



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

I.A. No. 1190/2023

IN

Company Petition No. (IB)- 723(ND)/2020

IN THE MATTER OF:

Barkha Agarwal

Flat No. 208, 1/73,
S R Market, Peepal Mandi,
Agra- 282003, Uttar Pradesh

**... Petitioner/
Financial Creditor**

Versus

**Kunal Structural Developers
& Industries Private Limited**

CIN: U45400DL2007PTC165199

Registered Office at:

1st Floor, 5 Pusa Road, Near
Karol Bagh Metro Station,
New Delhi – 110005

**... Respondent/
Corporate Debtor**

AND IN THE MATTER OF I.A. NO. 1190/2023:

Pramod Kumar Sharma

Resolution Professional of
Kunal Structural Developers &
Industries Private Limited (Under CIRP)
IP Reg. No.: IBBI/IPA-002/IP-N00110/2017-18/10258
Address: H.No. 16, Dashrath Kunj-B
West Arjun Nagar, Agra- 282001, U.P.

... Applicant

Under Section: 30(6) r/w Sections 31 of IBC 2016

Order Delivered on: 31.10.2023

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)



PRESENT:

- For the Applicant** : Adv. Abhishek Kumar for SRA
For the Respondent : Mr. Ravi Maheshwari, Mrs. Barkha Agarwal, Mrs. Usha Agarwal CoC Member in person, Adv. Ruchir Batra for Suspended Directors
For the CoC : Mrs. Deepti Gupta
For the RP : Adv. Nilotpall Shyam, PCS Mohd. Nazim Khan

ORDER

PER: SH. ASHOK KUMAR BHARDWAJ, MEMBER (J)

IA-1190/2023

The captioned application has been preferred under Section 30(6) read with Section 31 of the IBC, 2016 read with Regulation 39(4) of the IBBI (CIRP) Regulations, 2016, by Mr. Pramod Kumar Sharma, the Resolution Professional of Kunal Structural Developers & Industries Private Limited (under CIRP) for approval of the Resolution Plan approved by the Committee of Creditors in its 6th Meeting, held on 25.12.2022, by 100% voting.

2. The Authorized Share Capital of the CD (under Insolvency) is Rs.1,00,00,000/- (Rupees One Crores only) and its Paid-Up Share Capital is Rs.25,00,000/-. In terms of the order dated 23.05.2022 passed in CP No. (IB)-723(ND)/2020, this Tribunal ordered initiation of CIRP qua the CD and declared moratorium in terms of the Section 14(1) of IBC, 2016.

3. It is submitted by the Applicant/RP in its Application that in terms of the Public Notice No. ROC/DELHI/248(1)/STK-7/6217 dated 29.10.2019, issued under Section 248(1) of the Companies Act, 2013, the Registrar of Companies,



NCT of Delhi, Haryana struck off the name of the CD from the Register of the Companies and published the notice to the effect in the Official Gazette, having the effect of removal of the name of CD from the Register of Companies and its dissolution.. However, in terms of the order dated 24.08.2023, passed in Company Appeal No. 170/252/ND/2022, by NCLT Court- V the CD could be restored to the Register of Companies. In para 11(a) of the order, the NCLT directed that the restoration of the name of CD shall have the ramification as if it was never struck off. Thus, at this stage when we are examining the captioned petition, the CD exists.

4. Though the Company was struck off in the year 2019, however, the Applicant, at whose instance, the CIRP was initiated did not disclose this fact to this Adjudicating Authority. Moreover, the Corporate Debtor did not file its reply during the hearing of the Application on Admission nor at any subsequent stage it brought this fact to the knowledge of this Authority. Nevertheless, we are conscious of the fact that the Hon'ble NCLAT in the matter of "Mr. Hemang Phophalia Vs. The Greater Bombay Co-Operative Bank Limited & Ors. - Company Appeal (AT) (Insolvency) No. 765 of 2019", had held that the CIRP can be initiated in respect of the struck off Company.

5. In the aforementioned backdrop, the Applicant made publication in terms of the provisions of Sections 13 and 15 of IBC, 2016 read with Regulation 6 of CIRP Regulations, 2016. In discharge of his function, in terms of the provisions of Regulation 27 of the CIRP Regulations 2016, the Applicant also appointed Registered Valuers to ascertain the Fair and Liquidation Value of Current and Non-Current Assets of the Corporate Debtor, in accordance



with the Regulation 35 of the CIRP Regulations, 2016. The Liquidation and Fair Value of the CD was assessed as Rs. 2.6377 Crores and Rs.3.425 Crores (as per the averments made in para 6 of the application) respectively. The Applicant whose appointment as RP could be confirmed by this Adjudicating Authority, had prepared a list of Creditors. He also prepared the Information Memorandum and issued Invitation for Expression of Interest in Form G. It also issued the Evaluation Matrix and the request for Resolution Plan. With reference to the Invitation for EOI published on 06.08.2022, the RP received the EOI from two PRAs viz. Consortium of Pioneer Projects and Pioneer Engineering Industries and Amit Kumar Agrawal. When the Consortium of Pioneer Projects and Pioneer Engineering Industries was found eligible to submit the plan, Mr. Amit Kumar Agrawal was found ineligible. By the last date for submission of Resolution Plan i.e. 05.10.2022, the SRA viz. Consortium of Pioneer Projects and Pioneer Engineering Industries could submit its plan. The CoC decided that the Successful Resolution Applicant shall furnish the PG of INR 20,00,000/- (Rupees Twenty Lakhs Only) either by way of interest Free Deposit or by Bank Guarantee from any scheduled bank in favour of the CD within 07 working days of approval of Resolution Plan by the CoC. The validity of PG was to be 270 days, renewable from time to time till the date of the implementation of the plan.

