL	35,88,60,493.46	34.82
Total		1,03,06,01,770.42	100.00

- That the Form-G i.e. INVITATION FOR EXPRESSION OF INTEREST was published in newspapers on 22.11.2023 in Economic Times (English) Bhopal Delhi, Patrika (Jabalpur) and Business Standard (Hindi & English) Delhi NCR INVITATION FOR XPRESSION OF INTEREST with last date for submission of EOI as 07.12.2024. Due to State, Elections in Madhya Pradesh, Model Code of Conduct was in force in the state and as such, Government Organizations couldn't participate in the EOI dated 22.11.2023 till the last date for submission of EOI. Hence, Committee of Creditors (COC) resolved that last date for submission of EOI for government organizations be extended up to 22/12/2023. It was also clarified that Government Organizations would include all Central and State Government entities i.e., public sector undertakings, Corporations, government companies, subsidiary of government companies, trusts, board and all government local bodies and authorities.
- In response to issue of form-G i.e. INVITATION FOR EXPRESSION OF INTEREST, 24 EOIs were received with whom Information memorandum and RFRP (Request for Resolution Plan) were shared. List of final prospective resolution applicants (PRAs) was as below:

- i. M/s Bhagwat Prasad & Sons -Ravi Maheswari(prop)
 - ii. SUBHLAXMI INVESTMENT ADVISORY PVT.LTD
 - iii. Nakshatra Asset Ventures Limited
 - iv. One City Infrastructure Private Limited
 - v. Resurgent property Ventures Private Limited and Sanjay Lodha
 - vi. MPCL Industries Limited
 - vii. Shan G.D. Ispat and Power Private Limited
 - viii. Kundan Care Products Limited
 - ix. Vensar Constructions company Limited and Rekart Innovations Private Limited
 - x. Mercados Energy Markets India Private Limited
 - xi. People's Association for Total Help & Youth Applause (PATHEYA) and M-OZARK Management Consultancy Private Limited
 - xii. HR COMMERCIALS PRIVATE LIMITED and Sunrise Industries and Crown steels.
 - xiii. Kalyan Toll Infrastructure Limited
 - xiv. Prakash Asphal ngs & Toll Highways (India) Ltd.
 - xv. Lakshdeep Investments and Finance Private Limited
 - xvi. SPSS Infrastructure Private Limited
 - xvii. EKI Services Ltd
 - xviii. Greenergy Solar Enterprise Private Limited
 - xix. Sagar Stone Industries
 - xx. RKG Asset Management LLP
 - xxi. Surendra Kumar Bansal
 - xxii. Navneet Garg- Individual
 - xxiii. Harsh Malhotra and Arrow Engineering Limited
 - xxiv. Raj Kumar Jain lead Consortium
- Till the last date of submission of resolution plans i.e. 25.01.2024, 10 PRAs submitted their final resolution plans. List of Prospective Resolution Applicants whose resolution plans were received was as below:
- i. Sagar Stone Industries
 - ii. Mr. Raj Kumar Jain Consortium with Ashok Kumar Jain and Anil Kumar Jain
 - iii. M/s Vensar Constructions Company Limited (Lead Member Consortium with Mis Rekart Innovations Pvt Ltd (Other Member)

