THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH
(through web-based vide conferencing platform)

IA No.134 of 2021
In
CP(IB) No.122/Chd/HP/2019
(Admitted)
Under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016

In the matter of:-

Central Bank of India …Financial Creditor

Versus

Luni Power Company Pvt. Ltd. …Corporate Debtor

And in the matter of:- **IA No.134/2021**
Mr. Sachin Gopal Jathar
Resolution Professional of
Luni Power Company Pvt. Ltd. …Applicant/Resolution Professional

Order delivered on 19.04.2022

Coram: HON'BLE SHRI HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE SHRI SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

Present through Video Conferencing :-

For Applicant/Resolution Professional	:-	Mr. Balwinder Singh Kalsi, Advocate
		Mr. Siddhanth Makkar, Advocate
		Mr. Shaunak Mitra, Advocate
For the Resolution Applicant	:-	Mrs. Munisha Gandhi, Senior Advocate
		Mr. Keshav Pratap Singh, Advocate
		Ms. Salina Chalana, Advocate

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

ORDER

IA No.134/2021

The present application has been filed by the Resolution Professional of Luni Power Company Private Limited (for short the '**corporate debtor**') under

Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (for short the '**Code**') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016, for short the ('**CIRP Regulations**') for approval of the resolution plan as approved by the committee of creditors.

2. Brief facts necessary for adjudication of the present application are that Central Bank of India ('**financial creditor**') had filed an application under Section 7 of the Code before this Tribunal for initiation of Corporation Insolvency Resolution Process ('**CIRP**') against the corporate debtor. This Tribunal, vide its judgment dated 23.12.2019 admitted the petition filed by the financial creditor and appointed, Mr. Sanjay Kumar Agarwal, as Interim Resolution Professional ('**IRP**'). Thereafter, this Tribunal vide order dated 10.08.2020 appointed Mr. Sachin Gopal Jathar as Resolution Professional.

3. It is stated that the erstwhile IRP in compliance with Section 13 and 15 of the Code had made a public announcement in Form-A inviting creditors to submit their respective claims. The Form-A was published on 26.12.2019 in Business Standard in English and Punjab Kesari in Hindi. The last date of receipt of claims as per Form-A was 05.11.2019. The IRP had admitted one claim from the financial creditor. Thereafter, Committee of Creditors was constituted consisting of Central Bank of India with 100% voting share.

4. In the 1st Meeting of the Committee of Creditors held on 21.01.2020, the IRP informed the Committee of Creditors that he had received only one claim from the financial creditor i.e. Central Bank of India. Further, the IRP proposed his

candidature to be further appointed as the Resolution Professional and the members of the Committee of Creditors passed the said resolution with 100% votes.

5. In the 2nd Meeting of the Committee of Creditors held 25.08.2020, the Resolution Professional informed the members of the Committee of Creditors that he has been appointed as Resolution Professional vide order dated 10.08.2020 passed by this Bench. The Resolution Professional sought suggestions from the Committee of Creditors with respect to appointment of registered valuers and transactional auditor. Further, the Resolution Professional discussed about the Bid Evaluation Matrix ('**BEM**'), publication of Expression of Interest ('**EOI**'), and Request For Resolution Plan ('**RFRP**') for revival of the corporate debtor. The Resolution Professional also mentioned that he had met the IRP and the suspended board of director of the company and had requested them to provide information/documents of the company.

6. In the 3rd Meeting of the Committee of Creditors held on 09.03.2020, the Resolution Professional apprised about the appointment of new security agency for the sites of corporate debtor in Himachal Pradesh. The Resolution Professional also mentioned that the IM has been prepared on the basis of available documents and requested the director of the company to provide the pending documents in order to update the IM. The Resolution Professional further discussed about the publication of Form-G and calling for EOI alongwith the eligibility criteria and BEM. The Resolution Professional had also passed a resolution under Section 25(2)(h), 36A, 36B of the Code for publication of Form-G in order to invite Prospective Resolution Applicants ('**PRA**'). The same was approved by a majority vote of 100% of voting shares of the members of the Committee of Creditors.

