

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH, COURT-IV

I.A./3662/ND/2022

IN

C.P. No. IB-1071/ND/2019

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

IN THE MATTER OF:

Mr. Ankit Kishore Sinha,

Resolution Professional of

M/s. Straight Edge Contracts Private Limited

...APPLICANT

AND

IN THE MATTER OF:

M/s. Gupta Ji Electric Company

Versus

...Operational Creditor

M/s. Straight Edge Contracts Private Limited

...Corporate Debtor

ORDER DELIVERED ON: 13.10.2022

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

ORDER

PER: SH. DHARMINDER SINGH, MEMBER (JUDICIAL)

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') on behalf of Mr. Ankit Kishore Sinha Resolution Professional (RP) of M/s.

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Straight Edge Contracts Private Limited ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by M/s. Noida Shopping Centre Private Limited ('Successful Resolution Applicant') and approved by the Committee of Creditors ('CoC') in its 7th CoC Meeting held on 19.07.2022 with 100% voting in favour.

2. Briefly stated, the facts as averred by the applicant in the application are stated are as follows:

- a) The applicant submits that the Corporate Insolvency Resolution Process was initiated against M/s. Straight Edge Contracts Private Limited (Corporate Debtor) by the Hon'ble NCLT vide order dated 26.02.2020 in C.P. (IB) No. 1071/2019, a petition filed by M/s. Gupta Ji Electronic Company under Section 9 of the Code, 2016 and Mr. Ranjit Kumar Verma (erstwhile IRP) was appointed as the IRP of the Corporate Debtor.
- b) The applicant submits that Mr. Rajesh Nagpal ('Suspended Director of the Corporate Debtor') being aggrieved by the order dated 26.02.2022 had preferred an appeal bearing Company Appeal (AT)(INS) 388/2020 before the Hon'ble NCLAT. The applicant further submits that vide order dated 13.03.2020, the Hon'ble NCLAT had set aside the impugned admission order in light of a Memorandum of Understanding that was executed between Mr. Rajesh Nagpal and the Operational Creditor. The applicant adds that subsequent to the same, vide an order dated 28.09.2020, the Hon'ble NCLAT had recalled its earlier order dated 13.03.2020 and the admission order dated 26.02.2020 passed by this Hon'ble NCLT was restored.
- c) The Applicant submits that the erstwhile IRP had made a public announcement dated 2.03.2020 inviting claims from all the creditors of the Corporate Debtor was made by the IRP in Form A of Schedule II under Regulation 6 of the Insolvency and Bankruptcy Board of India (insolvency Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations"). The applicant further submits that pursuant to the same, after verification of the claims and revising the constitution of OCO, the final list of members of the COC from 12.01.2022 along with their respective voting share is as follow:-

S.No.	Financial Creditor	Voting share %
1.	Gulshan Homz Private Limited	92.78%
2.	Mr. Divam Kapoor	5.57%
3.	Castle Buildcon Private Limited	1.65%
TOTAL		100%

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- d) The applicant submits that the first meeting of CoC was convened by the erstwhile IRP on 04.11.2020, wherein the erstwhile IRP was replaced and the applicant was appointed as RESOLUTION Professional of the Corporate Debtor and the same was confirmed by the Hon'ble NCLT vide its order dated 24.11.2020. The applicant further submits that the second meeting of CoC was convened on 30.12.2020 the appointment of Registered Valuers and Legal Advisor and ratification of their fees therein, and authorising the Resolution Professional to take day-to-day action of the Corporate Debtor under Section 28(1) of the IBC, were discussed. And the same was approved by COC with 100% voting in favour.
- e) The applicant submits that third meeting of CoC was convened on 22.01.2021, wherein publication of Form G to invite Expression of Interest (Eoi) under Regulation 36A(1) of the CIRP Regulations and issuance of interim finance for the CIRP, were discussed and the same were passed by a majority vote of 100%. The applicant further submits that the fourth meeting of COC was convened on 02.03.2022 wherein the CoC unanimously passed resolutions inter alia, approving the Draft Information Memorandum and authorizing the Applicant/RP to do all such acts as may be necessary to invite Eoi.
- f) The applicant submits that the CIRP period of 180 days of the corporate debtor was expired on 05.03.2022, and the Hon'ble NCLT vide order dated 22.03.2022 allowed the extension of 90 days CIRP period. The applicant further submits that the Hon'ble NCLT vide order dated 09.06.2022 granted an extension of further 60 (sixty) days, beginning from 04.06.2022, accordingly, the insolvency process of the Corporate Debtor was extended till 02.08.2022. The applicant adds that NCLT vide order dated 22.01.2021 has allowed exclusion of time period from 03.02.2021 to 12.01.2022 from the CIRP period of corporate debtor on account of stay of COC Meeting.
- g) The applicant submits that invitation of expression of interest in Form G was published in Business Standard newspaper on 01.04.2022. The applicant further submits that pursuant to the Fifth meeting of the CoC held on 19.04.2022, the period for submission of Eois was extended by another 15 (fifteen) days accordingly, another Public Announcement was made in this regard on 21.04.2022 in the Business Standard Newspaper.
- h) The applicant submits that pursuant to the publication of second Form-G on 21.04.2022, only one EOI dated 04.05.2022 was received from M/s. Noida Shopping Centre Private Limited. The applicant further submits that the Provisional List of Resolution Applicant was published on 10.05.2022 and Final List of Resolution Applicant was published on 19.05.2022 with only one name of the M/s. Noida Shopping Centre Private Limited. The applicant further submits that in compliance with Regulation 36B of the

