

**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT - IV**

ITEM No. 501

IA/1431/ND/2023 in IB/1689/ND/2018

IN THE MATTER OF:

Sudhir Power Projects Limited ... Applicant

Versus

Dignity Buildcon Private Limited ... Respondent

Order under Section 9 of IBC, 2016.

Order pronounced on 17.05.2023

Coram:

**Mr. P.S.N. PRASAD,
HON'BLE MEMBER (JUDICIAL)**

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

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide, separate sheets.

IA/1431/ND/2023 in IB/1689/ND/2018 **Stands allowed.**

Sd/-

**DR. BINOD KUMAR SINHA,
MEMBER (TECHNICAL)**

Sd/-

**P.S.N. PRASAD,
MEMBER (JUDICIAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

IA-1431/2023

IN

Company Petition No. IB- 1689(ND)/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:-

Mr. Shailendra Ajmera

(Resolution Professional for

M/s. Dignity Buildcon Private Limited)

..... Applicant

AND IN THE MATTER OF:

M/s. Experion Developers Private Limited

... Successful Resolution Applicant/ Respondent

AND IN THE MATTER OF:

M/s. Sudhir Power Projects Limited

... Operational Creditor

VERSUS

M/s. Dignity Buildcon Private Limited

... Corporate Debtor

CORAM:

SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

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

Order Delivered on:17.05.2023

ORDER

PER: SH. P.S.N. PRASAD, MEMBER (JUDICIAL)

PER: DR BINOD KUMAR SINHA, MEMBER (TECHNICAL)

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. Shailendra Ajmera, applicant herein and Resolution Professional (RP) of M/s. Dignity Buildcon Private Limited ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by M/s. Experion Developers Private Limited ('Successful Resolution Applicant') and approved by the Committee of Creditors ('CoC') in its 67th CoC Meeting held on 27.02.2023 in terms of Section 30(4) of I&B Code, 2016 with a majority of 99.73% votes in favor.

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

- a) The applicant submitted that Corporate Insolvency Resolution Process against M/s. Dignity Buildcon Private Limited ('Corporate Debtor') had been initiated by Hon'ble NCLT vide its order dated 24.04.2019 in C.P.(IB) No.1689/2018, a petition under Section 9 of the Code, 2016 filed by M/s. Sudhir Power Projects Limited ('Operational Creditor') and Mr. Pradeep Kathuria was appointed as the Interim Resolution Professional of the Corporate Debtor.
- b) The applicant submitted that the Corporate debtor i.e., M/s. Dignity Buildcon Private Limited is engaged in the business of developing commercial towers in Golf Course Extension Road of Gurgaon, Haryana.
- c) The applicant submits that pursuant to the public announcement in Form A dated 26.04.2019, the IRP had constituted the Committee of Creditors based on the claims received from the creditors of the Corporate Debtor and filed a report dated 16 May 2019 regarding such constitution. It is further submitted that the CoC was reconstituted after receiving additional claims and taking into account the assignment of debt by Standard Chartered Bank in favour of Experion Capital and the same was taken on record by this Adjudicating Adjudicating vide order dated 15 February 2023. The tabular representation depicting the

composition of the CoC of the CD (as on the date immediately prior to the approval of the Resolution Plan by the CoC) along with voting results is as follows –

Sr. No.	Name of the Financial Creditor	Claim admitted (In INR)	Voting Share (percentage %)	Voted For/ Dissented/ Abstained
1.	Experion Capital Private Limited	5,95,27,91,294	60%	Yes
2.	Alchemist Asset Reconstruction Company Limited	3,50,80,24,796	35.4%	Yes
3.	Logos Holding Company Private Limited	41,08,08,318	4.1%	Yes
4.	Addon Realty Private Limited	2,41,37,800	0.2%	Yes
5.	Rapid Buildwell Limited	2,67,59,778	0.3%	Dissented
TOTAL		9,92,25,21,986	100%	Approved: 99.73% Dissented: 0.3%