7. In the 4th Meeting of the Committee of Creditors held on 16.10.2020, amongst other agenda matters, the Resolution Professional discussed about the published Form-G and calling for EOI along with eligibility criteria and BEM. He further briefed the Committee of Creditors of the provisional list of PRAs and thereafter, discussed the RFRP document and sought approval from Committee of Creditors with respect to the RFRP document and releasing it to PRAs. Thereafter, the Committee of Creditors took up the matter of suo-moto extension from 24.03.2020 to 31.08.2020 due to COVID-19 pandemic related lockdown and that this extension was taken on the basis of Regulation 40C read with order dated 30.03.2020 passed by the Hon’ble NCLAT.

8. The Committee of Creditors opined that the process of EOI and seeking resolution plan was underway and more time would be required for completion of the process. Accordingly, the Committee of Creditors in its third meeting passed with 100% of voting share passed a resolution under Section 12 of the IBC for extension of CIRP period by 90 days beyond the period of 180 days.

9. In the 5th Meeting of the Committee of Creditors held on 27.11.2020, the Resolution Professional apprised the Committee of Creditors that as the last date for submission of resolution plan was 17.11.2020, the Resolution Professional received the resolution plan from Kundan Care Products Limited. Resolution Professional opened the resolution plan received in a sealed envelope in presence of the Committee of Creditors. The Resolution Professional mentioned that he shall proceed with the verification of the resolution plan and make a report thereto and any non-compliance shall be checked and be intimated to the Resolution Applicant. The Resolution Professional further requested the members of the Committee of

Creditors to contribute towards CIRP cost as no cost has been contributed to the Committee of Creditors and Committee of Creditors assured the Resolution Professional that the cost shall be paid shortly.

10. In the 6th Meeting held on 02.12.2020, Resolution Professional apprised the members of the Committee of Creditors that initially, the IRP Shri Sanjay Agrawal proceeded with the CIRP activities of the Company and during his tenure quite a few key decisions were taken by the Committee of Creditors. One of the key decisions taken by the Committee of Creditors in its first meeting was the termination of the services of the employees workmen/staff on the payroll of the company. The Committee of Creditors had however, not finalised the modalities and the financial consideration then in the first Committee of Creditors and any day thereof. Unfortunately the IRP was not able to attend to the CIRP due to personal reasons. It was informed that the matter relating to the termination of services of workmen / staff needs further discussion with the Committee of Creditors and requisite decisions needs to be taken accordingly. The suspended board of directors was also asked about the same to which no reply was received by the Resolution Professional. The IRP has stated that he has no knowledge of how the termination of employees was undertaken whereas the Suspended board of directors have preferred to ignore this subject matter.

11. The Committee of Creditors indicated that the decision for termination of the services of the employees was taken based on the IRP's inputs that there was no activities in the company, the employees had no tasks, and there was substantial out-go towards salaries of these employees i.e. around INR.2-3 Lakh per month. However, the CoC was not in knowledge of the process of termination of the

services of the employees. The official representing the corporate debtor informed the Chairman that the salaries were paid to the employees till 22.12.2020. With the CIRP order the IRP was at helm of the corporate debtor, the employees were terminated by the IRP and they did not have details of the process followed by the IRP while terminating the services of the employees. They, however, agreed to provide the records of employee available with them along with the appointment letter and other details of the employee to help the Resolution Professional to chalk out the details of workman and employee of the company.

12. The Chairman further informed the Committee of Creditors that he had received communications from the employees addressed to the Labour Officer - Palampur regarding their grievance against the termination of their service. The Resolution Professional had already written to the employees understanding the issue and requested them to provide details of their employment, their grievance and dues, if any. The Resolution Professional informed that he is expecting responses from the employees. The Chairman indicated that as the Committee of Creditors had decided to terminate the services of the employees and the employees need to be paid their dues towards the termination benefits as per the prevalent law (notice pay, gratuity, terminal benefits, any other dues, etc.). Quite some time had passed since the termination of the employees and funds need to be made available to the Resolution Professional to pay these dues at the earliest. He further indicated that these payments would form part of the CIRP Cost.

13. In the meantime, an application bearing IA No.797/2020 was filed by the Resolution Professional under Section 12(2) & (3) of the Code, seeking extension of CIRP period by 90 days beyond 180 days and this Tribunal vide order dated

11.12.2020 allowed the said application to the limited extent of extending the CIRP Period by 90 days beyond the period of 180 days.