- iv. Greenergy Solar Enterprise Pvt Ltd
 - v. MPCL Industries Ltd
 - vi. People's Association for Total Help & Youth Applause (PATHEYA) (Lead Member) and M-Ozark Management Consultancy Private Limited (Consortium Member)
 - vii. Kundan Care Product Limited
 - viii. Mr. Navneet Garg (BG in name of Organic Recycling Systems Ltd)
 - ix. Kalyan Toll Infra Ltd
 - x. EKI Energy Services Limited.
- In the minutes of Fifth COC Meeting dated 22.02.2024 which concluded on 26.02.2024, all the PRA's were invited separately to present their Resolution Plan in front of the COC. The RP clarified to all the PRA's in the meeting that any Cash Surplus/Liquid Assets Surplus available with the Corporate Debtor on the date of handing over the plant to the Successful Resolution Applicant (SRA) will not be transferred to the SRA rather it will be distributed amongst the Creditors as per water flow mechanism as provided in Section - 53 of the IBC 2016.
- In the minutes of Sixth COC Meeting dated 12.03.2024, COC resolved with 100% votes to approve for filing an application with Adjudicating Authority for extension of CIRP Period by 90 days.
- In the minutes of Seventh COC Meeting dated 20.03.2024, RP invited all the Prospective Resolution Applicants to discuss and submit their Final Addendum in their respective Resolution Plan. At the request of the few PRA's and after discussing with the members of the COC, the last date to submit the Addendum in the Resolution Plan was extended up to 07.00PM of 22.03.2024.
- In the Eighth COC Meeting dated 08.04.2024, COC resolved with 100% votes that once the valuation details are disclosed no further Form G will be published.
- In the Ninth COC Meeting dated 23.04.2024, COC resolved with 100% votes that in case of tie among two or more resolution applicants and when all such RA get 66% or more votes in favour then whoever pays the higher amount to the Financial Creditors (FC) shall be declared as approved by Committee of Creditors.
- In the minutes of Eleventh COC Meeting dated 09.05.2024 wherein RP asked the members to finalize the marks of the Qualitative Parameters as per the Evaluation Matrix. After discussions and clarifications in few points, the CoC

members stated that they will finalize and submit their marks respectively via mail to the RP. The RP then said that he will then allot the marks to each Resolution Plan on the basis of average of marks allotted by all the 3 (Three) financial creditors. The members of the COC agreed with this view of the RP.

- In Thirteenth COC Meeting dated 24.05.2024 adjourned to 27.05.2024, COC resolved with 100% votes to go for e-voting for issuance of fresh form G, E-voting for issuance of revised RFRP with provision of Swiss Challenger Method. E-voting was started on 28.05.2024 and after resolution on 14th COC Meeting on 30.05.2024, the same were cancelled on 31.05.2024.
- In Fourteenth COC Meeting dated 30.05.2024, SBI's representative informed the committee that the last date for completion of CIRP period is 12.06.2024. Therefore, it will not be prudent to modify RFRP and again invite EOI for submission of Resolution Plan for the CD.
- In Sixteenth COC Meeting dated 14.06.2024, the RP informed the COC the result of e-Voting on the Resolution Plan of the PRA. He informed that the results of the voting on the resolution plan had been received on July 10, 2024, at 6:30 PM. The RP reported that all three financial creditors unanimously voted, with 100%, votes, in favor of the resolution plan submitted by Kundan Care Product Limited. As such, the Resolution Plan of M/s Kundan Care Products Limited was successfully resolved to be accepted.
- In Eighteenth COC Meeting dated 16.07.2024, Resolution Professional (informed the CoC members that the Successful Resolution Applicant (SRA), M/s Kundan Care Products Limited, has transferred an amount equivalent to 10% of the Resolution Amount, i.e., Rs.6,51,11 000 (Rs. Six Crore, Fifty-One Lakh, Eleven Thousand only) into the Corporate Debtor's account through its group company. This transfer was made in lieu of the Performance Bank Guarantee, as the authorized person of the RA is currently traveling abroad for a business trip. The RP further informed the CoC members that the SRA has requested that this amount be returned to them once they submit the Performance Bank Guarantee of an equivalent amount. Thus, The CoC, with 100% unanimous votes agreed to return the, amount of Rs. 6.5111 Crore to M/s Kundan Care Products Limited, once the Performance Bank Guarantee of an equivalent amount is submitted by them.
- In Resolution Plan, which has been submitted by Resolution Applicant, there is change in management and control of the corporate debtor and such change satisfies the conditions stipulated under Section 32A of the Code, therefore the benefit of immunity under Section 32A of the Code will be applicable to the Resolution Applicant.

