

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**IA (IBC) No.61/GB/2021
IN
C.P. (IB)No.03/GB/2020**

Coram:

Hon'ble Shri Rohit Kapoor, Member (J):

Hearing through

Hon'ble Shri Prasanta Kumar Mohanty, Member (T): **Video Conference**

**ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 24.03.2022**

Name of the Company: Mr. Kamal Agarwal, RP
V/s
Kotak Mahindra Prime Ltd.
2. M/s V.C. Educations
3. Mr. Gautam Saha
4. Mr. Abhijit Dutta

Section: Under Section 30(6) of IBC, 2016, Regulation 39(4) of CIRP, 2016
read with Rule 11 of NCLT Rules, 2016

SL.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

1.	MR. KAMAL AGARWAL	RP	Petitioner	Present in
2.	NONE	-	Respondents	Video Conference

ORDER

The Parties are represented through respective Learned Counsel(s).

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, through Video Conferencing vide separate sheet.

Sd/-

**(Prasanta Kumar Mohanty)
Member (Technical)
& Adjudicating Authority**

Sd/-

**(Rohit Kapoor)
Member (Judicial)
& Adjudicating Authority**

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**ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 24.03.2022**

Name of the Company: Mr. Kamal Agarwal
-RP in Concept Eduventure Pvt Ltd
V/s
Kotak Mahindra Prime Private Ltd. & 3 others

Section: Under Section 30(6) of IBC, 2016, Regulation 39(4) of CIRP, 2016
read with
Rule 11 of NCLT Rules, 2016

<u>S. NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	MR. KAMAL AGARWAL	RP	Petitioner	Present in
2.	NONE	-	Respondents	Video Conference

ORDER

[DATE OF ORDER: 24.03.2022]

[Per: Hon'ble Shri Prasanta Kumar Mohanty, Member (T)]

1. This Application is filed by the Resolution Professional Mr. Kamal Agarwal under Section 30(6) & 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, seeking following reliefs:

- i. Approve the resolution plan submitted by M/s V C Education under Section 31(1) of the Code as being approved by the CoC with 100% voting share;**
- ii. Appoint the Resolution Professional as the Chairman of the monitoring Committee for supervision of the implementation of the Resolution Plan;**

- iii.** Pass an order that the resolution professional in the capacity of the chairman of the monitoring committee shall continue to pursue all the avoidance applications filed under 43,45,49,50, and 66 of the Code;
- iv.** Pass an order that all the claw back received in pursuance to the avoidance applications shall be distributed in accordance with the directions of this Hon'ble Court;
- v.** Pass any further order(s), directions(s), modification (s) as this Hon'ble Tribunal may deem fit and proper.

2. It is briefly stated that:

- 2.1 Vide order dated 26.02.2020, this Hon'ble Bench had ordered for initiation of CIRP and appointed Mr. Amit Pareek as the IRP.
- 2.2 First Meeting of the Committee of creditors was held on 6th of May, 2020 comprising of only the operational creditors and vide agenda item No. 6, IRP Amit Pareek was appointed as the Resolution Professional.
- 2.3 In the 4th (Fourth) meeting of the Committee of Creditors held on 03rd of September, 2020, vide agenda item No. 7A, the then sole Financial Creditor M/S Volkswagen Finance Private Limited, having 100% voting rights, resolved to replace the existing RP Amit Pareek and proposed the name of the Applicant i.e., Kamal Agarwal to be appointed as the incoming RP and the Applicant was appointed as the RP vide this Hon'ble Bench's order dated 09.12.2020 in IA 64 of 2020.
- 2.4 As per the Form A published by the IRP, the estimated date of closure of CIRP process was 23.08.2020. The erstwhile IRP/ RP filed an application under Section 60(5) of IBC, 2016 seeking exclusion of period of 130 days. This Hon'ble Court was pleased to allow the application and excluded a period of 130 days in computation of total period of 180 days for Corona Pandemic. After the exclusion, the estimated of closure of CIRP period was 01.01.2021.

- 2.5 Thereafter, the Applicant/ Resolution Professional filed an application under Section 12(2) of the Code, praying for extension of CIRP period due to COVID Pandemic by 90 days beyond 180 days vide IA 01 of 2021 and this Hon'ble Court was pleased to allow the above application vide its order dated 10th Feb 2021. The estimated date of closure of CIRP after extension of 90 days was 01.04.2021.
- 2.6 Meanwhile, the CoC in its seventh meeting held on 31.03.2021 **resolved to liquidate the corporate debtor in the absence of any resolution plan.** An application under Section 33(2) was filed before this Hon'ble Court and it was first listed on 28.07.2021 vide IA 25 of 2021 and thereafter on 13.08.2021. However, this Bench **directed the RP to explore the possibility of a resolution plan and pursuant to the direction, the RP** received two EOI from prospective resolution applicants along with the EMD amount.
- 2.7 The Ninth (9th) CoC was called on 22.10.2021 for consideration and approval of the resolution plan and the approved resolution plan (if any) shall be filed by 31.10.2021. Regulation 39(4) mandates the approved plan to be filed at least 15 days prior to the maximum period for completion of CIRP under Section 12. However, one of the resolution applicants prayed for extension of further 10 days which was allowed by the CoC. The date of next CoC meeting was fixed on 30.10.2021.
- 2.8 An application was filed under Section 60 (5) (c) listed vide IA 56 of 2021 along with an additional affidavit praying for exclusion of 183 days and this Hon'ble Tribunal was kind enough to allow during Pandemic the exclusion vide its order dated 11.11.2021 and hence the maximum permitted period for completion of CIRP within 330 days was extended to 30.11.2021.
- 2.9** The 10th CoC was called on 30.10.2021, where both the resolution plans submitted by the consortium of Mr. Binay Bhushan Das and M/s V C Education were considered by the CoC and **eventually, the resolution plan submitted by M/s V C Education was**

approved by the CoC with 100 % voting share through e-voting on 03.11.2021.

