

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

**IA No.335 of 2021  
In  
CP(IB) No.277/Chd/Pb/2018  
(Admitted)**

**Under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016**

**In the matter of:-**

**Punjab National Bank**

...Financial Creditor

## Versus

Kudos Chemie Limited

...Corporate Debtor

**And in the matter of:-**

Rajender Kumar Jain, Resolution Professional

For Kudos Chemie Limited

House No.3698/1, 1<sup>st</sup> Floor, Sector 46-C, Chandigarh- 160047

...Applicant

Versus

UPL Limited

Registered Office at 3-11, G.I.D.C, VAPI,

District Valsad, Gujarat- 396195

...Respondent

**Order delivered on 17.03.2022**

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

**Present through Video Conferencing :-**

For the Applicant :- Mr. Abhishek Anand, Advocate  
Mr. Viren Sharma, Advocate

For the Resolution Applicant :- Ms. Eshna Kumar, Advocate

**PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)**

**ORDER**

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The present application has been filed by the Resolution Professional of Kudos Chemie Limited (for short the '**corporate debtor**') under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (for short the '**Code**') read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (for short '**CIRP Regulations**') seeking approval of the Resolution Plan.

2. Brief facts necessary for adjudication of the present application are that Punjab National Bank ('**financial creditor**') had filed a petition bearing CP(IB) No.277/Chd/PB/2018 under Section 7 of the Code before this Tribunal for initiation of Corporation Insolvency Resolution Process ('**CIRP**') against the corporate debtor. This Tribunal, vide its judgment dated 05.07.2019 (Annexure A-1) admitted the petition filed by the financial creditor and appointed, Mr. Rajender Kumar Jain, as Interim Resolution Professional ('**IRP**'). Pursuant to the appointment, the IRP duly performed his duties under the Code and the underlying Regulations for carrying out the CIRP of the corporate debtor. Thereafter, the IRP made a Public Announcement in accordance with Section 15 of the Code read with Regulation 6 of Chapter III of the CIRP Regulations, in the newspapers viz. Financial Express in English language and Punjabi Jagran in Punjabi language, both dated 07.07.2019 (Annexure A-2) at the registered and principal place of corporate debtor. Thereafter, the IRP received claims from 9 financial creditors and 283 operational creditors within the stipulated time. After due verification and examination, the IRP collated

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the claims and constituted the Committee of Creditors on 26.07.2019 under Section 21 of the Code.

3. The IRP convened the 1<sup>st</sup> Meeting of the Committee of Creditors on 02.08.2019, wherein discussion was held regarding the claims received from the operational creditor including claims from Government Departments and list of the claims received and summary sheet of claims of all the creditors was placed before the Committee of Creditors Members for their consideration.

4. In the 2nd Meeting of the Committee of Creditors held on 17.09.2019, Committee of Creditors was reconstituted on receiving additional claim from the financial creditors, namely, Siemens Financial Services Private Limited. It is stated that Committee of Creditors decided to publish Form-G for inviting prospective resolution applicants to submit the resolution plan for the revival of the corporate debtor. Committee of Creditors also finalized the eligibility criteria for prospective resolution applicant in the matter of the corporate debtor. It is further stated that members of the Committee of Creditors also decided to move fresh application against Central Bureau of Investigation/Enforcement Directorate as the properties of the corporate debtor had subsequently been attached by the concerned authorities in terms of order dated 30.08.2019. Furthermore, Committee of Creditors confirmed Mr. Rajender Kumar Jain, IRP, as Resolution Professional for conducting the CIRP of the corporate debtor subject to ratification of his fees by the Committee of Creditors.

5. On 19.09.2019, in terms of Section 25(2)(h) of the Code, the Resolution Professional invited expression of interest for submission of resolution plan as

approved by the Committee of Creditors in the prescribed Form-G dated 19.09.2019, published in 'Business Standard' 'Economic Times' and 'Punjabi Jagran'.

