

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

**I.A. 4441/2023
IN
C.P. No. IB- 953/PB/2018**

(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:

PUNJAB NATIONAL BANK

.... PETITIONER

VERSUS

M/s HANUNG TOYS and TEXTILES LIMITED

[A Company Under Corporate Insolvency Resolution Process]

..... RESPONDENT

AND

AND IN THE MATTER OF:

MR. ASHOK KUMAR GUPTA
RESOLUTION PROFESSIONAL OF CORPORATE DEBTOR.

.... APPLICANT

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

SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

PRESENT

For the Petitioner/Financial Creditor:	Ms. Ekta Choudhary and Mr. Divyank Dutt Dwivedi, Advocates
For Bank of Maharashtra:	Mr. Nishant Awana, Ms. Rini Badoni and Mr. Nitya Sharma, Advocates
For the RP:	Mr. Saurabh Kalia and Mr. Rishi Singhal, Mr. Anuj Kumar Pandey Advocates and Mr. Ashok Kumar Gupta, RP
For the SRA:	Mr. Pawan Sharma, Advocate

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

ORDER DELIVERED ON: 28.02.2024

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. Ashok Kumar Gupta Resolution Professional (RP) of M/s HANUNG TOYS and TEXTILES LIMITED ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by M/s Cyfuture India Private Limited [CIN: U72200RJ2001PTC017138] ('Successful Resolution Applicant') as approved by the Committee of Creditors ('CoC') in its 16th CoC Meeting held on 03.07.2023 with 87.88% voting share.

2. **BRIEF BACKGROUND OF PARTIES**

CORPORATE DEBTOR

M/s Hanung Toys and Textiles Limited (HTTL) is a company incorporated on 09.10.1990 which was engaged in the business of manufacturing and selling of stuffed toys and home furnishing products. The Company was engaged in export of manufactured products to various overseas buyers, however it suffered huge losses due to disposal of its slow and non-moving inventory and finished goods at very low prices to manage its working capital requirements. The blockage of working capital in unrealized subsidies and adverse market conditions put further pressure on operations. CD was a public listed company as per audited annual reports issued by it for the year ended 31.03.2017. However, after the declaration of fraud and default, CD was delisted from both NSE and BSE (Stock Exchanges). The applicant contended that CD has not been in operation since the year 2018.

SUCCESSFUL RESOLUTION APPLICANT

M/s Cyfuture India Private Limited is a company which is engaged in providing Information Technology services to its clients in India and overseas since 2001. Applicant contended that the SRA has a team of over 2000 employees catering to various sectors like e-commerce, retail, IT & Software, Education, Banking etc. SRA

possesses Tier III Data Center Facilities and provides services like Big Data Analytics, AI, IOT etc. It is further submitted that SRA is a CMMI level 5 assessed and ISO 20000-1:2011 and ANSI/TIA942 certified company with dynamic leadership. The SRA has Net-Worth of Rs. 55.98 Crores as per audited annual accounts for the year ended 31.03.2022. SRA further submitted that its turnover exceeded Rs. 100 crores during Financial Years 2019-20 and 2021-22 with EBITDA margin of approximately 20% year on year. SRA contended that it has presence across 9 locations in India, USA and UK etc. and is confident of raising further capital if the need so arises.

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

- a) That the Corporate Insolvency Resolution Process against the Corporate Debtor was admitted by The Hon'ble Principal Bench, NCLT New Delhi vide order dated 28.03.2019 filed by the Financial Creditor Punjab National Bank and inter-alia had appointed Mr. Arvinder Singh as The Resolution Professional.
- b) That in terms of Regulation 6(1) of The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the IRP had made a public announcement in FORM-A on 31.03.2019 in Financial Express (English Newspaper) and Jansatta (Hindi Newspaper) and the same was duly uploaded on website of IBBI.
- c) Thereafter, the CIRP was initially stayed by the Hon'ble NCLAT on 30.04.2019 upon an Appeal preferred by the Suspended Board of Directors. Subsequently, the stay on CIRP was removed by NCLAT on 25.11.2019 and appeal was dismissed. [Company Appeal (AT) (Insolvency) No. 465 of 2019]
- d) The erstwhile IRP called 2nd CoC meeting on 05.12.2019 in which CoC appointed Mr. Ashok Kumar Gupta as the Resolution Professional with 98.05% voting share. Later vide order dated 16.12.2019, this Tribunal approved/confirmed the appointment of Mr. Ashok Kumar Gupta as the RP.

