

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH-V**

**I.A/1138/ND/2021 A/W I.A/1428/ND/2021**  
**IN**

**CP IB-2371/ND/2019**

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

**IN THE MATTER OF**

**Ingram Micro India Private Limited**

S.G. Business Centre No. 12,  
New Hosur Road, Wilsen Garden,  
Bangalore-560027

**... Operational Creditor**

**Versus**

**M/s K.D.K. Enterprises Private Limited**

Unit No.- 4, LGF, Gallon Plaza, 3/31-34,  
Shivalik Road, Malviya Nagar,  
New Delhi-110017

**... Corporate Debtor**

**AND**

**IN THE MATTER OF I.A. 1138/ND/2021:**

**Devendra Singh**

**Resolution Professional**

**M/s K.D.K. Enterprises Private Limited**

**... Applicant**

**AND**

**IN THE MATTER OF I.A. 1428/ND/2021:**

**Ingram Micro India Private Limited**

**...Applicant/Operational Creditor**

**Versus**

**Devendra Singh**

**Resolution Professional**

**M/s K.D.K. Enterprises Private Limited & Ors.**

**...Respondents**

**I.A./1138/ND/2021 A/W I.A./1428/ND/2021**

**IN**

**CP IB-2371/ND/2019**

**Order Delivered on: 21.12.2023**

**CORAM:**

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

**For the Applicant** : Mr. Saurabh Jain, Mr. Prayag Jain, Mr. Aashish Sethi, Advs. In IA/1428/2021

**For the Respondent** :

**For the SRA** : Mr. Hashmat Nabi, Ms. Shariqa Aftab, Ms. Divya Kaur, Advs.

**For the RP** : Mr. Palash Singhvi, Mr. Anurag Singh, Advs.

**For the CoC** : Mr. Brijesh Kumar Tamber, Mr. Prateek Kushwaha, Advs. for Indian Bank/CoC

**ORDER**

**PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)**

1. The Present application i.e., I.A./1138/2021 has been filed under Section 30(6) read with section 31(1) of the Insolvency and 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 ('CIRP Regulations') on behalf of Mr. Devendra Singh, Resolution Professional ('Applicant') of M/s K.D.K. Enterprises Private Limited ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by Mr. Vikas Kumar Khairari, ex-director of the Corporate Debtor ('Successful Resolution Applicant') and approved by the Committee of Creditor ('CoC') in its 9<sup>th</sup> meeting held on 21.01.2021 with 100% voting in favor.

**2. Facts as averred by the Applicant in I.A./1138/ND/2021**

- a) The Applicant submits that the Corporate Insolvency Resolution Process was initiated against M/s K.D.K. Enterprises Private Limited ('Corporate Debtor') by this Adjudicating Authority vide order dated 20.03.2020 in C.P IB-2371/ND/2019, an application filed by M/s Ingram Micro India Private

Limited under Section 9 of the Code and Mr. Naveen Kumar Jain was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor. However, vide 3<sup>rd</sup> CoC meeting convened on 17.08.2020, the members of CoC passed a resolution to appoint Mr. Devendra Singh as the Resolution Professional of the Corporate Debtor. Hence, in view of the resolution passed by the members of CoC in its 3<sup>rd</sup> CoC meeting, this Adjudicating Authority vide its order dated 04.09.2020, appointed Mr. Devendra Singh as the Resolution Professional of the Corporate Debtor.