3. In compliance with the directions of this Hon'ble Tribunal vide order dates 02.12.2021, the Applicant/ RP called the 11th CoC meeting on 05.12.2021, held on 10th December 2021 in physical mode. The summary of the outcome of the meeting is as under:

	Outcome
a. Ensuring physical presence of all the members of the committee of creditors including both the partners of the successful resolution applicant (SRA), M/s V C Education and the representative of the sole financial creditor having 100% voting rights.	All the members of the CoC were present in persons including the partners of the successful resolution applicants, Mr Shrikant Vibhutiya and Mr Abdul Samad Choudhury and both the suspended directors Mr Gautam Saha and Mr Abhijit Dutta and the sole financial creditor M/s Kotak Mahindra Prime Private Limited (replaced the earlier FC M/S Volkswagen Finance Private Limited, on assignment of loan) was duly represented along with the authorisation letter and a copy of the assignment agreement dated 15.09.2021
b. Compliance to be done by the SRA M/s V C Education, to get the partnership firm m/s V C Education registered under the Indian Partnership Act, 1932, before the next date of hearing, i.e., 07.01.2022	The SRA M/s V C Education informed that they have already initiated steps to get the partnership firm registered and it shall be their endeavour to get it registered before the next date of hearing
c. The SRA M/s V C Education, is to give an indemnity bond cum	The SRA M/s V C Education agreed to submit an indemnity bond cum

<p>undertaking in terms of decision taken vide agenda item no 4(f) of 9th CoC meeting, that whatsoever shall be the claw back amount, pursuant to the final adjudication, under the avoidance applications, shall be distributed in accordance with the decision of the Hon'ble NCLT Guwahati Bench.</p>	<p>undertaking in terms of decision taken vide agenda item no 4(f) of the 9th CoC meeting, that whatsoever shall be the claw back amount, pursuant to the final adjudication, under the avoidance applications, shall be distributed in accordance with the decision of the Hon'ble NCLT Guwahati Bench.</p> <p>It was further informed that the undertaking should also contain: -</p> <ul style="list-style-type: none"> (i) brief details about the experience in education sector of the partners; (ii) a statement that the operational creditor shall be paid upfront and in priority over the financial creditor; (iii) a statement that the sale value of the Porsche Car amounting to Rs 49 Lakh lying in the form of Fixed Deposit shall be utilized for the benefit of the corporate debtor
<p>d. The SRA M/s V C Education is also requested upon to improve upon their final bid amount</p>	<p>The SRA M/s V C Education stated that they have submitted the final bid amount after taking into consideration all the relevant factors and it is not possible for any further improvement in the bid amount and more so considering the fact that even the restoration of the trade mark "Concept Educations" back to the corporate debtor is contingent upon final adjudication of IA 24 of 2021</p>

	filed under section 45 of the Code.
e. The sole financial creditor is to clarify whether it would be invoking personal guarantees of the suspended board of directors (if any) pursuant to the approval of the resolution plan.	The sole financial creditor has clarified that it shall not invoke any personal guarantees against the suspended directors pursuant to the approval of the Resolution Plan.
f. The sole financial creditor having 100% voting rights is also requested to accept any amount lower than the proposed amount of Rs 45 Lakhs by the SRA in full and final discharge of its claim	The Sole Financial Creditor submitted that the matter was taken up by the management and it was decided that it was not possible to accept any amount less than the proposed amount of Rs 45 lakhs more so after taking into consideration the fact that it had made the undertaking of not invoking any personal guarantee against the suspended board of directors.

4. The RP further submits that in furtherance to the commitment made in the 11th CoC meeting the Resolution Applicants have already applied for the Registration of their partnership firm under the Indian Partnership Act, 1932 as confirmed vide e-mail dated 13.12.2021.

5. In accordance with the order dated 07.01.2022, the RP further submits that:

5.1 The CoC in its 10th meeting held on 30.10.2021, vide agenda item no 6, has voted for in favour of the resolution plan submitted by M/s VC Education by 100% voting share through e-voting on 03.11.2021.

5.2 In compliance with Regulation 39(4) of the CIRP Regulations 2016, The applicant/ Resolution Professional has submitted the plan before this Hon'ble Tribunal on 16. 11.2021, i.e., 15 days before the maximum permitted period of 330 days for completion of CIRP.

A compliance report has also been filed along with the main application. (Form H at page 521 to 537).

5.3 The resolution plan provides for payment as under:

Sl. No.	Particulars	Amount
1	CIRP Costs (Estimated).	25,00,000/-
2	Financial Creditor	45,00,000/-
3a	Operational Creditors -Employees –against admitted amount of Rs. 11,58,917/-	5,00,000/-
3b	Operational Creditors -Faculties –against admitted due of Rs. 63,45,671/-	20,00,000/-
3c	Operational Creditors—other than above	NIL
3d	ESIC claim as admitted	10,00,000/-
	TOTAL	1,05,00,000/-

5.4 A brief summary of compliance of Section 30(1) and Section 30(2) read with Regulation 38 & 39 of the CIRP Regulations has been submitted as under:

a. **Compliance of Section 30(1) read with Regulation 39(1) (a):**

The resolution applicants have submitted their plan along with an affidavit stating that M/s V C Education and its partners are eligible under Section 29A, attached by way of Annexure-8 at page 127-130 of the resolution plan and further confirmation at page part III Clause 12 at 55 of the plan.