d) The applicant submitted that the CoC in its first CoC Meeting held on 23.05.2019 had resolved to appoint Mr. Chandra Prakash (erstwhile Resolution Professional) as the Resolution Professional of the Corporate Debtor. It is further submitted that the CoC, in view of the fact that the registration as the Insolvency Professional of the erstwhile Resolution Professional was suspended vide IBBI Disciplinary Committee order dated 11.10.2022, the CoC had resolved to replace the erstwhile RP with the Applicant as the new RP of the Corporate Debtor. Furthermore, this Adjudicating Authority vide order dated 02.01.2023 in I.A. No. 6405 of 2022, had taken on record the appointment of Mr. Shailendra Ajmera as the Resolution Professional of the Corporate Debtor in place of Mr. Chandra Prakash, erstwhile Resolution Professional.

- e) The applicant submitted that the CoC in its meetings had discussed and approved the particulars of eligibility criteria for inviting Expression of Interests from prospective resolution applicant, Information Memorandum, Evaluation Matrix, Appointment of Registered Valuers for conducting the valuation of the all three classes of assets, appointment of Transaction Auditor and other related matters.
- f) The applicant submitted that pursuant to the publication of the Expression of Interest in Form –G, the Five (5) Final Prospective Resolution Applicants came forward and submitted their respective resolution plans. However later on, two (2) Prospective Resolution Applicants withdrew from the process. It is further added that on account of nationwide lockdown declared on 25.03.2020, the process of negotiation came to a standstill and the CoC resolved to invite fresh resolution plans from the Prospective Resolution Applicants.
- g) The applicant submitted that the CoC in its 35th CoC Meeting conducted on 20.11.2020 and reconvened on 22.11.2020, had conducted the open bidding process between the Four (4) Prospective Resolution Applicants that had at that time submitted their revised resolution plans for the Corporate Debtor. The applicant further submitted that the CoC in its 40th CoC Meeting held on 24.12.2020 had decided to give all Prospective Resolution Applicants one final opportunity to submit a revised commercial offer by 04.01.2021 which was extended up to 18 January 2021.
- h) The applicant submitted that the Successful Resolution Applicant, who had previously not submitted the Resolution Plan for the Corporate Debtor had filed an application, bearing I.A. No. 319 of 2021 before this Hon'ble Adjudicating Authority seeking directions for the Erstwhile RP to place its resolution plan before the CoC. This Hon'ble Adjudicating Authority by an order dated 21.01.2021 had directed the Erstwhile RP to place the resolution plan of the Successful Resolution Applicant before the CoC for their consideration.
- i) The applicant submitted that in compliance of this Hon'ble Adjudicating Authority dated 21.01.2021, the resolution plans received from Four (4) Prospective Resolution Applicants namely Sattva, Dhirs, M3M and Experion were put to vote from 10 February 2021 till 12 February 2021 ('first round of voting') and the resolution plan submitted by Sattva received the highest voting percentage, i.e., 64.64%. Notably, all CoC members, except Alchemist, voted in favour of Sattva. The applicant further added that the CoC members decided to re-vote on the resolution plan of Sattva from 13 February 2021 till 15 February 2021. While the voting on the resolution plans was ongoing, the Successful Resolution Applicant submitted its revised resolution plan on 14 February 2021, however the same was not considered by the CoC as the second round of voting had already commenced.