6. In the 4th Meeting of the Committee of Creditors held on 07.10.2019, the Resolution Professional updated the Committee of Creditors regarding the additional claims received from operational creditors of corporate debtor. Discussion was also held on the Expression of Interest received from six parties and the members further discussed regarding the parties who made enquiry for the submission of Expression of Interest pursuant to the publication of Form G in the matter of the corporate debtor. Members of the Committee of Creditors also discussed regarding the progress of application against Electricity Department for the restoration of Electricity and the progress regarding application against Enforcement Directorate for de-attachment of corporate debtor's properties. Further, the Resolution Professional informed the members of the Committee of Creditors about the withdrawal of proposal of the party who was willing to run the business of the corporate debtor on job work basis as project requires huge investment and due to non- confirmation by the Committee of Creditors to treat their investment as CIRP cost or as Interim Finance. Since, the Committee of Creditors did not appreciate such request, the party ultimately refused to restart the operations. Discussions were also held on the projected cash flow offered by another party by running the corporate debtor on job work basis and the members of the Committee of Creditors were requested to prepare a summary proposal of the same for approval of its higher authorities.

7. In the 6th Meeting of the Committee of Creditors, held on 21.11.2019, the Resolution Professional informed the Committee of Creditors that CIRP period of the corporate debtor was expiring on 01.01.2020 being the 180th day of the CIRP. Amongst other decisions, it was resolved that the Resolution Professional should apply for extension of CIRP period beyond 180 days in the matter of corporate debtor and the Resolution Professional was authorized to move an application before this Tribunal for extension of CIRP period beyond 180 days. All the members of the Committee of Creditors except SREI Equipment Finance Limited and Siemens Financial Services Private Limited, were present and the resolution was passed by more than requisite voting share of 66%.

8. Pursuant to the above, the Resolution Professional filed an application bearing CA No.4 of 2020 before this Tribunal, seeking extension of 90 days beyond 180 days of CIRP period and this Tribunal vide order dated 08.01.2020 (Annexure A-10) extended the CIRP period by 90 days w.e.f. 01.01.2020. In the 11th Meeting of the Committee of Creditors held on 30.03.2020, members of the Committee of Creditors discussed various agendas including the agenda for extension of CIRP period beyond 270 days. It is mentioned in the application that the maximum period under Section 12(2) of the Code, expired on 31.03.2020 and the Committee of Creditors resolved that the Resolution Professional should apply for the exclusion of CIRP period beyond 270 days for the time spent in litigation in the matter of the corporate debtor. The Resolution Professional informed the Committee of Creditors that the CIRP period is expiring on 31.03.2020 being the 270th day of the CIRP, thus, members of Committee of Creditors authorized the Resolution Professional to move an application before this Tribunal for an extension of CIRP period by 60 days

beyond the period of 270 days in terms of 2nd proviso to Section 12(3) of the Code. Pursuant to the above, the Resolution Professional filed an application bearing IA No.278 of 2020, before this Tribunal, seeking extension of 60 days beyond 270 days of CIRP period. This Tribunal vide order dated 05.08.2020 (Annexure A-16) extended the CIRP period by 60 days and excluded the period from 25.03.2020 to 31.07.2020 in terms of Regulations 40C of the CIRP Regulations.

9. In the 10th Meeting of the Committee of Creditors held on 07.03.2020, the Resolution Professional presented all the resolution plans received from eligible prospective resolution applicants before the Committee and opened the Resolution Plans in their presence. It is stated that the Resolution Professional received a total of 3 Resolution Plans for the corporate debtor and thus, all the three prospective resolution applicants were invited for initial negotiations with the Committee of Creditors on 16.03.2020. However, considering the Corona Virus threat and the inherent risks involved in the travel, two of the prospective resolution applicants, namely, UPL Limited and KLJ Resources requested for adjournment of the meeting and pursuant to the discussions with the members of the Committee of Creditors telephonically, the meeting of the Committee of Creditors scheduled to be held on 16.03.2020 for negotiations with the prospective resolution applicants, was deferred on the request of the prospective resolution applicants.

10. Thereafter, in the 12th Meeting of the Committee of Creditors, held on 21.04.2020, the members of the Committee of Creditors enquired about the three prospective Resolution Applicants, who had submitted the Resolution Plan for the revival of the corporate debtor and future aspects of negotiations with those prospective Resolution Applicants in the view of final measurement/ascertainment