- b) The Applicant submits that a public announcement was made by the IRP inviting claims from all the creditors of the Corporate Debtor in Form A, in the manner prescribed under the Code and was published on 15.05.2020 in Financial Express (English) and Jansatta (Hindi) Delhi /NCR Edition. The Applicant further submits that pursuant to the Public Announcement, the Applicant had received and collated the claims of the creditors and constituted the Committee of Creditors ('CoC') on 03.06.2020 in terms of section 18 of the Code. The Applicant adds that the said list of creditors and the report of the constitution of the committee as per Regulation 13 and 17 respectively of the CIRP Regulations was taken on record by this Adjudicating Authority.
- c) The Applicant submits that pursuant to its appointment, the Applicant convened 4<sup>th</sup> meeting of the CoC on 22.09.2020, wherein, the Resolution Professional apprised the members of the CoC and appointed two Registered Valuers as per Regulation 27 of the CIRP Regulations, to carry out the process of determining the fair value and liquidation value of the assets of the Corporate Debtor and further appointed Gupta Achita & Co., Chartered Accountants as the Transaction Auditor of the Corporate Debtor for carrying out audit of the accounts of the Corporate Debtor.
- d) The Applicant submits that pursuant to Regulation 36A of the CIRP Regulations read with Section 25(2)(h) of the Code, the Resolution Professional in 4<sup>th</sup> CoC meeting approved the eligibility criteria for the Prospective Resolution Applicants (PRAs) and thereafter, proceeded with the issuance of Form-G for inviting Expression of Interest (EoI) from the PRAs.

- e) The Applicant submits that in accordance with Section 12 of the IBC, the time limit for completion of CIRP is 180 days from the date of admission of application for initiation of such process, which came to an end on 16.09.2020 in the present case. Hence, an extension of 90 days beyond the stipulated period of 180 days was required to be extended. The members of the CoC representing 100% of the voting share accorded their approval and hence, the Resolution Professional filed an Application bearing IA-4392/2020 in CP (IB) No. 2371/ND/2019 under Section 12(2) of the IBC read with Regulation 40 of the CIRP Regulations seeking extension of the time limit of CIRP of the Corporate Debtor by 90 days. This Adjudicating Authority vide order dated 12.11.2020, extended the period of CIRP for another period of 90 days till 21.02.2021.
- f) The Applicant submits that the Resolution Professional had invited EoI from the PRAs and in this regard, advertisements/Form G was published on 03.10.2020. The last date for submission of EoI was 18.10.2020, wherein, the Resolution Professional received 3 EoIs from PRAs namely, Mr. Vikas Kumar Khairari, Mr. Bhagwat Singh Rathore and Mr. Harsha Vardhan Reddy. It is also submitted that Mr. Harsha Vardhan Reddy withdrew his EoI vide communication dated 21.10.2020.
- g) The Applicant submits that the CoC in its 5<sup>th</sup> CoC meeting held on 28.10.2020, approved the terms of Request for Resolution Plan Document and Evaluation Matrix which is to be shared with eligible PRAs. The provisional list of the PRAs have been circulated on 28.10.2020 and final list of PRAs have been circulated on 07.11.2020 to the CoC and an intimation mail was sent to both the PRAs.
- h) The Applicant submits that the CoC in its 6<sup>th</sup> CoC meeting held on 25.11.2020 extended the timeline for submission of Resolution Plan by eligible PRAs till 21.12.2020.
- i) The Applicant submits that the Applicant had received two Resolution Plans for the CIRP of the Corporate Debtor. That the Resolution Plan submitted by Mr. Vikas Kumar Khairari was supported with the Earnest Money Deposit

(EMD) amounting to Rs. 7,25,422. However, the other Resolution plan submitted by Mr. Bhagwat Singh Rathore was not supported by the amount of EMD.

- j) The Applicant submits that the Resolution Professional in the 7<sup>th</sup> CoC meeting held on 23.12.2020, presented the two Resolution Plans submitted by the PRAs before the CoC. The Resolution Professional apprised that the Resolution Applicant Mr. Vikas Kumar Khairari had provided the EMD amount through cheque which was not strictly as per the terms of RFRP document, whereas, the acceptable mode of submission of EMD amount is through RTGS/Bank guarantee/ Demand Draft only. Hence, the CoC granted 7 days' time to Mr. Khairari to deposit the EMD amount through required mode of payment. On the contrary, the Resolution Plan proposed by Mr. Bhagwat Singh Rathore did not provide for any EMD amount.
- k) The Applicant submits that the Resolution Professional in the 8<sup>th</sup> CoC meeting held on 07.01.2021 placed the detailed analysis and compliance status of both the Resolution Plans submitted by the PRAs. The Resolution Plan submitted by Mr. Bhagwat Singh Rathore was declared as non-responsive and non-compliant as the plan was submitted without EMD amount.
- l) The Applicant submits that in the said 8<sup>th</sup> CoC meeting, a Transaction Audit Report was also placed before the CoC members and after discussion and deliberation, the CoC requested the Transaction Auditor to provide details of all the financial transactions with the related parties and payment of salary to the directors of the Corporate Debtor covered under Transaction Audit.
- m) The Applicant submits that the Resolution Professional in the 9<sup>th</sup> CoC meeting held on 21.01.2021 apprised the members of CoC that it had received communication from Mr. Vikas Khairari (Resolution Applicant) that the Resolution Applicant is unable to further revise the plan already submitted and hence, to consider the plan submitted on 21.12.2020 as final. Thereafter, the Resolution Professional placed the Resolution plan submitted by Mr. Vikas Khairari to the CoC along with the detailed compliance and evaluation report. After discussions and deliberations, the CoC members, representing 100%