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3. We have heard the submissions made by the Ld. Counsel for the applicant and have gone through the documents produced on record.
4. Some key features of the Resolution Plan are as follows

OVERVIEW OF THE RESOLUTION PLAN

- I. The amounts provided for the stakeholders under the Resolution Plan is as under:

16. The amounts provided under the Resolution Plan for payment to Creditors / Stakeholders:

Particulars	Amount of Claim admitted (Rs.)	Amount provided under the Plan (Rs.)	Amount provided to the amount claimed %	Amount available in liquidation (Rs.)
Employees Provident Fund Organisation	41,48,748	41,48,748	100%	N/A
CIRP Cost	0	Upto 5,00,000	100%	0
Secured Financial Creditors	103,06,01,769.96	65,00,00,000	63.07%	54,18,70,501
Unsecured Financial Creditors (except related party)	0	0	0	0
Workmen / Employees	1,72,115	1,72,115	100%	0
Operational Creditors (Government Dues other than EPFO)	3,52,17,293.15	1,00,000	0.28%	0
Operational (Other than Workmen and Employees and Government Dues) - Vendors /	5,60,30,469.93	1,00,000	0.18%	0



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Suppliers				
Related Party (includes Unsecured Financial Creditors & Operational Creditor)	0	0	0	0
Total	113,03,19,145	65,50,20,863		54,18,70,501

II. Source of Funds

The source of funds proposed to be infused in the Corporate Debtor and/or paid to its Creditors/Stakeholders under this Resolution Plan will be from the Resolution Applicant's own funds and/or the funds of Group Companies/NBFCs.

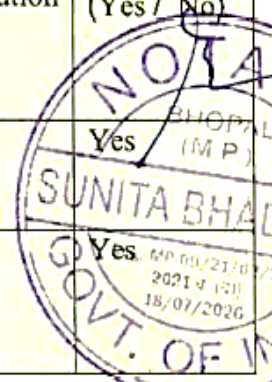

The Resolution Applicant is fully aware of the reasons due to which the Corporate Debtor faced distressed situation which resulted in stopping of operations. In order to properly address the cause of default of the Corporate Debtor, the Resolution Applicant proposes to infuse its own funds for carrying out Project works, etc.

III. Compliances

The final Resolution Plan submitted by SRA meets the requirements of Section 30(2) of the Code as under: -

9. The compliance of the Resolution Plan is as under:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?		Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	13	Yes

Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?		Yes
Section 30(2)	Whether the Resolution Plan-		
	(a) provides for the payment of insolvency resolution process costs?	5.1	Yes
	(b) provides for the payment to the operational creditors?	5.2	No
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	5.2	Yes
	(d) provides for the management of the affairs of the corporate debtor?	5.3	Yes
	(e) provides for the implementation and supervision of the resolution plan?	5.4	Yes
	(f) contravenes any of the provisions of the law for the time being in force?	5.5	No
Section 30(4)	Whether the Resolution Plan		
	(a) is feasible and viable, according to the CoC?		Yes
	(b) has been approved by the CoC with 66% voting share?		Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?		Yes
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?		Yes
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	7	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	8	Yes
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	9	Yes
Regulation 38(2)	Whether the Resolution Plan provides:		
	(a) the term of the plan and its implementation schedule?	10.1	Yes
	(b) for the management and control of the business of the corporate debtor during its term?	10.2	Yes
	(c) adequate means for supervising its implementation?	10.3	Yes
38(3)	Whether the resolution plan demonstrates that –		

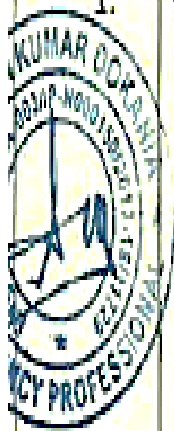


	(a) it addresses the cause of default?	11.1	Yes
	(b) it is feasible and viable?	11.2	Yes
	(c) it has provisions for its effective implementation?	11.3	Yes
	(d) it has provisions for approvals required and the timeline for the same?	11.4	Yes
	(e) the resolution applicant has the capability to implement the resolution plan?	11.5	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.		Yes