of land in the name of the corporate debtor. It is also stated that as the extended CIRP period was expiring on 06.10.2020, the applicant convened the 16th Meeting of the Committee of Creditors on 03.10.2020 through audio-video conferencing in view of the pandemic of COVID-19, wherein the Committee of Creditors negotiated with the prospective resolution applicants. The Resolution Professional further apprised the members of the Committee of Creditors that 330 days of the CIRP period was expiring on 06.10.2020 and discussed that the pandemic COVID-19 has affected the resolution process due to which the process has been delayed and the negotiations with the prospective resolution applicants is in progress and for completion of CIRP, more time was required for which the Resolution Professional will be required to move the requisite application for exclusion of atleast 60 days. The agenda for extension of the CIRP period was discussed by the members of the Committee of Creditors. Upon discussions and deliberations, the members of the Committee of Creditors were of the view that an extension of 45 days beyond 330 days of CIRP be sought in terms of Section 12 of the Code read with Rule 11 of the NCLT Rules. All the members of the Committee of Creditors were present in the meeting in person except Siemens Financial Services Private Limited and the resolution for extension of CIRP period by 45 days beyond 330 days was approved by the members of the Committee of Creditors with 70.822% voting share. Pursuant to this, the Resolution Professional filed an IA No.761 of 2020 seeking exclusion/extension of 45 days of CIRP period beyond 330 days. Accordingly, this Tribunal vide order dated 09.02.2022 decided and disposed of IA No.761/2020, IA No.347/2021, IA No.144/2021 and IA No.59/2022 being interrelated and interconnected and keeping in view the facts and circumstances in the applications and to meet the ends of justice, period of 45 days out of litigation period of 608 days

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spent in litigation period of CIRP period was excluded from the CIRP period so to cover the CIRP period within the statutory period of 330 days. The prayer of the Resolution Professional for excluding the period of pendency of IA No.761/2020 i.e. w.e.f. 09.10.2020 till final disposal of IA No.761/2020 i.e. 09.02.2022 was also allowed in view of the fact that effective hearing could not take place before this Tribunal due to COVID-19 pandemic.

11. In the 13th Meeting of the Committee of Creditors held on 29.06.2020, the Resolution Professional presented various alternatives before the Committee of Creditors for inviting better prospective Resolution Applicants for the effective realization of the assets of the corporate debtor. The Resolution Applicant also advised the members of the corporate debtor to have negotiations with the prospective resolution applicants as they themselves have done due diligence about the valuation of the corporate debtor. Further, the Committee of Creditors were apprised of the demarcation of the land of the corporate debtor being conducted by independent professional hired for specifically identifying the land in the name of the corporate debtor as there were some complexities involved with regard to the land of the corporate debtor.

12. In the 14th Meeting of the Committee of Creditors held on 18.08.2020, the members of the Committee of Creditors took note of the reconstitution of the Committee of Creditors in view of the determination of the claim of the SREI Equipment Finance Limited as operational creditor for the ascertainment of the land owned by the corporate debtor. The Resolution Professional informed the EOI received from the new prospective resolution applicants but the same could be

considered only after republishing the Form G as their EOI could not be considered in view of the restricted timelines of Form G issued earlier.

13. In the 15th Meeting of the Committee of Creditors, held on 21.08.2020, the agenda of the meeting of the Committee of Creditors was to negotiate with the prospective resolution applicants who have submitted resolution plan for the revival of the corporate debtor. The amount finally proposed by the prospective resolution applicants at the end of the first round of negotiation is as under:-

| S.No. | Name of the PRA                     | Resolution Plan amount offered in the 1 <sup>st</sup> Round of Negotiation                                                                                          |
|-------|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.    | UPL Limited                         | Rs. 185 Crore in 2 years along with Interest @ 8 % p.a. (Additional, Rs. 85 Crore towards operational requirement such as refurbishment of plant & Working Capital) |
| 2.    | KLJ Resources Limited               | Rs. 90 Crore in 2 years. (Additional Rs. 134.43 Crore towards Capex and Working Capital requirement over the next 4 year)                                           |
| 3.    | Mahima Lifesciences Private Limited | Rs. 50 Crore.                                                                                                                                                       |

14. The 17th Meeting of the Committee of Creditors was held on 03.03.2020, wherein, amongst other agendas, discussions and negotiations were held with the prospective resolution applicants. In the 18th Meeting of the Committee of Creditors, held on 01.12.2020, upon discussions and deliberations, the members of the Committee of Creditors requested the prospective resolution applicants to submit their revised resolution plans. Thereafter, in the 20th meeting of the Committee of Creditors held on 16.01.2021, the Resolution Professional put forth the agenda for approval of the Resolution Plan submitted by the prospective resolution applicant. The members of the Committee of Creditors deliberated on the distribution of the

amount as proposed under the Resolution Plan in terms of provisions of Section 53 of the Code, term of the Resolution Plan and eligibility of the prospective resolution applicant in terms of the provisions of Section 29A of the Code. The members of the Committee of Creditors further requested the prospective resolution applicant to provide the latest audited financial statements.