b. **Compliance of Section 30(2) (a):** The resolution plan provides for payment of insolvency resolution process costs in a manner specified by IBBI in priority to the payment of all other debts of the corporate Debtor at Part 1 Clause 7.3.1 at page 20 and clause 7.4.1 to 7.4.3 at page 25 to 26 of the resolution plan.

c. **Compliance of Section 30(2) (b):** The resolution plan provides for the payment of debts of OCs in such manner as may be specified by the Board which is not less than:

i. The amount to be paid to the operational creditors in the event of liquidation of the corporate debtor under Section

1	Estimated Liquidation Value	70.65 Lakhs
2	Less:- Estimated CIRP Costs	25.00 Lakhs
3	Less:- Amount owed to financial creditor	57.09 Lakhs
4	Balance available or Operational Creditors	11.44 Lakhs
5	Amount proposed to be paid to operational creditors under the plan	35 Lakhs
6	Excess Amount Proposed under the plan	23.56 Lakhs

- ii. The amount that could 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.

1	Amount to be distributed under the resolution plan	105 Lakhs
2	Less:- Estimated CIRP costs	25.00 Lakhs
3	Less:- Amount owned to financial creditor	57.09 Lakhs
4	Balance available for Operational Creditors	22.21 Lakhs
5	Amount proposed to be paid to operational creditors under the plan.	35.00 Lakhs
6	Excess Amount Proposed under the Plan.	12.09 Lakhs

- d. The resolution plan provides for the management of the affairs of the corporate debtor after approval of the resolution plan **at Part II clause 3 at Page 45 of the resolution plan.**

- e. The resolution plan provides for the implementation and supervision of the resolution plan **at Part II Clause 3 (III) & IV) at page 47 & 48 of the resolution plan and further confirmed at part III Clause 13 at page 55.** The Resolution Applicant has stated by **way of undertaking an affidavit at page 131 of 133** that the resolution applicant has obtained all the corporate authorizations required or expedient under applicable laws for the submissions of the Resolution Plan.
- f. The Resolution Plan confirms to other requirements as may be specified by the board in Regulations 38 and 39 of the CIRP Regulations, 2016 as follows:
- i. **Regulation 38(1) (a):** The amount payable under the resolution plan to the Operational Creditors are given priority over Financial Creditors **at Para 7.1 page 19-20. OCs shall be paid within 90 days and are placed before FCs and it shall be ensured that OCs are paid before the FC.**
 - ii. **Regulation 38 (IA):** The Resolution plan contains a statement in details as to who it had dealt with the interest of all stakeholders including the financial creditors and operational creditors of the corporate debtor **at part I clause 7.3 at page 20 to 35.**
 - iii. **Regulation 39(IB):** The resolution Plan contains a statement that neither the resolution applicant nor any of its related parties has failed to implement or contributed to the failure or implementation of any other resolution plan approved by the Adjudicating Authority in the past at **part III Clause 14 page 56.**
 - iv. **Regulation 38(2) (a):** The resolution plan provides for its terms and implementation at **Part II clause 2 at page 44 and part I clause 7.1 at Page 19 and clause 12 at page 42.**

- v. **Regulation 38(2) (b):** the management and control of the corporate debtor at **part II clause 3 at page 45 of the plan.**
- vi. **Regulation 38(2)(c):** adequate means for supervising its implementation at **Part II Clause IV at page 48 of the plan through the Resolution professional as the chairman of the monitoring committee.**
- vii. **Regulation 38(3):** the cause of default at **Clause 4.14 at page 10 and by way of confirmation at part II Clause 15.1 at page 56.**
- viii. **Regulation 38(3):** **The resolution plan is feasible and viable as it is stated to be unconditional by way of affidavit at page 131 to 133 and further the Net worth of the Resolution Applicant is shown to be 2.17 Crores at Clause 3 at page 16. The sources for funds are attached by way of Annexure 4 at page 71.**
- ix. **Regulation 38(3) (c):** The resolution plan shows that it has provisions of its effective implementation with the turnaround proposals **at clause 4.15 at page 10 and at clause 1 at page 14 to 16** with an experience in education sector shown at page 14 and further confirmation at **part II clause 15.3 at Page 56.**
- x. **Regulation 38(3) (d):** It has provisions for approvals required **at Clause 2.1 at page 44** and by way of timelines **at clause 7.1 at page 19 and clause 8.1 at page 35 C** and further confirmation **at part II clause 15.4 at page 56.**
- xi. **Regulation 38(3)(e):** The resolution applicant has the capability to implement the resolution plan as can be seen **from their total Net Worth of 2.17 crores and Biodata attached by way of Annexure 7 at page 86-89**
- xii. **Regulation 39(1) and (c):** The resolution Plan contains an affidavit of eligibility under Section **29A at page 127 to 130** and further an affidavit is attached by way of an undertaking **at page 131 to 133** stating that all the confirmations,

declarations and representations made in the Binding Resolution Plan are valid on the date of the undertaking with the acknowledgment that the CoC may at their sole discretion be free to cancel the resolution Plan and encash the EMD where such confirmations, declarations and representations are found to be incorrect or misleading.

xiii. Section 31 (4) of the Code: The resolution applicant states **at Part II clause 2.1 at page 44 of the plan** that it shall obtain the necessary approval required under any law for the time being in **force within a period of one year from the date of the approval of the plan by this Hon'ble Tribunal** or within such period as it provided in such law, whichever is later.