IV. Payment of CIRP Cost - As per information received from Resolution Professional there is no outstanding CIRP Cost as on the date of submission of this Resolution Plan. However, Resolution Applicant is ready to borne the future CIRP Cost on actual basis upto INR 5,00,000.00 (Rupees Five Lakh Only) and any amount over and above the same shall be borne by Financial Creditor.

V. The summary of the financial proposal under the Resolution Plan is as under:

S. NO.	DESCRIPTION	AMOUNT (IN INR)
1.	CIRP Cost	As per information received from Resolution Professional there is no outstanding CIRP Cost as on the date of submission of this Resolution Plan. However Resolution Applicant is ready to borne the future CIRP Cost on actual basis upto INR 5,00,000.00 (Rupees Five Lakh Only) over and above shall be borne by Financial Creditor.



2.	Workmen and Employees	INR 1,72,115.00 (Rupees One Lakh Seventy Two Thousand One Hundred Fifteen Only)
3.	Employees Provident Fund Organisation (EPFO)	INR 41,48,748.00 (Rupees Forty One Lakh Forty Eight Thousand Seven Hundred Forty Eight Only)
4.	Operational Creditors (Government Dues other than EPFO)	INR 1,00,000.00 (Rupees One Lakh Only)
5.	Operational (Other than Workmen and Employees and Government Dues) - Vendors / Suppliers	INR 1,00,000.00 (Rupees One Lakh Only)
6.	Financial Creditors (Secured)	<p>INR 65,00,00,000.00 (Rupees Sixty Five Crore Only)</p> <ul style="list-style-type: none"> • Upfront INR 25,00,00,000.00 (Rupees Twenty-Five Crore Only) (Effective Date + 30 days) • INR 20,00,00,000.00 (Rupees Twenty Crore Only) (Effective Date + 90 days) • INR 20,00,00,000.00 (Rupees Twenty Crore Only) (Effective Date + 120 days)
	TOTAL (A)	INR 65,50,20,863.00
7.	Estimated Capital Expenditure by Resolution Applicant	INR 16,00,00,000.00
	TOTAL (B)	INR 16,00,00,000.00
8.	Total Outlay under the Resolution Plan (A + B)	INR 81,50,20,863.00

VI. Term of the Resolution Plan and its Implementation Schedule

17. The term of plan and its implementation schedule in detail R.38(2):

Sr. no.	Activity	Timeline (Days)
1.	Effective Date	Approval of this Resolution Plan by the Hon'ble NCLT
2.	Transfer Date	Effective Date + 30 days
3.	Completion Date	Effective Date + 120 days (maximum)

VII. Valuation of the Corporate Debtor

Pursuant to the Regulation 27 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations 2016, the Applicant appointed two registered valuers in each class of asset to determine the fair value and liquidation value of the corporate debtor in accordance with the provisions of Regulations 35 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations 2016 performing the valuation of all the classes of assets of the Corporate Debtor. The summary of value computed by the valuers in their respective valuation reports are as follows:

Sr. No.	Name of Valuer	Class of Assets	Fair value	Liquidation Value
1.	YATENDRA PALIWAL	Land & Building	6,74,70,000	33,73,500
2.	GTECH VALUERS PVT LTD	Land & Building	2,11,89,614	63,43,502
		Avg. Value of Land and Building	4,43,29,807	48,58,501
3.	PRADEEP KUMAR	Plant & Machinery	88,59,00,000	62,01,00,000
4.	GTECH VALUERS PVT LTD	Plant & Machinery	75,56,65,000	45,39,24,000
		Avg. Value of Plant and Machinery	82,07,82,500	53,70,12,000



