

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

I.A. 5467 OF 2021

IN

Company Petition No. (IB)940(ND)/2018

IN THE MATTER OF:

**M/s. Astonfield Solar (Gujarat) Pvt. Ltd
311 B/C/D, South Court,
Saket, New Delhi – 110017**

...Corporate Debtor

AND IN THE MATTER OF:

**Mr. Amit Gupta
Resolution Professional of
Astonfield Solar (Gujarat) Pvt. Ltd
702 Janki Centre, Dattaji Salvi Road
Off Veera Desai Road, Andheri (West)
Mumbai, Maharashtra - 400053**

...Applicant

VERSUS

**1. Kundan Care Products Limited
E-22, Industrial Area Bhadrabad
Haridwar, Uttrakhand - 249403**

...Respondent No. 1

**2. The Committee of Creditors
Through its counsel:
Mr. Ashish Rana
C-41 1st Floor, Sector – 2
Noida, Uttar Pradesh - 201301**

...Respondent No. 2

Order Delivered on : 03.01.2022

SECTION: 30(6) read with 31(1) of the IBC, 2016

CORAM:

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Sr. Adv. Sumant Batra along with Adv.
Savar Mahajan and Adv. Chintan Gandhi

For the Respondent No.1 : Adv. Prithu Garg, Adv. Yudhveer Singh Rawal

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

Mr. Amit Gupta, the Resolution Professional of the M/s. Astonfield Solar (Gujarat) Pvt. Ltd (hereinafter referred to as '**Applicant/ Resolution Professional**') has filed the present IA No. 3618/2021 under Section 30(6) read with Section 31(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as '**Code**') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations 2016 for approval of the Resolution plan submitted by M/s. Kundan Care Products Limited (hereinafter referred to as '**Successful Resolution Applicant**' (SRA)).

2. That the prayers made in the Application are reproduced below :

- (a) *Allow the Applicant to withdraw C.A. No. 1526 of 2019 in C.P. No. (IB) 940/ND/2018 along with the Affidavit dated 2 November 2021 and consider the present application as a fresh/consolidated application for the purposes of adjudication for approval of the Revised Resolution Plan, being the resolution plan submitted on 12 November 2019 as modified by the addendums dated 13 November 2019 and 17 September 2021;*
- (b) *Allow the present application and approve the resolution plan submitted for the Corporate Debtor by Kundan Care Products Limited (Successful Resolution Plan) in terms of Section 31(1) of the Code;*
- (c) *Direct that the resolution plan approved/sanctioned by this Hon'ble Adjudicating Authority shall be binding on the Corporate Debtor, its employees, members/ shareholders, creditors, guarantors and other stakeholders including Central Government, any State Government or any other local authority to whom debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed involved in the Successful Resolution Plan;*

(d) Pass such other or further order(s) as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of present case.

3. To put succinctly, the facts of the case are that the Corporate Debtor, M/s. Astonfield Solar (Gujarat) Pvt Ltd filed an Application bearing No. IB-940(ND) 2018 under Section 10 of IBC, 2016 for initiation of Corporate Insolvency Resolution Process (CIRP) against itself. The said Application was admitted by this Tribunal vide Order dated 20.11.2018 and the Applicant Mr. Amit Gupta was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor. It is added that the IRP Mr. Amit Gupta was confirmed as RP vide order dated 01.02.2019 passed by this Adjudicating Authority.

4. It is submitted that in terms of Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the said Interim Resolution Professional made a Public Announcement in Form-A on 23.11.2018 with the last date for submission of claims being 06.12.2018. It has been added that the copy of the Public Announcement was uploaded on the website of Insolvency and Bankruptcy Board of India (IBBI).

5. It is submitted by the Applicant that pursuant to the Public Announcement, the claims of the following amounts were received by it.

Creditors	Claim Filed (INR) (Crores)	Claim Admitted (INR) (Crores)
Financial Creditors	81.18	78.08
Operational Creditors	32.50	1.85
Total		79.93

6. It is further submitted that the Resolution Professional constituted a Committee of Creditors (CoC) comprising of the following members :

S. No.	Financial Creditor	Claim admitted (INR Crores)	Voting Share (percentage %)
1.	Export Import Bank of India	42.87	58.47
2.	Power Finance Corporation Ltd.	29.92	40.81
3.	Astonfield Renewables Private Limited	0.52	0.72
4.	Amplus Energy Solutions Pvt. Ltd. (related party of the Corporate Debtor)	4.77	-
TOTAL		78.08	100%

7. It is stated by the Applicant that the 'Form-G' was published on 20.02.2019 in the daily newspapers namely, Free Press Journal (English) & Navshakti (Marathi) in Mumbai Edition, Financial Express (English) & Jansatta (Hindi) in Delhi Edition, Free Press (English) & Financial Express (Gujarati) in Ahmadabad Edition. It is added that as per the Form G, the last date for submission of Resolution Plan(s) was 02.05.2019.