- j) The applicant further submitted that the Successful Resolution Applicant being aggrieved of the fact that the revised resolution plan submitted is not considered had filed an application bearing IA No 833/ND/2021 before this Hon'ble Adjudicating Authority for reconsideration of its revised resolution plan by the CoC and this Hon'ble Adjudicating Authority, by an order dated 17 February 2021, allowed the application and directed the Erstwhile RP to place the revised resolution plan of the Successful resolution Applicant before the CoC. Further, this Hon'ble Adjudicating Authority also permitted other RAs also to submit their revised offers to the Erstwhile RP for placing before the CoC.
- k) The applicant submitted that the CoC in its 51st CoC Meeting held on 03.03.2021 had decided to put the resolution plans to vote from 4 March 2021 till 6 March 2021, extended to 8 March 2021. The first round of voting was concluded on 8 March 2021 and the resolution plans submitted by Sattva and the Successful Resolution Applicant received 64.64% (the said plans were approved by all CoC members, except Alchemist). The applicant added that since both the resolution plans had received the equal percentage of highest votes, basis the tie-breaker formula approved by the CoC, the resolution plan of the Successful Resolution Applicant was put for re-voting from 8 March 2021 till 9 March 2021 ('Second Round of Voting') since it had achieved higher score under the Evaluation Matrix.
- l) The applicant submitted that the second round of voting on the resolution plan submitted by the Successful Resolution Applicant concluded on 9 March 2021 and the resolution plan again received approval of 64.64% of the CoC members and had been approved by all CoC members, except Alchemist.
- m) The applicant submitted that the following extensions and exclusions in the Corporate Debtor's CIRP Period were granted/allowed by this Hon'ble Adjudicating Authority:-
- a) Extension of 90 days beyond 180 days from 21 October 2019 (up till 19 January 2020) vide order dated 17.10.2018 in CA No. 435/ND/2019.
 - b) Extension of 60 days beyond 270 days from 19 January 2020 (up till 19 March 2020) vide order dated 17.01.2022 in C.A No. 477/ND/2020.
 - c) Exclusion of lock down period from 20 March 2020 till 31 July 2020 vide order dated 14.10.2020 in IA No. 4334//ND/2020.
 - d) Extension of 60 days beyond 330 days beyond 31 July 2020 (up till 29 September 2020) vide order in IA No. 2992/ND/2020.
 - e) Extension of 60 days from 29 September 2020 (up till 28 November 2020) vide order dated 14.10.2020 in IA No. 4150/ND/ 2020.

- f) Extension of 30 days from 28 November 2020 (up 2020 I till 27 December 2020) vide order dated 02.12.2020 in IA No. 5240/ND/2020.
 - g) Extension of 30 days from 27 December 2020 (till 27 January 2021) vide order dated 06.01.2021 in IA No. 5758/ND/2020.
 - h) Extension of 20 days from 27 January 2021 (till 16 February 2021) vide order dated 04.02.2021 in IA No. 563/ND/2021.
 - i) Vide order dated 17.02. 2021 in IA No. 833/ND/2021, 3 weeks' further extension is granted from the last date of CIRP, i.e. up till 9 March 2021.
- n) The applicant submitted that since the CIRP period of the Corporate Debtor (after various extensions/ exclusion of time) was expiring on 9 March 2021, and since no resolution plan had been approved by the CoC, the Erstwhile RP had filed I.A. No. 1367 of 2021 ("Liquidation Application") before this Hon'ble Adjudicating Authority for liquidation of the Corporate Debtor.
- o) The Adjudicating Authority vide order dated 01.10.2021 in I.A. No. 1342 of 2021 filed by the Successful Resolution Applicant had directed that "two plans which are pending for transparent and proper voting need to be reconsidered by CoC. We direct RP to conduct CoC meeting as early as possible. Put both the plans before CoC". Furthermore, this Adjudicating Authority passed an order in I.A No. 4918 of 2021 filed by Erstwhile RP, clarifying that the resolution plans of Experion and Sattva are to be considered.
- p) Being aggrieved by this Adjudicating Authority's order dated 25.11.2021 passed in I.A No. 4918/ND/2021 read with order dated 01.10.2021, two appeals bearing Company Appeal (AT) (Ins.) No. 1026 of 2021 on behalf of Alchemist and Company Appeal (AT) (Ins.) No. 1062 of 2021 on behalf of Dhirs were filed before the Hon'ble NCLAT. The Hon'ble NCLAT vide order dated 21.12.2021 passed the final order in the appeals inter alia granting a period of 15 days to all 4 resolution applicants to submit their revised plan along with PBG and further 30 days thereafter for the CoC to complete the process of consideration and voting on the resolution plans.
- q) The applicant submitted that pursuant to the order dated 21.12.2021 of the Hon'ble NCLAT, the Erstwhile RP invited all four PRAs (i.e., Experion, Dhirs, Sattva and M3M) to submit their resolution plans (password protected) by 05.01.2022 along with the PBG of INR 20 Crores in accordance with the RFRP. The applicant further submitted that pursuant to invitations, the resolution plans were received from only two (2) PRAs namely Dhirs and M3M whereas M/s. Sattva expressed its unwillingness to submit a resolution plan, while the Successful Resolution Applicant submitted a letter seeking an extension of time for submission of its plan

