IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-III

Item No.04
IA-5999/2022
In
IB-411(ND)/2020

IN THE MATTER OF:
M/s. CSII India Pvt. Ltd. .... **APPLICANT**
Vs.
M/s. Telexcell Information Systems Limited .... **RESPONDENT**

SECTION
U/s 9 IBC code 2016 **Order pronounced on 30.05.2023**

CORAM:
SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)
SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:
For the Applicant :
For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. IA-5999/2022 is **allowed** and **disposed of.** The main Company Petition i.e., IB-411(ND)/2020 stands **disposed of** accordingly.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT-III, NEW DELHI

IA-5999/2022

In

(IB)-411(ND)/2020

<u>IN THE MATTER OF:</u>

M/s. CSII INDIA PVT. LTD.

(Formerly Known as M/s. CSDC INDIA PRIVATE LIMITED)

...... Operational Creditor

VERSUS

M/s. TELEXCELL INFORMATION SYSTEMS LIMITED

...... Corporate Debtor

<u>IN THE MATTER OF IA-5999/2022</u>

Under Section 30(6) r/w Section 31 of IBC, 2016 r/w Regulation 39(4) of IBBI (CIRP Regulations), 2016

Mr. MUKESH KUMAR JAIN

Resolution Professional of M/s. Telexcell Information Systems Ltd.

...... Applicant/Resolution Professional

Pronounced On: 30.05.2023

<u>CORAM:</u>

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

<u>PRESENT:</u>

For the Applicant	:	Mr. Gautam Singhal and Mr. Rajat Chaudhary, Advs.
For the Respondent	:	

<u>ORDER</u>

<u>PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)</u>

1. Brief Facts of the Case

1.1. The present application has been filed by Mr. MUKESH KUMAR JAIN, Resolution Professional ("RP") of M/s. TELEXCELL INFORMATION SYSTEMS LTD. ("Corporate Debtor") on 08.12.2022 under the provisions of Sections 30(6) read with Section 31 of the Insolvency & Bankruptcy Code, 2016 ("the Code" or "IBC") read with Regulation 39(4) of the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") for approval of the Resolution Plan in respect of M/s. TELEXCELL INFORMATION SYSTEMS LTD. ("Corporate Debtor") submitted by Respondent/Successful Resolution Applicant ("SRA") namely M/s. FRANS GLOBAL INFOTECH PRIVATE LIMITED.

1.2. This Adjudicating Authority vide order dated 05.10.2021 was pleased to admit the Company Petition (IB)-411(ND)/2020 filed by M/s. CSII INDIA PVT. LTD. ("Operational Creditor"), for initiating the CIRP under Section 9 of the Code against the Corporate Debtor and declared the moratorium and appointed the Applicant Mr. Mukesh Kumar Jain as an Interim Resolution Professional. A copy of the admission order dated 05.10.2021 is filed along with the application.

1.3. After Admission Order dated 05.10.2021, One of the Director (Power Suspended) filed the Company Appeal bearing Company Appeal (AT) (Ins.) No. 871- 872/ 2021 before the Hon'ble National Company Law Appellate Tribunal, New Delhi challenging the passing of the order dated 05.10.2021. The Hon'ble Appellate Tribunal vide order dated 25.11.2022 was pleased to dismiss the said appeal for non-prosecution.

2. Collation of claims by RP

2.1. In terms of Section 13 and Section 15 of the Code, the Applicant/RP has submitted that the public announcement was published in two newspapers i.e. Financial Express (English Edition) and Jansatta (Hindi Edition) Delhi Edition on 08.10.2021 to invite the stakeholders for submission of their claims. A copy of the public announcement is filed along with the application.

2.2. In response to the public announcement (publication of Form-A) made, the applicant constituted the Committee of Creditors ("CoC") and filed a report bearing IA-5578/2021, certifying the Constitution of the CoC along with the list of creditors under Regulation 13 & 17 of CIRP Regulations before this Adjudicating Authority. This Adjudicating Authority was pleased to take the same on record.

2.3. The first meeting of the CoC was convened on 03.11.2021, wherein, the applicant received more claims after the constitution of the CoC on 27.10.2021. Therefore, in compliance of Section 21(1) of the Code, the applicant re-constituted the CoC on 25.11.2021 with Financial Creditors i.e. Starfire Movies Private Limited, Mr. Prashant Gehlawat and Baba Lease & Investment Private Limited. Thereafter, the applicant filed a report certifying the re-constitution of the CoC in compliance of Section 21(1) of the Code and Regulation 17(1) of CIRP Regulations before this Adjudicating Authority bearing IA-5669/2021. This Adjudicating Authority was pleased to take the same on record.