- e) The ex-promoter of the CD filed [SLP (C) 30437/2019] as well as [Civil Appeal No. 9466/2019] before The Hon'ble Supreme Court of India and an interim stay was granted by the Hon'ble Supreme Court, however the aforesaid appeals were dismissed by the Apex Court on 18.05.2022 and 21.07.2022 respectively.
- f) On 12.07.2018, The Hon'ble Delhi High Court appointed an Official Liquidator under The Companies Act. Thereafter, on 27.11.2019, the Division Bench of the Hon'ble Delhi High Court allowed the Appeal of PNB and The OL was directed to transfer records and assets to NCLT (IBC).
- g) Thereafter, vide order dated 09.09.2022, this Tribunal revived the CIRP and also allowed exclusion of the time period during which appeals were pending.
- h) That the erstwhile IRP prepared a list of Creditors after verification of claim received pursuant to the Public Announcement and constituted Committee of Creditors. The present RP on appointment, modified and added names to the list on receiving subsequent claims to constitute the revised committee of creditors comprising of 17 Members.

List of Secured Financial Creditors			As on 30.6.2023 (Amount in ₹)		COC Members voting share	
Sl. No	Name of creditor	Amount claimed	Amount of claim admitted	Total	Voting %	
1	PUNJAB NATIONAL BANK	14,72,64,35,806	14,72,64,35,806	17,56,44,58,079	35.46%	
	PUNJAB NATIONAL BANK (OBC)	2,83,80,22,273	2,83,80,22,273			
2	UNION BANK OF INDIA(Andhra Bank)	96,08,28,716	96,08,28,716	2,40,75,37,731	4.86%	
	UNION BANK OF INDIA	1,44,67,09,015	1,44,67,09,015			
3	BANK OF BARODA	3,14,25,57,349	3,14,25,57,349	3,14,25,57,349	6.34%	
4	BANK OF INDIA	2,25,12,76,390	2,25,12,76,390	2,25,12,76,390	4.54%	
5	BANK OF MAHARASTRA	67,13,81,280	67,13,81,280	67,13,81,280	1.36%	
6	EXIM BANK	1,15,01,00,000	1,15,01,00,000	1,15,01,00,000	2.32%	
7	KARNATKA BANK	55,67,19,801	55,67,19,801	55,67,19,801	1.12%	
8	CENTRAL BANK OF INDIA	4,21,48,35,221	4,21,48,35,221	4,21,48,35,221	8.51%	
9	CANARA BANK (SYNDICATE BANK)	2,19,14,97,792	2,19,14,97,792	2,19,14,97,792	4.42%	
10	UCO BANK	1,78,03,78,733	1,78,03,78,733	1,78,03,78,733	3.59%	
11	EDELWEISS ASSET RECONSTRUCTION CO. LTD.	9,06,09,55,357	9,06,09,55,357	9,06,09,55,357	18.29%	
12	JM FINANCIAL	63,63,60,065	63,63,60,065	63,63,60,065	1.28%	
13	ICICI BANK	2,92,41,43,145	2,56,20,03,061	2,56,20,03,061	5.17%	
14	STANDARD CHARTERD BANK	58,25,14,364	58,25,14,364	58,25,14,364	1.18%	
15	SICOM LTD.	37,92,54,697	37,92,54,697	37,92,54,697	0.77%	
16	HONGKONG & SHANGHAI BANKING CORP LTD.	2,38,51,886		-	0.00%	
17	DBS BANK LTD	38,25,00,780	38,25,00,780	38,25,00,780	0.77%	
Total		49,92,03,22,670	49,53,43,30,700	49,53,43,30,700	100.00%	

- i) That in the 2nd Meeting of CoC, the CoC resolved to publish Expression of Interest/ Form G to invite prospective resolution applicants for submission of Expression of Interest by 07.11.2022. A Provisional List of PRA's was issued on 28.11.2022. Thereafter, a Request For Resolution Plan (RFRP) dated 29.12.2022 was issued to all the prospective qualified resolution applicants who had submitted their expression of interest in terms of process documents. The last date for submission of Resolution Plans was 23.01.2023.
- j) Form G was re-issued on 15.12.2022. Resolution Plan submitted by SRA herein on 28.01.2023. After being declared the H-1 Bidder in the Challenge Mechanism held by RP on 16.05.2023 and thereafter, the SRA had submitted addendum and clarification to the said plan upon further discussion and clarification as sought by the RP and SRA finally submitted Resolution Plan dated 25.05.2023.
- k) The RP had received eleven Expression of Interests (EOI's) from PRA(s) and after due verification the final list of Prospective Resolution Applicants was issued on 03.01.2023, which is as under: -