6. In its 4th meeting held on 16.11.2022, the CoC resolved for filing an IA before this Adjudicating Authority for extension of the period of CIRP by 90 days. In the wake, IA-5665/2022 was preferred before this Adjudicating



Authority, in which an order dated 12.11.2022, according the extension as prayed viz. by 90 days was passed.

7. In paras 14 and 15 of the captioned application, the SRA has given the highlights of the Resolution Plan, the estimated total amount proposed to be infused qua the CD and the crux of the final Resolution Plan. In para 17 of the application, the Applicant has averred that the plan meets the mandatory requirements of the Regulation 38(1) and (2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Paras 15 to 17 of the applications reads thus: -

“15. That it is submitted that the Final Resolution Plan submitted by Consortium of Pioneer Projects and Pioneer Engineering Industries approved by COC meets the requirements of Section 30(2) of the Code as under: -

| Provisions under Section 30(2) of the Code | Compliance under Resolution Plan |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (a) Provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the Corporate Debtor; | CIRP Cost shall be paid as per actuals subject to the approval of COC. As per Table 6.7 of the Resolution Plan, a provision for 30 Lakh has been made towards the CIRP cost. Further, averment with regard to payment of CIRP cost in advance has been made in the Resolution Plan |



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| | and the same is required to be paid within 60 days from the Cut-Off date . It is specified in Clause 5.1.2 that actual amount shall paid in full, in priority to any other creditor. |
| (b) Provides for the payment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the Corporate Debtor under section 53; | operational creditors - NIL |
| (c) provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan; | The Resolution Plan provides the details regarding the formation and functioning of the Corporate Debtor, its business and affairs, as a going concern after the approval of the resolution plan as set forth in Clause 8.2 of the Resolution Plan. |
| (d) the implementation and supervision of the resolution plan; | <p>The implementation provisions are mentioned in the Resolution Plan and outlined in Clause 8.3. Implementation and supervision of the resolution plan has been provided.</p> <p>The Resolution plan proposes to constitute a monitoring Committee for the purpose of supervising and monitoring the progress in the implementation of the Resolution Plan Proposed. It shall constitute of the following members (refer to clause 8.3.3 at page-):-</p> <ul style="list-style-type: none">i. Resolution Professional (Chairman) |
| | <ul style="list-style-type: none">ii. One member nominated by the Financial Creditor with consensus/majority voting.iii. One member nominated by the Resolution Applicant |
| (e) does not contravene any of the provisions of the aw for the time being in force | An undertaking in terms of Section 30(2)(e) of IBC has been provided. Clause 11.7 of Resolution Plan |
| (f) confirms to such other requirements as may be specified by the Board | The Resolution Plan confirms to all such other requirements as may be specified by the Board under the Code and the Regulations. |



16. That as per the Addendum to Resolution Plan by Resolution Applicant, the Resolution Applicant has provided the detailed Timeline and the source of funds. Further, the Resolution Plan is supported by affidavits under Section 29A of the Code.

17. The Resolution Plan of Consortium of Pioneer Projects and Pioneer Engineering Industries approved by the COC meets the mandatory contents of the resolution plan as specified under Regulations 38(1) and (2) of the CIRP Regulations as under:

| Regulation 38(1) and (2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 | Compliance under Resolution Plan |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| 38(1)(a) The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors | Operational creditors - NIL Hence Not Applicable |
| 38(1)(b) The amount payable under a resolution plan - (b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan. | Clause 6.5.11 of the Resolution Plan. |
| 38 (1A) Shall include a statement as to how it has dealt with the interests of all the stakeholder, including financial creditors and operational creditors of the Corporate Debtor | An undertaking in this regard has been provided. Clause 11.1 of Resolution Plan |



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| <p>38 (1B) Shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past;</p> | <p>An undertaking in this regard has been provided. Clause 11.2 of the Resolution Plan</p> |
| <p>38 (2)(a) shall provide for the term of the plan and its implementation schedule</p> | <p>Implementation schedule with regard to the payment of Financial Creditor and CIRP cost has been provided at Clause 6.5.2 and Clause 6.7. Further, the Resolution Plan provides for funding pattern in the Sources of Fund at Clause 7.2.</p> |
| <p>38 (2)(b) shall provide for the management and control of the business of the Corporate Debtor during its term</p> | <p>The implementation provisions are mentioned in the Resolution Plan and outlined in Clause 8.3. Implementation and supervision of the resolution plan has been provided.</p> |