xiv. Regulation 36B 4(A): The resolution Applicant has submitted performance bank guarantee by way of depositing 20% of the total resolution **plan of Rs. 1.05 crore, i.e., Rs 21 Lakh** with the Resolution Professional which includes 10 Lakhs deposited by way of EMD amount. The same is stated **at Part III Clause 3 at Page 50 of the plan.**

5.5 The resolution Plan provides for payment of debts of operational creditors in compliance of Section 30(2) (b)

- a. The plan addresses to reasons for default of the Corporate Debtor addressed at para 4.14 of the Plan.
- b. The proposal to turnaround the corporate debtor is mentioned at para 4.15 of the plan and the details of faculties to be engaged post approval mentioned in para 1.4 of the plan.
- c. The current net worth of the resolution application is in excess of 2 crores.
- d. There shall be upfront payment of proposed 1.05 crore.**
- e. The resolution applicant has stated the plan implementation schedule at para 7.1 of the plan and has undertaken to take

all the necessary approval within a period of one year or as is provided in law whichever is later.

- f. Para 7.3 states the amount proposed to be invested and the manner of payment of the proposed investment.
- g. Para 7.4 states that the plan provides for payment of CIRP costs in priority to any other creditors.
- h. It is stated that the resolution applicant proposes to make **the corporate debtor a going concern within 120 days.**
- i. The resolution applicant has sought for relief in para 9 which it deems necessary for the implementation of the resolution plan and which prima facie appears to be reasonable.
- j. There are certain disclaimers as set out in para 10 of the resolution plan which prima facie appears to be reasonable.
- k. It is further stated in para 11 **under Necessary Measures Needed for Implementation of the Resolution Plan that “The Necessary Measures under present clause sought are reliefs from the Hon’ble Adjudicating Authority and the implementation of the Resolution Plan is not dependent on the grant of reliefs and concessions by the Hon’ble Adjudicating Authority”.**
- l. Para III (i) & (ii) states that upon approval of the resolution plan, the supervision of the implementation of the resolution plan shall inter alia vest with the **Monitoring Committee.**

6. The RP has under Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, submitted the **Compliance Certificate as stated below:**

6.1 The details of the CIRP are as under:

SL No.	Particulars	Description		
1	Name of the CD	Concept Eduventure Private Limited		
2	Date of Initiation of CIRP	26.02.2020		
3	Date of Appointment of IRP	26.02.2020 (Amit Pareek IBBI/IPA-002/IP-N00413/2017-2018/11205)		
4	Date of Publication of Public Announcement	29.02.2020		
5	Date of Constitution of CoC	20.03.2020		
6	Date of First Meeting of CoC	06.05.2020 (originally scheduled to be held on 26.05.2020 as adjourned for lack of quorum and was then held on 06.05.2020)		
7	Date of Appointment of RP	06.05.2020 (CoC in its first meeting comprising of operational creditors only appointed Amit Pareek as RP) However, in the 4 th CoC meeting held on 03.09.2020, it was resolved to replace Amit Pareek and Kamal Agarwal was proposed as the incoming RP. The Hon'ble NCLT vide its order dated 09.12.2020 in IA 64 of 2020 appointed Kamal Agarwal as the RP.		
8	Date of Appointment of	Name of Registered Valuer	Category	Date of Appointment

	Registered Valuers			nt and Fees
		Bhavin R Patel IBBI/RV/02/02/2020/13647	Plant & Machinery	28.12.2020 22500/- Plus GST
		Ankit Gupta IBBI/RV/02/2020/13647	Plant & Machinery	28.12.2020 22500/- Plus GST
		Manish Agarwalla IBBI/RV/04/2020/13366	Securities or Financial Asset	28.12.2020 30,000/- Plus GST
		Jigar Pardipchandra IBBI/RV/06/2019/10657	Securities or Financial Asset	28.12.2020 30,000/- Plus GST
9	Date of Issue of Invitation for EOI	25.02.2021		
10	Date of Final List of Eligible Prospective Resolution Applicants	06.04.2021		
11	Date of Invitation of Resolution Plan	27.03.2021		
12	Last Date of Submission of Resolution Plan	27.04.2021		
13	Date of Approval of Resolution Plan	03.11.2021 (it is clarified that pursuant to issuances of Form G on 25.02.2021 few		

	by CoC	<p>enquiries were received, however, none culminated into submission of expression of interest, therefore, the CoC in its 7th meeting held on 31.03.2021 resolved to liquidate the corporate debtor and also requested the RP to act as the liquidator. The CoC further directed the RP to intimate its decision to the Hon'ble Adjudicating Authority and the RP filed an application under Section 33(2) of the Code, praying for liquidation of the Corporate Debtor. The Application as listed on 28.07.2021 vide IA 25 of 2021. The Hon'ble Tribunal directed the RP to explore the possibility of a resolution plan and hence further efforts were made to search for prospective resolution applicants and two prospective resolution applicants expressed their interest to submit a resolution plan and further submitted EMD amount Rs 10 Lakhs each. Subsequently two resolution plans were received and out of which one submitted by M/s V C Education was approved by the CoC with 100% voting share on 03.11.2021 through e-voting.</p>		
14	Date of Expiry of Extended Period of CIRP	30.11.2021 (The extended period of CIRP was to expire on 01.04.2021. However, the Hon'ble Court permitted exclusion of further 183 days vide its order dated 11.11.2021 in IA 56 of 2021 and the maximum permitted period for completion of CIRP is to expire on 30.11.2021)		
15	Fair Value	Category	P & M	SFA