8. It is further stated that the Applicant received total 09 Expressions of Interest (EOIs) from the Prospective Resolution Applicants (PRAs), out of which, 07 PRAs were found to be eligible and 02 ineligible as per the eligibility criteria approved by the CoC.

9. It is further submitted by the Applicant that the last date for receipt of Resolution Plan was initially fixed for 02.05.2019, which was extended from time to time at the request of the Prospective Resolution Applicants, and the last date for receipt of Resolution Plan was eventually fixed as 31.05.2019.

10. It is stated by the Applicant that several PRAs requested for additional time for submission of Resolution Plan due to their inability to complete the due diligence process within the stipulated timeline. Accordingly, in its 6th meeting, the CoC by majority vote of 99.28% approved the extension of CIRP period from 180 days to 270 days.

11. It is further stated by the Applicant that accordingly, he had filed an application with the Adjudicating Authority under Section 12(2) of the Code, seeking extension of time for completing the CIRP of the Corporate Debtor. The Adjudicating Authority vide order dated 16.05.2019 extended the time period for completing the CIRP of the Corporate Debtor by further 90 days.

12. It is added that the Applicant further filed an Application bearing C.A. 1014 of 2019 seeking directions for exclusion of certain time period while computing the CIR period of the Corporate Debtor. Vide order dated 08.08.2019, this Adjudicating Authority excluded a period of 34 days from 29.12.2019 to 01.02.2019 and thus, the CIR Period which was expiring on 17.08.2019 got extended to 20.09.2019.

13. It is further submitted by the Applicant that in the meanwhile, an Application bearing C.A. No. 1119/2019 was filed by one Prospective Resolution Applicant namely, Kundan Care Products Ltd. (hereinafter referred to as Respondent No.1), who had not submitted EOI earlier, seeking directions against the Applicant to provide the Information Memorandum and to entertain the Resolution Plan submitted by it. It is added that the aforesaid Application was allowed by this Adjudicating Authority vide order dated 06.09.2019. It was further pointed out by this Adjudicating Authority

that in terms of the amendment in Section 12 of IBC, 2016 the 330 days would expire around 15.11.2019. The scanned copy of the Order dated 06.09.2019 is reproduced below :

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-940(ND)2018

PRESENT: MS. INA MALHOTRA
HON'BLE MEMBER(J)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW DELHI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 06.09.2019.

NAME OF THE COMPANY: M/s. Astonefield Solar (Gujarat) Pvt. Ltd.
SECTION OF THE COMPANIES ACT: 10 of IBC, 2016

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
-------	------	-------------	----------------	-----------

	Present for the Petitioner:	Mr. Krishnendu Datta, Mr. Prithvi Garg, Mr. Siddharth Mehta and Ms. Niharica Khanna, Advocates		
--	------------------------------------	---	--	--

Present for the Respondent: Mr. Savar Mahajan, Advocate

ORDER

CA 1119/2019 has been filed under Section 60(5) by Resolution Applicant praying for directions to the RP to provide the information memorandum and direct him to entertain the resolution plan. Ld. Counsel appearing for the Resolution Applicant submits that 270 days after excluding of certain period granted by the Bench shall expire on 20th September, 2019.

Ld. Counsel for the Resolution Applicant submits that they can give their proposal before the next COC is constituted. The information memorandum be provided within 1 day.

The fact that no plan being approved as yet, it may be expedient and in the interest of the resolution process to consider the best deal. Accordingly, due permission is granted. The date of COC is being communicated to the Resolution Applicant.

(Sapna)

It is also been pointed out that in terms of the notification, additional 90 days period commenced from 16th August, 2019. 330 days therefore expire around 15th November 2019.

Application stands disposed off.


(Ina Malhotra)
Member (J)

14. It is submitted by the Applicant that 03 PRAs, namely, Derit Infrastructure Private Limited, Engenrin Energy Private Limited and Kundan Care Products Limited submitted their Resolution Plans, which were considered by the CoC in its 16th Meeting held on 07.11.2019. Both Derit Infrastructure Private Limited and Kundan Care Products Limited were once again requested by the members of the CoC to revise their commercial proposal. Since no EMD was submitted by the Engenrin Energy Private Limited, their Resolution Plan was not considered by the CoC.

