

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**IA No.4984 (PB)/2021**

**IN**

**CP (IB) No.1275(PB) 2018**

*Application under sections 30(6) and 31(1) of the Insolvency and Bankruptcy Code, 2016 read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for approval of Resolution Plan.*

***In the matter of***

State Bank of India

...

Financial Creditor

Versus

M/s Kannu Aditya (India) Ltd.

...

Corporate Debtor

**Memo of parties**

***In the matter of***

Anil Kohli, Resolution Professional of  
Kannu Aditya (India) Ltd.

...

Applicant

Versus

Kendriya Bhandar

(Central Government Employees Consumer Co-operative Society Ltd.)

...

Proforma Respondent

**Order pronounced on: 21.10.2022**

***Coram:***

Chief Justice (Retd.) Ramalingam Sudhakar : Hon'ble President

Shri Avinash K. Srivastava : Hon'ble Member (Technical)

***Appearances :***

For the Applicant/RP

: Mr. Abhishek Anand, Advocate  
: Mr. Karan Kohli, Advocate  
Mr. Shahil Bhatia, Advocate  
Mr. Mohak Sharma, Advocate  
Mr. Partik Choudhary, Advocate  
Mr. Prateek Kushwaha, Advocate  
Mr. Nikhil Jain, Advocate  
: Ms. Divya Kaur, Advocate  
Mr. Hashmat Nabi, Advocate

For the PNB

**ORDER**

***Per: Avinash Kumar Srivastava, Member (Technical)***

***1. Preliminary***

1.1. The present interlocutory application bearing IA No.4984 (PB) 2021

was moved on behalf of Mr. Anil Kohli Resolution Professional ("**RP**") of Kannu Aditya (India) Ltd. (CIN: U74899DL1999PLC098882), by Mr. Abhishek Anand , Learned Counsel for the RP, under the provisions of Sections 30(6) and 31(1)of the Insolvency & Bankruptcy Code,2016 [hereinafter referred to as "**the Code**" or "**IBC**"] read with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**") for approval of the Resolution Plan in respect of Kannu Aditya (India) Ltd. ("**Corporate Debtor**").

- 1.1. The corporate debtor is engaged in the business of trading of rice: both basmati and non basmati varieties.
  - 1.2. The underlying Company Petition CP (IB) No.1275(PB)2018 filed by State Bank of India under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process ("**CIRP**") of the Corporate Debtor was admitted by this Adjudicating Authority *vide* its order dated 22.05.2019 ("**Admission Order**"). On that date, *i.e.*, 22.05.2019 ("**Insolvency Commencement Date**") Mr. Anil Kohli (IBBI Reg No. IBBI/IPA-001/IP-P00112/2017-2018/10219) was appointed as IRP, who was later confirmed as RP in the 2<sup>nd</sup> CoC meeting dated 25.07.2019.
- 2. Collation of claims by RP**
- 2.1. The Applicant submits that the public announcement was made on 29.05.2019 in *Business Standard (English)* and *Rashtriya Jansatta (Hindi) (Delhi/ NCR Edition)* and called for proof of claims from the creditors of the Corporate Debtor and informed lenders to submit their claims as envisaged under the Code and the last date for submissions of claim was 10.06.2019.
  - 2.2. Pursuant to the collation and verification of claims received, the

COC was constituted with two financial Creditors. The total admitted debt due to the financial creditors is as under:

Financial Creditors	Amount Claimed	Amount of Claim Admitted	Voting Share
State Bank of India	₹3,29,55,25,987/-	₹3,29,55,25,987/-	97.16%
Punjab National Bank	₹9,63,30,236/-	₹9,63,30,236/-	2.84%
Total	₹3,39,18,56,223/-	₹3,39,18,56,223/-	100%

2.3. The details of claims submitted are as follows:

Particulars	Amount Claim in Cr. Rupees	Claim Admitted in Cr. Rupees
Financial Creditors	339.24	339.19
Operational Creditors	17.40	15.62
Workmen & Employees	0	0
Other Creditors	0	0
Total	356.64	354.81