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| <p>38 (2)(c) Shall provide for the adequate means for supervising its implementation.</p> | <p>Provided as aforesaid</p> |
| <p>(3) A resolution plan shall demonstrate that –</p> <p>(a) it addresses the cause of default;</p> <p>(b) it is feasible and viable;</p> <p>(c) it has provisions for its effective implementation;</p> | <p>(a) Provided in Clause 6.1 of Resolution Plan</p> <p>(b) Statement with regard to viability and feasibility has been made. Clause 6.4 of Resolution Plan</p> <p>(c) The Resolution Applicant has provided for the effective implementation under Clause 8.3 of the Resolution Plan.</p> |



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| <p>(d) it has provisions for approvals required and the timeline for the same; and</p> | <p>(d) Time of one year from the cut-off date or as required under the respective law whichever is more shall be provided for obtaining all necessary approvals, licenses and permissions (Including but not Privileged & Confidentiality to pollution/environment approvals) for running the Corporate Debtor in accordance with Section 31(4) of the Code provided at Clause 9.20 of the Resolution Plan</p> |
| <p>(e) the resolution applicant has the capability to implement the resolution plan.</p> | <p>(e) A specific averment in this regard Provided in clause 6.2.1 of the Resolution Plan at.</p> |

8. As can be seen from para 19 of the application, the CoC in its 5th meeting decided that the sole Resolution Applicant shall submit a revised Resolution Plan as per the negotiation held between the RA and the CoC members. Thus, the SRA submitted the revised Resolution Process for final consideration of the CoC. A true copy of the plan has been enclosed as Annexure-8 to the application. An averment has been made in para 18 of the application that pursuant to the 6th CoC meeting dated 25.12.2022, the Resolution Plan was approved by the CoC with 100% voting in favour of the plan. The copies of CoC meeting (1st to 6th) are enclosed as Annexure-7 to the application. The Resolution passed in 6th meeting of CoC reads thus: -



PRESENT:

RESOLUTION PROFESSIONAL & TEAM

1. Mr. Pramod Kumar Sharma, Resolution Professional (RP)
2. Mohd Nazim Khan (Company Secretary & Insolvency Professional),
Team member of RP

VOTING MEMBERS OF CONSTITUTED COC (Unsecured Financial Creditors)

| S. No. | Name of Financial Creditors | % Vote Share | Represented by |
|--------------|-----------------------------|--------------|-------------------|
| 1. | Barkha Agarwal | 35.93 | Mr. Umesh Agarwal |
| 2. | Usha Agarwal | 13.46 | Mr. Umesh Agarwal |
| 3. | Ravi Maheshwari | 13.89 | Mr. Umesh Agarwal |
| 4. | Jitendra Kumar Gupta | 8.43 | Mr. Rajit Gupta |
| 5. | Deepti Gupta | 5.03 | Mr. Rajit Gupta |
| Total | | 76.74 | |

ABSENT:

VOTING MEMBERS OF CONSTITUTED COC

| S. No. | Name of the Financial Creditors | % Vote Share |
|--------------|---------------------------------|--------------|
| 1. | Hema Jain | 9.04 |
| 2. | Sunil Kumar Pandey | 7.19 |
| 3. | Shilpa Verma | 7.03 |
| Total | | 23.26 |

9. It is the stand taken by the RP in para 20 of the application that as the debt due to one of the FCs namely, Ms. Hema Jain had already been discharged by the Suspended Director in a settlement arrived in the criminal proceedings initiated by the FC, the name of the said FC was removed from the CoC after due intimation to the members of CoC and in due deference to Regulation 13 and 17 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. According to the Applicant, he has filed a



certificate in Form (H), prescribed under Regulation 39(4) of the aforementioned regulations along with receipt of Bank Guarantee of Rs. 20 Lakh, valid upto 10.08.2023 towards Performance Security as required under Regulation 36B (4A) of the Regulations. The certificate in Form H and a copy of the Bank Guarantee has been enclosed as Annexure-10 (Colly) to the application.

10. We have perused the certificate in (Form-H) furnished by the Applicant in terms of the provisions of Regulation 39(4) of the Regulations. It is seen from 18th and 19th row of the table mentioned in Part-2 of the plan that the Fair Value of the CD is 3.425 Crores and its Liquidation Value is Rs.2.6377 Crores. In Clause-4 of the Certificate, the Applicant has certified that the Resolution Plan complies with all the provisions of IBC, 2016 and the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations). In said part of the certificate, the RP has also stated that the SRA has submitted an affidavit confirming its eligibility under Section 29A of the Code to submit the Plan. It is also authenticated by the RP that the contents of the affidavit are in order. In 3rd clause of Part-4 of the certificate, the RP has asserted that the plan was approved by the CoC with 100% vote share of the Financial Creditors. The list of Financial Creditors and their vote share has been mentioned in Part-5 of the Plan. The said part reads thus: -