2.4. The second meeting of the CoC was convened on 15.12.2021. The Applicant informed during the meeting that the CoC did not approve the appointment of the Resolution Professional in the first meeting of the CoC. The members after discussions approved the appointment of the applicant as the Resolution Professional of the Corporate Debtor. The members of the CoC also discussed and deliberated upon the draft of the Expression of Interest (“EoI”) for inviting Prospective Resolution Applicants (“PRAs”) for submission of the Resolution Plan and eligibility criteria as prepared by the Applicant. The members of the CoC approved the EoI for inviting PRAs for submission of the Resolution Plan and eligibility criteria. Accordingly, the application bearing IA-500/2022 was filed before this Tribunal under Section 22(3)(a) of the Code communicating the decision of the CoC to continue the Interim Resolution Professional as the Resolution Professional of the Corporate Debtor. This Tribunal vide order dated 14.02.2022 was pleased to allow the application and further confirm the appointment of the applicant as the Resolution Professional.

3. Evaluation and voting

3.1 The Applicant in terms of Section 25(2)(h) of the Code read with Regulation 36(4) of the CIRP Regulations invited the Expression of Interest ("EoI") for submissions of the Resolution Plans for the Corporate Debtor and the same were published in the English Newspaper, namely 'Financial Express' and Hindi newspaper namely 'Jansatta' on 19.12.2021. The last date for submission of EoI was 03.01.2022.

3.2 Further, the third meeting of the CoC was convened on 09.01.2022. The applicant informed that pursuant to the publication of Form-G, the applicant received certain queries from certain persons. However, no EoI was received till the last date of submission of EoI. The CoC decided to reissue Form-G with revised eligibility criteria. Accordingly, the revised Form-G was published in the English Newspaper namely 'Financial Express' and Hindi newspaper namely 'Jansatta' on 14.01.2022. The last date for submission of the EoI was 04.02.2022.

3.3 The fourth meeting of the CoC was convened on 12.02.2022. The applicant informed that pursuant to the re-publication of Form-G dated 13.01.2022, two EoI was received from two PRAs namely M/s One City Infrastructure Private Limited and M/s Frans Global Infotech Private Limited. The members approved the Evaluation Matrix and Request For Resolution Plan ("RFRP").

3.4 The Fifth meeting of the CoC was convened on 23.02.2022. It was informed to the members of the CoC as in the fourth meeting, the value of the performance guarantee could not be decided, therefore, the members of the CoC are required to decide the value of the performance guarantee as required under Regulation 36B(4A) of CIRP Regulations. The CoC approved the value of the performance guarantee. Since the matter relating to the performance guarantee could not be decided earlier and as per the revised Form-G dated

13.01.2022 the last date for issuance of RFRP and submission of Resolution Plan was 19.02.2022 and 21.03.2022 respectively, the timeline for submission of Resolution Plan was to be extended in terms of Regulation 36B(5) and sub-regulation (6). The members of the CoC approved the extension of the timeline for submission of the Resolution Plan to 28.03.2022.

3.5 The Sixth meeting of the CoC was convened on 22.03.2022. The applicant informed that since there was a delay in providing the books of accounts of the corporate debtor by the Directors (power-suspended), the valuers could not be appointed. So, the applicant appointed two registered valuers entities to determine the fair and liquidation value of the assets of the Corporate Debtor. The members of the CoC confirmed the appointment of two Registered Valuers entities namely M/s AAA Valuation Professional LLP & M/s Crest Valuation Services Private Limited. The applicant further apprised the members that the statutory period of 180 days for the CIRP of the Corporate Debtor would expire on 02.04.2022 and pursuant to the re-publication of fresh Form-G, two EoI for submitting the resolution plan was received and the last date for submitting resolution plan was 28.03.2022 and further due to the third outbreak of Covid-19, Delhi Government imposed lockdown in the month of January and February 2022 and all the economic activities were severely affected, therefore, it was suggested that the application may be made to this Adjudicating Authority to grant additional 90 days to complete CIRP of the Corporate Debtor. The members of the CoC approved the filing of the application for the extension of 90 days beyond 180 days. Accordingly, the application bearing IA-1497/2022 was filed and this Tribunal vide order dated 21.04.2022 was pleased to extend the CIRP period by 90 days till 01.07.2022.

3.6 The Seventh meeting of the CoC was convened on 29.04.2022. The applicant informed the members of the CoC that on 17.04.2022, the suspended board of directors sent certain files, documents and soft copies of books of accounts to the applicant. It was further informed to the members of the CoC that the Financial statements of the Corporate Debtor were not audited after the FY 2017-2018 and the same is also required to be completed. The applicant further apprised the members that PRAs also sought further information to complete their due diligence before submission of Resolution Plans and sought a period of 30 days for submission of their Resolution Plan. In these circumstances, it was discussed that the CoC may consider making another application before this Tribunal for granting exclusion of period from November 09, 2021 to April 17, 2022 (on account of delay by suspended directors in furnishing the desired documents and information). The CoC approved the filing of the application for grant of exclusion of the period from November 09, 2021 to April 17, 2022. The members of the CoC further resolved to approve the extension of the timeline for submission of the Resolution Plan till 15.06.2022. Accordingly, the Applicant filed an application bearing IA-2103/2022 seeking exclusion of 159 days from the period 09.11.2021 to 17.04.2022 and this Tribunal vide order dated 11.05.2022 was pleased to allow the said application. Consequently, the CIRP of the Corporate Debtor was due to expire on 08.12.2022.