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CIRP Regulations, Information Memorandum and Request for Resolution Plan ("RFRP") was issued to M/s. Noida Shopping Centre Private Limited on 13.05.2022.

- i) The applicant submits that M/s. Noida Shopping Centre Private Limited had submitted the resolution plan on 24.06.2022, which was put before the CoC on 19.07.2022 in its seventh CoC Meeting for deliberation. The applicant further submits that during the CoC meeting, the applicant had apprised the CoC members about the salient features of the Resolution Plan submitted by M/s. Noida Shopping Centre Private Limited. The applicant adds that after deliberations and discussion, the Coc in its seventh CoC meeting had approved the resolution plan dated 24.06.2022 submitted by M/s. Noida Shopping Centre Private Limited ("Successful Resolution Applicant") with 100% voting in affirmative.
- j) The applicant submits that pursuant to the approval of the Resolution Plan submitted by the Successful Resolution Applicant, Letter of Intent ("Lol") was issued by the applicant to the Successful Resolution Applicant on 21.07.2022. The applicant further submits that Lol issued in furtherance of the Plan approved by the CoC, inter alia provided that, the SRA shall infuse funds of Rs. 1,33,69,675/- (Rupees One Crore Thirty-Three Lakhs Sixty-Nine Thousand Six Hundred Seventy-Five Only) ("Resolution Plan Amount") and further that, the RA shall provide the signed Lol along with a PBG of an amount equal to 15 per cent of the Resolution Plan Amount, to the Applicant within 5 (five) days of the issuance of the Lol. The applicant adds that a signed Lol along with the Performance Bank Guarantee having PBG Number: 050121GLO002722 amounting Rs.20,10,000/- (Rupees Twenty Lakhs Ten Thousand Only) was issued by the Successful Resolution Applicant on 25.07.2022.

3. The salient features of the resolution plan submitted by M/s. Noida Shopping Centre Private Limited and as approved by the COC in its 7th CoC Meeting held on 19.07.2022 with 100% voting in favour.

I. Background of the Resolution Applicant

M/s. Noida Shopping Centre Private Limited is a company incorporated on 13.07.1995 and primarily deals in real state investments and in providing comprehensive strategies to unlock value as well as practical solutions to a broad range of activities of services relating to the real estate projects.

II. Summary of claims vis-à-vis provisions of the Resolution Plan

The basis of settlement of claims of various classes of stakeholders, their order of priority and their respective settlement amount is provided under:

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Resolution Applicant (Proposed Amount)	Amount Admitted	Amount Proposed (INR)	Timelines
Payment of CIRP Cost			
The Resolution Plan provides that the outstanding CIRP Cost will be paid in full and discharged before and payment if made to any of the creditors.		70,26,442/- (Estimated) CIRP cost will be paid as per the actuals.	Upfront within one (1) month of tentative effective date ('E'), wherein, tentative effective date is equal to the date of approval by the Adjudicating Authority ('X') plus 10 days.
Payment of the dues of Unsecured Financial Creditors			
The Plan provides a fix lump sum amount payable to all the creditors of this category.	1,37,12,351/-	41,13,791/-	Upfront within one (1) month of tentative effective date ('E'), wherein, tentative effective date is equal to the date of approval by the Adjudicating Authority ('X') plus 10 days.
Payment of the dues of the Unsecured Operational Creditors			
Payment of the dues of the Unsecured Operational Creditors- Workmen & Employees 12 months	10,16,400/-	10,16,400/-	Upfront within one (1) month of tentative effective date ('E'), wherein, tentative effective date is equal to the date of approval by the