15. It is further submitted by the Applicant that both the PRAs namely, Kundan Care Products Limited and Derit Infrastructure Private Limited submitted their revised Resolution Plans, which were put to consideration and vote before the CoC in its 17th meeting held on 11.11.2019. The voting on the Resolution plan took place between 08p.m on 13.11.2019 to 08p.m. on 14.11.2019. It is stated that the Resolution Plan submitted by the Resolution Applicant (RA) Kundan Care Products Limited was approved by the CoC by 99.28% voting share. It is added by the Applicant that on 14.11.2019, a performance guarantee of INR 5 Crore was submitted by the Successful Resolution Applicant in the form of a bank guarantee issued by Punjab National Bank.

16. It is submitted by the Applicant that on 15.11.2019, he had filed an application bearing C.A. No. 1526 of 2019 under Section 30(6) read with Section 31(1) of the Code and Regulation 39 (4) of the CIRP Regulations for approval of the Resolution Plan by this Adjudicating Authority.

17. It is further submitted by the Applicant that the Successful Resolution Applicant on 17.12.2019 filed an application bearing I.A. No. 1679 of 2019 under Section 60(5) of the Code seeking permission of the Adjudicating Authority to withdraw its Resolution Plan. It is stated that vide order dated 03.07.2020, the I.A. No. 1679 of 2019 was rejected by this Adjudicating Authority. The Respondent No. 1, then challenged the said order by filing a Company Appeal (AT) Ins No. 653 of 2020 before Hon'ble NCLAT, which was dismissed vide its Judgement dated 30.09.2020.

18. It is stated by the Applicant that the Respondent No.1 challenged the Judgement dated 30.09.2020 passed by Hon'ble NCLAT before the Hon'ble Supreme Court by filing *Civil Appeal No. 3560 of 2020 titled as Kundan Care Products Limited Vs. Amit Gupta & Ors.* It is added that during hearing of the Civil Appeal, the Respondent No.1 submitted before the Hon'ble Supreme Court that it has mutually negotiated a settlement with the CoC and requested the Hon'ble Apex Court to exercise its power under Article 142 of the Constitution of India for allowing a one-time relief of modification of the Resolution Plan, as mutually acceptable to the Successful Resolution Applicant and the CoC. Simultaneously, the CoC also requested the Hon'ble Apex Court that the Kundan Care Products Limited may be permitted to withdraw the Civil Appeal No. 3560/2020 with a liberty to file a revised Resolution Plan before the Adjudicating Authority.

19. It is further stated by the Applicant that the Hon'ble Supreme Court vide its Judgement dated 13.09.2021, dismissed the Civil Appeal No. 3560 of 2020 filed by the Respondent No.1 (Kundan Care Products Limited) with the following directions :

“196. This Court had been informed that EXIM Bank and PFCL represent 98 per cent of the financial creditors of Astonfield. In view of the above agreement which has been arrived at, we deem it appropriate to exercise our jurisdiction under Article 142 of the Constitution of India for a one-time relief and direct that:

- (i) The A-CoC shall convene and take a decision on the proposal submitted by Kundan Care on 5 July 2021, and the response by EXIM Bank and PFCL dated 12 July 2021;
- (ii) In the event, that a revised Resolution Plan is agreed upon by the A-CoC, it shall be submitted through the A-RP for the approval of the NCLT within a week thereafter. In the event that a revised Resolution Plan is not agreed upon, the original Resolution Plan, as submitted before the NCLT on 15 November 2019, shall prevail; and
- (iii) The NCLT shall dispose of the application with the revised Resolution Plan expeditiously and preferably within a period of two weeks from the date of receipt of an application from the A-RP for the approval of the revised Resolution Plan...”

20. It is submitted by the Applicant that accordingly, the Respondent No.1 submitted a revised Resolution Plan, which was placed before the 25th meeting of the CoC held on 16.09.2021 for consideration. It is added by the Applicant that the CoC requested the Respondent No.1 to make certain changes in its revised proposal and accordingly, the Respondent No.1 submitted the modified proposal in the form of an addendum to the Resolution Plan, which was placed before the CoC in its 25th meeting held on 16.09.2021 and put to vote by the members of the CoC from 06:30 p.m. 17.09.2021 to 06:30 p.m. 24.09.2021. The scanned copy of the Resolution, which was put to vote before the CoC is reproduced below :

“RESOLVED THAT pursuant to Hon’ble Supreme Court directions vide order dated 13 September 2021 in the Civil Appeal No. 3560 of 2020 in the matter of Kundan Care Products Limited v/s Mr. Amit Gupta & Ors., approval of the members of the Committee of Creditors be and is hereby accorded to approve the revised Addendum no. 3 dated 17th September 2021 to the Resolution Plan dated 12 November 2019 submitted by Kundan Care Products Limited, Resolution Applicant vide email 17th September 2021 with reference to their earlier communication dated 5 July 2021.