		Valuer 1	73,50,000	1,40,364
		Valuer 2	64,00,000	1,40,366
		Avg Fair Value	68,75,000	1,40,365
		Total Avg Fair Value	70,15,365/- (as per valuers report)	
		The Avg Fair Value of High End Luxury Porsche Boxster Car was estimated to be 42,50,000/-. However, a timely disposal by the RP resulted in realization of Rs 49,00,000/- thereby a value enhancement of Rs. 6,50,000/-. Hence, the Avg Fair value can be taken to be 76,65,365/-		
16	Liquidation Value	Category	P & M	SFA
		Valuer 1	54,00,000	1,40,364
		Valuer 2	46,00,000	1,40,366
		Avg Fair Value	50,00,000	1,40,365
		Total Avg Liquidation Value	51,40,365/- (as per valuers report)	
		The Avg Liquidation Value of High End Luxury Porsche Boxster Car as estimated to be 29,75,000/-. However, a timely disposal by the RP resulted in realization of Rs 49,00,000/- thereby a value enhancement of Rs 19,25,000/-. Hence, the Avg liquidation value can be taken to be Rs. 70,65,365/-		
17	No of CoC Meeting Held	10 (Ten)		

6.2 The RP has examined the Resolution Plan received from Resolution Applicant M/s V C Education and approved by Committee of Creditors (CoC) of M/s Concept Eduventure Private Limited and certifies that:

- i. The said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Processes for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.
- ii. The Resolution Applicant M/s V C Education has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under Section 29A of the Coe to submit resolution plan. The said Resolution plan has been approved by the CoC in accordance with the provisions of the code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 100% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations in the Tenth(10th) CoC meeting held on 30.10.2021.
- iii. RP sought vote of members of the CoC by electronic voting system which was kept open at least for 24 hours as per the regulation 26 and the e-voting was kept open till 03.11.2021.

6.3 The list of financial creditors of the CD [state the name of CD] being members of the CoC and distribution of voting share among them is as under:

Sl. No.	Name of Creditor	Voting Share	Voting for Resolution Plan (Voted for /Dissented/Abstained)
1	Kotak Mahindra Prime Limited (Financial	100%	VOTED FOR RESOLUTION PLAN

	Creditor) as loan assigned from M/s Volkswagen Finance Private Limited		
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6.4 The Resolution Plan includes a statement (Part III of the plan at para 4 to 9) under regulation 38(1 A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made thereunder.

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

Sl. No	Category of Stakeholder	Amount Claimed	Amount Admitted (Provisional)	Amount Provided under the plan	Amount Provided to the Amount Claimed (%)
1	Secured Financial Creditor	57,08,837	57,08,837	45,00,000	78.83%
2	Unsecured Financial Creditors	Nil	Nil	Nil	Nil
3	Operational Creditors				
	Government – ESI Dues. Principal Outstanding- 2,23,606/- Government	10,89,161	10,89,161	10,00,000	91.81%

	-PF dues not claimed Approx. claim 9.62 Lakhs				
	Government Joint Commissioner of Income Tax (OSD) Circle TDS, Guwahati	51,26,532	51,26,532	Nil	Nil
	Operational Creditors other than workmen/Empl oyees / Govt. Dues	86,87,890	86,87,890	Nil	Nil
	Faculties / teachers	63,45,671	63,45,671	20,00,000	31.52%
	Employees	11,58,917	11,58,917	5,00,000	43.14%
4	Other Debts and Dues	Nil	Nil	Nil	NA
	Total	2,81,18,0 08	2,81,18,0 08	80,00,000	28.45%

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

Sl. No.	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting share (%) held before CIRP	Voting Share (%) held after CIRP

1	Equity	8000	NIL	100%	NIL
2	Preference	NIL	NIL	NA	NIL

6.7 The CIRP has been conducted as per the timeline indicated as under:

Section of the Code / Regulation No.	Description of Activity	Latest Timeline under Regulation 40 A	Actual Date
Section 16 (1)	Commencement of CIRP and Appointment of IRP	T	T
Regulation 6(1)	Publication of Public Announcement	T+3	T+3
Section 15 (1) (c) /Regulation 12 (1)	Submission of Claims	T+14	T+14 Date of submission of claims with the erstwhile IRP varied as Financial Creditor submitted a delayed claim.
Regulation 13(1)	Verification of Claims	T+21	T+21 Verification as also delayed in view of delayed submissions of claim to the erstwhile IRP/ RP Amit Pareek.

Section 26(6A) /Regulation 15A	Application for appointment of Authorised Representative, if necessary	T+23	NA
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	T+23	T+ 23
Section 22(1) and Regulation 17(2)	First Meeting of the CoC	T+23	T+ 70(in view of lockdown due to Covid 19 pandemic)
Regulation 35 A	Determination of Fraudulent and other Translations	T+115	T+ 408(in view of non-co-operation)
Regulation 27	Appointment of Two Registered Valuers	T+47	T+ 306 days (the erstwhile RP failed to appoint the registered valuers and thereafter were appointed within 20 days of his appointment vide order dated 09.12.2020)
2[Regulation 36(1)	Submission of Information Memorandum to CoC	T+54	T+567 days (liquidation was approved by the CoC. However, Hon'ble Court

			directed vide its order dated 28.07.2021 the RP to explore the possibility of a resolution plan
Regulation 36A	Invitation of EOI	T+75	T+365 delay owing to pandemic and non-co-operation of the suspended board
	Publication of Form G	T+75	T+365 delay owing to pandemic and non-co-operation of the suspended board
	Provisional List of Resolution Applicants	T+100	Not prepared as no expression of interest submitted pursuant to publication of Form G
	Final List of Resolution Applicants	T+115	Not prepared as no expression of interest submitted pursuant to publication of Form G
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix	T+105	T+582 (Liquidation was approved by the CoC. However, Hon'ble Court directed vide its

	and Information Memorandum to Resolution Applicants		order dated 28.07.2021 the RP to explore the possibility of a resolution plan
Section 30(6)/Regulation 39(4)	Submission of CoC approved Resolution Plan	T+165	T+628 (delay as liquidation was approved by the CoC. However, Hon'ble Court directed vide its order dated 28.07.2021 the RP to explore the possibility of a resolution plan