14. In the 7th Meeting of the Committee of Creditors held on 19.01.2021, the Chairman apprised the members that the Resolution Professional has undertaken the verification of the Resolution Plan from Kundan Care Products Limited according to the Request for Resolution Plan (in short '**RFRP**') and in accordance with the laws and guidelines in the Code. In light of this verification exercise, there were certain gaps observed which were needed to be abridged and the same were discussed with the Resolution Applicant. The Resolution Professional communicated the gaps observed with the Resolution Applicant.

On the above based facts and circumstances, detailed discussion of the Resolution Plan was taken up. The Committee of Creditors requested that the representatives of the Resolution Applicant to brief them on terms and implementation of the Plan. The representatives of the Resolution Applicant were then called into the meeting to present the plan submitted by them and throw a light on the various dimensions of the plan & its implementation schedule. The representatives of the Resolution Applicant walked the Committee of Creditors through the various aspects of the plan, detailed their vision for implementation of the plan, pointed out the challenges they anticipated, detailed the implementation schedules and the consideration offered to under the plan.

Further, there were detailed deliberations between the Committee of Creditors and the representatives of the Resolution Applicant on the various aspects of the resolution plan. The Members of the Committee of Creditors took up negotiations with the Resolution Applicant. The Committee of Creditors was of the opinion that the Resolution Applicant could consider bettering the offer under the plan. The Resolution Applicant had proposed a plan of value of Rs.5 Crore. The Resolution Applicant agreed to better their offer under the resolution plan, address gaps, if any, in the resolution plan and revert to the Resolution Professional with their response in this regard at the earliest. The Committee of Creditors advised the Chairman, to propose the resolution for decision on the resolution plan in the next Committee of Creditors meeting to be scheduled once the updated proposal was received from the Resolution Applicant.

15. In the 8th Meeting of the Committee of Creditors held on 03.02.2021, the chairman informed the members of the committee of creditors that a letter dated 02.02.2021 was received by the Resolution Professional from suspended board of directors regarding the application filed by one of the promoters of the corporate debtor. Attention of the members was drawn to CIRP Regulation 30A which deals with the withdrawal of the application. There were detailed deliberations of the modalities of the withdrawal application. It was observed that though an application was filed in the NCLT, the other dimensions of the process such as providing any bank guarantee, the application, Form FA etc. was not done; only the letter from the suspended board of directors was shared. The committee of creditors indicated that though the officials of the corporate debtor were in talks with the bank for long, the matter regarding settlement was yet to be formalized through NCLT. The corporate debtor had filed an application in this regard with the NCLT and that NCLT has yet to decide upon the same. The committee of creditors felt that the CIRP needs to be continued and the steps in the process needs to be covered accordingly. Giving due consideration to the developments at hand, the Committee of Creditors decided that

they would continue with the CIRP and proceed with the decision on the resolution plan at hand.

16. In the last meeting of the Committee of Creditors, the Committee of Creditors deliberated on the resolution plan submitted by the resolution applicant- Kundan Care Products Limited. There were detailed discussions and negotiations on the aspect of the resolution plan. Subsequently, the resolution applicant was requested to amend/revise the resolution plan and its consideration. The chairman informed the Committee of Creditors that the resolution applicant had submitted the revised resolution plan, which was of value of Rs.9 Crore. The Resolution Professional had verified the revised resolution plan submitted by the resolution applicant for it being in accordance with the RFRP and the laws and guidelines in the Code.

The Committee of Creditors discussed the aspects of amended resolution plan filed by the resolution applicant. After due deliberation on the resolution plan, the resolution for approval of the plan comprising of the terms and consideration was taken up. The members of the Committee of Creditors voted on the said resolution and the resolution was passed with 100% voting by the Committee of Creditors for adopting the resolution plan. The Committee of Creditors advised the Resolution Professional to proceed with the filing of the relevant application with this Bench and undertake requisite activities in this regard.

Further, it was informed that all the recurring CIRP cost such as professional fees etc. and other expenses relating to the CIRP such as legal fees, voting expenses etc. incurred by the Resolution Professional till the date of approval of the resolution plan by this Bench, will be considered as CIRP cost and will be considered as ratified by the committee of creditors. Also, in case any litigation continues beyond the CIRP period which ought to be handled by the Resolution Professional, such litigation expenses will also be considered as ratified CIRP cost and shall be paid off by the resolution applicant.