“5. The list of financial creditors of the Kunal Structural Developers & Industries Private Limited being members of the CoC and distribution of voting share among them is as under: -

| S. No. | Name of Creditor | Voting Share)%(| Voting for Resolution Plan)Voted for / Dissented / Abstained(|
|--------|------------------|-----------------|----------------------------------------------------------------|
|--------|------------------|-----------------|----------------------------------------------------------------|



| | | | |
|----|-----------------------------|----------------|---------------|
| 1. | <i>Barkha Agarwal</i> | <i>39.50%</i> | <i>Assent</i> |
| 2. | <i>Usha Agarwal</i> | <i>14.80.%</i> | <i>Assent</i> |
| 3. | <i>Ravi Maheshwari</i> | <i>15.27%</i> | <i>Assent</i> |
| 4. | <i>Jitendra Kumar Gupta</i> | <i>9.26%</i> | <i>Assent</i> |
| 5. | <i>Deepti Gupta</i> | <i>5.53%</i> | <i>Assent</i> |
| 6. | <i>Sunil Kumar Pandey</i> | <i>7.91%</i> | <i>Assent</i> |
| 7. | <i>Shilpa Verma</i> | <i>7.73%</i> | <i>Assent</i> |
| | Total | 100% | |

11. In “Ebiz Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited & Anr.” in (Civil Appeal No. 3224 of 2020) decided on 13.09.2021, Hon’ble Supreme Court viewed that the negotiations between the Resolution Applicant and the CoC are brought to an end after the CoC’s approval and the only conditionality remains is the approval of the Adjudicating Authority, which has a limited jurisdiction to confirm or deny the legal validity of the Resolution Plan. The relevant excerpts of the para 153 of the Judgement reads thus:

“153 The IBC does not envisage a dichotomy in the binding character of the Resolution Plan in relation to a Resolution Applicant between the stage of approval by the CoC and the approval of the Adjudicating Authority. The binding nature of a Resolution Plan on a Resolution Applicant, who is the proponent of the Plan which has been accepted by the CoC cannot remain indeterminate at the discretion of the Resolution Applicant. The negotiations between the Resolution Applicant and the CoC are brought to an end after the CoC’s approval. The only conditionality that remains is the approval of the Adjudicating Authority, which has a limited jurisdiction to confirm or deny the legal



validity of the Resolution Plan in terms of Section 30 (2) of the IBC. If the requirements of Section 30(2) are satisfied, the Adjudicating Authority shall confirm the Plan approved by the CoC under Section 31(1) of the IBC.”

12. In the wake of the view taken by the Hon’ble Supreme Court as above, we may refer to Section 30(2) of IBC 2016, which read thus:

“30. Submission of resolution plan. –

(1)

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan –

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the ³[payment] of other debts of the corporate debtor;

⁴[(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.



Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

- (i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;*
 - (ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or*
 - (iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]*
- (c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;*
 - (d) the implementation and supervision of the resolution plan;*
 - (e) does not contravene any of the provisions of the law for the time being in force*
 - (f) confirms to such other requirements as may be specified by the Board.*

[Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution



plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]”

13. In terms of the aforementioned provision of the Code, the Resolution Professional need to examine each Resolution Plan received by him to confirm that the Plan – (i) provides for the payment of Insolvency Resolution Process cost in a manner specified by the board in priority to the payment of the other debts of the Corporate Debtor; (ii) provides for the payment of debt of Operational Creditor in such manner as specified by the board, which should not be less than the amount to be paid to such creditor in the event of liquidation of a corporate debtor under Section 53 or the amount that would have been paid to such creditor, if the amount to be distributed under the Resolution Plan had been distributed in accordance with order of priority in sub Section 1 of Section 53, whichever is higher and provides for the payment of debt of Financial Creditor, who do not vote in favour of the Resolution Plan in such manner as may be specified by the board which shall not be less than the amount to be paid to such creditors in accordance with sub-section 1 of Section 53 in the event of liquidation of the Corporate Debtor; (iii) provides for management of the affairs of the Corporate Debtor after approval of the Resolution Plan; (iv) provides for implementation and supervision of the Resolution Plan; (v) does not contravene any of the provision of the law for the time being in force. It is seen from Part-9 of the certificate given by the RP that the Plan is fully compliant of the provisions of Section 30(2) of the IBC, 2016. In the said part, the Applicant has also stated that the RA is eligible to submit the Resolution Plan. The part reads thus: -

“9. 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(|
|--------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|-----------------------|
| 25)2)h(| Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD? | Chapter 2 (Page 09, Clause 2.2) | 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? | - | Yes |
| Section 30)1(| Whether the Resolution Applicant has submitted an affidavit stating that it is eligible? | Page 91-95 | Yes |
| Section 30)2(| Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs? | (Declaration Present at Clause 5.1.1 at Page 19) | Yes |
| | (b) provides for the payment to the operational creditors? | NA (as there is no OC) | NA |
| | (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan? | (clause 6.5.11 at Page 31) | Yes |
| | (d) provides for the management of the affairs of the corporate debtor? | (Averment Present at Chapter-8 at Page 41-46) | Yes |
| | (e) provides for the implementation and supervision of the resolution plan? | (Declaration provided at Clause 8.3. at Page 42-44) | Yes |
| | (f) contravenes any of the provisions of the law for the time being in force?] | (Declaration provided at Clause 11.7 at Page 82) | Yes |
| Section 30)4(| Whether the Resolution Plan a) is feasible and viable, according to the CoC? | a. COC votes and approve after considering feasibility and viability of resolution plan- (Part- A, clause 4) | (a) Yes |
| | b) has been approved by the CoC with 66% voting share? | b. Voted and approved with 100% voting sheet | (b) Yes |