6.8 The Resolution Plan is not subject to any contingency and it was agreed by the CoC and the resolution applicant(s) in the Ninth (9th) CoC meeting that whatsoever shall be the claw back amount pursuant to the order of the Hon'ble NCLT Guwahati Bench under the avoidance applications shall be distributed in accordance with the directions of the Hon'ble Court

6.9 Following are the deviations/ non-compliances of the provisions of the Insolvency and Bankruptcy code, 2016, regulations made or circulars issued thereunder (if any deviation/ non-compliances were observed, please state the details and reasons for the same):

NIL

6.10 The CIRP commenced on 26.02.2020. However, Mr. Kamal Agarwal is placed as the RP vide order dated 09.12.2020. Thereafter, the RP filed application under Section 19(2) praying for directions to the suspended board as well as

chartered accountants for co-operation and the full co operation is yet to be received.

In view of the facts as is mentioned in above paras Form CIRP 8 is not filed within the prescribed timelines.

6.11 The details of Section 66 or avoidance application filed/pending:

Sl. No.	Type of Transaction	Date of Filing with Adjudicating Authority	Date of Order of the Adjudicating Authority	Brief of the Order
1	Preferential transactions under Section 43	Filed on 29.01.2022	Yet to be adjudicated	NA
2	Undervalued transactions under Section 45	Filed	Adjudicated	With the plan approval
3	Extortionate credit transactions under Section 50	No such transactions observed	NA	NA
4	Fraudulent transaction under Section 66	Filed on 29.01.2022	Yet to be adjudicated	NA

ORDER

7. The Insolvency and Bankruptcy Code, 2016, defines Resolution Plan as a plan for Insolvency Resolution of the Corporate Debtor as a going concern. It does not spell out the shape, color and texture of Resolution Plan, which is left to imagination of stakeholders. The Resolution Plan must resolve insolvency (rescue a failing, but viable business); should maximize the value of assets of the 'Corporate

Debtor', and should promote entrepreneurship, availability of credit and balance the interests of all the stakeholders.

8. In the backdrop of the object of the IBC, it is amply clear that the **Resolution is Rule and the Liquidation is an Exception. Liquidation brings the life of a corporate to an end.** It destroys organizational capital and renders resources idle till reallocation to alternate uses. Further, it is inequitable as it considers the claims of a set of stakeholders only if there is any surplus after satisfying the claims of a prior set of stakeholders fully. IBC therefore, does not allow liquidation of a corporate debtor directly. It allows liquidation only on failure of corporate insolvency resolution process. It rather facilitates and encourages resolution in several ways.

9. Keeping in view such object behind the enactment of the Code, intention of the Legislature is that the priority is to be given to the resolution than liquidation in the larger interests of the public, workmen, stakeholders and the other employees of the corporate debtor. In order to achieve the object of the Code the liquidation of a company can be only as a last resort, wherein, all efforts for bringing a Resolution Plan were failed or it cannot be found workable in the larger public interest. Hence, the approval of Resolution Plan by this Adjudicating Authority is necessary as per the apex court's decision in the matter of ***K. Saahidhar Vs. Indian Overseas Bank & Ors.***

10. Initially the CoC had recommended for Liquidation of the CD which was not found just by this Bench in the absence of full exploitation of the possibility of finding a Resolution plan for the MSME CD. It was felt that at that time that all attempts had not been made to find out a Resolution Plan during COVID Pandemic Period. Hence, the RP, CoC were given indication not to go for Liquidation immediately but to make further attempts to find out a viable Resolution Plan. Little more time was to them for the said purpose, as

a result, the CoC could get two Resolution Plans out of which the present one has been submitted before this Bench for approval.

10.1 The CoC in its 10th meeting held on 30.10.2021, vide agenda item no 6, has voted for in favour of the resolution plan submitted by **M/s VC Education by 100% voting share through e-voting on 03.11.2021.**

10.2 The SRA M/s V C Education agreed to submit an indemnity bond cum undertaking in terms of decision taken vide agenda item no 4(f) of the 9th CoC meeting, that whatsoever shall be the claw back amount, pursuant to the final adjudication, under the avoidance applications, shall be distributed in accordance with the decision of the Hon'ble NCLT Guwahati Bench

10.3 The Sole Financial Creditor submitted that it is not possible to accept any amount less than the proposed amount of Rs 45 lakhs more so after taking into consideration the fact that it has made the undertaking of not invoking any personal guarantee against the suspended board of directors pursuant to the approval of the Resolution Plan.

11. It is found that the **Resolution Plan confirms to the criteria as provided under clauses (a) to (f) in section 30(2) of the Code and the CoC approved the Resolution Plan by 100 % voting.** The Resolution Plan also confirms to such other requirements as may be specified by the Board. **The Resolution Professional has certified that the Final Resolution Plan is in conformity with the provisions of the IBC.**

12. The following related IAs have been disposed of today by this bench as necessitated along with the approval of the Resolution plan:

12.1 IA 64 of 2021 was filed by the RP under Section 60(5) read with section 14 & 74 of IBC 2016 read with rule 11 of the NCLT Rules, praying for direction to the respondent HDFC BANK LTD to restore unauthorized charges deducted, and the

same was disposed of on 07/01/2022 but not implemented. However, another prayer made for the said purpose by the RP in IA 10 of 2022 is disposed of now as under.