FURTHER RESOLVED THAT Mr. Amit Gupta, Resolution Professional be and is hereby authorized to submit the decision as approved by the members of Committee of Creditors to National Company Law Tribunal, New Delhi Bench for its approval.”

21. It is further submitted by the Applicant that by way of an email dated 24.09.2021, Power Finance Corporation, one of the Financial Creditors of the Corporate Debtor with 40.81% voting share in the CoC, requested the Applicant to extend the voting window till 08p.m. on 15.10.2021. The Power Finance Corporation sent another request on 14.10.2021 seeking additional time for casting their vote, pursuant to which the Applicant extended the voting window till 08 p.m. on 01.11.2021.

22. It is averred by the Applicant that the Resolution for approval of the modified Resolution Plan submitted by the Respondent No. 1 was passed by the CoC with 99.28% voting share. The scanned copy of the Voting Sheet as annexed by the Applicant is reproduced below:

Voting Results – Resolution wise [1]

Resolution Number	Yes (%)	No (%)	Abstain (%)	Final Status	Resolution
1.	99.28	0.00	0.72	Approved	<p><u>1. To consider, discuss and approve the Addendum No. 3 dated 13 September 2021 (received on 14 September 2021) – a modified financial proposal submitted by Kundan Care Products Limited, Resolution Applicant with reference to their communication dated 5 July 2021 in light of the Hon'ble Supreme Court Order dated 13 September 2021.</u></p> <p>RESOLVED THAT pursuant to Hon'ble Supreme Court directions vide order dated 13 September 2021 in the Civil Appeal No. 3560 of 2020 in the matter of Kundan Care Products Limited v/s Mr. Amit Gupta & Ors., approval of the members of the Committee of Creditors be and is hereby accorded to approve the revised Addendum no. 3 dated 17th September 2021 to the Resolution Plan dated 12 November 2019 submitted by Kundan Care Products Limited, Resolution Applicant vide email 17th September 2021 with reference to their earlier communication dated 5 July 2021.</p> <p>FURTHER RESOLVED THAT Mr. Amit Gupta, Resolution Professional be and is hereby authorized to submit the decision as approved by the members of Committee of Creditors to National Company Law Tribunal, New Delhi Bench for its approval."</p>

23. The results of the CoC voting on the modified Resolution Plan as summarised by the Applicant in its Application are reproduced overleaf :

S. No.	Financial Creditor	Claim admitted (INR Crores)	Voting Share (percentage %)	Voted for / Dissented / Abstained)
1.	Export Import Bank of India	42.87	58.47	Voted for
2.	Power Finance Corporation Ltd.	29.92	40.81	Voted for
3.	Astonfield Renewables Private Limited	0.52	0.72	Abstained
TOTAL		73.31	99.28%	

24. It is submitted by the Applicant that the total value of the Modified Resolution Plan submitted by the Successful Resolution Applicant/ Respondent No. 1 comes to Rs.37,01,06,500/-. The break-up of the amount as averred in the Application is reproduced below:

Sr. No.	Particulars	Amount (in INR)
1.	CIRP Costs#	28,01,06,500
2.	Operational creditors	
3.	Secured financial creditors	
4.	Statutory Liabilities	
	TOTAL – A	28,01,06,500
5.	Capital expenditure by Resolution Applicant*	9,00,00,000
	TOTAL – B	9,00,00,000
	Total Outlay under the Revised Resolution Plan (A+B)	INR 37,01,06,500

25. As regards the Sources of Funds, the Applicant in its Written Submissions has submitted the following :

“6.3.1 The total consideration is proposed to be paid/ settled to all stakeholders in cash and to be infused by the shareholders/ promoters (of SRA) in the form of Equity / Shareholder Contribution with Equity like features/ Redeemable Optionally Convertible Debentures/ Unsecured Subordinated Debt sourced from SRA, SRA’s associate/group

companies/family members/ Internal Accruals as per sole discretion of the SRA. Any instrument shall be ranked subordinate to the Secured Debt. (Ref: Annexure 2 @ pg. 52 Vol 1)

6.3.2 *The SRA shall repay the debt of the CD from own funds. Further the SRA has credit limit facility available from Punjab National Bank and Canara Bank amounting to INR 85 Crores which can be utilized towards the repayment of the debts of the Corporate Debtor. (Ref: Annexure 2 @ pg. 49 Vol 1) (Net Worth of the SRA as on 31 March 2019 - INR 135,23,92,186.) (Annexure 2 @ pg. 49 Vol. 1)*