3.7 Since the applicant received more claims from the creditors including the Financial Creditors in terms of the condonation of delay allowed by this Tribunal. Therefore, after collation and verification of the same, the applicant re-constituted the CoC on 08.06.2022 with Financial Creditors and filed the report bearing IA-2793/2022 certifying the re-constitution of the CoC before this Tribunal. This Tribunal vide order dated 27.07.2022 was pleased to take the said report on record.

3.8 The Eighth meeting of the CoC was convened on 24.06.2022. The applicant informed the members about the information, details and records still required to be provided by the Directors (Power-suspended) of the Corporate Debtor. It was also informed that the applicant appointed M/s. Dhingra Rajeev & Co., Chartered Accountants to determine preferential, undervalued, extortionate creditor and fraudulent transactions as per section 43, 45, 50 & 66 of

Insolvency & Bankruptcy Code, 2016 read with regulations 35A of CIRP Regulations, 2016. The applicant apprised the members that by the last date of receipt of the Resolution Plan i.e. 15.06.2022 only one Prospective Resolution Applicant i.e. M/s Frans Global Infotech Private Limited submitted their resolution plan. The applicant further informed the members of the CoC that the Resolution Plan received on 15.06.2022 from M/s Frans Global Infotech Private Limited, remitted the amount of Rs. 10,00,000/- (Rupees Ten Lakhs Only) towards EMD on 20.06.202 and so the same shall be required for the condonation of delay by the CoC. Accordingly, the resolution was placed before the CoC to consider the condonation of delay in depositing the Earnest Money Deposit ("EMD") by M/s. Frans Global Infotech Private Limited. The CoC resolved to approve the condonation of delay.

3.9 The Ninth meeting of the CoC was convened on 29.08.2022. It was informed that the draft Report of Transaction Audit was received and further discussion on the same was going on. It was apprised to the members of the CoC that the resolution Plan from M/s. Frans Global Infotech Private Limited was shared with all members after the 8th meeting of the CoC and pursuant to sharing of the Resolution Plan, the applicant had raised a few clarifications and observations on the plan with the PRA. The applicant also invited the representative of the PRA to discuss the Resolution Plan in the meeting. Mr. Khan, representative of M/s. Frans Global Infotech Private Limited appeared in the meeting to apprise the CoC members. After a long discussion with respect to the feasibility and viability of the Resolution Plan, the following points were noted down in terms of revised/updated resolution plan:-

-Increasing the amount of resolution plan,

-Expedite the payment plan instead of the proposed time period of three years,

-SIDBI has requested to pay out their share upfront / in priority as regards to the timings.

-Resolution Plan can be modified only once.

-Other pointers as emailed by the resolution professional to the Prospective Resolution Applicant.

-Expedite on the BSNL/MTNL contracts/empanelment

-The time limit for submission of the revised Resolution plan and further voting on the same and submission to this Tribunal is a time-bound process and accordingly, the revised plan needs to be submitted at the earliest.

3.10 The Tenth meeting of the CoC was convened on 01.11.2022. It was informed that the revised Resolution Plan by M/s. Frans Global Infotech Pvt. Ltd. was received by the applicant through mail on 27.10.2022, pursuant to the 9th CoC meeting. The Resolution Plan was shared along with the notice of the CoC meeting and the Resolution Applicant was given an opportunity to give a brief presentation of their plans. It was further informed that the plan was under review for compliance and the missing documents requirement was discussed with the PRA and intimated over the email also. The members of the CoC discussed in detail with the PRA about the revised amount along with the payment plan and requested time for the next few days for analysing as well as legal review of the plan. The applicant apprised the members that once the required missing documents would be provided, the plan will be put for voting in another CoC meeting. The applicant also informed about the timeline for the completion of the CIRP which is due to expire on 08.12.2022.

3.11 It is pertinent to mention that the application bearing IA-2246/2022 filed by M/s Tekify Global through its Proprietor and the application bearing IA-2530/2022 filed by M/s Electronis One through its Proprietor respectively seeking condonation of delay in filing the claim under the category of Financial Creditor was allowed by this Tribunal vide order dated 02.11.2022. Accordingly, after collation and verification of the respective claims of M/s Tekify Global & M/s

Electronis One under the category of Financial Creditor, the applicant re-constituted the CoC on 09.11.2022 and filed the report bearing IA-5523/2022 certifying the re-constitution of the CoC. This Tribunal vide order dated 16.11.2022 was pleased to allow the said application.