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| Section 31)1(| Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC? | Chapter 6 at page no.22-24 | Yes |
| Regulation 38)1(| Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?] | NA (No claim from Operational creditors received) | NA |
| Regulation 38)1A(| Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders? | Clause 9.33 at Page- 69 | 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 | (Declaration provided at Clause 11.2 at | No |
| | implementation of any resolution plan approved under the Code. | Page 80) | |
| | (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?] | NA | NA |
| Regulation 38)2(| Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? | Term of the Plan provided at Clause 8.1 (Page- 41) and implementation schedule provided at Clause 6.5 at page- 24-31 | (a) Yes |
| |)b(for the management and control of the business of the corporate debtor during its term? | (Declaration provided at Clause 8.3. at Page 42-44) | (b) Yes |
| |)c(adequate means for supervising its implementation? | | (c) Yes |
| 38)3(| Whether the resolution plan demonstrates that – | | |
| |)a(it addresses the cause of default? | Clause 6.1 at page no.22 | Yes |
| |)b(it is feasible and viable? | Clause 6.4 at page no.24 | Yes |
| |)c(it has provisions for its effective implementation? | (Declaration provided at Clause 8.3. at Page 42-44) | Yes |
| |)d(it has provisions for approvals required and the timeline for the same? | Clause 9.20 at page 64 | Yes |
| |)e(the resolution applicant has the capability to implement the resolution plan? | Clause 2.3 (Page-10), 6.2.1(Page 22) | Yes |



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| 39)2(| Whether the RP has filed applications in respect of transactions observed, found or determined by him? | 1. IA No. 218/2023 under Section 66 filed and pending consideration of AA. 2. Application under Section 66 vide e-filing no | Yes |
| | | 0710102/01161 /2023 filed on 30.01.2023 | |
| Regulation 39(4) | Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.] | Rs. 20,00,000 (Rupees Twenty Lakhs only) in the form of bank guarantee dated 12.01.2023 issued by Union Bank, Sector-10A, Gurgaon, Haryana received as per clause 1.8.3 of RFRP | Yes |

As can be seen from Part-7 of the Plan, the CD had only Unsecured Financial Creditors. A provision has been made to pay them the 24.39% amount of their admitted claim. When the claimed amount is Rs.7,21,48,100/-, the Plan provides for only Rs.1,76,00,000/- to be paid to the Unsecured Financial Creditors. Nevertheless, the proposal regarding the distribution of the plan value/bid amount amongst creditors is the subject to be addressed to by the CoC, as it is the issue covered by the Commercial Wisdom of the CoC. **In Kalpraj Dharamshi & Anr. vs. Kotak Investment Advisors Ltd. & Anr.** (Civil Appeal Nos.2943-2944 of 2020), Hon'ble Supreme Court categorically ruled that the Commercial Wisdom is not to be interfered with by this Adjudicating Authority. The relevant excerpt of the judgment reads thus:

“146. In all the aforesaid three judgments of this Court, the scope of jurisdiction of the Adjudicating Authority (NCLT) and the Appellate Authority (NCLAT) has also been elaborately considered. It will be



relevant to refer to paragraph 55 of the judgment in the case of **K. Shashidhar** (*supra*), which reads thus:

“55. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite per cent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides: (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.”

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153. In the case of **Maharashtra Seamless Limited** (*supra*), NCLT had approved the plan of appellant therein with regard to CIRP of United Seamless Tubulaar (P) Ltd. In appeal, NCLAT directed, that the appellant therein should increase upfront payment to Rs.597.54 crore to the “financial creditors”, “operational creditors” and other creditors by paying an additional amount of Rs.120.54 crore. NCLAT further directed, that in the event the “resolution applicant” failed to undertake the payment of additional amount of Rs.120.54 crore in addition to Rs.477 crore and deposit the said amount in escrow account within 30 days, the order of approval of the ‘resolution plan’ was to be treated to be set aside. While allowing the appeal and setting aside the directions of NCLAT, this court observed thus:

“30. The appellate authority has, in our opinion, proceeded on equitable perception rather than commercial wisdom. On the face of it, release of assets at a value 20% below its liquidation value arrived at by the valuers seems inequitable. Here, we feel the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis. Such is the scheme of the Code. Section 31(1) of the code lays down in clear terms that for final approval of a resolution plan, the adjudicating authority has to be satisfied that the requirement of sub-section (2) of Section 30 of the Code has been complied with. The proviso to Section 31(1) of the Code stipulates the other point on which an adjudicating authority has to be satisfied. That factor is that the resolution plan has provisions for its implementation. The scope of interference by the adjudicating authority in limited judicial review has been laid down in *Essar steel [Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531]*, the relevant passage (para 54) of which we have reproduced in earlier part of this judgment. The case of MSL in their appeal is that they want to run the company and infuse more funds. In such circumstances, we do not think the appellate authority ought to have interfered with the order of the adjudicating authority in directing the successful resolution applicant to enhance their fund inflow upfront.”