2.4. The RP submits that a total of twenty-three CoC meetings have been held during CIRP period as follows:

Particulars	Date of CoC Meeting
1 <sup>st</sup> CoC Meeting	26.06.2019
2 <sup>nd</sup> CoC Meeting	25.07.2019
3 <sup>rd</sup> CoC Meeting	26.08.2019
4 <sup>th</sup> CoC Meeting	16.09.2019
5 <sup>th</sup> CoC Meeting	01.11.2019
6 <sup>th</sup> CoC Meeting	10.12.2019
7 <sup>th</sup> CoC Meeting	29.01.2020

<b>Particulars</b>	<b>Date of CoC Meeting</b>
8 <sup>th</sup> CoC Meeting	11.02.2020
9 <sup>th</sup> CoC Meeting	11.03.2020
10 <sup>th</sup> CoC Meeting	25.05.2020
11 <sup>th</sup> CoC Meeting	17.06.2020
12 <sup>th</sup> CoC Meeting	10.07.2020
13 <sup>th</sup> CoC Meeting	27.07.2020
14 <sup>th</sup> CoC Meeting	20.08.2020
15 <sup>th</sup> CoC Meeting	26.08.2020
16 <sup>th</sup> CoC Meeting	15.04.2021
17 <sup>th</sup> CoC Meeting	27.07.2021
18 <sup>th</sup> CoC Meeting	16.07.2021
19 <sup>th</sup> CoC Meeting	17.08.2021
20 <sup>th</sup> CoC Meeting	10.09.2021
21 <sup>st</sup> CoC Meeting	16.09.2021
22 <sup>nd</sup> CoC Meeting	29.09.2021
23 <sup>rd</sup> CoC Meeting	16.10.2021

**3. Evaluation and voting**

3.1 The Applicant submits that invitations for Expression of Interest (EoIs) in Form-G was issued on 03.08.2019 by way of a public notice ("**Public Notice**") whereby prospective resolution applicants (**PRAs**) were invited to submit the EoIs for submitting a resolution plan of the Corporate Debtor on or before 20.08.2019 , which was further extended to 13.09.2019. Pursuant to it, the applicant received 3 EoIs and the last date for submission of Resolution Plan was 22.10.2019 but no resolution plan was received till the last date. Thereafter revised Form G was published on 19.11.2019 and the applicant again received 5 EoIs but no resolution plan was received till the extended period for submission of Resolution plan i.e 24.01.2020 but an email was received from one PRA for further extension of time period for submission of Resolution Plan which was allowed by the COC and time period was extended till 4.00 PM

As

of 29.01.2020 for all the PRAs to submit the Resolution Plan.

- 3.2. In pursuant thereto, one PRA(VKS Jewellery Trading LLC) submitted a resolution Plan in consortium with M/s Aquarian Filtration Private Limited and it was found that the plan submitted by the PRA does not provide requisite information for completing the assessment, therefore, COC in its 11<sup>th</sup> meeting dated 17.06.2020 requested the PRA to submit revised and cured resolution Plan but no revised Resolution Plan was received from the PRA till the time granted by the COC to submit the revised Resolution Plan.
- 3.3. Thereafter in the 14<sup>th</sup> CoC Meeting held on 20.08.2020, it was apprised by RP, to the members of COC, that two emails were received on 19.08.2020 from two PRAs, viz. **Prudent ARC** and **Kendriya Bhandar (Central Government Employees Consumer Co- operative Society Ltd.)** for submission of Resolution Plan for the corporate debtor and it was also apprised that Kendriya Bhandar was not part of final list of PRA and so is ineligible to submit a Resolution Plan. Further COC decided that a brief proposal be submitted by both the PRAs by 22.08.2020 with concrete proposals latest by 26.08.2020 along with refundable upfront amount. Further COC observed that the brief proposals from both the parties do not inspire any confidence as they are not willing to remove their conditions for assignment of loan by financial creditors.
- 3.4. The appointed registered valuers also submitted their reports providing the average fair value and average liquidation value of the Corporate Debtor as per the valuation report which are as follows:

As

IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

IA No.4984 (PB)/2021,  
In CP (IB) No.1275(PB)2018

*In Re: Resolution Plan approval of Kannu Aditya (India) Ltd.*

Sl. No.	Name of Registered Valuer	Assets	Average Fair Value	Average Liquidation Value
1.	Mr. Brahmpal Bhardwaj	Plant & Machinery	₹1,69,63,040/-	₹1,20,74,128/-
2.	Mr. D.K. Malhotra	Plant & Machinery	₹1,81,17,179/-	₹1,07,79,721/-
3.	Mr. Amish Garg	Secured & Financial Assets	₹11,49,742/-	₹10,70,638/-
4.	Mr. Gautam Maurya	Secured & Financial Assets	₹8,50,789/-	₹8,44,342/-
5.	Mr. Deepak Bansal	Land and Building	₹17,97,65,490/-	₹12,58,35,843/-
6.	Mr. Vijay Vinod Bhatia	Land and Building	₹17,51,81,834/-	₹15,23,22,242/-
		<b>Average value</b>	₹19,60,14,037/-	₹15,14,63,457/-

3.5. Subsequently, the COC decided to file an application for liquidation of the corporate debtor as a going concern, post exploring option under Sec 230 of the Companies Act, 2013 which was filed by the RP bearing IA No. 3628 of 2020. Meanwhile, on 17.11.2020, M/s Kendriya Bhandar filed an application bearing IA No. 950/2021 before this Adjudicating Authority for placing the Resolution Plans for voting before CoC. Further, the applicant vide email dated 17.11.2020 apprised the members of COC about the application and then COC called for a lenders meeting to discuss the way forward.

3.6. The lenders meeting convened on 23.11.2020 wherein it was apprised that the Kendriya Bhandar has proposed a resolution Plan of Rs. 121.50 Crores but lenders were unanimously of the

---

view that only on satisfaction of certain conditions, the COC will consider any proposed Resolution Plan. Pursuant to this Kendriya Bhandar filed an affidavit before this Adjudicating Authority reflecting its binding commitment to meet the conditions as stipulated in the lenders meeting held on 23.11.2020.

- 3.7. Thereafter *vide* email dated 29.12.2020, State Bank of India requested the applicant to share the Resolution Plan prepared by Kendriya Bhandar. Then SBI requested the applicant to seek certain information from Kendriya Bhandar and subsequently Kendra Bhandar provided the information as sought for.
- 3.8. In respect of IA No. 950/2021, the Bench observed that the said application cannot be filed by the proposed resolution applicant but by lender members or the RP and therefore, the application filed by the Proposed Resolution Applicant was allowed to be withdrawn and the same was dismissed as withdrawn on 24.02.2021. This Adjudicating Authority *vide* order dated 09.04.2021 also allowed the lenders to hold the meeting of lenders at the earliest and proposed resolution applicant was allowed to place a resolution plan which may be considered and decided by the lenders at the earliest.
- 3.9. In the 16<sup>th</sup> COC meeting dated 15.04.2021 the applicant placed the Resolution Plan submitted by PRA before CoC and after due discussions and deliberations, the PRA was advised to replace the FD submitted by them as the EMD amount of Rs. 1 crore to be directly deposited to the Bank account of the corporate debtor and to provide authenticated authority letter and approval by Board of Directors signed by chief executive of PRA and the CoC further decided to seek further revised resolution plan from the Resolution Applicant.