S. No.	Final List of Prospective Resolution Applicant ("PRAs")
1.	ACCUMEN LAMINATORS LLP
2.	CHINAR STEEL SEGMENT CENTRE PRIVATE LIMITED under consortium with SUNRISE INDUSTRIES
3.	CYFUTURE INDIA PRIVATE LIMITED
4.	GANPATI OVERSEAS & ITS PARTNER
5.	HYNITE FARMS PRIVATE LIMITED
6.	ONE CITY INFRASTRUCTURE PRIVATE LIMITED
7.	SHANTI G.D.ISPAT AND POWER PRIVATE LIMITED
8.	SHERISHA TECHNOLOGIES PRIVATE LIMITED
9.	TRUEGUARD REALCON PRIVATE LIMITED
10.	UNITED BIOTECH PRIVATE LIMITED along with NOIDA HOLDINGS PRIVATE LIMITED

- 1) That till the last date of submission of resolution plan, four PRA(s) submitted their resolution plan. Details are as under: -

S. No.	Final List of Prospective Resolution Applicant ("PRAs")
1	CHINAR STEEL SEGMENT CENTRE PRIVATE LIMITED under consortium with SUNRISE INDUSTRIES
2	CYFUTURE INDIA PRIVATE LIMITED
3	GANPATI OVERSEAS & ITS PARTNERs
4.	HYNITE FARMS PRIVATE LIMITED
5.	UNITED BIOTECH PRIVATE LIMITED along with NOIDA HOLDINGS PRIVATE LIMITED

It is submitted that one of the Resolution Applicants namely M/s ACCUMEN LAMINATORS LLP had submitted the initial plan subject to getting approval of SEBI to cure 29A Compliance in due time, however as they could not cure the defect, therefore they requested for withdrawal and the same was allowed by RP.

- m) Five Resolution Plans were received, in the 8th CoC Meeting held on 09.02.2023, all the 5 Resolution Plans were opened. Thereafter, in the time period between 24.03.2023 to 15.05.2023, the 10th to 13th COC meeting were conducted for discussion on Resolution Plans.
- n) Thereafter, in the 14th CoC Meeting held on 16.05.2023, the Challenge Round was conducted and the Successful Resolution Applicant herein was declared as H1.
- o) In the 16th CoC meeting on 03.07.2023, all the 5 resolution plans were put to vote. This Tribunal granted extension of 30 days w.e.f.14.07.2023 to 12.08.2023 vide order dated 13.07.2023. On 04.08.2023, E-Voting on the Resolution Plans under 16th CoC meeting concluded and the Resolution Plan submitted by M/s Cyfuture India Private Limited was approved with 87.88% voting share. The RP received receipt of unconditional acceptance of Letter of Intent from the SRA on 08.08.2023.

4. We have heard the submissions made by the Ld. Counsel for the applicant and have gone through the documents produced on record.
5. That some key features of the Resolution Plan are as follows:
- i. That the Resolution Applicant has proposed an amount of Rs. 78.15 crores including the CIRP Cost.

A. FINANCIAL PROPOSAL OF THE RESOLUTION PLAN

S.No	Particulars	Amounts (Crore)
a.	Secured Financial Creditors	71.50
b.	There are no unsecured Financial Creditors	0.00
c.	CIRP cost (already incurred cost + likely to be incurred and other priority payments of EPFO and Official Liquidator)	6.25
d.	OC (unsecured and Statutory Authorities)	0.25
e.	Other Contingencies	0.15
	Total	78.15

It is averred herein that in case the actual CIRP Costs turn out to be less than the Estimated CIRP Costs, then the Balance Amount shall be paid to Secured Creditors. On the contrary if the actual CIRP costs exceed the estimated CIRP costs, then such balance shall be deducted from the amount payable to secured creditors.

ii. **PAYMENT SCHEDULE**

“E” implies the Effective Date which means the date on which the Resolution Plan is granted approval by this Adjudicating Authority.