on the ground of filing of Civil Appeal Nos. 67-68 of 2022 ("Experion SC Appeal") against the NCLAT order dated 21 December 2021.

- r) The applicant submitted that the CoC had unanimously decided that opening of the resolution plans will be deferred until the hearing of Experion SC Appeal which was listed on 7 January 2022, therefore, the 58th CoC meeting was adjourned. It is further added that Experion SC Appeal was heard and dismissed by the Hon'ble Supreme Court, however, the Hon'ble Supreme Court had granted 15 days' further time to the Successful Resolution Applicant to submit the revised plan in terms of paragraph 20 of the NCLAT's order dated 21 December 2021.
- s) Meanwhile, the Successful Resolution Applicant had filed a writ petition bearing W.P. No. 1107 of 2022 ("Experion Writ Petition") before the Hon'ble High Court of Delhi, seeking, inter-alia, directions for issuance of a writ or order or direction in the nature of mandamus/ certiorari quashing setting aside/ declaring the proviso to Section 30 (5) of the Code as unconstitutional and violative of Article 14 of the Constitution.
- t) The Hon'ble Delhi High Court passed an interim order in W .P. No. 1107 of 2022 ("Experion Writ Petition"), directing that "there shall be no voting on any Resolution Plan(s) in the meeting of CoC, to be convened in the near future". ("DHC Interim Order"). It was submitted that the CoC in its 59th CoC meeting had unanimously agreed that, in view of the DHC Interim Order, the resolution plans submitted for the Corporate Debtor shall not be opened and deliberated amongst the CoC members at this stage.
- u) The applicant submitted that CoC in its 63rd CoC meeting had approved the filing of appropriate application by RP for exclusion of the Litigation Period of 367 days (i.e., from 7 January 2022, being the date of the SC Order in Experion Appeal, till 9 January 2023, being the date when the Experion Writ Petition was dismissed as withdrawn and stay got vacated) from the calculation of period of 30 days allowed by the Hon'ble Appellate Tribunal to the CoC to consider and vote on the resolution plans. The Hon'ble NCLAT vide order dated 17.02.2023 had allowed I.A. No. 617 of 2023 filed by the RP, granting exclusion of the Litigation Period and further granted 30 days' time from the date of the order (i.e., 17th February 2023) to take further steps to implement its order dated 21 December 2021.
- v) The applicant submitted that the CoC in its 66th CoC Meeting held on 22.02.2023, had discussed the plans of all the three PRAs and the Applicant had apprised the CoC members of the financial proposals received from the Prospective Resolution Applicants, present value of the payments proposed to be made to the financial creditors and the repayment plan. Further, it was decided that the PRAs can submit their revised resolution plans on or before 24.02.2023.