15. In the 21st Meeting of the Committee of Creditors held on 21.01.2021, as requested by the members of the Committee of Creditors, the Resolution Professional presented manner of distribution of amount offered under the resolution plan under various scenario viz. plan amount as per claims accepted by the Resolution Professional, amount as per security interest by Assuming WCTL and FITL as part of Term Loan, Plan amount if CDR package was assumed to have been implemented. Upon discussions and deliberations, it was decided that the plan amount as per claims admitted shall form the basis and the members of the Committee of Creditors directed the Resolution Professional to place the Resolution Plan on vote. The Resolution Professional further placed the agenda for liquidation of the corporate debtor in case the resolution plan is not approved by the Committee of Creditors. In terms of Regulation 39B, 39C and 39D of the CIRP Regulations, the Resolution Professional put forth the agenda for best estimate of the amount required to meet the liquidation cost, sale of the corporate debtor as a going concern and the fee of liquidator before the members of the Committee of Creditors. It was discussed that the above agendas shall be put for e-voting after 7-10 days and in the meantime, one more attempt be done to improve the resolution plan amount.

16. In the 22nd Meeting of the Committee of Creditors convened by the Resolution Professional on 27.01.2021, the members of the Committee of Creditors

requested the prospective resolution applicant to increase the amount offered under the resolution plan. The prospective resolution applicant in turn refused to increase the amount offered under the resolution plan. The members of the Committee of Creditors were further apprised that in terms of the resolution plan, if any amount is received by the corporate debtor in view of the application filed under Section 43, 45, 47, 49, 50 or 66 of the Code, shall be solely for the benefit of the secured financial creditors subject to deduction of the costs, expenses and taxed incurred by the corporate debtor for such recovery.

17. It is stated that the e-voting for agendas placed before the members of the Committee of Creditors in the 21st meeting of the Committee of Creditors was opened from 03:00 PM on 10.02.2021 till 06:00 PM on 01.03.2021. The agenda for approval of the Resolution Plan submitted by UPL Limited in the matter of the corporate debtor was approved with 97.61% voting share. The brief contours of the Resolution Plan submitted by M/s UPL Limited as approved by the Committee of Creditors is detailed hereinbelow:-

| Sr. No. | Particulars                                                        | Total Amount Claimed | Amount verified by RP | Upfront Cash | Deferred Cash at the end of 1st year | Deferred Cash at the end of one year and 320 days |
|---------|--------------------------------------------------------------------|----------------------|-----------------------|--------------|--------------------------------------|---------------------------------------------------|
| 1       | CIRP Cost (Estimated upto 31 Mar 2021)*                            |                      | 3.73                  | 3.73         |                                      |                                                   |
| 2       | <b>Workmen &amp; Employees</b>                                     | <b>20.91</b>         | <b>18.88</b>          |              |                                      |                                                   |
|         | Workmen's dues for 24 months                                       |                      | 3.09                  | 0.93         |                                      |                                                   |
|         | Wages and other dues to employees other than workmen for 12 months |                      | 1.04                  |              |                                      |                                                   |
|         | Workers/Employees dues for more than 24/12 months                  |                      | 14.75                 |              |                                      |                                                   |

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|          |                                                  |                |                 |              |              |               |
|----------|--------------------------------------------------|----------------|-----------------|--------------|--------------|---------------|
|          | old                                              |                |                 |              |              |               |
| <b>3</b> | <b>Secured financial creditors:</b>              |                |                 |              |              |               |
|          | PNB+OBC                                          | 2618.23        | 2,618.23        | 32.10        | 60.20        | 72.24         |
|          | Central Bank of India                            | 421.56         | 421 .56         | 5.17         | 9.69         | 11.63         |
|          | State Bank of India                              | 279.13         | 279.13          | 3.42         | 6.42         | 7.70          |
|          | IDBI Bank Ltd.                                   | 202.39         | 202.39          | 2.48         | 4.65         | 5.58          |
|          | UCO Bank                                         | 87.32          | 87.32           | 1.07         | 2.01         | 2.41          |
|          | Union Bank of India (erstwhile Corporation Bank) | 85.29          | 85.29           | 1.05         | 1.96         | 2.35          |
|          | SIEMENS                                          | 4.06           | 3. 30           | 0.04         | 0.07         | 0.08          |
|          | <b>Total of FC</b>                               | <b>3697.98</b> | <b>3,696.93</b> | <b>45.33</b> | <b>85.00</b> | <b>102.00</b> |
| <b>4</b> | <b>Unsecured FCs</b>                             |                |                 |              |              |               |
| <b>5</b> | <b>Other Creditors</b>                           |                |                 |              |              |               |
| A)       | Government dues                                  | 519.71         | 295.18          | -            |              |               |
| B)       | Operational Creditors**                          | 208.31         | 156.42          | -            |              |               |
| D)       | Other creditors                                  | 0.29           | 0.17            |              |              |               |
|          |                                                  |                |                 |              |              |               |
|          | <b>Total</b>                                     | <b>4447.2</b>  | <b>4207.58</b>  | <b>50.00</b> | <b>85.00</b> | <b>102.00</b> |