voting share approved the Resolution Plan of Mr. Vikas Kumar Khairari through e-voting on 03.02.2021 in terms of Section 30(3) of the Code read with Regulation 39(2) of the CIRP Regulations.

- n) The Applicant submits that in the 10<sup>th</sup> CoC meeting held on 18.02.2021, it was concluded that during the relevant period of transaction audit, no such transaction qualified as Preferential/Undervalued/Extortionate/Fraudulent under Section 43,45,50 and 66 of IBC, 2016 by the Transaction Auditor. Hence, the view of the CoC member and the Resolution professional was in consonance with that of the Transaction Auditor.
- o) The Applicant submits that on 08.02.2021, the Resolution Professional sent a Letter of Intent to Mr. Vikas Kumar Khairari, thereby, intimating that the Resolution Plan submitted by it in the CIRP of the Corporate Debtor has been approved by the CoC. The said Letter of Intent was accepted and agreed by the SRA. Thereafter, the Resolution Professional remitted back the EMD amount submitted earlier. Further, on the requisition of the Resolution Professional, the SRA provided a Performance Deposit for an amount of Rs. 14,51,000/- favoring Indian Bank being the member of the CoC.
- p) The applicant further submits that the approved Resolution Plan meets all requirements envisaged under the Code and hence, placed on record Compliance Certificate dated 18.02.2021 in Form H, as required under Regulation 39(4) of the CIRP Regulations.
- q) Hence, the Applicant seeks before this Adjudicating Authority the approval of the Resolution Plan submitted by Mr. Vikas Kumar Khairari which was approved by the CoC on 21.01.2021.

### **3. Objections to the Resolution Plan bearing I.A./1428/ND/2021**

While the Applicant sought approval of the Resolution Plan submitted by Mr. Vikas Kumar Khairari so approved by the CoC in its 9<sup>th</sup> COC meeting held on 21.01.2021 with 100% voting, the Operational Creditor of the Corporate Debtor had raised objections against the approval of the Resolution Plan vide I.A. 1428/ND/2021. Operational Creditor ('objector') in I.A. 1428/ND/2021 against the approval of

Resolution Plan has mentioned in Para 4 of the application that the IRP while suggesting Audit by Qualified Forensic Auditor during the 2<sup>nd</sup> CoC meeting on 24.7.2020 had alleged a number of discrepancies.

a. The Objector submits that the Draft Transactional Review Audit Report submitted by Gupta Achita & Co. on 22.12.2020 observed following anomalies in the transaction of the Corporate Debtor:

- i) The Corporate Debtor has made purchase of Rs. 79.90 Lacs (7.8% of share) out of the total purchase of INR 1,013.90 Lacs from Simsys Infotech Private Limited (SIPL).
- ii) Business loans have been utilized for making payments to SIPL.
- iii) A preferential relationship between SIPL and Advanced Info Solutions had been established. Kunj Nayika, Director of “Advance Softech Infosystems Private Limited” has proprietorship with name of Advance Infosolutions.
- iv) Corporate Debtor has made sale of product to Advance Infosolutions and the same product was purchased from Simsys Infotech Private Limited during same span of time and price.
- v) Amount received from Advance Infosolutions was used to settle payments of Simsys Infotech Private Limited of INR 50 lacs.
- vi) Closing Balance of SIPL of INR 4.86 lacs as on 31.3.2020 has been adjusted with balance of Advance Softech Infosystem Private Limited.
- vii) Various other anomalies were found with respect to Inventory Valuation. As per clause 5 of key observation made in the Draft Transactional Review Audit Report, Closing Inventory 2017-18 is of Rs. 1.73 Cr and Closing Inventory 2018-19 is of Rs. 1.28 Cr. The Corporate Debtor has not maintained any Inventory Register in the company due to comparatively small volume transaction.
- viii) The Draft Transactional Review Audit Report also found anomalies in Invoice. No written purchase order received from customer and same is received over the phone. There is no customer purchase order in written form. It is due to non-availability of such data, the Report could not ascertain if the terms & conditions of the sales are complied with which

lead to time between sale order and actual dispatch, any sale order if pending, auto closure of sales order beyond due delivery date.

- b. The Objector submits that the copy of the Draft Transactional Review Audit Report was not provided to the Objector until the same was raised by the Objector in the 8<sup>th</sup> CoC meeting held on 07.01.2021.
  - c. The Objector further submits that certain in-adversities and suspicious 400 entries in the personal account of the related persons of the Corporate Debtor were not included in the Transactional Review Audit.
  - d. The Objector submits that the Resolution Plan proposed by the promoter of the Corporate Debtor mentions the amount of money being offered to the Financial Creditor. However, no payment is being proposed to be paid to the Operational creditors.
  - e. The Objector submits that the Objector requested the Applicant (present Resolution professional) to conduct Forensic Audit of the Corporate Debtor, however, the same was not accepted by the Bank and instead, a regular audit was conducted to coverup the illegalities in the transactions done by the Promoter/Director of the Corporate Debtor i.e., the Successful Resolution Applicant.
  - f. The Objector submits that the Corporate Debtor being a MSME under Section 29A of the Code, floated the Resolution plan, wherein, the dues of only the Secured Creditors will be cleared and no amount will be paid to other Creditors. The Objector further requested the Resolution Professional to confirm whether the Corporate Debtor was having valid MSME registration.
4. The Applicant (Resolution Professional) responded to the objections raised by the objector vide its reply dated 26.07.2022, wherein the Applicant had made the following submissions to the objections raised by the Objector (i.e., the Operational Creditor):
- i) That upon admission of the Corporate Debtor into CIRP, the erstwhile IRP alleged discrepancies in approx. 400 transactions of the Corporate Debtor which was also discussed in the 2<sup>nd</sup> CoC meeting held on 24.07.2020.



However, it was also stated by the IRP in the 2<sup>nd</sup> CoC meeting that “the books of accounts of the Corporate Debtor has not been prepared and audited for FY 2018-19 and 2019-20”, which is contradicting the former observation made by the IRP. Therefore, in the absence of books of accounts, it can be prudently inferred that such claim of finding discrepancies in transactions stand baseless.

- ii) That the Operational Creditor is demanding for forensic audit of these transactions despite of a Transaction Audit being conducted pursuant to the discrepancies put up by the erstwhile IRP. However, in the 3<sup>rd</sup> CoC meeting held on 17.08.2020, the member Indian Bank reiterated its decision that “Bank has taken a decision to go for only Transaction Review Audit and not the Forensic Audit in this matter”.
- iii) That the Chairperson informed the members of the CoC in the 8<sup>th</sup> CoC meeting that the Draft Transaction Audit Report received on 22.12.2020 was presented and discussed in the 7<sup>th</sup> CoC meeting dated 23.12.2020 whereby, the Resolution Professional along with the minute of the meeting dated 23.12.2020 circulated the Draft Transaction Audit Report to the participants of the meeting on 24.12.2020.
- iv) That regarding the alleged suspicious 400 entries, there is no list available on record to justify such suspicious transactions. However, the Transaction Auditor had to review its report in the light of minutes of 2<sup>nd</sup> CoC. The Transaction Audit was conducted by M/s Gupta Achita & Co. and was duly acknowledged in the 9<sup>th</sup> and 10<sup>th</sup> meeting of CoC held on 21.01.2021 and 18.02.2021 respectively. The Resolution Professional in 9<sup>th</sup> CoC meeting explained that on the basis of the discussion among the CoC, other participants and the Transaction Auditor with respect to the report of the Transaction Auditor, there is no transaction which was firmly observed and concluded to be qualified under avoidance transaction. Hence, as of now, there exists no transaction which are to be reported to this Adjudicating Authority.