17. The financial proposal, summary of resolution plan by Kundan Care Products Limited and Resolution Plan amount of the Resolution Applicant is as under:-

Financial Proposal by the Resolution Applicant.

Particulars	Amount Proposed
IRPC- CIRP Cost	CIRP costs remaining outstanding as on effective date, will be first met out from the resolution amount proposed by the resolution applicant towards secured FC's.
Operational Creditors	NIL
Statutory Liabilities	NIL
Secured Financial Creditors (Including CIRP Cost)	INR 9.00 Crore
Workmen Claim	INR NIL
Any other liability, including contingent liabilities	NIL

Summary of Resolution Plan by Kundan Care Products Limited

Proposed amount for secured financial creditors (including CIRP Cost)	INR 9.00 Crore
Amount of upfront payment to secured financial creditors within 7 days from the effective date	INR 4.5,0 Crore
Proposed deferred payment within 90 days from the effective date	INR 4.50 Crore
Employees & Workmen including provident funds	NIL
Operating Creditors	NIL
Statutory Liabilities	NIL
Insolvency Resolution Process Cost	CIRP costs remaining outstanding as on effective date, will be first met out from the resolution amount proposed by the resolution applicant towards secured FC's.

Resolution Plan Amount

Description	Amount (in INR)
1. CIRP Cost- IRPC	9,00,000/-
2. Secured Financial Creditors	
3. Operational Creditors	NIL
4. Statutory Liabilities	NIL
5. Any other liability, including Contingent liabilities	NIL
Total-A	**9,00,00,000/-**
Capital Expenditure by Resolution Applicant [The Corporate Debtor's project is not yet completed due to prolonged delay on account of various reasons. The RA is committed to infuse INR 20 Crores towards the proposed capital expenditure over a period of time towards requirements of the company]	20,00,00,000/-
Total-B	**20,00,00,000/-**
Total Outlay under the Resolution Plan (A+B)	**29,00,00,000/-**

18. It is stated that the total term of the Resolution Plan is 90 days from the effective date. The resolution plan will be implemented and supervised by Monitoring Committee comprising of three members, one nominee member of the Committee of Creditors, one nominee of the Resolution Applicant and the Resolution Professional (acting as the Chairman of the Monitoring Agency). It is also stated that the total consideration amount of Rs.9,00,00,000/- is proposed to be paid/settled to all stakeholders in cash and to be infused by the shareholders/promoters in the form of equity/shareholder contribution with equity like features/redeemable optionally convertible debentures/unsecured subordinated debt sourced from resolution applicant/resolution applicant's associate/group companies/family members/internal accruals/thru SPV/entity as per sole discretion of the resolution applicant.

19. The resolution plan as approved by the Committee of Creditors with 100% votes is annexed with the application as Annexure 12.

20. The Resolution Applicant has submitted its affidavit stating that the Resolution Applicant is eligible under Section 29A of the Code. Copy of affidavit submitted by the Resolution Applicant under Section 29A of the Code, is annexed with the application as Annexure 12.

21. The list of financial creditors of the corporate debtor, Luni Power Company Private Limited, being members of the Committee of Creditors and distribution of voting share among them, as given in Para 5 of Form H, is as under:-

S.No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted For/Dissented/ Abstained)
1	Central Bank of India	100	Voted For

22. It is submitted that Section 30(6) of the Code mandates the applicant as a Resolution Professional to submit the resolution plan as approved by the Committee of Creditors to the Adjudicating Authority for approval under Section 31(1) of the Code. Accordingly, as the resolution plan submitted by the resolution applicants has been duly approved by the members of the Committee of Creditors by a voting share of 100% which is more than the requisite voting share required i.e. 66%, the Resolution Professional has thus, filed the present for approval of the resolution plan before this Adjudicating Authority.

23. It is also submitted that Committee of Creditors while accepting the bid has taken care of all the provisions and regulations of the Code. Thus, it is prayed that the instant application for approval of resolution plan, as approved by the Committee of Creditors, in the matter of corporate debtor be approved.