3.12 The Eleventh meeting of the CoC was convened on 15.11.2022. The Applicant, inter-alia, informed the members that the M/s. Frans Global Infotech Private Limited (Successful Resolution Applicant) initially submitted a Resolution Plan which was discussed in detail along with the representative of the Resolution Applicant in the 9th CoC meeting and thereafter a revised Resolution Plan was submitted on 27.10.2022 which was shared with the CoC members and discussed in the 10th CoC meeting. The Resolution Applicant was also present in the 10th CoC meeting and gave a brief presentation of the plan. After detailed discussion and deliberation upon the feasibility and viability of the revised Resolution Plan, the following resolution was put to vote:-

> ***"RESOLVED THAT, having discussed and assured itself about the commercial feasibility and viability of the revised Resolution Plan submitted by M/s. Frans Global Infotech Private Limited in the matter of M/s. Telexcell Information Systems Limited be and is hereby approved.***
>
> ***FURTHER RESOLVED THAT Resolution Professional be and is hereby authorised to file necessary application u/s 30(6) of Insolvency & Bankruptcy Code, 2016 for approval of Resolution Plan."***

3.13 The members of the CoC requested to put the said resolutions for approval of members of the CoC through e-voting. Considering the criticality of timings, it was decided that the voting lines would remain open from 10 AM of 17.11.2022 to 6 PM of 19.11.2022. On 19.11.2022, the applicant received the voting results. In view of the results of the e-voting, the following resolutions has been approved by the CoC with 100% voting:

"RESOLVED THAT, having discussed and assured itself about the commercial feasibility and viability of the revised Resolution Plan submitted by M/s. Frank Global Infotech Private Limited in the matter of M/s. Telexcell Information Systems Limited be and is hereby approved.

FURTHER RESOLVED THAT Resolution Professional be and is hereby authorised to file necessary application u/s 30(6) of Insolvency & Bankruptcy Code, 2016 for approval of resolution plan."

3.14 The details of members of the CoC and their voting percentage share are as follows:

S.No.	**Category of Creditor**	**Claim Amount (in Rs.)**	**Amount Admitted (in Rs.)**	**Voting Share (%)**
1.	Prashant Gehlawat	3,80,06,652/-	3,79,10,893/-	27.14%
2.	Starfire Movies Private Limited	2,63,01,268/-	2,63,01,268/-	18.83%
3.	Baba Lease and Investment Private Limited	3,16,73,967/-	3,16,73,967/-	22.68%
4.	SIDBI	23,64,017/-	22,09,442/-	1.58%
5.	Startit Incubation Private Limited	38,63,100/-	38,63,100/-	2.77%
6.	M/s. Electronis One	81,09,500/-	81,09,500/-	5.81%
7.	Tekify Global	2,95,98,250/-	2,95,98,250/-	21.19%
Total		**14,04,35,429/-**	**13,96,66,420/-**	**100%**

4. The RP submits that a total of 11 (Eleven) CoC meetings have been held during the CIRP period which are as follows:

S. No.	**Sequence of Meeting of CoC**	**Date of Meeting**	**CoC Members Present**
1.	First Meeting of CoC	03.11.2021	Yes
2.	Second Meeting of CoC	15.12.2021	Yes

3.	Third Meeting of CoC	09.01.2022	Yes
4.	Fourth Meeting of CoC	12.02.2022	Yes
5.	Fifth Meeting of CoC	23.02.2022	Yes
6.	Sixth Meeting of CoC	22.03.2022	Yes
7.	Seventh Meeting of CoC	29.04.2022	Yes
8.	Eighth Meeting of CoC	24.06.2022	Yes
9.	Ninth Meeting of CoC	29.08.2022	Yes
10.	Tenth Meeting of CoC	01.11.2022	Yes
11.	Eleventh Meeting of CoC	15.11.2022	Yes

5. Valuation of the Corporate Debtor

In terms of Regulation 27 of CIRP Regulations, the applicant appointed two registered valuers entities to determine the fair and liquidation value of the assets of the Corporate Debtor, who are as follows:

1. M/s AAA Valuation Professional LLP (IBBI/RV- E/02/2019/104)

2. M/s. Crest Valuation Services Private Limited (IBBI/RV-E/05/2020/127)

The Summary of the valuation report are as follows:

S. No.	Assets	Average Fair Value	Average Liquidation Value
1.	Land & Building	Valuer I- 16,425,512 Valuer-II- 10,022,379 Average Fair Value- 13,223,945.50	Valuer I- 15,731,124 Valuer-II- 7,362,859 Average Liquidation Value- 11,546,991.50
2.	Plant & Machinery	Valuer I- 2,245,272 Valuer-II- 12,117,693 Average Fair Value- 7,181,482.50	Valuer I- 2,012,898 Valuer-II- 10,709,246 Average Liquidation Value- 6,361,072.00
3.	Security & Financial Assets	Valuer I- 46,538,548 Valuer-II- 37,616,391 Average Fair Value- 42,077,469.50	Valuer I- 26,225,998 Valuer-II- 33,594,917 Average Liquidation Value- 29,910,457.50
	Total	**6,24,82,897**	**4,78,18,521**

Copy of valuation reports as provided by the registered valuers is filed along with the application.