- v) That there was no discrepancy in the documents related to the verification of inventory by the Transaction Auditor. However, physical verification of inventory by the bank and statutory auditor was further confirmed by the Transaction Auditor that the same was done on random basis by the bank. The Transaction Auditor further mentioned that Branch head has not physically verified the entire inventory, because as per the bank policy they don't have to conduct physical verification of the inventory, if the bank credit facility is less than Rs. 2 Crore.
- vi) That it was concluded by the Transaction Auditor that there were no such transactions which qualifies as Preferential/Undervalued/Extortionate /Fraudulent covered under Section 43, 45, 50 and 66 of IBC, 2016 by the Transaction Auditor. The view of the CoC member and RP was in consonance with that of the Transaction Auditor.
- vii) That as per the provisions of the Code and the relevant CIRP Regulations, the Resolution Applicant has not been provided the liquidation value of the assets of the Corporate Debtor. However, the Liquidation Value is not sufficient to pay the outstanding debt of Secured Financial Creditors in full. Hence, liquidation Value due to Operational Creditors (including Workmen & Employee and Statutory Dues) in accordance with the priority in sub-section (1) of section 53 is NIL.
- viii) The Resolution Professional in the 10<sup>th</sup> CoC meeting held on 18.02.2021 affirmed that the corporate debtor was having valid MSME registration and is non ineligible under the provisions of Section 29A of the Code. The respective MSME certificate was also filed before this Adjudicating Authority along with an affidavit and undertaking.
5. With regard to the objection raised by the Objector as to the suspicious transactions from the account of the Corporate Debtor, the Resolution Professional submitted that there is no list available on record which justifies the existence of avoidance transaction. Further, as per the report dated 06.01.2021 and addendum dated 20.01.2021 to the said report of the Transaction Auditor, there were no such transactions which qualifies as Preferential/ Undervalued / Extortionate

/Fraudulent covered under Section 43, 45, 50 and 66 of IBC, 2016 by the Transaction Auditor. Further, the view of the CoC member and RP was in consonance with that of the Transaction Auditor. The fact as to non-existence of PUFEE Transactions is acknowledged by the CoC in its 10<sup>th</sup> meeting held on 18.02.2021. The relevant extract of the 10<sup>th</sup> CoC meeting is reproduced hereunder:-

**“Observations in Inventory Record:** *The transaction auditor confirmed the CoC that they have verified all the documents pertaining to inventory statements from the bank record which were submitted by the corporate debtor and further confirmed that the same are in consonance with the financial figures shown in the audited financial statement of the corporate debtor for the relevant periods. **Therefore, no discrepancy was observed in the documents related to verification of inventory by the transaction auditor.** However, physical verification of inventory by the bank and statutory auditor was further confirmed by the transaction auditor that the same was done on random basis by the bank. The transaction auditor further mentioned that Branch Head has not physically verified the entire inventory, because as per the bank policy they don't have to conduct physical verification of the inventory, if the bank credit facility is less than Rs.2 crore.*

*Thereafter, the Resolution Professional discussed and dealt with the findings of the Transaction Auditor. After thorough discussions, and deliberations with the CoC, **it was concluded that during the relevant period of transaction audit, there was no such transactions which qualifies as Preferential/ Undervalued/ Extortionate /Fraudulent covered under Section 43, 45, 50 and 66 of IBC, 2016 by the Transaction Auditor. The view of the CoC member and RP was in consonance with that of the Transaction Auditor.***