- w) The applicant submitted that the revised plans were examined by the Applicant along with his legal team and the same were considered to be in compliance with the Code and the CIRP Regulations. Further, all the three resolution plans were presented before the CoC in its 67th CoC meeting and the CoC deliberated on the qualitative scoring of the resolution plans as per the Evaluation Matrix. After discussions and deliberations on the resolution plans, taking into consideration compliance with the provisions of the Code and the CIRP Regulations, eligibility of the PRAs as per the Section 29A report submitted by M/s. Bagchi & Gupta, and the feasibility and viability of all the resolution plans, the CoC decided to put the three resolution plans for simultaneous voting, in accordance with Section 30 (4) and Regulation 39 of the CIRP Regulations.
- x) The applicant submitted that the e-voting on all three resolution plans was conducted as per Regulation 25 (5) read with Regulation 26 of the CIRP Regulations from 6 PM on 28 February 2023 till 6 PM on 3 March 2023 and after conclusion of the-voting, the Resolution Plan of the Successful Resolution Applicant stood approved by 99.73% voting share and no other resolution plan received the requisite vote of 66% as required under the Code.
- y) The applicant submitted that pursuant to approval of the Resolution Plan submitted by Successful Resolution Applicant by the CoC, the applicant had issued a Letter of Intent dated 03.03.2023 to the Successful Resolution Applicant inter-alia informing the SRA that the final Resolution Plan dated 24.02.2023 as submitted before the CoC was approved and accordingly, the Successful Resolution Applicant was requested to convey their unconditional acceptance. The applicant added that pursuant to the issue of Letter of Intent, the Successful Resolution Applicant had accepted the Letter of Intent and had also issued a PBG of INR 20 crores in accordance with the Request for Resolution Plan.

3. While the applicant sought approval of the Resolution Plan dated 24.02.2023 submitted by M/s. Experion Developers Private Limited ('Successful Resolution Applicant') as approved by the CoC with 99.73% voting in favor, the Unsuccessful Resolution Applicant had raised some oral objections against the approval of the Resolution Plan before this Adjudicating Authority during the final arguments of I.A/1431/ND/2023 in the hearing dated 17.03.2023. However, in view of the categorical judgement of the Hon'ble Supreme Court in **Arcelor Mittal India Pvt. Ltd. Satish Kumar Gupta [(2019) 2 SCC 1]**, it is settled position of law that the resolution applicant does not have any vested right that his Resolution Plan must be considered. The commercial wisdom of the CoC is paramount, and it has the

absolute prerogative to decide the viability and feasibility of the Resolution Plans presented before them and the same is not to be interfered even by the Adjudicating Authority. Therefore, the objections raised by the Unsuccessful Resolution Applicant are overruled.

4. We have heard the submissions made by the Ld. Counsel for the Applicant, Ld. Senior Counsel for the Successful Resolution Applicant, Ld. Counsel for the Unsuccessful Resolution Applicant and have meticulously gone through the documents produced on record. After considering the arguments advanced by the Ld. Counsel for the Applicant, this Adjudicating Authority is of the considered view that, no specific or sustainable objections as to the approval of the resolution plan dated 24.02.2023 survive, therefore there is no impediments in proceeding with examining the Resolution Plan vis-à-vis with the mandatory compliance under the Code and the Regulations made thereunder.
5. The salient features of the Resolution Plan dated 24.02.2023 as submitted by consortium of M/s. Experion Developers Private Limited and as approved by the COC in its Sixty-Seventh (67th) CoC meeting held on 27.02.2023 with an affirmative voting of 99.73% are reproduced herein below:

I. Background of the Resolution Applicant:

The Resolution Applicant is a private limited company incorporated under the Companies Act, 1956 having its registered office at F-9, 1st Floor, Manish Plaza-1, Plot No. 7, MLU, Sector-10, Dwarka, New Delhi-110075, India.

The SRA is a 100% FDI funded real estate developer backed by Experion Holdings Pte. Ltd., Singapore, the real estate investing arm of the \$2.5 billion AT Holdings group of companies with substantial development projects across various locations in India. The Successful Resolution Applicant is developing townships, group-housing projects, commercial landmarks, organised retail destinations, hotels and resorts across Andhra Pradesh, Delhi NCR, Goa, Haryana, Maharashtra, Punjab, Tamil Nadu and Uttar Pradesh.