12.2 IA 10 of 2022, is filed under Rule 11 of the NCLT Rules, 2016 praying for clarification of order dated 07.01.2022 with a specific direction to the Respondent no 1/HDFC Bank to reverse the unauthorized charges deducted of Rs 43,483.84 in the Current Account of the Corporate Debtor post commencement of CIRP. **In our earlier order dated 07.01.2022 while disposing IA 64 of 2021, the Respondent was directed to retain the applicable charges, if any, of the Bank and refund the rest amount deducted to the account of the CD. Moreover, the deposit of the CD kept with the Bank can be closed and the proceeds of the same is to be credited to the account of the CD as prayed for by the RP. It is not clear as to why the Respondent did not implement the said order. Since the Respondent is silent about the applicable charges, we direct Respondent HDFC Bank to retain Rs. 20,000.00 only towards its charges and refund the rest of Rs 23,483.84 in to the Current Account of the Corporate Debtor within 3 working days from today. Other part of the order of IA 64 of 2021 is to be implemented immediately. Hence, IA 10 of 2022 stands disposed along with the approval of Resolution Plan.**

12.3 IA 24 of 2021 filed by the Mr. Kamal Agarwal, the Resolution Professional of the Corporate Debtor, under Section 45 of the IBC, 2016 read with Rule 11 of NCLT Rules against Potential Coaching Institute Pvt. Ltd. and two of Directors of the Suspended Management of the Corporate Debtor namely, Mr. Gautam Saha and Mr. Abhijit Dutta to declare the 'right to use' of trademark 'CONCEPT Educations' as void and reverse the effect of such transaction and restore it back to the CD, **has been disposed of separately by this Tribunal today. Return of trademark to CD is part of the Resolution Plan. Matter was heard from both the**

sides and the reason mentioned by the Respondents therein for allowing the right to use Trademark are not at all convincing. In order to ensure the successful implementation of the Resolution Plan, the agreement entered into between the CD and the Potential Coaching Institute Pvt. Ltd within the look back period is cancelled with immediate effect and the trademark is transferred back to the CD. There is no liability or any obligation from either side from today but it is made clear that the matter of not cooperating by the Suspended Management and their agreement with the Potential Coaching Institute Pvt. Ltd for Rs 10.00 lacs and subsequent withdrawal from partnership shall be heard with other IAs filed by the RP under Sections 19,43, and 66 of IBC 2016.

12.4 IA 37 of 2021 filed by the Mr. Kamal Agarwal, Resolution Professional of the Corporate Debtor, the applicant herein under Section 65 of the IBC, 2016 read with Rule 11 of NCLT Rules against Manish Soni and six others including the Directors of the Suspended Management of the Corporate Debtor namely, Mr. Gautam Saha and Mr. Abhijit Dutta **to impose maximum penalty upon the initiators of insolvency proceedings against the corporate debtor with a malicious intent for purpose other than resolution of insolvency of the corporate debtor, is disposed of separately by this Bench today.**

12.5 IA 06 of 2022 is filed under section 49 of the Code read with rule 11 of NCLT rules, seeking restoration of the trade mark 'CONCEPT Education' as is existed before deed of agreement dated 08.02.2019 and restoration of partnership in Potential and Concept Educations as is existed before Reconstitution of Partnership deed dated 17.09.2019 along with the benefits earned by the respondents out of use of the trade mark 'CONCEPT Educations'. **Since we have already disposed of IA 24 of 2021, we do not find any further merit in the prayer made in IA 06 OF 2022. The agreements**

entered into between the CD and the Potential Coaching Institute Pvt. Ltd. dated 01.02.2019, 08.02.2019 and thereafter, if any, within the look back period is cancelled with immediate effect and the trademark is transferred back to the CD. The Potential Coaching Institute Pvt. Ltd. shall not use the trademark hereafter. There is no liability or any obligation from either side from today. The CD and Potential Coaching Institute Pvt. Ltd are free to run their Coaching Institutes independently from today. Hence, IA 06 of 2022 stands disposed of with the above observations and directions.

13. The following IAs filed by the RP, are pending as it does not have relation with and impact on the approval of Resolution Plan Hence the following IAs shall be heard and disposed of separately.

13.1 IA 40 of 2021 filed under 19(2) of the IBC 2016 read with section 68 70, 71 72 & 236 of IBC 2016 read with rule 11 of the NCLT Rules 2016 to direct the respondents to share the information required by the resolution professional and further refer the matter to the Board (Insolvency & Bankruptcy Board of India for filing complaint with the special court established under chapter XXVIII of the Companies Act, 2013 Sufficient opportunities were given to the Respondents to extend full cooperation to the RP but the RP has now filed the Report that all Respondents, except R 6 and R 7, have not cooperated as required under the IBC.

13.2 IA 11 of 2022, filed under Section 43 of the IBC, 2016 read with rule 11 of the NCLT rules, 2016 praying the following:

- a. Pass an order requiring the respondent no 1 (Gautam Saha) and the respondent no 2 (Abhijit Dutta) to pay back Rs 36,87,1641.00 (Rupees Thirty-Six Lakhs Eighty-Seven Thousands One Hundred and Sixty-Four) and Rs 21,15,5001.00 (Rupees Twenty-One Lakhs Fifteen**

Thousands Five Hundred) respectively into the account of the corporate debtor;

- b. Pass an order on the preferential transactions identified by the respondent no 4 (Transaction Auditor) as this Hon'ble Court may deem fit and proper;**

13.3 IA 17 of 2022, filed under Section 66 of the IBC, 2016 read with rule 11 of the NCLT rules, 2016, seeking order against respondents herein to contribute to the assets of the corporate debtor along with an order to refer the matter to the Central Government under section 213 of the Companies Act, 2013 for appointing inspector(s) to investigate into the affairs of the corporate debtor.