24. Vide orders dated 03.03.2022 and 08.03.2022, the Resolution Professional was directed to file an affidavit regarding the pendency of any application related to PUFE transaction. Accordingly, the Resolution Professional filed an affidavit vide Diary No.00345/3 dated 10.03.2022, stating therein that he did not find any transaction which could be reported under the provisions of Sections 43, 45, 50 and 66 of the Code, and thus, no application was filed under Sections 43, 45, 50 or 66 of the Code, It is further stated that no applications concerning preferential, undervalued, fraudulent or extortionate transactions in the instant matter are pending before this Tribunal or any other Court of law.

25. The learned counsel for the Resolution Professional has also submitted that as per Form H (Annexure A-13) all the provisions of the Code and Regulations were complied with and the resolution plan has been approved by 100% voting share and thus, the resolution plan submitted by Kundan Care Products Limited be approved.

26. We have heard Mr. Balwinder Singh Kalsi, learned counsel for the applicant/Resolution Professional. We have also gone through the record before us and have carefully considered the submissions made by learned counsel for the Resolution Professional.

27. The CIRP proceedings under Section 7 of the Code, against the corporate debtor were initiated vide order dated 23.12.2019 and Committee of Creditors was constituted on 15.01.2020. The Resolution Plan includes a statement under Regulation 38(1A) of the CIRP Regulations as to how it has dealt with interests of all stakeholders in compliance with the Code and Regulations made thereunder. The amounts provided for the stakeholders under the Resolution Plan, as given in Para 7 of Form H, is are as under:-

(Amount in INR)

Sr.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	N/A	N/A	N/A	N/A
		(b) Other than (a) above: (i) who did not vote in favour of the Resolution Plan	N/A	N/A	N/A	N/A
		(ii) who voted in favour of the Resolution Plan	19,79,51,487	19,79,51,487	9,00,00,000	45%
		Total **[(a) + (b)]**	**19,79,51,487**	**19,79,51,487**	**9,00,00,000**	**45%**
2.	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of Section 21	15,13,30,582	15,13,30,582	Nil	Nil

		(b) Other than (a) above: (i) who did not vote in favour of the Resolution Plan	N/A	N/A	N/A	N/A
		(ii) who voted in favour of the Resolution Plan	N/A	N/A	N/A	N/A
		Total **[(a) + (b)]**	**15,13,30,582**	**15,13,30,582**	**Nil**	**Nil**
3.	Operational Creditors	(a) Related party of corporate debtor	59,51,212	59,51,212	Nil	Nil
		(b) Other than (a) above:				
		(i) Government	N/A	N/A	N/A	N/A
		(ii) Workmen	13,32,269.20	Nil	Nil	Nil
		(iii) Employees	N/A	N/A	N/A	N/A
		(iv) Operational Creditors	47,24,284	47,24,284	Nil	Nil
		Total **[(a)+(b)]**	**1,20,07,765.20**	**1,06,75,496**	**Nil**	**Nil**
4.	Other debts and dues		N/A	N/A	N/A	N/A
	Grand Total		**36,12,89,834.20**	**35,99,57,565**	**9,00,00,000**	**25%**

28. The compliance of resolution plan has been given in Para 9 of the Form H, which is as under:-

Section of the Code/Regulation No.	Requirement with respect to the Resolution Plan	Clause of Resolution Plan	Compliance (Yes/No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Clause 5.2, Pg. No.20	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Clause 4.5, Pg. No.18	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Affidavit in Format III as Annexure.	Yes
Section 30(2)	Whether the Resolution Plan-		
	(a) provides for the payment of insolvency resolution process	Clause 6.3.2, Pg. No.24	Yes
	b) provides for the payment to the operational creditors?	Clause 6.3, Pg. No.25	Yes
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Clause 6.3.4 (vi)	Yes
	(d) provides for the management of the affairs of the corporate debtor?	Clause 15, Pg. No.45	Yes
	(e) provides for the Implementation and supervision of the Resolution plan?	Clause 17, Pg. No.51	Yes
	(f) Contravene any of the provisions of the law for the time being in force?	Clause 19.1, Pg.No,51	Yes
Section 30(4)	Whether the Resolution Plan		