II. Payment to Secured Financial Creditors and Unsecured Financial Creditors-

The SRA proposes to make a payment of Rs.445,00,00,000/- as Upfront Payment to the Secured Financial Creditors and Rs.2,50,00,000/- as upfront payment to the unsecured Financial Creditors in the following manner:

- a) Increase in Authorised Share Capital:** Upon approval of this Resolution Plan by the Adjudicating Authority, the Authorized Share Capital of the Corporate Debtor shall be increased in accordance with Applicable Laws, and the approval of this Resolution Plan by the Adjudicating Authority, shall also constitute approval of such increase in the Authorized Share Capital;
- b) Issue of Fresh Shares:** The Corporate Debtor shall then issue fresh shares at the face value to the Secured Financial Creditors (other than the Secured Financial Creditors holding non-convertible debentures of the Corporate Debtor) such that the entire debt of such Secured Financial Creditors shall convert into shares; and simultaneously the SRA, and, or, GSC Investments Advisors Private limited("GSC") and, or, such other Entity shall also be issued fresh shares of the Corporate Debtor;
- c) Selective Capital Reduction:** Simultaneous to the issuance of shares to inter alia the Secured Financial Creditors and the SRA and, or, GSC, and, or, such Other Entity, there shall be a selective capital reduction with respect to the existing shares of the Corporate Debtor, whereby all the equity shares and preference shares of the corporate Debtor (except the shares issued under the Resolution Plan) shall stand cancelled and extinguished;
- d) Purchase of shares and NCDs:** Accordingly, on the Transfer Date, the SRA, and, or, GSC and, or, such Other Entity, shall, for a total consideration of Rs. 445,00,00,000/- i.e. the Upfront Payment and as a full and final settlement, purchase (a) all the shares held by the Secured Financial Creditors (who have been issued shares under this Resolution

Plan), and (b) all the non-convertible debentures of the Corporate Debtor held by the other Secured Financial Creditors;

e) Payment to Unsecured Financial Creditors: Out of the total amount claimed by the unsecured Financial Creditors, the Resolution Professional admitted an amount of Rs. 60,68,00,000/-. The SRA proposes to pay 4.1% of the total claim admitted, amounting to Rs. 2,50,00,000/- for full and final settlement of all dues of unsecured Financial Creditors.

III. Payment to other classes of creditors; Corporate Insolvency Resolution Process ("CIRP") Costs-

S. No.	Class of Creditor	Amount Claimed (Rs. in Cr.)	Amount Admitted (Rs. in Cr.)	Amount provided under the Plan (Rs. in Cr.)	Percentage of Amount Provided against the Amount Claimed (%)
1.	Secured Financial Creditors	946.13	946.13	445.00	47.03
2.	Unsecured Financial Creditors	145.88	60.88	2.5	4.12
3.	Operational Creditors	65.73	31.20	2.5	8.01
4.	Workmen and Employees	0.17	0.10	0.10	100
5.	Other Creditors	90.65	27.38	Nil	0.00
6.	Dissenting Financial Creditors	Payment of debts shall be equal to the payments stipulated under Section 30(2)(b) of the IBC. The amount required to			

		be paid to any dissenting Financial Creditors in excess of their entitlement as per this Resolution Plan shall be deducted from the Upfront Payment.
6.	CIRP Costs	The Corporate Debtor shall be free to pay CIRP Costs from the existing cash and cash equivalent available with the Corporate Debtor, including from proceeds from resolution process of Prius Commercial Projects Private Limited. In case any CIRP Costs are outstanding as on the Transfer Date, cash and cash equivalent available with the Corporate Debtor shall be used to pay such CIRP Costs and the balance cash and cash equivalent (other than the infusions made by the SRA in accordance with the terms of this Resolution Plan) available with the Corporate Debtor shall be passed through to all Financial Creditors (assenting or dissenting) in full, in proportion to their voting share. In case the existing cash and cash equivalent are not sufficient to pay the CIRP Costs in full, the shortfall shall be paid and shall be reduced from the Upfront Payment.