RS

- 3.10. After due discussions and deliberations on various occasions, in the 22<sup>nd</sup> COC meeting dated 29.09.2021, it was apprised to COC by the applicant that the prospective Resolution Applicant has submitted their revised resolution Plan and the same was placed before them in which CoC sought certain modifications.
- 3.11. Thereafter, in the 23<sup>rd</sup> CoC meeting dated 16.10.2021, the applicant placed before the COC the receipt of addendum dated 06.10.2021 received by the Prospective Resolution Applicant along with the resolution Plan for approval. The CoC deliberated in accordance with Section 30(4) and 30(6) of the Code read along with CIRP Regulations, 2016 during the 23<sup>rd</sup> meeting of the CoC held on 16.10.2021. The e- voting on the compliant resolution plan commenced at 6.00 PM on 16.10.2021 and concluded at 6:00 PM on 18.10.2020.
- 3.12. This Adjudicating Authority has granted a total number of Eight extensions and exclusion in the whole CIR Process which are elaborated as follows:
- i. 18.11.2019 (extension of 90 days)
  - ii. 18.02.2020 (extension of 60 days)
  - iii. 24.06.2020 (extension of 60 days w.e.f 30.06.2020 and exclusion from 01.06.2020 to 30.06.2020)
  - iv. 09.04.2021 (extension of 276 days i.e 28.08.2020 to 31.05.2021)
  - v. 04.06.2021 (exclusion from 19.04.2021 to 07.06.2021)
  - vi. 26.07.2021 (30 days extension)
  - vii. 25.08.2021(30 days extension)
  - viii. 22.09.2021(30 days extension)
- 3.13. The Resolution Plan submitted by the Successful Resolution

Applicant i.e Kendriya Bhandar (Central Government Employees Consumer Co- operative Society Ltd.) was approved by a majority of 97.16% voting share by the CoC in the 23<sup>rd</sup> COC meeting dated 16.10.2021 and the application for approval of the resolution plan by this Adjudicating Authority was filed by the RP on 28.10.2021.

#### **4. Details of Resolution Plan/Payment Schedule**

4.1. The successful Resolution Applicant i.e Kendriya Bhandar (Central Govt. Employee Consumer Cooperative Society Ltd.) is established as a welfare project of Govt. Of India with the objective to provide good quality items of daily needs to the consumers at very reasonable prices. It is running chain of more 110 grocery/ consumer retail outlets in Delhi having a turnover of Rs. 1500 crores and is fulfilling the household requirements of the Govt. Employees and the general public at large. The Successful resolution Applicant has addressed the reason for insolvency as mentioned in Information Memorandum, that the present state affairs of the corporate debtor is due to freeze of its bank accounts by Directorate of Revenue Intelligence, because of that the corporate debtor was unable to clear the outstanding dues of the creditors and could not draw the working capital lines.

4.2. The amount proposed in the Resolution Plan are tabulated below:

Rupees in Crores

<b>Sl. No.</b>	<b>Types of debts</b>	<b>Resolution Amount (In Crores)</b>	<b>Payment Term</b>
1.	CIRP Cost	0.50	The outstanding CIRP cost shall be paid within 30 days of approval of Resolution Plan by the Adjudicating Authority

As

IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

IA No.4984 (PB)/2021,  
In CP (IB) No.1275(PB)2018

*In Re: Resolution Plan approval of Kannu Aditya (India) Ltd.*

Sl. No.	Types of debts	Resolution Amount (In Crores)	Payment Term
2.	Operational Creditor	0.01	Operational Creditors will be paid as priority over the Financial Creditor
3.	Financial Creditors	17	The payment shall be made from the effective date : Cash component 1. 40 days-Rs. 2 crores 2. 150days-Rs. 2 crores 3. 270days-Rs.6 crores 4. 360 days-Rs. 7 crore
4.	Capex	0.50	Within 18 months from the effective date. However, the dates may be advanced to meet the commitments in the Resolution Plan
5.	Working Capital	2.00	Within 18 months from the effective date. However, the dates may be advanced to meet the commitments in the Resolution Plan
	<b>Total</b>	20.01	

**5. Compliance of the successful Resolution Plan with various provisions:**

- 5.2. The Applicant has submitted the details of various compliances as envisaged by the Code and the CIRP Regulations which a Resolution Plan is required to adhere to, as follows:

**Compliance with Section 30(2) of the Code:**

Clause of sec. 30(2)	Requirement	How dealt with in the Plan
(a)	Provides for the	Clause 3.1.1 of the Resolution Plan

IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

IA No.4984 (PB)/2021,  
In CP (IB) No.1275(PB)2018

*In Re: Resolution Plan approval of Kannu Aditya (India) Ltd.*

Clause of sec. 30(2)	Requirement	How dealt with in the Plan
	payment of Insolvency Resolution Process Cost.	provides for the Insolvency Resolution Process Cost. Clause 3.1.1 provides that the Resolution Applicant will pay any unpaid CIRP cost in full and priority.
(b)	Plan provide for payment to the Operational Creditors	In clause 3.2.2 the RA has proposed the Payment of Rs.0.01 crore to be paid to the Operational creditors in proportion to their admitted claim and will be paid before payment to the Operational Creditor.
(c)	Plan provides for payment to the Financial Creditors who did not vote in favour of the resolution Plan.	Clause 3.3 of the Resolution Plan states that dissenting Financial Creditors will be entitled to receive an amount as they would have received in the event of liquidation, in priority to the creditors voting in favour of the proposal. Such dissenting Financial creditor would be paid out of the total amount agreed to be paid to the Financial creditors.
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause 5.1 provides for management of the corporate debtor by the resolution applicant to be read along with the addendum dated 06.10.2021
(d)	Implementation and Supervision of Resolution Plan.	Clause 6.1 provides for Implementation and Supervision of Resolution Plan. The resolution applicant has

RS

IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

IA No.4984 (PB)/2021,  
In CP (IB) No.1275(PB)2018

*In Re: Resolution Plan approval of Kannu Aditya (India) Ltd.*

Clause of sec. 30(2)	Requirement	How dealt with in the Plan
		provided that the implementation of the Resolution Plan will be supervised by the monitoring Committee which will consist of one member of Resolution Applicant, 1 representative of Financial Creditors and a monitoring Professional to be appointed with mutual Consent
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	The statement has been included in the Resolution Plan in Clause 7.4, confirming that the Resolution Plan does not contravene any of the provisions of the law for the time being in force.

**Indicative Timeline (Clause 4.4 of the Resolution Plan)**

Activity	Days
Receipt of letter of intent from the COC	Y
Issuance of Performance Security- Performance Security i.e 10% of Applicant contribution i.e 10% of 17.51 Cr. Will be provided within 3 days of issuance of LOI	Y+3
Receipt of certified copy of Approval from Adjudicating Authority	X
Appointment of Board of Directors and Monitoring Committee	X+3
Payment for CIRP Process Cost	As per Regulation 38
Payment in escrow Account	
Payment to Operational Creditor	
Infusion of Equity	X+30

AKS

IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

IA No.4984 (PB)/2021,  
In CP (IB) No.1275(PB)2018

*In Re: Resolution Plan approval of Kannu Aditya (India) Ltd.*

Capital Reduction	Within 45 days of X
1 <sup>st</sup> Upfront payment to Financial Creditors	Within 45 days of X
Final Cash Component payment to Financial Creditors	Within 360 days of X
Financial Creditors to release Encumbrances(including making filings with ROC/ sub- registrar of assurances and other governmental agencies for recording such release), execute re conveyance deeds, issuance of no dues certificates and redeliver documents in relation to the Resolution Plan	After payment of the complete cash component under the Resolution Plan
Necessary Statutory Approvals	Within 12 months from X (In accordance with Section 31(4) of the Code)

***Mandatory contents of Resolution Plan in terms of Regulation 38(1) of CIRP Regulations:***

Regulation	Requirement	How dealt with in the Plan
38(1)	(a) The amount payable to the operational creditors under a resolution plan shall be paid in priority over financial creditor.	In Clause 3.2.3, the RA has specifically provided that the liquidation value due to the Operational creditor should be paid in priority to the other debt.
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor.	Clause 3.4 of the Plan
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any	Clause 4.2 of The Resolution Plan.