154. *This Court observed, that the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis. This Court clearly held, that the appellate authority ought not to have interfered with the order of the adjudicating authority by directing the successful resolution applicant to enhance their fund inflow upfront.*

155. *It would thus be clear, that the legislative scheme, as interpreted by various decisions of this Court, is unambiguous. The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided under Sections 30 and 31 of the I&B Code.”*

14. The affidavit under Section 29A of IBC is enclosed at page nos. 91-96 of the Plan. The relief and concessions sought in terms of the plan are mentioned in chapter-12 (page no. 89-90) thereof.

Nevertheless, the SRA has given an undertaking that irrespective of the grant of relief and concessions by this Adjudicating Authority, the Plan would be implemented. The relevant excerpt of the undertaking placed on record at page nos. 97-98 of the Plan reads thus: -

- “1. That I am duly authorized and competent to make and affirm the instant undertaking for and on behalf of the Resolution Applicant. The said document is true, valid and genuine to the best of my knowledge, information and belief.*
- 2. That the Resolution Applicant shall unconditionally and irrevocably implement the Resolution Plan and shall not back out at any time from implementation of Resolution Plan during its tenures if any relief or concession asked for in the Resolution Plan is not granted by the Hon’ble National company Law*



Tribunal in pursuant to the provision of the insolvency and bankruptcy Code 2016.”

15. The relief and concession sought by the Applicant reads thus: -

- “i. Neither the Resolution Applicant, nor any of its Affiliates, shall be disqualified from or considered ineligible under the IBC for proposing and/or implementing a plan in relation to the insolvency resolution of any Person, merely on account of the implementation of this Resolution Plan by the Resolution Applicant.*
- ii. Any assets in financial statement (including fixed assets, loans, advances, deposit, current assets, non-current assets or any other assets of any nature) of “PL” which is considered as not recoverable/realizable and written off shall be allowed as expenses under the Companies Act, Income Tax Act.*
- iii. May be allowed to file separate/fresh application for reliefs and concession with regard to any matter which may come to the notice of the Resolution Applicant after submission of this binding plan before COC and such reliefs and concession necessary for successful implementation of Resolution Plan may be granted.”*

16. As can be seen from Section 31(4) of IBC 2016, the Resolution Applicant shall pursuant to the Resolution Plan approved under sub-Section 1 of Section 31 of IBC 2016 shall obtain the necessary approvals required under any law for the time being in force within a period of one year from the date of the order passed under Section 31(1) of IBC 2016. Besides, in terms of the provisions of Section 14 of the Code, even during the period of CIRP, the license, permit, registration, quota, concession, clearances, or similar grant or right given by the Central Government/State Government, Local Authority, Sectoral



Regulator or any other Authority constituted under any other law for the time being in force shall not be suspended or terminated on the ground of Insolvency subject to the condition that there is no default in payment of current dues arising for the use or continuance of the license, permit, registration, quota, concession, clearance or similar grant or right during the moratorium period. Thus, when even during the moratorium period, the facilities mentioned above are made available to the CD only when there is no default in payment of the current dues, on approval of the Resolution Plan, the SRA/CD cannot be put on better footings. For convenient reference, the Explanation is reproduced herein below:

“14. Moratorium. –

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -

(a)

(b)

(c)

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Explanation.- For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;”



17. In any case, in terms of the provisions of Sections 13 and 15 of the IBC 2016 read with Regulation 6, 6A, 7, 8, 8A, 9 and 9A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, all the claimants such as Operational Creditors, Financial Creditors, Creditors in Class, Workmen and Employees and other Creditors can raise their claims before the IRP/RP. The claims are dealt with by IRP in terms of the provisions of Section 18(b) of the IBC, 2016 and by RP in terms of the provisions of Section 25(b) thereof read with Regulations 12(A), 13 and 14 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Thereafter, the RP prepares an Information Memorandum in terms of the provisions of Regulation 36(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Memorandum contains inter alia a list of creditors containing the range of creditors, the amounts claimed by them, the amount of their claim admitted and the security interest if any in respect of such claims. As has been provided in Regulation 36(1) of the Regulations (ibid), the Information Memorandum is required to be submitted in electronic form to each member of CoC, on or before 95th day from the Insolvency commencement date. As has been provided in Regulation 36(A) of the Regulations the RP publish brief particulars of the invitation for Expression of Interest in Form G of Schedule I to the Regulations at the earliest i.e. not later than 60th day from the Insolvency commencement date, from interested and eligible Prospective Resolution Applicants to submit Resolution Plans. As can be seen from Regulation 36(B) of the Regulations, the RP shall issue Information Memorandum Evaluation Matrix (IMEM) and request for Resolution Plans, within 5 days of the date of issue of provisional list of eligible Prospective



Resolution Applicants (required to be issued under Regulation 36(A)(10) of the Regulations). It is with reference to such Information Memorandum Evaluation Matrix that the RP issues request for Resolution Plan. The request for Resolution Plan details each step in the process and the manner and purposes of interaction between the Resolution Professional and the Prospective Resolution Applicant. The Resolution Plan submitted after consideration of the IMEM and RFRP is then examined by the Committee of Creditors. Nevertheless, it needs to satisfy the requirements of Regulation 37 and 38 of the extant Regulations. Once the plan is approved by the CoC, in terms of the provisions of Regulations 39 of the aforementioned Regulations, it virtually becomes a contract entered into between the CD represented through RP, SRA and the Creditors of the CD. On being approved by this Adjudicating Authority, by operation of Section 31 (1) of the Code, the plan becomes binding on the Corporate Debtor and its employees, members, creditors (including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being enforced such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the Resolution Plan. Thus, Section 31(1) of IBC, 2016, takes care of most of the relief/concession/waiver solicited by the Resolution Applicant.