*Mr. Sujit Keshari, representing Ingram Micro India Pvt. Ltd. requested the RP to confirm whether the corporate debtor was having valid MSME registration as on the date of declaring his as the eligible Resolution Applicant and the resolution applicant qualifies as per the provisions of Section 29A of IBC, 2016. **The RP apprised the members that the corporate debtor was having valid MSME registration at the relevant point of time and is non ineligible under the provisions of Section 29A of IBC, 2016 read with Section 240A of IBC, 2016.** The representative of Ingram Micro India Pvt. Ltd. requested the RP to share the copy of MSME registration certificate to which RP confirmed that the same would be shared along with the minutes of the instant meeting.*

*The members/participants took note of the same.*

The Objection raised by the Objector that the Transaction Audit was conducted instead of Forensic Audit to rule out discrepancies in the transactions, to which the Applicant submitted that Bank has taken a decision to go for only Transaction Review Audit and not the Forensic Audit in this matter.

The Hon'ble Supreme Court in the case of **Ngaitlang Dhar Vs Panna Pragati Infrastructure Private Limited & Ors., Civil Appeal Nos. 3742-3743 of 2020** has held that the commercial wisdom of the CoC is given paramount consideration. The relevant extract of the judgment is reproduced hereunder as:

*“31. It is Trite law that ‘commercial wisdom’ of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the processes within the timelines prescribed by the IBC. It has been consistently held that it is not open to the Adjudicating Authority (the NCLT) or the Appellate Authority (the NCLAT) to take into consideration any other factor other than the one specified in Section 30(2) or Section 61(3) of the IBC. It has been held that the opinion expressed by the CoC after due deliberations in the meetings through voting, as per voting shares, is the collective business decision and that the decision of the CoC’s ‘commercial wisdom’ is non-justiciable, except on limited grounds as are available for challenge under Section 30(2) or Section 61(3) of the IBC.”*

*“32. No doubt that, under Section 61(3)(ii) of the IBC, an appeal would be tenable if there has been material irregularity in exercise of the powers by the RP during the Corporate Insolvency Resolution period.....”*

Hence, keeping in view the above and also the fact that objector is an Operational Creditor and not a member of CoC, we are of the view that Adjudicating Authority may not interfere with the commercial wisdom of the CoC on the above issues, accept the recommendations of the RP/CoC and reject the prayers made in the I.A. 1428/ND/2021.

6. With regard to the Objection raised by the Objector that in the Resolution Plan no payment is being proposed to be made to the Operational Creditor, the Resolution Professional submitted that the Liquidation value proposed in the plan is not

sufficient to pay the outstanding debt of secured Financial Creditors in full. Hence, liquidation value due to Operational Creditors is NIL. Hence, the amount to be paid to the Operational Creditors, if the amount to be distributed under the plan had been distributed in accordance with the priority in sub-section 1 of Section 53 is also NIL. We are satisfied with the submission made by the Resolution Professional. Hence, the objection raised by the objector in this regard also stands non-tenable.

7. Further, after hearing both the parties, it is evident that the objections raised by the objector to the Resolution Plan approved by the CoC do not merit any consideration by this Adjudicating Authority. Hence, **I.A./1428/ND/2021 stands dismissed.**
8. Therefore, the resolution plan as approved by the CoC in its 9<sup>th</sup> COC Meeting held on 21.01.2021 and which has 100% voting by the members of CoC is placed before this Adjudicating Authority vide I.A./1138/ND/2021 is taken up for consideration. The salient features of the resolution plan submitted by Mr. Vikas Kumar Khairari ('Successful Resolution Applicant') and approved by the Committee of Creditor ('CoC') in its 9<sup>th</sup> meeting held on 21.01.2021 with 100% voting in favour, are as follows:-

- i) That the Synopsis of the Resolution Plan is as under:

**3. SYNOPSIS OF RESOLUTION PLAN**

S.No	Particulars	Vikas Kumar Khairari
		Amount (In INR)
1.	Total Resolution Plan Amount	<b>2,20,00,000</b>
2.	Payment of CIRP Cost <b>Additional CIRP Cost, if any, shall also be paid by the Mr. Vikas Kumar Khairari, Resolution Applicant</b>	12,00,000
3.	Payment to Financial Creditors	1,33,00,000
4.	Payment to Operational Creditors	Nil
5.	Funds to meet Working Capital and Capital Requirement <b>Mr. Vikas Kumar Khairari, Resolution Applicant shall also infuse Rs 75 Lakhs towards meeting immediate CAPEX/working requirements of the CD.</b>	75,00,000
	<b>Total</b>	<b>2,20,00,000</b>

ii) That the amount proposed to be paid towards the Corporate Insolvency Resolution of the Corporate Debtor pursuant to the implementation of the proposed Resolution Plan is as under: -