AKS

IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

IA No.4984 (PB)/2021,  
In CP (IB) No.1275(PB)2018

*In Re: Resolution Plan approval of Kanmu Aditya (India) Ltd.*

Regulation	Requirement	How dealt with in the Plan
	other resolution plan approved by the Adjudicating Authority at any time in the past.	
38(2)	<b>A resolution plan shall provide:</b>	
	(a) the term of the plan and its implementation schedule;	Clause 4.4 of the Resolution Plan
	(b) the management and control of the business of the corporate debtor during its term; and	Clause 5.1 and Clause 6 of the Resolution Plan
	(b) Adequate means for supervising its implementation	Clause 6 of the Resolution Plan
38(3)	<b>A resolution plan shall demonstrate that-</b>	
	(a) it addresses the cause of default;	Resolution Plan addresses the reasons for the default by the corporate Debtor in Clause 6.9 of the Resolution Plan
	(b) it is feasible and viable;	The COC has to decide the feasibility and viability of the Resolution Plan. The plan of RA has been detailed in 6.9 to be read along with the projected profitability statement and the addendum dated 06.10.2021
	(c) it has provisions for its effective implementation;	The plan provides for its timeline for implementation in Clause 4 of the Resolution Plan. The CoC shall decide the effectiveness of the implementation of the Resolution Plan.

AKS

Regulation	Requirement	How dealt with in the Plan
	(d) it has provisions for approvals required and the timeline for the same; and	The plan contains the provisions for approvals required and timelines for the same in Clause 4.4 r/w Section D of the Resolution Plan.
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Clause 6.10 r/w Section B deals with it.

5.3. The Applicant submits that the successful resolution applicant has submitted an affidavit in regard to the eligibility under section 29A of the Code, as required by Regulation 39(1)(a) of the CIRP Regulations. An undertaking has also been submitted by the successful Resolution Applicant, as mandated in terms of regulation 39(1)(c) of the CIRP Regulations.

5.4. The Applicant has filed a Compliance Certificate in prescribed Form, i.e Form 'H' in compliance with Regulation 39(4) of the CIRP Regulations<sup>1</sup>. The RP has issued the Letter of Intent to the Successful Resolution Applicant on 20.10.2021. Evidence of receipt of performance Security of Rs. 1.751 crore i.e equivalent to 10 % of the Resolution Plan consideration Amount as required under regulation 36B (4A) is also placed on record.<sup>2</sup>

#### **6. Details of Resolution Plan/ Payment Schedule**

6.2. The Applicant submits the relevant information about the amount claimed, amount admitted, and the amount proposed to be paid by the Successful Resolution Applicant, i.e., Kendriya Bhandar (Central Government Employees Consumer Co- operative Society Ltd.), under the said Resolution Plan is tabulated asunder:

<sup>1</sup> Page 451-457 of the Application

<sup>2</sup> Page 465 of the Application

As

IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

IA No.4984 (PB)/2021,  
In CP (IB) No.1275(PB)2018

*In Re: Resolution Plan approval of Kannu Aditya (India) Ltd.*

Sl. No.	Category of Stakeholder	Sub Category of Stake holder	Amount Claimed	Amount Admitted	Amount Provided under the Plan	Amount Provide d to the Amount Claimed (%)
1.	Secured Financial Creditors	(a)Creditors not having right to vote Under Sub Sec (2) of Section 21				
		(b)Other than (a) above:			₹170,000,000*	5.01%
		(i) Who did not vote in favour of the Resolution Plan  Punjab National Bank	₹96,330,236	₹96,330,236	₹7,48,295.1	0.78%
		(ii) Who voted in favour of the Resolution Plan  State Bank of India	₹3,295,525,987	₹3,295,525,987	₹16,92,51,704.9	5.14%
		Total [(a) + (b)]	₹3,391,856,223	₹3,391,856,223	₹170,000,000	5.01%
2.	Operational Creditors	(a)Related parties of the Corporate Debtor				
		(b)other than (a) above:				0.063%
		(i) Government Department of Income Tax	₹156,002,706	₹156,002,706	₹98,783	0.063%
		Department of Customs & Central Excise	₹ 187,596	₹187,596	₹119	
	Others					
	IDBI Capital Markets &	₹ 3,54,000	₹ 3,54,000	₹ 224	0.063%	