6. Details of Resolution Plan/Payment Schedule

The Resolution Applicant has to the extent possible, taken into account the interests of all stakeholders of the Corporate Debtor in the following manner:

6.1 CIRP Cost

Resolution Applicant propose to pay the entire Outstanding/Future CIRP cost approved by the CoC as may be provided by the RP in addition to payment to all the claimants as provided in the Information Memorandum. The Resolution Applicant reserves the right to seek details of the outstanding CIRP Cost and requisite documents evidencing the amounts incurred for the outstanding/future approved CIRP Cost.

6.2 Financial Creditors - Secured Financial Creditors

As per Information Memorandum/the list of Creditors as provided in IM/as provided by the RP subsequent thereto, one creditor in this category have submitted claim amounting to Rs. 23,64,017/- (Rupees Twenty Three Lakh Sixty Four Thousand and Seventeen Only) (in case RP has not included name of any creditor, who has filed the claim after due date or has filed the clam and whose claim has been rejected by the RP in full and the claim amount under verification in the list of Creditors in this category, such creditors will also be governed by the terms of this Resolution Plan) out of which RP has admitted the said claims for an amount of Rs. 22,09,442/- (Rupees Twenty Two Lakh Nine Thousand Four Hundred and Forty Two Only). The details of the amount claimed, amount admitted and the amount proposed to be paid under the Resolution Plan is mentioned below:-

S No	Name of Secured Creditor	Amount Claimed	Amount Admitted	Proposed Payment %	Proposed Payment Amount (In INR)	Voting %	Details of Security
1	Small Industries Development Bank of India (SIDBI)	2,364,017.00	2,209,442.00	100%	2,209,442.00	2.17	Current and Fixed Assets of the Company along with personal assets and guarantee of the promoters
	TOTAL	2,364,017.00	2,209,442.00		2,209,442.00		

6.3 Financial Creditors - Unsecured Financial Creditors (Both Unrelated and Related)

As per Information Memorandum/the List of Creditors as provided in IM/as updated by the RP subsequent thereto, Four creditors in this category have submitted claims amounting to Rs. 10,22,76,269/- (Rupees Ten Crore Twenty Two Lakh Seventy Six Thousand Two Hundred and Sixty Nine Only) (in case RP has not included name of any creditor, who has filed the claim after due date or has filed the claim and whose claim has been rejected by the RP in full, in the list of Creditors in this category, such creditors will also be governed by the terms of this Resolution Plan) out of which RP has admitted the said claims for an amount of Rs. 10,21,80,510/- (Rupees Ten Crore Twenty One Lakh Eighty Thousand Five Hundred and Ten Only). Resolution Applicant propose to pay a sum of Rs. 4,18,94,676/- (Rupees Four Crore Eighteen Lakh Ninety Four Thousand Six Hundred and Seventy Six Only) this category which shall be distributed and paid proportionately to all the Creditors within this category as proposed hereunder:

S No	Name of Secured Creditor	Amount Claimed	Amount Admitted	Proposed Payment %	Proposed Payment Amount (In INR)	Voting %	Related/ Unrelated
1	Starfire Movies Private Limited	26,301,268.00	26,301,268.00	42%	11,046,533.00	25.80	Unrelated
2	Prashant Gehlawat	38,006,652.00	37,910,893.00	42%	15,922,575.00	37.18	Unrelated
3	Baba Lease and Investment Private Limited	31,673,967.00	31,673,967.00	42%	13,303,066.00	31.07	Unrelated
4	Startit Incubation Private Limited	3,863,100.00	3,863,100.00	42%	1,622,502.00	3.79	Unrelated
5	Jain Turmerics	2,431,282.00	2,431,282.00	0%	0	0	Related
	TOTAL	**102,276,269.00**	**102,180,510.00**		**41,894,676.00**	**97.84**	

6.4 Proposal for Operational Creditors

Proposal for Operational Creditors has been dealt with below as per categories mentioned by Resolution Professional in List of Creditors as provided in the IM. The Operational Creditors shall be paid in priority to the Financial Creditors as per the provisions of the Code. In terms of provisions of Code, the Operational Creditors will be paid at least an amount equal to Liquidation Value payable to them in terms of provisions of Section 53(1) or the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of Section 53 of the Code whichever is higher.