	(a) is feasible and viable, according to the CoC?	Clause 6.2, Pg.No.51	Yes
	(b) has been approved by the CoC with 66% voting share?		Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Clause 17, Pg.No.51	Yes
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under Sections 43, 50 or 66 before the one hundred and fifteenth day of insolvency commencement date, under intimation to the Board?	No such transactions has been observed by the RP	Yes
Regulation 38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Clause 6.3.3, Pg.No.25	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause 6.3, Page No.24	Yes
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code.	Clause 4.6, Pg.No.18	Yes
	(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	N/A	N/A
Regulation 38(2)	Whether the Resolution Plan provides:		
	(a) the term of the plan and its implementation schedule?	Clause 15,16,17,18, Pg.No.45,46-51	Yes
	(b) for the management and control of business of the	Clause 15 & 16, Pg No.45, 46	Yes

	corporate debtor during its term?		
	(c) adequate means for supervising its implementation?	Clause 15 & 17, Pg.No.45 & 51	Yes
38(3)	Whether the resolution plan demonstrates that-		
	(a) it addresses the cause of default?	Clause 7; Pg.No.22-24,34, 35	Yes
	(b) it is feasible and viable?	Clause 6, 7, 8; Pg.No.22-24, 34, 25	Yes
	(c) it has provisions for its effective implementation?	Clause 15, 16, 17, 18, Pg.No.45, 46-51	Yes
	(d) It has provisions for approvals required and the timeline for the same?	Clause 11, Pg. No.37-44, Clause 18.3; Pg.No.34, 35	Yes
	(e) the resolution applicant has the capability to implement the resolution plan?	Clause 7 & 8; Pg.No.34, 35	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	No, no such transactions has been observed by the RP	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Clause 5.2, Pg.No.20	Yes

29. The approval of the Resolution Plan has been sought under Section 31 of the Code, which reads as under:-

> ***31. Approval of resolution plan. -***
> *(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.*

[Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]
(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.
(3) After the order of approval under sub-section (1), -
(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and
(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.
[(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:
Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.]

30. The conditions provided for in Section 31(1) of the Code, for approval of resolution plan are:-

a. The Resolution Plan is approved by the Committee of Creditors under Section 30(4) of the Code;

b. The Resolution Plan so approved meets the requirement as referred to in Section 30(2) of the Code;

c. The Resolution Plan has provisions for its effective implementation.

31. It is submitted by learned counsel for the Resolution Professional that the resolution plan has been approved by a vote of 100% voting share of the financial creditors, therefore, the conditions provided for by Section 30(4) of the Code are satisfied.

32. The provisions of Section 30(2) of the Code are as under:-

30. Submission of resolution plan

xxx *xxx* *xxx*

"(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) confirms 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.]"

33. The compliance of Section 30(2) of the Code is given in Para 9 of Form H (supra), the same is being examined further as under:-

i.) Section 30(2)(a): The resolution applicant has proposed a total sale consideration of Rs.9,00,00,000/- to all the stakeholders under this Resolution Plan. It is stated in the resolution plan that in no event, the total sale consideration including CIRP Cost for the claims or liabilities recognized in this resolution plan shall not exceed Rs.9,00,000/-. It is also stated that CIRP cost to the extent approved by the committee of creditors remaining outstanding as on effective date, shall be first met from the resolution amount proposed by the resolution applicant towards FC's. The resolution plan at clause 6.3.2(page 24 of the resolution plan/ page 226 of the Application) states that payment of insolvency resolution process cost shall be paid out of the total consideration and amounts payable to the creditors including but not limited to operational creditor, financial creditors, employees and workmen under this Resolution Plan may be adjusted accordingly.

ii.) Section 30(2)(b): The resolution plan (Clause 6.3, Page 25 of the Resolution Plan) states that the resolution plan envisages a payment to the operational creditors in accordance with Section 30 and 53 of the Code at the discretion of the Committee of Creditors and it is proposed that the claims of the operational creditor shall be paid NIL consideration as laid out in the resolution plan.

iii.) Section 30(2)(c): In Clause 6.3.4 (vi) of the Resolution Plan, it is stated that the dissenting financial creditors i.e. those financial creditors who vote against, or abstain from voting for, the Resolution Plan approved by the Committee of Creditors shall be paid an amount in priority in not less than the amount to be paid to them in accordance with Section 53(1) in the event of the liquidation of the corporate debtor. In the instant case, there is no dissenting financial creditor, as the resolution plan has been approved by 100% voting share consisting of Central Bank of India, the sole member of Committee of Creditor.