18. Besides, in terms of the provisions of Section 32(A) incorporated in the Code by Act No.1 of 2020, w.e.f. 28.12.2019, for an offence committed prior to the commencement of the Corporate Insolvency Resolution Process, the liability of the CD ceases and the CD is not liable to be prosecuted from the



date of approval of Resolution Plan by this Adjudicating Authority, if the Resolution Plan results in change of management or control of the CD to a person who was not promotor or in the management or control of the CD or a related party of such a person or a person with regard to whom the concerned Investigating Agency has reason to believe that he had abated or conspired for the commission of the offence and has submitted or filed a report or a complaint to the relevant statutory authority or Court. In such cases, where the prosecution is instituted against the CD, during CIRP, the CD stands discharged qua the same from the date of approval of the Resolution Plan. Nevertheless, every person who was a designated partner as defined in clause (j) of Section 2 of the Limited Liability Partnership Act, 2008, “an officer who is in default” as defined in Clause (60) of Section 2 of Companies Act, 2013 or was in any manner in charge of, or responsible to the CD for the conduct of his business or associated with the CD in any manner and was directly or indirectly involved in the commission of an offence as per the report submitted or complaint filed by Investigating Agency shall continue to be liable to be prosecuted and punished for such an offence committed by the Corporate Debtor notwithstanding the Corporate Debtors’ liability ceases after approval of the plan.

19. In the wake of the provisions of Section 32(A)(2), no action is taken against the property of the Corporate Debtor in relation to an offence committed prior to the commencement of the Corporate Insolvency Resolution Process of the CD, where such property is covered under Resolution Plan approved by this Authority under Section 31, which result in the change in the



control of the CD to a person who was not a promotor or in the management or control of the Corporate Debtor or related party of such person or a person with regard to whom the Investigating Agency has reason to believe that he had abated or conspired for commission of the offence and has submitted or filed a report or complaint to the relevant statutory authority or Court.

20. The action against the property of the Corporate Debtor as referred to in Section 32(A) of the Code includes the attachment, seizure, retention or confiscation under such law as may be applicable to the Corporate Debtor. One may also be not oblivious of the fact that in the backdrop of provisions of Section 31(3)(a) of the IBC, 2016, the moratorium order passed by the Adjudicating Authority under Section 14 ceases to have effect.

21. In sum and substance, the SRA/CD would be entitled to no other relief/concession/waiver except those, which are available to it as per the provisions of Section 31(1) and 32(A) of IBC, 2016.

Thus, the relief and concession sought by the SRA except those admissible to it in terms of the provisions of Section 31 and 32(A) of IBC are nixed.

22. Paras 8.3 to 8.3.8 of the Plan provides for implementation, supervision and monitoring of the Resolution Plan. The paras read thus: -

“8.3. IMPLEMENTATION AND SUPERVISION OF THE RESOLUTION PLAN:

8.3.1. *Once the Resolution Plan is approved by the Adjudicating Authority, a Monitoring Committee shall be constituted for the purpose of supervising and*



monitoring the progress in the implementation of the Resolution Plan.

8.3.2. *The Monitoring Committee shall supervise the implementation of the Resolution Plan until the final payment is made to Bank of India as per the Resolution Plan.*

8.3.3. *The Monitoring Committee shall comprise of:-*

- a. The Resolution Professional of the Corporate Debtor (Chairman)*
- b. One Member to be nominated by the Financial Creditor with consensus/majority voting.*
- c. One Member to be nominated by the Resolution Applicant.*

8.3.4. *The Monitoring Committee shall meet as and when decided with 7 days clear notice wherein two members must be present for a quorum provided such quorum shall only be valid quorum if nominee of Resolution Applicant is present in such meeting.*

8.3.5. *In the event, Resolution Professional of the Corporate Debtor is not present in any meeting of the Monitoring Committee for any reason, the nominee of Bank of India shall chair the meeting.*

8.3.6. *All the decision of the Monitoring Committee shall be taken by majority vote which shall be binding on all the concerned.*

8.3.7. *The minutes of the meeting of the Monitoring Committee shall be duly signed by the attendees.*



8.3.8. Scope of Monitoring Committee:

- *Supervise and ensure the receipt of amount from resolution applicant and its allocation to various creditors as per the Resolution Plan.*
- *Supervise and ensure the compliance of terms of Resolution Plan.*
- *Supervise and ensure the effective implementation of Resolution Plan.*
- *Supervise and ensure the measure for recovery of all receivable of Corporate Debtor.*
- *Periodically reviewing financials (Quarterly)*
- *Supervising and monitoring the Safety of the fixed assets of the Corporate Debtor.*
- *Supervise disposal of fixed assets as per Resolution Plan.*
- *Communicate and supervise recovery of claims receivable by Corporate Debtor.*
- *Submit compliance report at end of implementation period to COC and Resolution Applicant and to Hon'ble Adjudicating Authority (if required)."*