6.5 Operational Creditors - Workmen & Employees.

The Creditors within this category as proposed hereunder:

S No	Workmen and Employees	Amount Claimed	Amount Admitted	Proposed Payment %	Proposed Payment Amount (In INR)
1	Mr Suresh Negi	371,315.00	103,934.00	30.00	31,180.00
2	Mr Vijender Kumar Sharma	501,951.00	501,951.00	30.00	150,585.00
3	Mr Vikas Chauhan	407,042.00	230,909.00	30.00	69,273.00
4	Mr Ajay Kumar	126,000.00	-	-	-
5	Mr Anurag Soni	610,596.00	610,596.00	30.00	183,179.00
6	Mr Deepak Singh Rawat	134,230.00	-	-	
7	Mr Mrityonjay Thakur	203,000.00	-	-	
8	Mr Narender Singh Rathore	259,239.00	259,239.00	30.00	77,772.00
9	Mr Subhash Jayant Joshi	426,612.00	-	-	
10	Ms Ashima Gulati	80,966.00	75,296.00	30.00	22,589.00
11	Mr Manpreet Singh	358,037.00	220,857.00	30.00	66,257.00
	TOTAL	**3,478,988.00**	**2,002,782.00**		**600,835.00**

6.6 Operational Creditors – Other than Workmen & Employees and Government Dues

S No	Operational Creditors	Amount Claimed	Amount Admitted	Proposed Payment %	Proposed Amount (In INR)
1	Databit Technologies Private Limited	6,090,685.00	4,115,328.00	10%	411,533.00
2	Excel Traffic Logistics Private Limited	306,043.00	254,312.00	10%	25,431.00
3	Excel Traffic Logistics Private Limited	185,850.00	185,850.00	10%	18,585.00
4	Frans Global Infotech Private Limited	2,761,747.00	2,647,747.00	10%	264,775.00
5	Atlas Logistics Private Limited	588,382.00	588,382.00	10%	58,838.00
6	CSII India Private Limited	13,987,079.00	-	-	-
7	Fujisan Technologies Limited	8,360,832.00	4,920,198.00	10%	492,020.00
8	Jain Exim	2,574,116.00	-	-	-
9	Vinayak Forwarders Private Limited	3,503,052.00	-	-	-
	TOTAL	**38,357,786.00**	**12,711,817.00**		**1,271,182.00**

6.7 Operational Creditors – Government Dues

S No	Operational Creditors-Govt Dues	Amount Claimed	Amount Admitted	Proposed Payment %	Proposed Amount (In INR)
1	Department of Trade & Taxes, Delhi	109,975,523.00	109,975,523.00	0.5%	5,49,878.00
	TOTAL	**109,975,523.00**	**109,975,523.00**		**5,49,878.00**

Source of Funds

S No	Name of Party	Net Worth Certificate Dated	Amount (In INR)
1	Frans Global Infotech Pvt Limited	22.08.2022	19,000,000.00
2	Mr Nazish Ullah Khan-Promoter	22.08.2022	11,071,832.00
3	Ms Priyank Gehlot-Promoter	22.08.2022	12,757,322.00
4	Banking Limit-Yes Bank (taken upto 25% of Sanction Limit of Rs 1.70 crore)		4,250,000.00
5	EBT from Business Operation during 36 months (taken on Conservative Basis)		25,000,000.00
		TOTAL	**72,079,154.00**

Resolution Applicant shall bring funds for working capital purposes as and when required

6.8 The Resolution Plan size is Rs. 4,90,26,013/- (Rupees Four Crore Ninety Lakh Twenty Six Thousand and Thirteen Only). The Resolution Plan defines ***"Effective Date"*** which means the date on which this Resolution Plan is approved by this Adjudicating Authority under Section 31 of the Code. Further, the Payment Schedule is as follows:

Term of Resolution Plan (Number of months after approval of Resolution Plan by Hon'ble NCLT).	Payment Schedule (Total 36 months)		
	S No	**Payment Schedule**	**Amount (In INR)**
	1	Upfront Payment	10,131,337.00
	2	Within First 6 month	10,000,000.00
	3	Next 6 month	6,000,000.00
	4	Next 6 month	6,000,000.00
	5	Next 6 month	6,000,000.00
	6	Next 6 month	6,000,000.00
	7	Next 6 month	4,894,676.00
		TOTAL	**49,026,013.00**

7. Waivers, Reliefs, Concessions and Exemptions

The Resolution Applicant has prayed for the reliefs as enumerated under the Resolution Plan approved by the CoC. From the Resolution Plan approval date, all inquiries, investigations and proceedings, whether civil or criminal, suits, claims, disputes, interests and damages in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the plan approval date, or arising on account of implementation of this resolution plan shall stand withdrawn, satisfied and discharged. From the date of approval of the Resolution Plan, the Resolution Applicant shall be legally authorised to seek appropriate orders from respective authorities/courts/tribunals for renewal of licences/withdrawal/dismissal or abatement of the proceeding as the case may be. The Resolution Plan also provides details of Reliefs as already set out in clause 12 (12.1 to 12.10 at Page 61-63 of the Resolution Plan).