As

	Security Ltd.					0.063%
	Origo Commodities India Pvt. Ltd.	₹ 1,163,938	₹ 1,163,938		₹ 737	0.063%
	Kanchan & Associates					
	Total [(a) + (b)]	₹157,924,240	₹157,924,240		₹1,00,000	0.06%
<b>Grand Total</b>		₹3,549,780,463	₹3,549,780,463		₹170,100,000	4.79%

6.3. The Resolution plan size is approximately ₹20,01,000,00/- (Rupees Twenty Crores and One Lakh only) . The Resolution Plan defines “**Effective Date**” as the date on which the certified copy of the order by the Adjudicating Authority approving the Plan is received by the Resolution Applicant.

**7. Details on Management/Implementation and Reliefs as per the Resolution Plan**

7.2. The Resolution Plan also provides for details of management and control, implementation and supervision of the Resolution Plan and term of plan and the same is already set out in Para 5.1(c) & (d) *supra*.

**8. Details on fraudulent and avoidance transaction**

8.2. The Resolution Plan provides in Clause 7.15 that the avoidable transactions applications shall be continued to be pursued by the Resolution Professional and/ or erstwhile Resolution Professional or Monitoring Committee even after the approval of the Resolution Plan and the proceeds of the same shall be paid to the Financial Creditors (“Pass- Through Amount”) of the corporate debtor. It is further stated that the Pass through amount shall be paid to the State Bank of India in addition to the payout envisaged under the

Resolution Plan.

**9. Waivers, Reliefs and Exemptions**

The SRA has prayed for the reliefs, waivers and concessions as enumerated under the Resolution Plan approved by the CoC , namely, that from the plan approval date all inquiries, investigation 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 authorized to seek appropriate orders from respective authorities/courts/tribunals for renewal of licenses/withdrawal/dismissal or abetment of the proceedings as the case may be.

**10. Objections**

10.1 The dissenting financial creditor i.e. Punjab National Bank has raised the objection against the approved the Resolution Plan that as per clause 3.4 of the Resolution Plan, amount of Rs. 17 Crores has been provided for the Secured Creditors in total and only 0.78% is provided to PNB and SBI has been provided with 5.14% and thus it is contended that both SBI and PNB falls in the category of the Secured Financial Creditor but the distribution to the amount claimed is unequal and is in violation of Sec 32(b)(ii) and (4) of IBC, 2016. Further the objector has also placed reliance on the order of Hon'ble NCLAT dated 03.03.2020 which was the appeal filed by PNB against the order of this Adjudicating Authority, in which the Hon'ble NCLAT ordered :

*".....the rights and benefits in law claimed by the Appellant of having*

As

---

*security by way of pledge and value of the stock which was pledged are kept open for consideration of the COC when the Resolution Plan is available before it, and/ or in case situation of liquidation arises”*

10.2 In reply to the objections raised by PNB, the COC submitted that SBI had priority charge on all present and future assets of the Corporate debtor duly registered with ROC and no NOC was obtained by PNB from SBI prior to advancing such credit facilities on stock but keeping in mind the Hon'ble NCLAT order to consider PNB's claim, SBI agreed to consider the charge allegedly held by PNB over the stocks and decided to treat the charge of PNB as *pari passu* with charge held by SBI over such stocks. Further it was decided in the COC that the Resolution Plan amount allocated to Financial creditors should be distributed in the ratio of the admitted claim on the value of the pledged stock i.e. the payment can be made to PNB in proportion to its voting share , however to the extent of the value of the stock and not the entire amount allocated to FCs under the plan and the aforesaid distribution was decided by COC in its commercial wisdom. The PNB objected the distribution as they expressed that they should be paid 2.84% of the amount payable to FC's which was not accepted by COC and thus PNB dissented in approval of resolution plan.