S.No	Particulars	Amounts (Crores)
a.	E+30 days	6.50
b.	E+60 days	15.00
c.	E+90 days	10.00
d.	E+120 days	10.00
e.	E+150 days	10.00
f.	E+180 days	10.15
g.	E+210 days	8.00
h.	E+240 days	8.50
	Total	78.15

B. ADDITIONAL FUNDS FOR WORKING CAPITAL

The SRA has also proposed to bring in additional funds of Rs. 70 crores towards the working capital for the Corporate Debtor in a span of E+4 years. The proposed schedule for infusion of working capital is as under:

S.No	Particulars	Amounts (Crores)
a.	E+365 days	25.00
b.	E+2 years	15.00
c.	E+3 years	15.00
d.	E+4 years	15.00
	Total	70.00

C. PERFORMANCE SECURITY

The SRA has proposed to furnish Performance Security Deposit of Rs 7.82 crore, which is equivalent of an amount of 10.00% (Ten Percent) of the value of Proposed Resolution Plan of Rs. 78.15 Crores by way of Performance Bank Guarantee sanctioned from AXIS BANK LIMITED, SECTOR 62, NOIDA, UP – 201301 BRANCH dated 11-08-2023 bearing BANK GUARANTEE NO: 07230100000986 valid upto 31.08.2024(expiry date).

D. SOURCES OF FUNDS

S. No	Particulars	Amounts (Crores)
a.	Equity Capital (in tranches within E+240 days)	30.00
b.	Optionally Convertible Redeemable Preference Shares (in tranches within E+240 days)	20.00
c.	Term Loan from Banks	20.00
d.	WCL from Banks (in tranches as per Point no. B herein above)	70.00
	Total	140.00

E. FAIR AND LIQUIDATION VALUE

The average fair value and liquidation value of Corporate Debtor is Rs. 83,45,00,000 and Rs. 59,87,00,000/- respectively. The valuations have been conducted by M/s Protocol Valuers Private Limited [IBBI/RV-E/02/2019/109] and M/s Tech Valuers Private Limited [IBBI/RV-E/05/2020/124].

F. TERM OF MONITORING COMMITTEE

The SRA has proposed the formation of a monitoring committee to oversee effective and timely implementation of Resolution Plan. The Monitoring Committee shall comprise of 3 members which would include 1 Representative each from Secured Financial Creditors, Resolution Applicant and an Insolvency Professional to be appointed later as per applicable Law. All decisions taken by the said committee shall be passed by the majority vote of its members.

G. TREATMENT OF AVOIDANCE TRANSACTIONS

The Resolution Plan in its clause 2.21 provides that if any proceedings initiated by the RP in respect of avoidance transactions, if any, identified by the RP under Chapter II or any fraudulent or wrongful trading identified under Chapter IV of the IBC, would be pursued by the secured creditors even after approval of the resolution plan. It is further stated that proceeds or amount recovered/realized, if any, on or after pronouncement by competent authority in respect of such proceedings, shall be distributed as per the provisions of

Section 53(1) of IBC [Waterfall Mechanism]. The relevant clause in the Resolution Plan stipulates that the cost of such proceedings shall be borne by erstwhile members of CoC/Monitoring Committee.

H. That the final resolution plan submitted by Resolution Applicant meets the requirements of Section 30(2) of the Code as under: -

Section	Provisions under Section 30(2) of the Code	Compliance under Resolution Plan
30(2)(a)	Resolution Plan must provide for the payment of CIRP Costs in priority to the payment of other debts of the Corporate Debtor;	Yes, Clause 2.6(a) of the plan
30(2)(b)	Resolution Plan provides for the payment of debts of creditors 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 the event of a liquidation of the corporate debtor under section 53; 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	Yes Clause 2.6 (c) and (d) of the Plan.
30(2)(c)	Resolution Plan provides for the management of the affairs of the Corporate Debtor after approval of the plan and during the term of Resolution Plan;	Yes Clause 2.7, 2.8 & 2.9 of the Plan
30(2)(d)	Resolution Plan provides for the implementation and supervision of the resolution plan;	Yes Clause 2.8 of the Plan
30(2)(e)	Resolution Plan does not contravene any of the provisions of the law for the time being in force.	Yes Clause 2.10 and 2.11 of the Plan