6.3.3 *SRA has availed a Comfort Letter from a Non-Banking Finance Company (NBFC) - Gogia Leasing Limited for the purpose of Capital Expenditure to be made at the Plant which amounts to INR 9 Crore. The Asset Under Management of the NBFC is INR 258 Crores for the year ending 31 March 2018. (Ref: Annexure 2 @pg. 78 Vol 1)”*

26. That the Applicant has also provided the comparison between the earlier Resolution Plan and the modified Resolution Plan (excluding the capital expenditure to be infused by the SRA, which as per the note ii below the table remains the same as in the old plan) submitted by the Respondent No.1. The comparison as averred by the Applicant in its Written Submissions is reproduced below :

6.2. **A comparison table, which indicates the amounts offered under Old Resolution Plan and the revised Resolution Plan (i.e. Old Resolution Plan as amended by way of Addendum 3) (“New Resolution Plan”) is:**

(in INR) (in lakhs)

Particulars	Old Resolution Plan	New Resolution Plan
CIRP Costs	250	(at actuals)
Operational Creditors	50	50
Statutory Liabilities	0.44	0.44
Secured Financial Creditors (Principal)	2950	2450 (24.5 Crore)

	(29.5 Crore) ¹	
Total	32.5 Crore (including CIRP Cost)²	25.0044 Crore + CIRP Cost on actuals
Payment to Secured Financial Creditors		
(i) Upfront payment	1350 (13.5 Crore)³	1450 (14.5 Crore)
(ii) Deferred payment (principal)	1600⁴ (16 Crore)	1000⁵ (10 Crore)
(iii) Interest on deferred payment	481⁶ (4.81 Crore) [As calculated by the RP]	301⁷ (rounded off) (3.01 Crore) [As calculated by the RP]
Secured Financial Creditors (Total payment, including interest)	3431 (34.31 Crore)	2751 (rounded off) (27.51 Crore)⁸
Total Payout (A)	3481.44 (34.81 Cr) (without CIRP Cost) [3731.44 including CIRP Cost of INR 2.5 crores]	2801.44 (28.01 Cr) (without CIRP Cost)⁹

Note:

- i. Only the total amount proposed towards secured financial creditors has been revised/modified. Rest other amounts payable under the original resolution plan (to OCs and others) submitted remain the same.
- ii. Capital expenditure of INR 9 crore remains same in the Old Resolution Plan and the New Resolution Plan
- iii. The total payment proposed to secured financial creditors under the earlier Resolution Plan was INR 34.31 Crore which comprised of principal of INR 29.5 Crore and interest on deferred payment at the rate of 9.25% p.a. amounting to INR 4.81 Crore. Whereas the total payment proposed to secured financial creditors through Addendum 3 is INR 27,50,62,500 (approx. INR 27.5 Crore) which comprises of principal payment of INR 24.5 and interest on deferred payment at the rate of 9.25% p.a. amounting to INR 3,00,62,500 (approx. INR 3.01 Crore).
- iv. Hence, the principal amount stands reduced from INR 29.5 Cr to INR 24.5 Cr (i.e. 5 crore reduction). On account of reduction in deferred component, the interest payout stands reduced from INR 4.81 Crore to INR 3.01 Crore (i.e. reduction of INR 1.8 Crore).
- v. The revisions/modifications contained in the Addendum dated 17 September 2021 shall be read and construed as an integral part and parcel of the Resolution Plan. Subject to the revisions/modifications contained in the addendum dated 17 September 2021, the Resolution Plan shall continue to be binding and operative on all stakeholders, subject to approval.

27. That the details of the payments proposed to be made as per the modified Resolution Plan to the various stakeholders of the Corporate Debtor are submitted in Form 'H' of the Resolution Plan. The scanned copy of the relevant extracts of the same are reproduced overleaf :

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

(Amount in Rs Lakhs)

Sr. No.	Category of Stakeholder*	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Admitted (%)
1	Dissenting Secured Financial Creditors	0	0	0	0
2	Other Secured Financial Creditors	7300	7279	3431	47.14
3	Dissenting Unsecured Financial Creditors	52.44	52.44	0	0
4	Other Unsecured Financial Creditors	765.76	477	0	0
5	Operational Creditors	3383	186	50	26.88
	Government	0	0	0.44	N/A
Total		11501.2	7,994.44	3481.44	43.55

*If there are sub-categories in a category, please add rows for each sub-category.

Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.