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

(Amount in Rs. lakh)

Sl. No	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	NIL	NIL	NIL	NIL
		(ii) who voted in favour of the resolution plan	1,33,08,435	1,33,08,435	1,33,00,000	99.93
		Total[(a) + (b)]	1,33,08,435	1,33,08,435	1,33,00,000	99.93

Avendra Singh

2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under subsection (2) of section 21	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	NIL	NIL	NIL	NIL
		(ii) who voted in favour of the resolution plan	NIL	NIL	NIL	NIL
		Total[(a) + (b)]	-	-	-	-
3	Operational Creditors	(a) Related Party of Corporate Debtor	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				
		(i) Government (ii) Workmen (iii) Employees (iv) .....	1,11,22,647	1,11,22,647	NIL	NIL
		Total[(a) + (b)]	1,11,22,647	1,11,22,647	-	-
4	Other debts and dues	NIL	NIL	NIL	NIL	
Grand Total			24431082	24431082	1,33,00,000	54.43

In addition to the above, the Resolution Applicant also submitted that it shall also infuse Rs. 75 Lacs towards meeting up gradation, improvement and to meet the requirement in capital investment and working capital requirements of the Corporate Debtor.

- iii) That the fair value and liquidation value of the Corporate Debtor is Rs. 1.34 Crores and Rs. 0.83 Crores, respectively.
- iv) That the final resolution plan and its addendum submitted by Mr. Vikas Kumar Khairari meets the requirements of Section 30(2) of the Code as under:

-

<b>Section</b>	<b>Provisions under Section 30(2) of the Code</b>	<b>Compliance under Resolution Plan</b>
30(2)(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;	YES Page No. 22
30(2)(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- <ul style="list-style-type: none"> <li>(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or</li> <li>(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</li> </ul>	NIL payment to the Operational Creditor as per the Resolution Plan. Page No. 22
30(2)(c)	provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;	YES Page No. 23
30(2)(d)	the implementation and supervision of the resolution plan;	YES Page No. 23



30(2)(e)	does not contravene any of the provisions of the law for the time being in force	YES Page No. 23
30(2)(f)	conforms to such other requirements as may be specified by the Board.	YES Page No. 23

v) That the Resolution Applicant has provided the indicative timeline of events for implementation of the Resolution Plan at Page no. 44, which is reproduced as under: -

S.No.	Activity	Estimated Time Line
1.	Submission of proposed Resolution Plan by the Resolution Applicant	21 <sup>th</sup> December 2020
2.	NCLT Approval Date	X (effective date)
3.	Formation of monitoring committee	X + 10 Days
4.	Payment of CIRP Costs	Within X+ 90 days
5.	Payment to Financial Creditors as per the provisions of the plan: -Upfront Amount -Balance settlement amount	X+ 90 days X+ 90day +12 months

vi) 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	NIL payment to the Operational Creditor as per the Resolution Plan. Page No. 31

	plan, shall be paid in priority over financial creditors who voted in favour 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 Page No. 30-31
38(1B)	A resolution plan shall include a statement giving details if the resolution 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.]	NO Page No. 24
38(2)(a)	A resolution plan shall provide the term of the plan and its implementation schedule;	YES Page No. 44
38(2)(b)	A resolution plan shall provide the management and control of the business of the corporate debtor during its term; and	YES Page No. 42-43
38(2)(c)	A resolution plan shall provide adequate means for supervising its implementation	YES Page No. 42-43
38(3)(a)	A resolution plan shall demonstrate that – it addresses the cause of default;	YES Page No. 20
38(3)(b)	A resolution plan shall demonstrate that – it is feasible and viable;	YES Page No. 25
38(3)(c)	A resolution plan shall demonstrate that – it has provisions for its effective implementation;	YES Page No. 38
38(3)(d)	A resolution plan shall demonstrate that –	YES

	it has provisions for approvals required and the timeline for the same; and	Page No. 38-41
38(3)(e)	A resolution plan shall demonstrate that – the resolution applicant has the capability to implement the resolution plan.]	YES Page No. 42-43