I. Mandatory Contents as specified under Regulation 38 of IBBI CIRP Regulations 2016 are as under: -

Regulation	Provisions under Regulation 38 of IBBI CIRP Regulations 2016.	Compliance under Resolution Plan
38(1)(a)	The amount payable under a resolution plan – (a) to the operational creditors shall be paid in priority over financial creditors; and (b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.]	Yes Item 2.6 (b, c & d) of The Plan
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.]	Yes Provided under Clause 2.6 of the Resolution Plan
38(1B)	A resolution plan shall include a statement giving details if the applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.]	Clause 2.11
38(2)(a)	A resolution plan shall provide the term of the plan and its implementation schedule;	Clause 2.7 & 2.8
38(2)(b)	A resolution plan shall provide the management and control of the business of the corporate debtor during its term; and	Clause 2.9
38(2)(c)	A resolution plan shall provide adequate means for supervising its implementation	Clause 2.8
38(2)(d)	Resolution Plan provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings	Clause 2.21

	shall be distributed:	
38(3)(a)	A resolution plan shall demonstrate that – It addresses the cause of default;	Clause 4
38(3)(b)	A resolution plan shall demonstrate that – it is feasible and viable;	Clause 5
38(3)(c)	A resolution plan shall demonstrate that – it has provisions for its effective implementation;	Clause 2.7 & 2.8
38(3)(d)	A resolution plan shall demonstrate that – it has provisions for approvals required and the timeline for the same;	Clause 2.7
38(3)(e)	A resolution plan shall demonstrate that – the resolution applicant has the capability to implement the resolution plan.	Clause 2.2 & 2.3

J. With 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 not ineligible under the provisions of Section 29A of the Code, 2016.

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

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

L. 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.”

6. 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 follows: -

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.*

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

'273.1. The adjudicating authority has limited jurisdiction in the matter of approval of a resolution plan, which is well-defined and circumscribed by Sections 38(2) and 31 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by the Committee of Creditors. If, within its limited jurisdiction, the adjudicating authority finds any shortcoming in the resolution plan vis-a-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by the Code and exposted by this Court.' (emphasis supplied)

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

8. The Hon'ble Supreme Court vide its order dated 21.11.2023 in the case of **Ramkrishna Forgings Limited Vs Ravindra Loonkar, Resolution Professional of ACIL Limited & Anr.** in **Civil Appeal No. 1527/2022** held as follows: - (Relevant Extract)

"30. At this juncture, it also cannot be lost sight of that it is for the FC(s) who constitute the CoC to take a call, one way or the other. Stricto sensu, it is now well-settled that it is well within the coc' s domain as to how to deal with the entire debt of the Corporate Debtor. In this background, if after repeated negotiations, a Resolution Plan is submitted, as was done by the appellant (Resolution Applicant), including the financial component which includes the actual and minimum upfront payments, and has been approved by the CoC with a majority vote of 88.56%, such commercial wisdom was not required to be called into question or casually interfered with. Surprisingly, the discussion in both orders is wanting, except for the difference in the figure of the total outstanding dues and the amount of money which the appellant was to put up initially for taking over the Corporate Debtor, for this Court to understand as to what other reasons, grounded in the Code's provisions, compelled the Adjudicating Authority-NCLT to embark upon the novel path of ordering revaluation by the OL. At the cost of repetition, nobody had moved before the NCLT or raised any objection challenging the Resolution Plan pending approval. Even the NCLAT has only indicated that when "figures of crores" are emerging stage-wise, "then there is no harm to look at the Expert opinion", which the Adjudicating Authority-NCLT in this case has asked for"

In the present case, it is observed that CoC had accorded approval to the Resolution Plan submitted by the SRA herein with 87.88% Voting Share, hence in lieu of the aforesaid decision of The Hon'ble Supreme Court and in light of overall facts and circumstances of the case, this Tribunal has not gone into the viability of the Commercial Wisdom exercised by The Committee of Creditors.

9. 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.”
10. 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.
11. 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. In view of the above, **I.A. 4441/2023 in C.P.(IB) No. 953 (PB) 2018 stands allowed.**
12. 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.

13. 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)**.
14. 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.
15. 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.
16. 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.
17. Let the copy of the order be served to the parties.

-SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

-SD/-

(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)