iv.) Section 30(2)(d): In Clause 15 of the Resolution Plan (Page 45 of the resolution plan), it is stated that a committee i.e. Monitoring Agency consisting of three members comprising of one nominee member of the committee of creditors, one nominee of the resolution applicant and the Resolution Professional (acting as the Chairman of the Monitoring Agency) shall manage the corporate debtor for interim period. The professional fees of the Resolution Professional shall be equivalent to the existing fee levels which will be paid by the Resolution Applicant along with reimbursement of actual expenses (approved) incurred if any. The Monitoring Committee shall manage the corporate debtor in trust and shall appoint the Chairman to manage the day-to-day affairs of the corporate debtor under its supervision, until the full hand-over of assets of the corporate debtor including business records and all statutory records, tax filings, account books and account records taken into custody by the Resolution Professional under Sections 17 and 18 of the Code read with Section 23 and 25 of the Code. Upon appointment of the Monitoring Agency, the Resolution Professional shall be released of his statutory duties and responsibilities, however, he shall continue to be liable for complete handing over of all the records, assets and information and compliance during the period of his management. The Monitoring

Agency shall manage the affairs of the corporate debtor and shall exercise the powers of the board of Directors of the corporate debtor.

v.) Section 30(2) (e): In Clause 17 (Page No 51 of the resolution plan), it is stated that the Monitoring Agency shall supervise the Resolution Plan during the interim period.

vi.) Section 30(2)(f): In Clause 19.1 (Page 51 of the resolution plan), it is stated that the resolution plan does not contravene any of the provisions of the law for the time being in force.

34. We are now examining the compliance of the proviso to Section 31(1) of the Code that the resolution plan has provisions for its effective implementation. The resolution plan in Clause 17 of the Resolution Plan states that the supervision of the resolution plan as finally approved by the Adjudicating Authority is proposed to be done by the Monitoring Agency which shall comprise of three members comprising of one nominee member of the committee of creditors, one nominee of the resolution applicant and the Resolution Professional (acting as the Chairman of the Monitoring Agency). The resolution applicant M/s Kundan Care Products Limited proposes to pay an amount of Rs.9 Crores in total within 90 days from the approval of the resolution plan including CIRP costs and further an amount of Rs.20 Crores within the period of one year as a fresh capital infusion as and when required. The indicative implementation schedule, as provided in the resolution plan is as under:-

Sr.No	Activity	Timeline (Days)
1.	Effective Date	Approval of this Resolution Plan by NCLT
2.	Completion Date	Effective Date + 90 days (maximum)

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

35. We have discussed above that the requirements under Section 31(1) of the Code are satisfied in the present case. In para No. 4 of Form H, the Resolution Professional has certified that the resolution plan complies with all the provisions of the Code and Regulations and does not contravene any of the provisions of the law for the time being in force. The Resolution Professional has also certified that the resolution applicant Kundan Care Private Limited has submitted affidavit pursuant to Section 30(1) of the Code confirming their eligibility under Section 29A of the Code to submit the resolution plan and the contents of the said affidavit are in order. The Resolution Professional has submitted that the resolution plan has been approved by the Committee of Creditors with 100% voting share in accordance with the provisions of the Code and CIRP Regulations made thereunder and after considering the feasibility and viability and other requirements specified by the CIRP Regulations.

36. We shall now discuss the requirements of Regulation 39(4) of the Regulations. In Clause 5.2 of the Resolution Plan, it is mentioned that as per RFRP dated 17.10.2020, the Resolution Applicant undertakes to provide earnest money deposit of Rs.25 Lacs in the form of Demand Draft. It is further mentioned that the Resolution Applicant undertakes to provide performance security of Rs.1 Crore as

mentioned in the RFRP in form of performance bank guarantee or payment deposit in bank account. It is also mentioned that the validity, return, invocation, forfeiture and other treatment of performance bank guarantee shall be in consonance with the RFRP. A copy of performance bank guarantee issued by Canara Bank has been annexed with the application as Annexure 12. It is relevant to mention here that while going through Annexure 12, it transpired that the said bank guarantee issued on 09.09.2021 by Canara Bank in favour of successful resolution applicant was valid only upto 08.02.2022, which date had already expired, therefore, the matter was relisted for clarification on 28.03.2022.

37. When the matter was listed on 28.03.2022, it was stated by learned counsel for the Resolution Professional that the performance bank guarantee issued on 09.09.2021 by Canara Bank in favour of Successful Resolution Applicant, which was valid upto 08.02.2022, had already been renewed and leave of this Tribunal was sought to place the same on record.