5.	RAJAN SACHDEV	Financial Assets & Securities	0	0
6.	GTECH VALUERS PVT LTD	Financial Assets & Securities	0	0
		Avg. Value of Financial Assets & Securities	0	0
		Overall Avg. Value	86,51,12,307	54,18,70,501

VIII. Details of payment schedule:

	Amount in Crore	Details of payment
Earnest Money Deposit	0.5 Cr.	Already paid as Bid Bond Guarantee Amount
Upfront Contribution, if any, as per the Resolution Plan submitted by the applicant	25 Cr.	To be paid within 30 days of Effective Date
Performance Security under Regulation 39(4) Sub Regulation (4A) of Regulation 36B read with Regulation 39(4)	Rs. 6.5111 Crore	Already submitted
Remaining Amount	33.491 Crore	To be paid within 120 days of Effective Date.

IX. With respect to compliance regarding Regulation 39(4) of the CIRP Regulations, the applicant has filed compliance certificate in Form-H certifying that the Resolution Plan submitted by the successful resolution applicant meets the requirements as laid down in various sections of the Code and the CIRP Regulations and there are sufficient provisions in the Plan for its effective implementation as required under the Code. Further, an affidavit has been obtained from the Successful Resolution Applicant stating that he is not ineligible under the provisions of Section 29A of the Code, 2016.

- X.** CoC with 100% Voting has resolved that present RP on behalf of CoC would pursue all PUFEE or avoidance applications after the approval of Resolution Plan by NCLT without any Professional Fees except for cost and expenses incurred on actual basis and all recoveries realisation from such Applications will be distributed among all creditors/ stakeholders of Corporate Debtor in accordance with Section -53 of IBC.

5. Analysis and Findings

- i. This Adjudicating Authority finds that the Resolution Plan was submitted by the Successful Resolution Applicant namely **M/s. KUNDAN CARE PRODUCTS LIMITED** which was approved by the CoC in its 16th CoC meeting dated 14.06.2024 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. This Adjudicating Authority has further relied on the Hon'ble Supreme Court's decision in the matter of **Vallal RCK vs. M/s. Siva Industries and Holdings Limited and Others, Civil Appeal Nos. 1811-1812 of 2022** whereby the Hon'ble Apex Court has answered the question as to whether **'the adjudicating authority (NCLT) or the appellate authority (NCLAT) can sit in an appeal over the commercial wisdom of the Committee of Creditors ("CoC") or not'**. We rely upon the following paragraphs:

“21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring the completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption that Financial Creditors are fully informed about the viability

of the Corporate Debtor and the feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed Resolution Plan and assessment made by their team of experts.”

A reference in this respect could be made to the judgments of this Court in the cases of “**K. Sashidhar v. Indian Overseas Bank and Others, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.**

27. This Court has, time and again, emphasized the need or minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the case of **Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another:**

.....

“95. However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was

introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The Legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC”

- iv. The applicant has prayed for number of waivers in the Resolution Plan. As to the relief and concessions sought in the resolution plan, by taking into consideration 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**, we direct the Successful Resolution Applicant to file necessary application before the necessary forum/ authority in order to avail the necessary relief and concessions, in accordance with respective laws. 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.”

- v. 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.

- vi. Recently Hon'ble Supreme Court in their judgment dated 01.04.2025 passed in "**PIRAMAL CAPITAL AND HOUSING FINANCE LIMITED (FORMERLY KNOWN AS DEWAN HOUSING FINANCE CORPORATION LIMITED) vs 63 MOONS TECHNOLOGIES LIMITED & OTHERS (CIVIL APPEAL NOS. 1632-1634 OF 2022)**" has examined the issue of scope of Judicial Review in the matter of approval of Resolution Plan. After analysing all the aforementioned judgments and other judgments, Hon'ble Supreme Court has stated as under:

"42. In view of the above legal position settled by this Court in the fleet of judgments, it is no more res integra that the legislature has given paramount importance to the "commercial wisdom" of CoC, and that the scope of the judicial review by the Adjudicating Authority (NCLT) is limited to the extent provided under Section 31, and that of the Appellate Authority (NCLAT) is limited to the extent provided under sub-section (3) of Section 61 of the IB....."