8. The interests of existing shareholders have been altered by the Resolution plan as under:

Sr. No	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity- Promoters	23,477	0	100	0
2	Preference-Promoters	1,01,940	0	100	0

28. Thus, it is seen that “Other Secured Financial Creditors”, “Operational creditors” and “Government” all together are getting 43.55% of their claims admitted. That during the course of final hearing on 10.12.2021, Ld. Senior Counsel appearing for the Applicant submitted that since the Liquidation value for the dissenting Financial Creditor is ‘NIL’, they are paid ‘NIL’ amount in the Resolution Plan.


29. That as per the Form ‘H’ placed on record, the average Liquidation value of the Corporate Debtor is disclosed as Rs.28.77 Crore and the Fair Market Value of the Corporate Debtor is disclosed as Rs.66.49 Crore. It is observed that the size of the modified Resolution Plan approved by the CoC is higher than the Liquidation Value of the Corporate Debtor.

30. That as part of the Resolution Plan, the Resolution Applicant has also enclosed its Affidavit dated 05.06.2021 stating that it is not barred under Section 29A of IBC, 2016 to submit the Resolution Plan. The scanned copy of the same is reproduced below :


Dear Sir,

Sub: Resolution Applicants' undertaking under the Insolvency and Bankruptcy Code (Amendment) Act, 2018

In furtherance of the Request for Resolution Plan dated 06.03.2019 and in view of Section 29A of the IB Code, [I/We] ("Resolution Applicant") state, submit and confirm as follows:

1. [I/We] hereby unconditionally state, submit and confirm that [I/We] are not disqualified from submitting a Resolution Plan in respect of Astonfield Solar (Gujarat) Private Limited, pursuant to the provisions Section 29A of the IB Code and/or otherwise.
2. [I/We] hereby submit and confirm that I/We or any of our related parties have not failed to implement, neither contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.
3. [I/We] hereby state, submit and declare that none of (a) [me / us] being the Resolution Applicant; (b) any other person acting jointly with [me / us]; (c) any person who is a promoter and/or in the management and/or control of the Resolution Applicant; (d) any person who shall be the promoter and/or in management and/or control of the business of Astonfield Solar (Gujarat) Private Limited during implementation of the Resolution Plan; and/or (e) the holding company, subsidiary company, associate company or related party of any person referred to in (c) and/or (d).
 - (a) is an undischarged insolvent;
 - (b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;
 - (c) at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor;
 - (d) has been convicted for any offence punishable with imprisonment –
 - (i) for two years or more under any Act specified under the Twelfth Schedule; or
 - (ii) for seven years or more under any law for the time being in force;
 - (e) is disqualified to act as a director under the Companies Act, 2013;
 - (f) is prohibited by the Securities and Exchange Board of India from trading in securities or assessing the securities markets;
 - (g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code; 
 - (h) has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part;
 - (i) is subject to any disability corresponding to (a) to (h) above under any law in a jurisdiction outside India.
 - (j) has a connected person not eligible under clauses (a) to (i)

Yours sincerely,

For and on behalf of
Kundan Care Products Ltd.
For Kundan Care Products Ltd.

Sanjay Bhatnagar, **th. Sign.**
Director

31. As regards to the compliances under the Resolution Plan, the Applicant has submitted in the Form 'H', the following :

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)(b)	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?	4	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?	Hon'ble NCLT Order dated 06 September 2019	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	4.6	Yes
Section 30(2)	Whether the Resolution Plan:		
	(a) provides for the payment of insolvency resolution process costs?	6.3.2	Yes
	(b) provides for the payment of the debts of operational creditors?	6.3.3	Yes
	(c) provides for the management of the affairs of the Corporate debtor?	15 and 16	Yes
	(d) provides for the implementation and supervision of the resolution plan?	15, 17 and 18	Yes
	(e) contravenes any of the provisions of the law for the time being in force?		No
Section 30(4)	Whether the Resolution Plan		
	(a) is feasible and viable, according to the CoC?	7	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?	15,16,17,18	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?		No transactions determined
Regulation 38 (1)	Whether the Resolution Plan identifies specific sources of funds that will be used to pay the - (a) insolvency resolution process costs? (b) liquidation value due to operational creditors? (c) liquidation value due to dissenting financial creditors?	8.1	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	6.3	Yes
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	18	Yes
38(3)	Whether the resolution plan demonstrates that -		
	(a) it addresses the cause of default?	7	Yes
	(b) it is feasible and viable?	6, 7 and 8	Yes
	(c) it has provisions for its effective implementation?	15, 16, 17	Yes

		and 18	
	(d) it has provisions for approvals required and the timeline for the same?	18.3	Yes
	(e) the resolution applicant has the capability to implement the resolution plan?	7 and 8	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		NA

32. That with regard to timelines for implementation of the Resolution Plan, the following is stated by the Respondent No. 1/SRA in the Resolution Plan:

18 Term Of The Plan And Implementation Schedule

18.1 The term of this Resolution Plan shall be from the Effective Date until the Completion Date.

18.2 The indicative implementation schedule for this Resolution Plan is set out below:

Sr. no	Activity	Timeline (Days)
1.	Effective Date	Approval of this Resolution Plan by the Hon'bleNCLT
2.	Completion Date	Effective Date + 60days (maximum)

18.3 The aforementioned timeline is indicative and a delay on account of regulatory or other reasons shall not be considered to be a contravention of this Resolution Plan, if all the steps contemplated in the plan are completed. However, any approvals or permission required by the Resolution Applicant, under any law time being in force, shall be obtained from relevant statutory and regulatory approvals in time specified under that law, but in no event later than **12 months** from the Effective Date.

Reconstituted Board of Directors to file/ upload the documents relating to their appointment as Directors.

6.5.4 On dissolution of monitoring committee, as mentioned in earlier chapters, the Reconstituted BoD shall assume their powers as per the provisions of the Companies Act, 2013.

33. That vide order dated 16.12.2021, this Bench has sought certain clarifications from the Applicant/RP. The scanned copy of the order dated 16,.12.2021 is reproduced overleaf :

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, (COURT-II)

Item No. 301
(IB)-940(ND)/2018
IA-5467/2021

IN THE MATTER OF:

M/s Astonfield Solar (Gujarat) Pvt. Ltd. ... Applicant/Petitioner

Under Section: 10 of IBC Code, 2016

Order delivered on : 16.12.2021

CORAM:

SHRI. ABNI RANJAN KUMAR SINHA
HON'BLE MEMBER (J)


SHRI. L. N. GUPTA
HON'BLE MEMBER (T)

PRESENTS:

ORDER

The Bench sought certain clarifications as detailed below from the Applicant in IA-5467/2021/ Resolution Professional :

1. As per the provisions of Section 30(2), the Financial Creditors, who do not vote in favour of the Resolution Plan, shall not be paid less than the amount to be paid to such Creditors in accordance with Section 53(1) of IBC in the interest of the Corporate Debtor. In the instant case, we find that there is one "Dissenting Unsecured Financial Creditor" namely, M/s Astonfield Renewables Pvt. Ltd. having voting percentage of 0.72% and "Other Unsecured Financial Creditors having an admitted claim of Rs. 477 lakhs are also being paid Nil value. Whereas, the Operational Creditors, who come lower in priority in terms of the provision under Section 53 are getting paid Rs. 50 lakhs. What is the clarification/justification for paying the 'Nil' value to the only "Dissenting Unsecured Financial Creditor" and "Other Unsecured Financial Creditors" ?
2. Whether the Unsecured Financial Creditor namely, M/s Astonfield Renewables Pvt. Ltd. is a related party ?
3. What is the time period and source(s) of funds by which the Successful Resolution Applicant will infuse capital investment of Rs.9 crores in the Corporate Debtor ?
4. The Applicant in IA-5467/2021/ Resolution Professional is directed to file the query-wise response by way of an Affidavit by tomorrow i.e., 17.12.2021 both in softcopy on the DMS and physical copy to the Bench Officer.


(L. N. Gupta)
Member (T)


(Abni Ranjan Kumar Sinha)
Member (J)

34. That in compliance to the aforesaid direction, the Applicant vide its Affidavit dated 17.12.2021 has filed the query-wise response. In response to the query at Para 1 of the order dated 16.12.2021, the Applicant has averred the following :

Applicant's Response:

4.1.1 Clause 6.3.4(v) of Successful Resolution Plan states that *"It is proposed that the claims of the dissenting financial creditors shall be paid out of Total Consideration to the Financial Creditors laid out in this Resolution Plan. The distribution of the consideration to the dissenting Financial Creditors shall be in accordance with Section 30(3) along with Section 53(1) of the Code, at the sole discretion of the CoC"* (Ref: Annexure 2 @ page 73 of the Plan Approval Application).



4.1.2 As mentioned in the Form H, the total admitted claim of the secured financial creditors of the Corporate Debtor is INR 72.79 crores while the Liquidation Value of the Corporate Debtor is INR 28.77 cores. Hence, in the event of liquidation of the Corporate Debtor, the distribution to be made by the Liquidator as per Section 53(1) of the Code will not be sufficient to even discharge the claims of the Secured Financial Creditors in full. In view of these facts, in the event of liquidation of the Corporate Debtor, no amounts would be left to be distributed either to the dissenting unsecured financial creditors or the other unsecured financial creditors.