23. The para 7.2 of the Plan provides that the Resolution Applicant shall bring the fund for payment to creditors in accordance with the timeline provided under clause 6.5.3. The para provides for funding with regard to repair/refurbishment (Rs.25 Lakh) within 180 days from the cut-off date. The plan also provides for working capital margin of Rs.25 Lakh to be brought within 360 days from the cut-off date. The schedule regarding payment of the amount to the creditors has been mentioned in para 6.5.3 of the plan. The paras 6.5.2, 6.5.3 and 7.2 of the Plan reads thus: -



“6.5.2. *Subject to Clause 5.1.1, the Resolution Applicant proposes to pay INR 1.76 Crore to the Creditors of the Corporate Debtor to be distributed in accordance with their voting share. The said amount shall be paid Creditors of the Corporate Debtor in the following manner:-*

| S. No. | Name of Financial Creditor | Admitted Claim (INR) | %(Percentage)/ Voting Share | Total amount proposed to be paid under the Resolution Plan (INR) |
|---------------|-----------------------------------|-----------------------------|------------------------------------|-------------------------------------------------------------------------|
| 1. | <i>Barkha Agarwal</i> | 2,84,96,954 | 35.93 | 63,23,680 |
| 2. | <i>Usha Agarwal</i> | 1,06,79,291 | 13.46 | 23,68,960 |
| 3. | <i>Ravi Maheshwari</i> | 1,10,17,668 | 13.89 | 24,44,640 |
| 4. | <i>Jitendra Kumar Gupta</i> | 66,84,225 | 8.43 | 14,83,680 |
| 5. | <i>Deepti Gupta</i> | 39,86,324 | 5.03 | 8,85,280 |
| 6. | <i>Hema Jain</i> | 71,73,018 | 9.04 | 15,91,040 |
| 7. | <i>Sunil Kumar Pandey</i> | 57,04,098 | 7.19 | 12,65,440 |
| 8. | <i>Shilpa Verma</i> | 55,79,540 | 7.03 | 12,37,280 |
| Total | | 7,93,21,118 | 100 | 1,76,00,000/- |

6.5.3. *That the amount payable to the Creditors as per Clause 6.5.2 shall be payable to the respective creditors as per following schedule:-*

| S No | Amount to be paid/% of amount to paid proportionately to each creditors (INR) | Time Line |
|-------------|--------------------------------------------------------------------------------------|------------------|
|-------------|--------------------------------------------------------------------------------------|------------------|



| | | |
|----|----------------|---------------------------------------|
| 1. | 44,00,000/ 25% | Within 60 days from the Cut-Off date |
| 2. | 44,00,000/ 25% | Within 150 days from the Cut-Off date |
| 3. | 44,00,000/ 25% | Within 210 days from the Cut-Off date |
| 4. | 44,00,000/ 25% | Within 360 days from the Cut-Off date |

XXX

7.2. SOURCE OF FUND:- *The Resolution Applicant shall bring the fund with regard to payment to creditors in accordance with timeline provided under Clause 6.5.3. Further, the funding with regard to repair/refurbishment (Rs.25 Lakh) shall be made within 180 days from the cut-off date and similarly, with regard to working capital margin (Rs.25 Lakh) shall be brought within 360 days from the cut-off date.”*

24. As per the stand taken in the application for approval of the Resolution Plan as also in Form-H, the SRA has furnished the Performance Bank Guarantee dated 12.01.2023 for Rs.20 Lakh issued by Union Bank of India which is valid till 10.08.2023. The covering letter to Bank Guarantee has been placed at page 429 of the application filed for approval of the Resolution Plan.

25. In the backdrop of aforementioned factual position, discussion, analysis and findings, **the IA(IBC)-1190/2023 filed by the RP for approval of the Resolution Plan is allowed.** The Plan submitted by the SRA, certified by the RP is approved. **The SRA shall furnish the updated Performance Bank Guarantee which should remain valid till the implementation of the Resolution Plan. The SRA and the monitoring committee shall ensure that**



the Plan qua Resolution of Insolvency of CD, submitted by it is implemented in letter and spirit, with due deference to all the terms and conditions thereof. The Plan shall be binding on the Corporate Debtor and its employee, members, creditors (including the Central, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authority to whom the statutory dues are owed), Guarantors and other Stakeholders involved in the Resolution Plan. The Moratorium declared under Section 14 of IBC 2016 shall cease to have effect forthwith. The Resolution Professional shall forward all the records relating to the conduct of the CIRP and the Resolution Plan to IBBI to be recorded on its data base (Section 31(3)(b) of IBC 2016). The RP shall also forthwith send a copy of this order to the participants and the Resolution Applicant. He would also send a copy of this order to the ROC concerned within 15 days of this order. The RP shall intimate each claimant about the principle or formulae, as the case may be, for payment of debts under the Plan. The SRA shall act in terms of the provisions of Section 31(4) of IBC 2016. The Monitoring Committee shall file the progress report regarding implementation of the Plan before this Adjudicating Authority, every month.

**Sd/-
(L. N. GUPTA)
MEMBER (T)**

**Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)**