43. While considering the feasibility and viability of the Prospective Resolution Plans, the CoC can always suggest a modification therein and exercise its commercial wisdom. However, once the RP is approved by the requisite majority of CoC, and when such RP is placed before the Adjudicating Authority for its approval under Section 31, the Adjudicating Authority has to only see whether such RP as approved by the CoC meets the requirements as referred to in Section 30(2). It is only where the Adjudicating Authority is satisfied that the RP does not conform to the requirements of sub-section (1) of Section 31, it may by an order reject the RP. It is true that the NCLT has to decide all the questions on law or fact arising out of or in relation to the insolvency resolution or liquidation under the residuary jurisdiction vested in NCLT under Section 60(5), however as held in *Essar Steel (supra)*, such residual jurisdiction does not in any manner impact Section 30(2) of the Code, which circumscribes the jurisdiction of the Adjudicating Authority, when it comes to the confirmation of RP, as has been mandated by Section 31(1) of the Code.”

vii. On Perusal of the Resolution Plan, it emerges that the plan provides for -:

a) SECTION 30(2)(A)- Provision for Payment of Insolvency Resolution Cost” - As per information received from Resolution Professional there is no outstanding CIRP Cost as on the date of submission of this Resolution Plan. However, Resolution Applicant is ready to borne the future CIRP Cost on actual basis up to INR 5,00,000.00 (Rupees Five Lakh Only) over and above shall be borne by Financial Creditor. (As provided under **Heading 5.1** of the Resolution Plan)

b) “SECTION 30(2)(B)- Payment to Operational Creditors and Dissenting Financial Creditors” - This Resolution Plan provides for payment to Operational Creditors the amount to be paid to such creditors in the event of a liquidation of the Corporate Debtor under section 53 of the Code, or the amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher. This Resolution Plan also provides for payment to Dissenting Financial Creditors to the amount to be paid to such financial creditors in event of liquidation of C.D in accordance with sub-section (1) of Section 53 of the Code. (As provided under **Heading 5.2** of the Resolution Plan)

- c) **“SECTION 30(2)(C)- Management of the Affairs of the Corporate Debtor After Approval of the Resolution Plan”** – On and from the Effective Date, the powers of the Board of Directors will vest with the Monitoring Agency until the Completion Date. On and from the Completion Date, the Monitoring Agency will be dissolved and the management and control of the Corporate Debtor will vest with the Resolution Applicant, who will be entitled to appoint its nominees/representatives/assigns as Directors. The newly constituted Board of Directors shall be vested with the overall control and management of affairs of the Corporate Debtor with effect from the Completion Date. (As provided under **Heading 5.3** of the Resolution Plan)
- d) **“SECTION 30(2)(D)- THE IMPLEMENTATION AND SUPERVISION OF THE RESOLUTION PLAN”**- This Resolution Plan provides for the constitution of a Monitoring Agency for the implementation and supervision of the resolution plan after the Effective Date until the Completion Date. (As provided under **Heading 5.4** of the Resolution Plan)
- e) **“SECTION 30(2)(E)- NO CONTRAVENTION ANY OF THE PROVISIONS OF THE LAW FOR THE TIME BEING IN FORCE”** - This Resolution Plan does not contravene any of the provisions of the law for the time being in force. (As provided under **Heading 5.5** of the Resolution Plan)

viii. 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.”