38. Accordingly, in compliance of order dated 28.03.2022, learned counsel for the Resolution Professional moved an application bearing IA No.258 of 2022 under Section 60(5) of the Code, for placing on record extended bank guarantee, as submitted by the successful resolution applicant- M/s Kundan Care Products Ltd. Thus, this Tribunal, vide order 05.04.2022 allowed the said application and extended performance bank guarantee dated 09.02.2021 issued by Canara Bank in favour of successful resolution applicant which is valid upto 08.03.2023, has been taken on record.

39. It has been observed that in the Resolution Plan which has been submitted by Resolution Applicant in case, there is change in management and control of the

corporate debtor and such change satisfies the conditions stipulated under Section 32A of the Code, therefore the benefit of immunity under Section 32A of the Code will be applicable to the Resolution Applicant and the attachment by the Directorate of Enforcement, if any, shall be vacated.

40. In this regard, it relevant to refer to the judgment of the Hon'ble Supreme Court in the matter of ***Manish Kumar v. Union of India & Anr***. in ***Writ Petition (C) No. 26 of 2020***, wherein the Petitioner challenged the constitutional validity of Section 32A of the Code and the Hon'ble Supreme Court held that there is no case made out to seek invalidation of Section 32A.

41. It is directed that any relief sought for in the resolution plan, where the contract/agreement/understanding/proceedings/actions/notice etc. is not specifically identified or is for future and contingent liability, is at this moment rejected.

42. It is further directed that the resolution applicant, on taking control of the corporate debtor, shall ensure compliance under all applicable law for the time being in force. The resolution applicant shall obtain the necessary approval required under any law for the time being in force within one year from the date of this order or within such period as provided for in such law, whichever is later.

43. We shall clarify here that resolution applicant shall take over the corporate debtor with all its assets and liabilities as per terms of the approved resolution plan. If any relief concerning any identified liability of the corporate debtor is required, then that needs to be specifically mentioned and sought for in the resolution plan. This bench cannot allow any general power to any resolution applicant absolving

him of liability of the corporate debtor without knowing about the liability against which such exemption is sought. In other words, reliefs/exemptions from only existing liabilities which are specifically identified can be sought and allowed in the resolution plan.

44. It is seen that the Resolution Plan seeks several dispensations, concessions and waivers. Approval of Resolution Plan does not mean automatic waivers. The Resolution Applicant on approval of the Plan may approach those competent authorities/courts/legal forms/office(s) Government or Semi-Government/State or Central Government for appropriate relief(s) sought in the plan.

45. As already discussed above, vide orders dated 03.03.2022 and 08.03.2022 passed by this Tribunal, the Resolution Professional was directed to file an affidavit regarding the pendency of any application related to PUFE transaction. Accordingly, the Resolution Professional filed an affidavit vide Diary No.00345/3 dated 10.03.2022, stating therein that he did not find any transaction which could be reported under the provisions of Sections 43, 45, 50 and 66 of the Code, and thus, no application was filed under Sections 43, 45, 50 or 66 of the Code, It is further stated that no applications concerning preferential, undervalued, fraudulent or extortionate transactions in the instant matter are pending before this Tribunal or any other Court of law.

46. In view of the above discussions, the resolution plan submitted by the Resolution Applicant- Kundan Care Products Limited, as approved by the Committee of Creditors under Section 30(6) of the Code read with Regulation 39 of the CIRP Regulations, 2016, is hereby approved subject to comments made above regarding performance security. The resolution plan so approved shall be binding

on the corporate debtor and its employees, members, creditors including the Central Government, State Government or Local Authority, to whom a debt in respect of the payment of dues arising under any law for the time being in force such as authorities to whom statutory dues are owned, guarantors and other stakeholders involved in the resolution plan.

47. Under the provisions of Section 31(3) of the Code, we direct as under:-

a. The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 23.12.2019 shall cease to have effect; and

b. The Resolution Professional shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database.

Thus, IA No.134 of 2021 stands disposed of.

Sd/-	Sd/-
(Subrata Kumar Dash)	(Harnam Singh Thakur)
Member (Technical)	Member (Judicial)

April 19th, 2022
MK