8 Compliance of the successful Resolution Plan with various provisions:

8.1 The compliance of the Resolution Plan is as under:

Section of the Code/ Regulation No	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes/ No)
Section 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 Corporate Debtor?	Clause – 5.2	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 – 5.2	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Clause – 5.2	Yes
Section 30(2)	Whether the Resolution Plan- a.) Provides for the payment of insolvency resolution process costs?	Clause – 8.1(a)	Yes
	b.) Provides for the payment to the operational creditors?	Clause – 8.1(b)	Yes
	c.) Provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	N.A.	N.A.
	d.) Provides for the management of the affairs of the corporate debtor?	Clause – 9.1 & 10.4	Yes
	e.) Provides for the implementation and supervision of the resolution plan?	Clause – 9.1 & 10.5	Yes
	f.) Contravenes any of the provisions of the law for the time being in force?	Clause – 10.6 & 10.13	Yes
Section 30(4)	Whether the Resolution Plan a.) Is feasible and viable, according to the CoC?	Clause – 10.7	Yes

	b.) has been approved by the CoC with 66% voting share?	Clause – 10.7	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Clause – 9.1 & 10.5	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, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation of the Board?	NA	NA
Regulation 38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	-	No
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause – 10.2	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 – 10.1	Yes
	(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	Clause – 10.2	Yes
Regulation 38(2)	Whether the Resolution Plan provides: a.) The term of the plan and its implementation schedule?	Clause – 10.3	Yes
	b.) For the management and control of the business of the corporate debtor during its term?	Clause – 10.4	Yes
	c.) Adequate means for supervising its implementation?	Clause – 10.5	Yes

Regulation 38(3)	Whether the resolution plan demonstrates that – a.) It addresses the cause of default?	Clause – 10.6	Yes
	b.) It is feasible and viable?	Clause – 10.7	Yes
	c.) It has provisions for its effective implementation?	Clause – 10.8	Yes
	d.) It has provisions for approvals required and the timeline for the same?	Clause – 10.8	Yes
	e.) The resolution applicant has the capability to implement the resolution plan?	Clause – 10.9	Yes
Regulation 39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Clause – 9.3.1	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Clause – 7.4	Yes

8.2 The Applicant/RP submits that the Successful Resolution Applicant is not disqualified under Section 29A of the Code to submit the Resolution Plan, as required by Regulation 39(1)(a) of the CIRP Regulations. A separate undertaking has also been submitted along with the EoI by the Successful Resolution Applicant, as mandated in terms of Regulation 39(1)(c) of the CIRP Regulations. The Applicant/RP has filed a Compliance Certificate in the prescribed Form, i.e., **Form-H** as per the amended Resolution Plan in compliance with Regulation 39(4) of the CIRP Regulations.

9 Details of proceedings by/against the Company/RP

The payment to creditors as envisaged under the Resolution Plan under all nature of cases filed by creditors against the Corporate Debtor, shall be made only after the withdrawal of pending litigation/ cases/proceedings against the Corporate Debtor. All the ongoing cases against the Corporate Debtor including but not limited to mentioned, shall be considered as settled without any payment. All investigations against the Corporate Debtor by any agency shall be stopped forever and cases to proceed any further without any liability on the Corporate Debtor/Resolution Applicant and no action shall be initiated against the Corporate Debtor/Resolution Applicant. All the ongoing arbitration proceedings against Corporate Debtor, known or unknown, or award, decree or execution of such decree as passed, such shall be considered as withdrawn. As per Information Memorandum and further information shared, there are undermentioned cases pending on behalf of the Corporate Debtor against the other parties. It is proposed that the Successful Resolution Applicant shall pursue legal/recovery proceedings against other parties and the entire amount recovered, if any shall belong to Corporate Debtor only and nothing will distribute.

S No	Name of Respondent in proceedings by the Company/Resolution Professional	Claim Amount (Rs)	Judicial Authority
1	Mother Dairy Fruit And Vegetable Private Limited	669,150.00	Recovery Suit at District Judge, Rohini
2	Commnet System	323,886.00	Recovery Suit at District Judge, South Saket
3	Swadh Import and Export Private Limited	313,000.00	Recovery Suit at District Judge, South Saket
4	Tata Advanced Systems Limited	21,700,000.00	Arbitration Matter at Delhi International, Arbitration Centre, Delhi High Court,
5	Central Electronics Limited	24,222,417.00	Arbitration Matter at Delhi International, Arbitration Centre, Delhi High Court,
6	Mr Jawahar Lal Mahender Kumar Lalwani and Others (Suspended Directors)	17,475,865.00	Hon'ble NCLT, Delhi, Bench-III under under PUFE application u/s 43, 45, 47, 50 or 66 of the IBC Code
	TOTAL	**64,704,318.00**	

10 Details on Management and Implementation as per the Resolution Plan

The Resolution Plan also provides details of management and control, implementation and supervision of the Resolution Plan. The same is already set out in clause 9 at page 44 – 47 and clause 10 at page 47 – 59 of the Revised Resolution Plan dated 25.10.2022.