IV. Implementation of the Resolution Plan:-

As provided in Clause 8 of the Resolution plan, the timeline of the activities is as follow:-

S. No.	Activity	Timeline (days)
Phase I – Approval Process of the Proposed Plan		
1.	Approval of Plan by CoC	X
2.	Acceptance of Letter of Intent	X+7= Y
3.	Application to NCLT for approval of Plan	Y+7
4.	Approval by NCLT of this Plan ("Effective Date")	E
5.	Notice on the website of the Company	Within E + 7
6.	Intimation to various authorities including Haryana	

	RERA, RBI, DTCP, Tax Authorities and various other statutory authorities (as applicable)	
7.	Intimation to all creditors, existing shareholders and other stakeholders of the Company	
8.	Increase in the authorized share capital of the Company.	On or before E + 30
Phase II – Implementation of Plan		
1.	Interim Management of the Company by the Monitoring Agency (as defined hereinafter)	From E - Till Transfer Date
2.	Issuance of fresh shares to the Secured Financial Creditors and the Resolution Applicant/ GSC / Other Entity.	E+30 which date shall be the Transfer Date
3.	Extinguishment of shares held by the existing shareholders by way of selective capital reduction.	
Phase III – Settlement of Creditors		
1.	Infusion of funds by the Resolution Applicant	On the Transfer Date
2.	Payment of CIRP Costs	On the Transfer Date
3.	Payment of the Workmen/Employees claims	
4.	Payment to the other Operational Creditors	
5.	Payment to the dissenting Financial Creditors (if any)	
6.	Payment of the Upfront Payment, part settlement of claims of other Financial Creditors by purchase of shares / NCDs in the manner set out in this Plan i.e. Purchase of (i) shares held by the Secured Financial Creditors (other than the Secured Financial Creditors issued non-convertible debentures); and (ii) the non-convertible debentures held by the Secured Financial Creditors; by the Resolution Applicant/ GSC/ such Other Entity in accordance with the terms of this Resolution Plan	

6. 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.

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.]”

7. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in clause 7.4.2 (i) (Payment of CIRP Cost) of the Resolution Plan wherein it provides for the payment of the CIRP cost in priority to any other creditor of the Corporate Debtor.

8. In respect of compliance of Section 30(2)(b) of the Code, it is seen that there is a provision in clause 7.4.2 (iii) and 7.4.2 (iv) of the Resolution Plan wherein it provides as follow:-

a) **Clause 7.4.2 (iv) (a)- Operational Creditors -**

As per the Information Memorandum, the Resolution Professional has received 53 claims amounting to Rs. 65.73 Crores under the category of creditors having dues for supply of goods and services. Out of the total claim amount the Resolution Professional has admitted an amount of Rs.31.20 Crores. The Resolution Applicant proposes 8.01% of the total claim admitted of Rs.31.20 Crores amounting to Rs.2.5 Crores to settle the claimed dues of Operational Creditors. The amount proposed to be paid to other Operational Creditors shall be paid on the Transfer Date

b) **Clause 7.4.2 (iv) (c)- Workmen and Employees Dues -**

As per the Information Memorandum, the Resolution Professional has received claims from 5 employees for an amount of Rs. 17,00,680/-. Out of the total claim amount the Resolution Professional has admitted an amount of Rs. 9,72,734/- (the claim amount is inclusive of the gratuity payable, if any). 100% of the admitted claims of employees shall be paid towards the full and final settlement of such claims.

9. In respect of compliance of Section 30(2)(c), it is seen that clause 7.4.3 (Payments to Dissenting Financial Creditors) of the Resolution Plan, provides that in case of dissenting Financial Creditors, the payment of debts shall be equal to the payments stipulated under Section 30 (2) (b)of the IBC. The same shall be paid in priority to the other Financial Creditors and the amount

required to be paid to any dissenting Financial Creditors in excess of their entitlement as per this Resolution Plan shall be deducted from the Upfront Payment.