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immediately preceding the Insolvency Commencement date			Adjudicating Authority ('X') plus 10 days.
Payment of the dues of the Unsecured Operational Creditors- Workmen & Employees others	3,20,860/-	1,604/-	Upfront within one (1) month of tentative effective date ('E'), wherein, tentative effective date is equal to the date of approval by the Adjudicating Authority ('X') plus 10 days.
Payment of the dues of the Unsecured Operational Creditors- Other than Workmen & Employees 12 months immediately preceding the Insolvency Commencement date	4,22,87,539/-	2,11,438/-	Upfront within one (1) month of tentative effective date ('E'), wherein, tentative effective date is equal to the date of approval by the Adjudicating Authority ('X') plus ten (10) days.
Payment of dues of the Unsecured Operational Creditors- Government Dues	-----	-----	-----
Contribution for Working Capital	-----	10,00,000/-	Upfront within one (1) month of tentative effective date ('E'), wherein, tentative

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			effective date is equal to the date of approval by the Adjudicating Authority (X) plus ten (10) days.
Means of Finance			
Infusion of Funds by the Resolution Applicant from Internal Sources and contributed in the Corporate Debtor in the form of equity as well as debt.			

III. Term of Resolution Plan

The resolution plan envisages duration of one month for the committed repayment to the financial creditors, operational creditors and other creditors.

IV. Concessions, Waivers and Exemption

"The Resolution Applicant requests the NCLT for the reliefs and concessions set out below for the successful implementation of the Resolution Plan. By approving this Resolution Plan, the NCLT shall approve the waivers, reliefs and concessions, as listed below:

i. From the Effective Date, all inquiries, investigations and legal and quasi-legal proceedings/ prosecution, whether civil or criminal, suits, claims, disputes, proceedings in connection with Straight Edge Contracts Private Limited or affairs of Straight Edge Contracts Private Limited (including those initiated by Governmental Authorities), pending or threatened present or future in relation to any period prior to the Effective Date, or arising on account of implementation of this Resolution Plan shall stand withdrawn and dismissed and all liabilities and obligations therefore, whether or not set out in the balance sheets of Straight Edge Contracts Private Limited or the profit and loss account statements of Straight Edge Contracts Private Limited will be deemed to have been written off fully, and permanently extinguished and no adverse orders passed in the said matters should apply to Straight Edge Contracts Private Limited or the Resolution Applicant. Upon approval of this Resolution Plan, all new inquiries, investigations, notices, suits, claims, disputes, litigations, arbitrations or other judicial, regulatory or administrative proceedings will be deemed to be barred and will not be initiated or admitted against Straight Edge Contracts Private Limited and its new management in relation to any period prior to the Effective Date.

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ii. Upon approval of the Resolution Plan by the NCLT, all non-compliances, dues, breaches and defaults of Straight Edge Contracts Private Limited for the period prior to the Effective Date (including but not limited to those relating to tax), shall be deemed to be waived by the concerned Central Govt./ all State Governments / Semi-Govt. Authorities, including but not limited to ROC, Pollution board, Income Tax, TDS, GST, VAT Sales Tax, Environment Clearance, Electricity Board Authority, Sub-Registrar, etc. However, the Resolution Applicant shall make all necessary efforts to get the approvals/ legal compliances, renewed as per the prescribed norms under the applicable laws

iii. Immunity shall be deemed to have been granted to Straight Edge Contracts Private Limited/Resolution Applicant and its directors and employees from all proceedings / prosecutions and penalties under all Applicable Laws for any noncompliance for the period prior to the Effective Date and no interest/penal implications and/or prosecution shall arise due to such non-compliance / default breach prior to the Effective Date. This includes, without limitation, waiver/ extinguishment of penalties / interests on account of staggered payment of statutory liabilities of the workmen/ employees of Straight Edge Contracts Private Limited in accordance with the terms of this Resolution Plan.

iv. This further includes Waiver/ extinguishment of any tax, duty and legal liability pertaining for the period prior to the Effective Date under any state laws or central laws such as any future kind of existing and/or litigation/ assessment/ scrutiny/ contingency.