11 Details on Fraudulent and Avoidance transaction

11.1 The Applicant/RP on the basis of the Transaction Audit Report submitted by the Transaction Auditor on 21.09.2022, the Applicant/RP filed applications under Section 43 and 66 of the Code bearing IA-4975/2022 and IA-5268/2022 respectively. The said applications are pending adjudication before this Adjudicating Authority.

11.2 The Successful Resolution Applicant has stated in its Resolution Plan that any amount realized on account of the PUFE Application in pursuant to Sections 43, 45, 49, 50, 56 and 66 filed with this Adjudicating Authority will be to the account of the Corporate Debtor and the related proceedings will be pursued by the Corporate Debtor after the approval of the Resolution Plan by this Adjudicating Authority.

12 Analysis & Findings

12.1 On hearing the submissions made by the Ld. Counsel for the Resolution Professional and perusing the record, we find that the Resolution Plan has been approved by the CoC in its 11th meeting dated 15.11.2022 with 100% voting share. As per the CoC, the Plan meets the requirement of being a viable and feasible and for revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Bench.

12.2 At this juncture, we rely upon the Judgement passed by the Hon'ble Supreme Court in the matter of **"Vallal RCK versus M/s Siva Industries and Holdings Limited and Others, Civil Appeal Nos. 1811-1812 of 2022"**

whereby the Hon'ble Apex Court has answered the question as to whether **'*the adjudicating authority (NCLT) or the appellate authority (NCLAT) can sit in an appeal over the commercial wisdom of the Committee of Creditors ("CoC") or not*'**. We rely upon the following paragraphs:

"21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring the completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that Financial Creditors are fully informed about the viability of the Corporate Debtor and the feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed Resolution Plan and assessment made by their team of experts."

A reference in this respect could be made to the judgments of this Court in the cases of ***"K. Sashidhar v. Indian Overseas Bank and Others, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others****.*

27. This Court has, time and again, emphasized the need or minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the case of ***Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another[1]:***

.....

"95. However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the

[1] **Civil Appeal No. 9664 of 2019, Dated 15.03.2021**

IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC"

12.3 In light of the above-quoted judgements, it is clear that the **"Commercial wisdom of CoC"** is given paramount status. This Adjudicating Authority is not endowed with the powers of jurisdiction or authority to analyse or evaluate the commercial decision of the CoC. The Resolution Plan of M/s. Frans Global Infotech Private Limited (Resolution Applicant) has been upvoted by the CoC unanimously in its 11^{th} (Eleventh) meeting dated 15.11.2022 with 100% voting share, this Adjudicating Authority cannot interfere in the same.

12.4 On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

12.5 The reliefs, concessions and waivers sought by the Successful Resolution Applicant will be dealt with strictly as per law.

12.6 As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.

12.7 In case of non-compliance of this order or withdrawal of the Resolution Plan within the stipulated time, in addition to other consequences which follow under law, the CoC shall forfeit the EMD amount of Rs. 5,00,000/- (Rupees Five Lakhs Only) already paid by the Resolution Applicant as well as the Performance Guarantee of Rs.10,00,000/- (Rupees Ten Lakhs Only).

12.8 The present application has been filed with bonafide means, in the interest of justice and to advance the objectives of the Code.

13 <u>Orders</u>

13.1 The **IA-5999/2022** which is for approval of the Resolution Plan is **allowed** and the Resolution Plan of Rs. 4,90,26,013/- (Rupees Four Crore Ninety Lakh Twenty Six Thousand and Thirteen Only) is hereby **approved**. **The Resolution Plan shall form part of this Order.** Accordingly, **IA-5999/2022** stands disposed of as becomes infructuous. The main Company Petition, i.e., **IB-411(ND)/2020** stands **disposed of** accordingly.

13.2 The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that the revival of the Corporate Debtor Company shall come into force with immediate effect.

13.3 The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.

13.4 The RP shall submit the records collected during the commencement of the proceedings to the Insolvency and Bankruptcy Board of India ("IBBI") for their record.

13.5 Liberty is hereby granted for moving appropriate application(s) if required in connection with the implementation of this Resolution Plan.

13.6 A copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies, NCT of Delhi & Haryana.

13.7 The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.

13.8 The Resolution Professional is further directed to hand over all records, premises/factories/documents available with it to the Resolution Applicant to finalise the further line of action required for starting the operation. The Resolution Applicant shall have access to all the records and premises through the Resolution Professional to finalise the further course of action required for starting operations of the Corporate Debtor.

13.9 The Registry is hereby directed to send copies of the order forthwith to the IBBI, all the parties and their Ld. Counsel for information and for taking necessary steps. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

13.10 File be consigned to the record.

No order as to costs.

-SD-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

-SD-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)