10. In respect of compliance of Section 30(2)(d) and 30(2)(e) 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 Clause 12 (Management of the Corporate Debtor) of the Resolution Plan. The clause 12.4 of the Resolution Plan, provides for the Monitoring Agency which shall comprise of a 5 (five) member committee comprising of: (A) 2 (two) representatives nominated by the Secured Financial Creditors; (B) 2 (two) representatives nominated by the Resolution Applicant; and (C) the Resolution Professional or 1 (one) external expert as mutually nominated by the Resolution Applicant and the Financial Creditors jointly. The Monitoring Agency shall supervise the implementation of this Plan, and shall be required and entitled to do all such acts, deeds, matters and things as may be necessary, desirable or expedient in order to implement and give effect to this Plan in accordance with its terms and shall act under the supervision of the Adjudicating Authority.
11. In respect of compliance of Section 30(2)(f) of the Code, it is seen that the information provided in Clause 7.2.4 and Clause 16.1 of the Resolution Plan and other provisions of this Plan and the supporting documents provided by the Successful Resolution Applicant, it seems that the Resolution Plan is in compliance with the applicable laws.
12. In respect of compliance regarding Regulation 38 (1A) of the CIRP Regulations, it is seen that the Clause 7.2 and Clause 16.5 the Resolution Plan provides how it will deal with the interest of all the stakeholders including secured and unsecured financial creditors, operational creditors of the corporate debtor, statutory dues and interests of the employees and workmen, as per the requirement of Regulation 38(1A) of the CIRP Regulations.

13. 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 not ineligible under the provisions of Section 29A of the Code, 2016. Moreover, an affidavit by the Successful Resolution Applicant in compliance of Regulation 39(1) of CIRP Regulations is also placed on record of this Adjudicating Authority.
14. On perusal of Form-H annexed as Annexure-1 at page no. 42-54 of I.A. 1431/2021, we observe that the Fair Market Value of the Corporate Debtor as provided in Form- H is Rs.630.04 crores and the Liquidation Value of the Corporate Debtor is Rs. 428.46 crores. We further observe that one application bearing I.A./609/ND/2019 under Section 43 and 65 of the Code, 2016 filed on 26.11.2021 is pending before this Adjudicating Authority.
15. On perusal of the proposed Resolution Plan, we observe that clause 10.5 of the Resolution Plan be deemed to have been received for the benefit of all provides that, "in case any transaction is voided/ set aside by the Hon'ble NCLT in terms of Sections 43, 45, 47, 49, 50 or 66 of IBC and any amount is received by the Resolution Professional or the Corporate Debtor in furtherance thereof, such sum shall be deemed to have been received for the benefit of all the Financial Creditors (assenting or dissenting) and shall be paid to the Financial Creditors in proportion to their voting share. Further, the Resolution Applicant/ Monitoring Agency shall ensure that all the actions initiated pursuant to Sections 43, 45, 47, 49, 50 or 66 of IBC shall be pursued and the Corporate Debtor and the Resolution Applicant shall ensure all cooperation is provided for such actions being pursued, at all times even after the approval of the Resolution Plan by the Adjudicating Authority.

16. As to the relief and concessions sought in the Resolution Plan more specifically set out in Clause 9 (Other terms of the Resolution Plan, including certain desired reliefs and concessions) and Clause 14 (Additional Desired Reliefs and Concessions) 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**, this Adjudicating Authority 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.”

17. 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 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.

18. 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.”*
19. 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. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan dated 24.02.2023.
20. Accordingly, subject to the aforesaid observations, we hereby **approve the Resolution Plan dated 24.02.2023 ('Approved 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. Resultantly, ***I.A. 1431/ND/2023 stand allowed.*** 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. We further reiterate that the Approved 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 Approved 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 Approved Resolution Plan as mentioned above, it is clarified that the Successful 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.
23. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the Corporate Debtor and the Approved 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./1431/ND/2023 stands for the detailed reasons stated above.**

Let the copy of the order be served to the parties.

Sd/-
(DR.BINOD KUMAR SINHA)
MEMBER (T)

Sd/-
(P.S.N PRASAD)
MEMBER (J)

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