v. Waiver of any income-tax and Minimum Alternate Tax (MAT), liability or consequences (including interest, fine, penalty, etc), if any on CROSS, Resolution Applicant and its shareholders, upto approval of Resolution Plan, including but not limited to liabilities if any under Section 41 (1), Section 56, Section 43, Section 43 B, Section 28, Section 115JB and Section 79 of the Income-tax Act, 1961, without any impact on brought forward tax and book loss / depreciation, pursuant to this Resolution Plan.

vi. Any requirement to obtain waivers from any Tax Authorities including in terms of section 79 of the IT Act shall be granted upon approval of this Resolution Plan on the Effective Date.

vii. Any approvals that may be required from Central Government/ any State Government semi government / local Authorities (including tax authorities) in connection with the implementation of the Resolution Plan including on account of change in ownership / control of CROSS shall be deemed to have been granted on the Effective Date.

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viii. The Governmental Authorities, Electricity Board of Straight Edge Contracts Private Limited, Delhi, Electricity department of Straight Edge Contracts Private Limited and Delhi will provide the electricity connection/reconnection after the acquisition of Straight Edge Contracts Private Limited by the Resolution Applicant without payment of any dues related to the period up to the Effective Date to them by Straight Edge Contracts Private Limited.

ix. Any authority, power of attorney, rights given by Straight Edge Contracts Private Limited to any person/representative up to the effective date shall become infructuous and void.

x. Directions to be given that liberty be reserved to the Corporate Debtor, Resolution Applicant and to all other persons interested in the Resolution Plan to apply to the NCLT for any direction(s) that may be necessary for the purpose of carrying out the Resolution Plan.

xi. This Resolution Plan once approved by the CoC and then the Hon'ble Adjudicating Authority / NCLT, along with such conditions as may be stipulated by the Hon'ble Adjudicating Authority shall be binding on the all claimants Creditors, members, promoter and all other parties in interest and each of their respective successors and assigns in accordance with Sections 31(1) and 238 of IBC. The Resolution plan should be read in its entirety and any modification by the COC/NCLT/NCLAT would be binding on the Resolution Applicant/ Straight Edge Contracts Private Limited, subject to specific concurrence of Resolution Applicant w.r.t such modification."

V. Supervision, Monitoring and Implementation of the Resolution Plan

Immediately upon Effective date, Monitoring Committee shall be constituted and RP shall convene meeting of the Monitoring Committee within 7 days of receipt of the order of the Hon'ble Adjudicating Authority approving this Resolution Plan. The Monitoring Committee shall be comprised of following members:-

(i) Existing Resolution Professional as Chairman. (ii) One Authorised Representative on behalf of the Resolution Applicant. Resolution Applicant may also choose to nominate an Insolvency Professional registered with IBBI as its representative. (iii) One Representative to be nominated by the financial creditors of the Corporate Debtor.

4. In view of Section 31 of the Code, the Adjudicating Authority, before approving the Resolution Plan, is required to examine that a Resolution Plan which is approved by the CoC under Section 30 (4) of the Code meets the requirements as referred under Section 30 (2) of the Code.

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Section 30 (2) is quoted below: -

“(2) The resolution professional shall examine each Resolution Plan received by him to confirm that each Resolution Plan –

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the Resolution Plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) where a Resolution Plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a Resolution Plan;]

(c) provides for the management of the affairs of the Corporate debtor after approval of the Resolution Plan;

(d) The implementation and supervision of the Resolution Plan;

(e) does not contravene any of the provisions of the law for the time being in force

(f) conforms to such other requirements as may be specified by the Board.

Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the Resolution

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Plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]”

5. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in clause 7.1. (Payment of CIRP Cost) of Financial Proposal of the Resolution Plan wherein it provides for the payment of the CIRP cost in priority to other creditors of the corporate debtor. The estimated CIRP cost as per the information provided will be Rs.70,26,442/-, which may increase during the course of CIRP Period, however, the actual CIRP cost will be paid in full in priority to any other creditor.
6. In respect of compliance of Section 30(2)(b) of the Code, it is seen that there is a provision in clause 7.3 (Proposal to dissenting financial creditor) and Clause 7.4 (Proposal for Operational Creditors) of Financial Proposal of the resolution plan wherein it provides for the payment of amount due as per Section 53 of the Code, 2016 to the operational creditor in priority over financial creditor and payment to the dissenting financial creditor.
7. In respect of compliance of Section 30(2)(c) and 30(2)(d) of the Code, it is seen that the manner of the management of the affairs and control of the business of the Corporate Debtor has been provided in detail in Section 11 (Management and control during Term of Resolution Plan) and Section 12 (Supervision, Monitoring and Implementation of the Resolution Plan) of the Resolution Plan. The resolution plan provides for the constitution of monitoring committee which states that upon the NCLT approval stage an implementation and monitoring committee comprising of (i) Existing Resolution Professional as Chairman. (ii) One Authorised Representative on behalf of the Resolution Applicant and (iii) One Representative to be nominated by the financial creditors of the Corporate Debtor shall be constituted to monitor and supervise the implementation of the plan. The monitoring committee shall dissolve immediately after the Transfer date as envisaged under the Resolution Plan.