13.4 The Registry is directed to list all the above three pending IAs on 08.04.2022 for further clarifications and final hearings.

14. On perusal of the Resolution Plan, we are of the considered view that the Resolution Plan along with final clarifications as approved by the Committee of Creditors (CoC) meets the requirement of Section 31 r/w Section 30(2) of the Code. Therefore, the present application IA 61 of 2021 is allowed and Resolution Plan is approved with the certain observations and subject to compliances of the following conditions:

14.1 Approval of the Resolution Plan does not mean automatic waiver or abetment of legal proceedings, if any, which are pending by or against the Company/ Corporate Debtor as those are the subject matter of the concerned Competent Authorities having their proper/ own jurisdiction to pass any appropriate order as the case may be. The Resolution Applicant on approval of the Plan may approach those Competent Authorities/ Courts /Legal Forums/ Offices — Govt. or Semi Govt. / State or Central Govt. for appropriate relief(s) sought for in the plan. **This is not going to make any hindrance for proper implementation of the Resolution Plan** as those are the subject matter of the

concerned/appropriate Competent Authorities. The Resolution Applicant has liberty to approach Competent Authorities for any concession, relief or dispensation as the case may be.

14.2 **The Resolution Professional is hereby appointed as the Chairman of the monitoring Committee for supervision of the implementation of the Resolution Plan. One Professional Faculty is required to be in the Monitoring Committee. Since the CD is a Coaching Institute, an MSME Unit, the monitoring Committee needs to be wound up at an early date on implementation of the Resolution Plan.**

14.3 **Fees of the RP/Chairman is fixed at Rs 50,000.00 p.m. as resolved in the CoC**

14.4 The resolution professional in the capacity of the chairman of the monitoring committee **shall continue to pursue all the avoidance applications filed under Section 43 and 66 of the Code;**

14.5 The CoC has Passed a resolution that all the claw back received in pursuance to the avoidance applications shall be distributed in accordance with the directions of this Bench; It is observed that the sole financial creditor -M/S Volkswagen Finance Private Limited, (now loan assigned to M/s Kotak Mahindra Prime Pvt. Limited) **had sanctioned loans for High End Luxury Porsche Boxster Car to the Coaching institute worth of Crore of rupees. Coaching Institute was not requiring those cars but the FC knew that it was for Directors' personal use only but payment of installments and interest was paid from the Account of the CD only** It is not understood how a NBFC/FC has sanctioned such **High End Luxury Porsche Boxster Cars** to the Coaching Institute and one of the main reasons for failure of the Coaching Institute to pay the salary of the Employees, Faculties, other OCs, resulted into CIRP, is due to the diversion of funds towards payment of large value loan installments and interest of high end Car Loans given/availed. Now the FC is getting almost its entire dues as provided in the Resolution Plan, leave interest

portion/overdue interest and their resolution not to take any amount further, if recovered from the transactions under Sec 43,45,50,66 is not viewed at all a favour to other Creditors. The FC-NBFC does not deserve more amount than the amount provided in the Resolution Plan.

15. It is further directed that:

15.1 The approved Resolution Plan shall come into force with immediate effect.

15.2 The Resolution Plan shall be subject to the various existing laws in force and shall also conform to such other requirements specified by the Board and other Statutory/Competent Authorities as the case may be. The RA is to file a copy of the Registered Partnership deed within 30 days from today.

15.3 The Resolution Applicant shall, pursuant to the approval of the Resolution Plan under section 31(1) of the Code, obtain the necessary approvals required under any laws 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 section 31(1) or within such period as provided for in such law, whichever is later or as the case may be.

15.4 All relevant parties in relation to the Final Resolution Plan are to be bound by the terms and conditions mentioned therein in accordance with Section 31(1) of the IBC 2016.

15.5 All relevant parties are directed to **extend full cooperation to carry out the terms and conditions of the Resolution Plan**. If there is any deviation in implementing the Final Resolution Plan, the concerned parties/entity will be liable for punishment as per Chapter 7 (Offences and penalties) of the IBC, 2016.

15.6 The CoC has Passed a resolution that all the claw back received in pursuance to the avoidance applications shall be distributed in accordance with the directions of this Bench and the RA has also confirmed that they would not claim any amount, if recovered from

the Suspended Management under Sec. 43 and 66 of IBC. The Suspended Management is not cooperating and the RP has to pursue the matters filed under Sections 19, 43 & 66 of IBC. **Since no further amount is to be paid to the FC and there are no workers, the amount to be recovered, if any, is to be paid to the Employees /Faculties and so on as per the Sec 53 of IBC only after the payment of fees of the RP of Rs 50,000.00 p. m.**

15.7 **The learned RP is to follow these matters meticulously for satisfaction of the claims of the Creditors including the claims of Employees/Faculties, Government and other OCs not satisfied to the extent of Rs 2,01,17,008.00.**

16. **The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.**

17. **Hence the IA 61 of 2021 is allowed with the above Observations and Directions.**

Sd/-

**(Prasanta Kumar Mohanty)
Member (Technical)
& Adjudicating Authority**

Sd/-

**(Rohit Kapoor)
Member (Judicial)
& Adjudicating Authority**