The Resolution Plan dated 18.01.2021 as approved by the Committee of Creditors with 97.61% voting share is annexed with the application as Annexure A-32.

18. The Resolution Applicant has submitted undertaking and affidavit stating that the Resolution Applicant is eligible under Section 29A of the Code. Copy of undertaking and affidavit submitted by the Resolution Applicant under Section 29A of the Code and Regulation 39(1) of CIRP Regulations, 2016, are also annexed with the application as Annexure A-33.

19. The list of financial creditors of the corporate debtor, being members of the Committee of Creditors and distribution of voting share among them and the position of voting for the resolution plan, as given in Para 5 of Form H, along with details of claims summary is as under :-

| S. No. | Name of the financial Creditor               | Claim Admitted (Rs.)  | Voting Share % | Voting for Resolution Plan (Voted For/Dissented/ Abstained) |
|--------|----------------------------------------------|-----------------------|----------------|-------------------------------------------------------------|
| 1      | Punjab National bank (Parent Bank) (PNB+OBC) | 26,182,316,395        | 70.822         | Voted For                                                   |
| 2      | Central Bank of India                        | 4,215,572,331         | 11.403         | Voted For                                                   |
| 3      | State Bank of India                          | 2,791,307,854         | 7.550          | Voted For                                                   |
| 4      | IDBI bank Limited                            | 2,023,894,092         | 5.475          | Voted For                                                   |
| 5      | UCO Bank                                     | 873,236,254           | 2.362          | Voted For                                                   |
| 6      | Corporation Bank                             | 852,890,278           | 2.307          | Dissented                                                   |
| 7      | Siemens Limited                              | 30,047,842            | 0.081          | Dissented                                                   |
|        | <b>Total</b>                                 | <b>36,969,265,046</b> | <b>100</b>     |                                                             |

| Particulars                   | Amount Claimed         | Claim Admitted         |
|-------------------------------|------------------------|------------------------|
| Financial Creditors (Secured) | 36,97,98,61,222        | 69,96,92,65,046        |
| Operational Creditors         | 1,70,03,92,188         | 1,58,14,59,510         |
| Government Dues               | 5,19,71,23,956         | 2,95,18,17,034         |
| Workmen & Employees           | 59,47,59,582           | 57,32,37,849           |
| <b>Total</b>                  | <b>44,47,21,36,947</b> | <b>42,07,57,79,439</b> |

20. It is submitted that Section 30(6) of the Code mandates the applicant as a Resolution Professional to submit the resolution plan as approved by the Committee of Creditors to the Adjudicating Authority for approval under Section 31(1) of the Code. Accordingly, as the resolution plan submitted by the resolution applicants has been duly approved by the members of the Committee of Creditors by a voting share of 97.61% which is more than the requisite voting share required i.e. 66%, the Resolution Professional has thus, filed the present for approval of the resolution plan before this Adjudicating Authority.

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

22. The learned counsel for the Resolution Professional has also submitted that as per Form H (Annexure A-34) all the provisions of the Code and Regulations were complied with and the resolution plan has been approved by 97.61% voting share and thus, the resolution plan submitted by UPL Limited be approved.

23. We have heard Mr. Abhishek Anand, learned counsel for the applicant/Resolution Professional. We have also gone through the record before us and have carefully considered the submissions made by learned counsel for the Resolution Professional.