35. That in regard to the query mentioned at Para 2 of the order dated in 16.12.2021, the Applicant has stated the following in its Affidavit :

Applicant's Response

4.2.1 ARPL filed its claim with the RP in Form C dated 8 April 2019 as per which ARPL has, on an affidavit, declared that ARPL is not a related party of the Corporate Debtor as defined under Section 5(24) of the Code and is eligible to be a part of the CoC by virtue of proviso to Section 21(2) of the Code. Further, while verifying the claim form submitted by ARPL with me, I had reviewed the relationship of ARPL with the Corporate Debtor and concluded that ARPL is not a related party of the Corporate Debtor as per the Code (*Ref: Annexure 8 @ page 134 of Plan Approval Application*). A copy of the claim form is attached as **Exhibit A**.

36. That with respect to the third query mentioned in Para 3 of the order dated 16.12.221, the Applicant has submitted the following in its Affidavit:

Applicant's Response

4.3.1 As per the Successful Resolution Plan, the Successful Resolution Applicant has committed to infuse an amount of INR 9 crores within 1 year from the Cut Off date. I understand that the Cut Off date is the Completion (i.e. 15 days from the date plan the resolution plan is approved by this Hon'ble Adjudicating Authority) and the same has been confirmed by the Resolution Applicant by way of its email dated 17 December 2021. A copy of the email dated 17 December 2021 is attached as **Exhibit B**.



The image shows a handwritten signature in blue ink over a circular official stamp. The stamp contains the text: 'C.P. NO. (IB)940(ND)/2018', 'BY REGD. NO. RESOLUTION PLAN APPROVAL', 'D-PR/2018/18', and '23/12/2021'. There are also some decorative elements like stars and a central emblem.

37. After going through the Application, written submissions and all other documents placed on record, we observe that the CoC of the Corporate Debtor

has duly considered and approved the modified Resolution Plan submitted by the Resolution Applicant M/s Kundan Care Products Ltd in compliance of the directions of the Hon'ble Supreme Court in Civil Appeal No. 3560 of 2020 titled as Kundan Care Products Limited Vs. Amit Gupta & Ors. The said Resolution Plan has been approved by the CoC by a voting share of 99.28% in its 25th Meeting held on 16.09.2021. We also observe that no objection whatsoever challenging the Resolution Plan have been filed before this Adjudicating Authority at any stage.

38. The role of the Adjudicating Authority has been examined by the Hon'ble Supreme Court in a catena of decisions. The relevant portion of the decision of the Hon'ble Supreme Court in *Civil Appeal No. 10673 OF 2018, in the matter of K. Sashidhar Vs. Indian Overseas Bank & Ors.* is reproduced below:

“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.”

“38. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters “other than” enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I & B Code and not to act as a court of equity or exercise plenary powers.”

39. In view of the decision referred to Supra, it is a well-settled principle of law that the Adjudicating Authority is not required to interfere with the decision taken by the CoC in its commercial wisdom, save and except the circumstances referred to in Section 30(2) of the IBC, 2016.

40. In sequel to the above, we have no other option but to approve the Resolution Plan as approved by the CoC and as placed by the Applicant

before this Adjudicating Authority. **We, therefore, approve the Resolution Plan submitted by the Applicant with the following directions in respect of the Corporate Debtor :**

- (i) The order of the moratorium passed by this Adjudicating Authority under Section 14 of the IBC, 2016 shall cease to have effect from the date of passing of this Order.
- (ii) The Resolution Professional shall forward all the records relating to the conduct of the CIRP and the Resolution Plan to the IBBI for its record and database.
- (iii) The approved Resolution Plan as annexed from Page 45-120 with COC approved addendums shall become effective from the date of passing of this Order and shall be implemented strictly as per the term of the plan and implementation schedule given in the Resolution Plan.
- (iv) The Monitoring Committee as provided in the Resolution Plan shall be setup by the Applicant within 07 days of passing of this Order which shall take all necessary steps for implementation of the Resolution Plan.
- (v) The Respondent No. 1/SRA shall firm up and ensure infusion of Rs. 09 (nine) crore into the Corporate Debtor within the stipulated term as mentioned in para 4.3.1 of the Applicant's Affidavit dated 17.12.2021 and as reproduced in Para 36.

41. The Resolution Professional shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance. A copy shall also be sent by the Applicant to the IBBI for their record.

42. **With the above, prayers at serial (b) and (c) of IA-5467 of 2021 are allowed.** Prayer (a) already stands allowed separately in terms of Order dated 10.12.2021 in CA-1526/2019 being dismissed as withdrawn.

Sd/-
(L. N. Gupta)
Member (T)

Sd/-
(Abni Ranjan Kumar Sinha)
Member (J)