6. In light of the above-quoted judgements, it is clear that the **“Commercial wisdom of CoC”** is given paramount status. This Adjudicating Authority is not endowed with the powers of jurisdiction or authority to analyse or evaluate the commercial decision of the CoC. The Resolution Plan was submitted by the Successful Resolution Applicant namely M/s. Kundan Care Products Limited which was approved by the CoC in its 16th convened meeting dated 14.06.2024 under section 30(4) of the IBC by 100% voting share, this Adjudicating Authority cannot interfere in the same.
7. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Sections 25(2)(h), 29A, 30(2), 30(4) and 31(1) of the IBC and also complies with Regulations 35A, 36B(4A), 37, 38(1), 38(1A), 38(1B), 38(2), 38(3), 39(1), 39(2) and 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Applicant/RP has filed a Compliance Certificate in the prescribed Form, i.e., Form-H as per the amended Resolution Plan in compliance with Regulation 39(4) of the CIRP Regulations. The Applicant/RP submits that the Successful Resolution Applicant is not disqualified under Section 29A of the Code to submit the Resolution Plan, as required by Regulation 39(1)(a) of the CIRP Regulations. A separate undertaking has also been submitted along with the EoI by the Successful Resolution Applicant, as mandated in terms of Regulation 39(1)(c) of the CIRP Regulations.
8. The reliefs, concessions and waivers sought by the Successful Resolution Applicant will be dealt with strictly as per law.

9. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.
10. In case of non-compliance of this order or withdrawal of the Resolution Plan within the stipulated time, in addition to other consequences which follow under law, the CoC shall forfeit the EMD already paid by the SRA as well as the Performance Bank Guarantee.
11. In view of the above, we are of the considered view that the present application has been filed with bonafide means, in the interest of justice and to advance the objectives of the Code.
12. Thus, from the judgements cited supra, it is amply clear that only limited judicial review is available to the Adjudicating Authority under Section 30(2) read with Section 31 of the Code, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the committee of the creditors.
13. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan. Accordingly, we hereby **approve the Resolution Plan with a plan value of Rs.81,50,20,863/- (Rupees Eighty One Crore Fifty Lakh Twenty Thousand Eight Hundred and Sixty Three Only)**, which shall be binding on the corporate debtor and its employees, shareholders of corporate debtor, creditors including the Central Government, any State Government or any local authority to whom statutory dues are owed, guarantors, successful resolution applicant and other stakeholders involved. In view of the above, **I.A. 36/2024 stands allowed. The Resolution Plan shall form part of this Order.**

“Effective Date” means the date on which this Resolution Plan is approved by this Adjudicating Authority under Section 31 of the Code.

14. It is declared that the moratorium order passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of pronouncement of this order.
15. However, the resolution plan shall not be construed as waiver to any statutory obligations/liabilities arising out of the approved resolution plan and the same shall be dealt in accordance with the appropriate authorities concerned as per relevant laws. We are of the considered view that if any waiver is sought in the resolution plan, the same shall be subject to approval by the concerned authorities. The same view has been held by the Hon'ble Supreme Court in **Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Embassy Property Development case (supra)**.
16. Accordingly, MoA and AoA of the corporate debtor shall be amended and filed with the RoC for information and record as prescribed. While approving the 'resolution plan' as mentioned above, it is clarified that the 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.
17. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the corporate debtor and the Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code. The Resolution Professional is further directed to handover all the records, premises, properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.

18. The approved 'Resolution Plan' shall become effective from the date of passing of this order. The Approved Resolution Plan shall be part of this order.
19. Within two business days from the effective date, a Monitoring Committee of three members consisting of one nominee member of the CoC and one nominee member of SRA and Resolution Professional should be constituted. The Monitoring Committee shall oversee the working of newly constituted Board of Directors of Corporate Debtor till the Completion Date. It shall also supervise the implementation of this Resolution Plan.
20. The Registry is hereby directed to send copies of the order forthwith to the IBBI, all the parties and their Ld. Counsel for information and for taking necessary steps.
21. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

File be consigned to the record.

No order as to costs.

-SD/-

**(ATUL CHATURVEDI)
MEMBER TECHNICAL**

-SD/-

**(MAHENDRA KHANDELWAL)
MEMBER JUDICIAL**