24. The CIRP proceedings under Section 7 of the Code, against the corporate debtor were initiated vide order dated 05.07.2019 and Committee of Creditors was constituted on 10.08.2019 and 04.08.2020 on receipt/verification of additional claims. The Resolution Plan includes a statement under Regulation 38(1A) of the CIRP Regulations as to how it has dealt with interests of all stakeholders in compliance with the Code and Regulations made thereunder. The amounts provided for the stakeholders under the Resolution Plan, as given in Para 7 of Form H, is are as under:-

(Amount in Rs. Lacs)

| Sr.No. | Category of Stakeholder       | Sub-category of Stakeholder                                                  | Amount Claimed   | Amount Admitted  | Amount Provided under the Plan# | Amount provided to the amount claimed. |
|--------|-------------------------------|------------------------------------------------------------------------------|------------------|------------------|---------------------------------|----------------------------------------|
| (1)    | (2)                           | (3)                                                                          | (4)              | (5)              | (6)                             | (7)                                    |
| 1.     | Secured Financial Creditors   | (a) Creditors not having a right to vote under sub-section (2) of Section 21 | 0                | 0                | 0                               |                                        |
|        |                               | (b) Other than (a) above:                                                    |                  |                  |                                 |                                        |
|        |                               | (i) who did not vote in favour of the Resolution Plan                        | 8935.34          | 8829.38          | 556.65                          | 6.30% of the Claim admitted            |
|        |                               | (ii) who voted in favour of the Resolution Plan                              | 360863.27        | 360863.27        | 22750.56                        | 6.30% of the Claim admitted            |
|        |                               | Total [(a) + (b)]                                                            | <b>369798.61</b> | <b>369692.65</b> | <b>23307.21</b>                 |                                        |
| 2.     | Unsecured Financial Creditors | (a) Creditors not having a right to vote under sub-section (2) of Section 21 | 0                | 0                | 0                               |                                        |

|    |                       |                                                       |          |          |       |                         |
|----|-----------------------|-------------------------------------------------------|----------|----------|-------|-------------------------|
|    |                       | (b) Other than (a) above:                             | 0        | 0        | 0     |                         |
|    |                       | (i) who did not vote in favour of the Resolution Plan | 0        | 0        | 0     |                         |
|    |                       | (ii) who voted in favour of the Resolution Plan       | 0        | 0        | 0     |                         |
|    |                       | Total [(a) + (b)]                                     | 0        | 0        | 0     |                         |
| 3. | Operational Creditors | (a) Related party of corporate debtor                 | 0        | 0        | 0     |                         |
|    |                       | (b) Other than (a) above:                             | 0        | 0        | 0     |                         |
|    |                       | (i) Government                                        | 51971.24 | 29518.17 | 0     |                         |
|    |                       | (ii) Workmen                                          | 2091.45  | 1888.30  | 20.00 | 1.06% of Claim admitted |
|    |                       | (iii) Employees                                       |          |          |       |                         |
|    |                       | (iv) Operational Creditors                            | 20831.14 | 19641.88 | 0     |                         |
|    |                       | Total [(a)+(b)]                                       | 74893.83 | 51048.28 | 20.00 |                         |
| 4. | Other debts and dues  | Creditors (other than financial creditors)            |          |          |       |                         |

|             |           |                            |           |           |          |  |
|-------------|-----------|----------------------------|-----------|-----------|----------|--|
|             |           | and operational creditors) | 28.93     | 16.87     | 0        |  |
| 5.          | CIRP Cost |                            |           |           | 373.00   |  |
| Grand Total |           |                            | 444721.37 | 420757.80 | 23700.21 |  |

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

| Section of the Code/Regulation No. | Requirement with respect to the Resolution Plan                                                                                                                      | Clause of Resolution Plan                                | Compliance (Yes/No) |
|------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|---------------------|
| 25(2)(h)                           | Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?               | Yes                                                      | 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, as per affidavit provided under Section 29A         | Yes                 |
| Section 30(1)                      | Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?                                                                             | Yes at Page No 679-685 of the Resolution Plan            | Yes                 |
| Section 30(2)                      | Whether the Resolution Plan-                                                                                                                                         |                                                          |                     |
|                                    | (a) provides for the payment of insolvency resolution process                                                                                                        | Yes, at Page No 21-22 and Page 74 of the Resolution Plan | Yes                 |