## **11 Analysis & Findings**

11.1. On considering the objections raised by the dissenting Financial Creditor, we would consider the matter in the light of the Judgment of Hon'ble Supreme Court in the matter of ***India Resurgence ARC Private Limited v. M/s Amit Metaliks Limited & Another [Civil Appeal No. 1700 of 2021]***. The relevant Paragraphs are extracted as under:

**13.1. “Thus, what amount is to be paid to different classes or subclasses of creditors in accordance with provisions of the Code and the related Regulations, is essentially the commercial**

---

***wisdom of the Committee of Creditors; and a dissenting secured creditor like the appellant cannot suggest a higher amount to be paid to it with reference to the value of the security interest.***

***16. It needs hardly any emphasis that if the propositions suggested on behalf of the appellant were to be accepted, the result would be that rather than insolvency resolution and maximisation of the value of assets of the corporate debtor, the processes would lead to more liquidations, with every secured financial creditor opting to stand on dissent. Such a result would be defeating the very purpose envisaged by the Code; and cannot be countenanced.”***

11.2. Further we are extremely conscious of the Hon’ble Supreme Court’s decision in Committee of Creditors of “***Essar Steel India Limited. V. Satish Kumar Gupta (2020) 8 SCC 531***” and would refer to the relevant observations made in this regard which is as follows:-

***“85. Indeed, if an "equality for all" approach recognizing the rights of different classes of creditors as part of an insolvency resolution process is adopted, secured financial creditors will, in many cases, be incentivised to vote for liquidation rather than resolution, as they would have better rights if the corporate debtor was to be liquidated rather than a resolution plan being approved. This would defeat the entire objective of the Code which is to first ensure that resolution of distressed assets takes place and only if the same is not possible should liquidation follow.”***

11.3. We have to be circumspect to ensure that the IBC was never envisaged as a means to recover dues thus considering the facts and relying on the decisions of Hon’ble Supreme Court we do not find merit on the objections raised by the objector as the proposal for the payment to the secured financial creditors is found to be

equitable and such an approach should, therefore, be shunned for putting the corporate debtor back into their feet.

- 11.4. With the objections out of the way, we now proceed to examine the application filed by RP for approval of the Resolution Plan. 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 with 97.16% voting share in favour of the Resolution Plan. As per the CoC, the Plan meets the requirement of being a viable and feasible revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Bench.
- 11.5. 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.
- 11.6. The reliefs, concessions and waivers sought by the Successful Resolution Applicant will be dealt with strictly as per law.
- 11.7. 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.
- 11.8. In case of non-compliance of this order or withdrawal of Resolution Plan within the stipulated time, in addition to other consequences which follow under law, the CoC shall forfeit the EMD amount already paid by the Resolution Applicant as well as the Performance Security.

As

12. **Orders**


- 12.3. Subject to the observations made in this Order, the Resolution Plan in question is hereby **approved. The Resolution Plan shall form part of this Order.**
- 12.4. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect.
- 12.5. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
- 12.6. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- 12.7. **IA (IB) No.4984(PB) 2021** and the main Company Petition, *i.e.*, CP (IB) No.1275(PB)/2018 shall stand **disposed of** accordingly.
- 12.8. In view of the order passed in IA (IB) No. 4984(PB) 2021 *supra*, all the pending applications in relation to the corporate debtor becomes infructuous and stands disposed of in terms and as dealt in the approved resolution Plan except the applications filed as Preferential Avoidance and Undervalued transactions under Sec 44,45 & 46 of IBC, 2016 as it will be pursued as per Clause 7.15 of the Resolution Plan as dealt above in Para 8 of this order.
- 12.9. Liberty is hereby granted for moving appropriate application if required in connection with implementation of this Resolution Plan.
- 12.10. A copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies, NCT of Delhi & Haryana.
- 12.11. The Resolution Professional shall stand discharged from his duties

AKS

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.

- 12.12. 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 of 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 of operations of the Corporate Debtor.
- 12.13. The Registry is directed to send copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 12.14. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
- 12.15. File be consigned to the record.

  
**RAMALINGAM SUDHAKAR**  
**PRESIDENT**

  
**AVINASH K. SRIVASTAVA**  
**MEMBER (TECHNICAL)**