**PLAN FOR REVIVAL:**

vii) Post acquisition of the Corporate Debtor, the Resolution Applicant will make his efforts for effectively running the business of the Corporate Debtor. Further, the Resolution Applicant shall infuse funds of Rs. 1,33,08,435 Lacs (Approx.) in the form of secured loan/equity from his own sources/ companies for repayment of the creditors and for meeting the CIRP cost. An amount of Rs. 1,33,08,435 shall be paid in full to the Financial Creditor against total dues. As a result of settlement of these financial debts of the Corporate Debtor will be reduced to nil. The Resolution Applicant shall also infuse Rs. 75 Lacs towards meeting up gradation, improvement and to meet the requirement in capital investment and working capital requirements of the Corporate Debtor. Total implementation period of resolution plan would be 24 months. However, the debt of Financial Creditor of the Corporate Debtor shall be repaid in full within 15 months from the effective date.

9. 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.]”*

10. In respect of compliance regarding Regulation 39(4) of the CIRP Regulations, the Applicant has filed a compliance certificate in Form-H annexed as Annexure A-

20 at Page 250-255 of the application, certifying that the Resolution Plan submitted by the Successful Resolution Applicant meets the requirements as laid down in various sections of the Code and the CIRP Regulations and there are sufficient provisions in the Plan for its effective implementation as required under the Code. Further, an affidavit has been obtained from the Successful Resolution Applicant stating that he is eligible under the provisions of Section 29A of the Code, 2016.

11. As to the relief and concessions sought in the Resolution Plan more specifically set out in Section-11 (Other Provisions of Resolution/Reliefs) of the Resolution Plan, it is pertinent to refer to 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**. The relevant part of the judgment 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.”*

In the light of the decision of the Hon’ble Supreme Court in the **Embassy Property Development Private Limited (Supra)**, as to the relief and concessions sought in the Resolution Plan, it is clarified that this Adjudicating Authority is not inclined towards granting any such relief prayed for except for what is provided in the Code itself. However, the Successful Resolution Applicant may approach and file the necessary application before the necessary forum/authority in order to avail the necessary relief and concessions, in accordance with respective laws.

12. In so far as the approval of the resolution plan is concerned, this Adjudicating 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 judgment 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.”*

13. Further, 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**, vide its judgment 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.”*

14. 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.**

15. Thus, from the judgments 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.
16. In view of the above discussion, this Adjudicating Authority is satisfied that the Resolution Plan as filed and explained by the SRA meets the requirement of Section 30(2) of IBC.
17. Therefore, in our considered view, there is no impediment to giving approval to the instant Resolution Plan. Accordingly, we hereby **approve the Resolution Plan**, which shall be binding on the corporate debtor and its employees, shareholders of the corporate debtor, creditors including the Central Government, any State Government or any local authority to whom statutory dues are owed, Successful Resolution Applicant and other stakeholders involved.
18. 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.
19. 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 in such law.
20. 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 in its database in terms of Section 31(3) (b) of the Code. The



Resolution Professional is further directed to hand over all the records, premises, and properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.

21. The approved Resolution Plan shall become effective from the date of passing of this order. The Approved Resolution Plan shall be a part of this order, subject to our observations regarding concessions, reliefs and waivers sought therein.
22. The Monitoring Committee is directed to file the monthly status report with regard to the implementation of the approved plan before this Adjudicating Authority.

In view of the above, the **I.A./1138/ND/2021 stands approved** in terms of the aforesaid discussion.

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

**Sd/-**  
**(DR. SANJEEV RANJAN)**  
**MEMBER (T)**

**Sd/-**  
**(MAHENDRA KHANDELWAL)**  
**MEMBER (J)**