|                |                                                                                                            |                                                                                                                                                                       |     |
|----------------|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
|                | b) provides for the payment to the operational creditors?                                                  | Yes, at Page No 22-23 and Page 75                                                                                                                                     | Yes |
|                | (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan? | Yes, at Page No 25 and Page 72-73                                                                                                                                     | Yes |
|                | (d) provides for the management of the affairs of the corporate debtor?                                    | Yes, at Page No 32-37 of the Resolution Plan                                                                                                                          | Yes |
|                | (e) provides for the Implementation and supervision of the Resolution plan?                                | Yes, at Page No 37-45 of the Resolution Plan                                                                                                                          | Yes |
|                | (f) Contravene any of the provisions of the law for the time being in force?                               | No, the statement in this regard is at Page No 49 of the Resolution Plan                                                                                              | Yes |
| Section 30(4)  | Whether the Resolution Plan                                                                                |                                                                                                                                                                       |     |
|                | (a) is feasible and viable, according to the CoC?                                                          | Yes, at Page No 49 of the Resolution Plan. Further, according to the members of the Committee of Creditors the Resolution Plan is feasible and viable.                | Yes |
|                | (b) has been approved by the CoC with 66% voting share?                                                    | Yes, the Resolution Plan has been approved with 97.61% voting share in the CoC meeting dated 21 <sup>st</sup> January, 2021 through E-Voting concluded on 02.03.2021. | Yes |
| Section 31(1)  | Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?    | Yes, at Page No 37-45 of the Resolution Plan                                                                                                                          | Yes |
| Regulation 35A | Where the resolution professional made a determination if the                                              | Transaction Audit report dated 16.09.2020 was received on 17.09.2020.                                                                                                 | Yes |

|                   |                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                  |     |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
|                   | corporate debtor has been subjected to any transaction of the nature covered under Sections 43, 50 or 66 before the one hundred and fifteenth day of insolvency commencement date, under intimation to the Board? | The Resolution Professional has identified and formed his opinion regarding transactions which fall under Section 43, 45 and 66 of IBC 2016.<br><br>RP has already filed the application with the Hon'ble NCLT vide Diary No.0404114/01771/2020 dated 13.11.2020 |     |
| Regulation 38(1)  | Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?                                                                        | Yes, at Page No22-23 and Page 75 of the Resolution Plan                                                                                                                                                                                                          | Yes |
| Regulation 38(1A) | Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?                                                                                                   | Yes, at Page No45 of the Resolution Plan                                                                                                                                                                                                                         | 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.                        | Yes, the Resolution Applicant has provided a statement to this effect is at Page No 48 of the Resolution Plan                                                                                                                                                    | Yes |
|                   | (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?                                                                                               | Non Applicable                                                                                                                                                                                                                                                   | N.A |
| Regulation 38(2)  | Whether the Resolution Plan provides:                                                                                                                                                                             |                                                                                                                                                                                                                                                                  |     |

|                  |                                                                                                            |                                                                                                                                  |     |
|------------------|------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|-----|
|                  | (a) the term of the plan and its implementation schedule?                                                  | Yes, at Page No 43-45 of the Resolution Plan                                                                                     | Yes |
|                  | (b) for the management and control of business of the corporate debtor during its term?                    | Yes, at Page No 32-37 of the Resolution Plan                                                                                     | Yes |
|                  | (c) adequate means for supervising its implementation?                                                     | Yes, at Page No 37-45 of the Resolution Plan                                                                                     | Yes |
| 38(3)            | Whether the resolution plan demonstrates that-                                                             |                                                                                                                                  |     |
|                  | (a) it addresses the cause of default?                                                                     | Yes, at Page No 48 of the Resolution Plan                                                                                        | Yes |
|                  | (b) it is feasible and viable?                                                                             | Yes, at Page No.48-49 of the Resolution Plan                                                                                     | Yes |
|                  | (c) it has provisions for its effective implementation?                                                    | Yes, at Page No.37-45 of the Resolution Plan                                                                                     | Yes |
|                  | (d) It has provisions for approvals required and the timeline for the same?                                | Yes, at Page 50 of the Resolution Plan                                                                                           | Yes |
|                  | (e) the resolution applicant has the capability to implement the resolution plan?                          | Yes, at Page No 49 of the Resolution Plan                                                                                        | Yes |
| 39(2)            | Whether the RP has filed applications in respect of transactions observed, found or determined by him?     | Yes, vide Diary No.0404114/01771/2020 dated 13.11.2020                                                                           | Yes |
| Regulation 39(4) | Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B. | The Successful Resolution Applicant has submitted the Performance Guarantee of Rs.23,70,00,000 in favour of Punjab National Bank | Yes |