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8. In respect of compliance of Section 30(2)(e) and 30(2)(f) of the Code, it is seen that the declaration the plan is not in contravention of provisions of the applicable law has been provided in clause 15 (statements, declarations and compliances with provision of IBC, 2016 and CIRP Regulations) confirming that the resolution plan is in compliance with such other requirements as may be specified by the board
9. In respect of compliance regarding Regulation 38 of the CIRP Regulations, it is seen that the clause 7 (Financial Proposal) read with clause 9 (Cost of Plan and Means of Finance) of the resolution plan provides how it will deal with the interest of all the stakeholders including Financial Creditors and the Operational Creditors and effective term and supervision of the resolution plan. Further, Clause 11, 12 and 15 provides for the implementation, supervision and management of the business of the corporate debtor.
10. In respect of 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 eligible under the provisions of Section 29A of the Code, 2016.
11. On perusal of Form-H, we observe that no application for Preferential, Undervalued, Extortionate Credit, Fraudulent or Avoidance Transaction ('PUFE') was filed before this Adjudicating Authority. We further observe that the fair market value of the corporate debtor as provided in Form- H is Rs.80,26,297/- crores and the liquidation value of the corporate debtor is Rs.69,77,582/-.
12. As to the relief and concessions sought in the resolution plan more specifically set out in Clause 14 (Other Terms of the Plan) of the Resolution Plan, 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, quasijudicial 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 subsection (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."

13. As per the Resolution Plan, the "**Effective Date**" means the date on which the following have been completed:

- a) 100% Shareholding has been vested with the Resolution Applicant/ its nominees.
- b) Nominees of the Resolution Applicant have been appointed on the Board of Directors of the Straight Edge Contracts Private Limited and present directors are deemed to have vacated offices."

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14. As per the Resolution Plan, the **“Transfer Date”** shall mean the date on which proposed transaction is completed and corporate debtor is handed over to Resolution Applicant in accordance with the terms of the RFRP and the Definitive Agreements and in accordance with the applicable law.

15. In so far as the approval of the resolution plan is concerned, this authority is not sitting on an appeal against the decision of the Committee of Creditors and 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

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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.

16. 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."

17. 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.

18. We find that the corporate insolvency resolution process was initiated against M/s. Straight Edge Contracts Private Limited (corporate debtor) on 26.02.2020 and the resolution plan was approved by the CoC on 19.07.2022 consequent to which the application for approval of resolution plan by this Adjudicating Authority was filed on 25.07.2022. The extended CIRP Period of Corporate Debtor after considering the exclusion from 03.02.2021 to 12.01.2022 allowed vide order dated 12.01.2022, extension of 90 days was granted vide order dated 22.03.2022 and further extension of 60 days was granted vide order dated 09.06.2022 and CIRP period came to end on 02.08.2022. Taking, into consideration that the instant application for approval of resolution plan is pending before this Adjudicating Authority, in the interest of justice, this Adjudicating Authority vide order dated

10.08.2022 in I.A./3793/ND/2022 had extended the period of CIRP for further 60 days starting from 03.08.2022.

19. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan. Accordingly, we hereby approve the Resolution Plan, 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.
20. 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.
21. However, the resolution plan shall not construe any 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)**.
22. 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.

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23. 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.
24. 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, subject to our observations regarding concessions, reliefs and waivers sought therein.
25. The Monitoring Committee is directed to file the monthly status report with regard to the implementation of the approved plan before this Adjudicating Authority.
26. In view of the above, the **I.A./3662/ND/2022 stands allowed in terms of aforesaid discussion.**

Let the copy of the order be served to the parties

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(DR. BINOD KUMAR SINHA)
MEMBER (T)

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(DHARMINDER SINGH)
MEMBER (J)