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

**31. Approval of resolution plan. -**

IA No.335 of 2021

In

CP(IB) No.277/Chd/Pb/2018

(Admitted)

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

*[Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]*

*(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.*

*(3) After the order of approval under sub-section (1), -*

*(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and*

*(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.*

*[(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:*

*Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.]*

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

- a. The Resolution Plan is approved by the Committee of Creditors under Section 30(4) of the Code;
- b. The Resolution Plan so approved meets the requirement as referred to in Section 30(2) of the Code;
- c. The Resolution Plan has provisions for its effective implementation.

28. It is submitted by learned counsel for the Resolution Professional that the resolution plan has been approved by a vote of 97.61 % voting share of the financial creditors, therefore, the conditions provided for by Section 30(4) of the Code are satisfied.

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

**30. Submission of resolution plan**

XXX

XXX

XXX

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

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

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

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

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

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

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

*(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;*

*(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or*

*(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]*

*(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;*

*(d) The implementation and supervision of the resolution plan;*

*(e) does not contravene any of the provisions of the law for the time being in force*

*(f) confirms to such other requirements as may be specified by the Board.*

*[Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]”*

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

- i.) Section 30(2)(a): The resolution plan at clause 3.2(page 21 of the resolution plan/ page 621 of the Application) states that payment of insolvency resolution process cost shall be paid in full and in priority to the payment of other debts of the Corporate Debtor, from the upfront cash within 90 days from the date of approval of resolution plan by the Adjudicating Authority. That the amount of CIRP Cost estimated upto 31.03.2021 has been provided as Rs. 3.73 crores (Annexure 2, page 74 of the Resolution Plan/ 673 of the Application).
- ii.) Section 30(2)(b): The resolution plan (Page 61 of the application and Clause 4.3C iv of the Resolution Plan) states that according to the Information Memorandum issued by the RP to the resolution applicant, the operational creditors have been segregated into three categories. The first category being operational creditors being workmen and employees. That the amount verified by the Resolution Professional is Rs.18.88 crores to which an amount of Rs. 20 lakhs is being given Annexure 2, page 74 of the Resolution Plan/ 673 of the Application. The Next category being, operational creditors relating to Government dues. The amount

verified by the Resolution Professional is Rs. 295.18 crores to which payment of NIL is being made by the Resolution Applicant. The third category being operational creditors (other than workmen & employees and government dues). The amount verified Resolution Professional is Rs. 295.18 crores to which payment of NIL is being made by the Resolution Applicant. Further, it has been stated by the Resolution Applicant in Clause 3.4 to 3.7 (Page 22 of the Resolution Plan/ Page 622 of the Application) and Annexure 1 of the Resolution Plan that the amount due to the Operational Creditors shall be paid in compliance with provisions of Section 30(2)(b) of the Code and Regulation 38(1) of the CIRP Regulations. that the Operational creditors are being paid. Annexure 1 provides that in the event there are any dissenting financial creditors, they shall be paid proportionately from the Upfront cash in priority to the assenting secured financial creditors. In case, resolution applicant is required to make payment higher than the proportionate amount, the payment to the assenting financial creditors shall be reduced to that extent on proportionate basis. In the event, the amount of the upfront cash is not sufficient to discharge the said liability towards the dissenting financial creditors, the remaining deficit amount will be paid from the deferred cash.

- iii.) Section 30(2)(c): In Clause 5 of the resolution plan (page 31 of the resolution plan/ page 630 of the Application), it is stated that the management and control of the business of the Corporate Debtor after approval of Resolution Plan by the NCLT, the corporate debtor shall be

managed by the Monitoring Committee up to the Trigger Date (Clause 5.2). Immediately on the Trigger Date, the Resolution Professional/ Monitoring Committee shall begin the process of delivering and handing over to the Resolution Applicant, the physical custody of all records/ documents within 21 days from trigger date. (Clause 5.3) Trigger date has been defined as 90th day from NCLT approval order excluding the period of stay granted by any relevant court/ Tribunal (page 18 of the resolution plan/ page 617 of the Application). The Board shall be reconstituted immediately on the trigger date by appointing directors nominated by the Resolution Applicant.

- iv.) Section 30(2)(d): In Clause 6 of the Resolution Plan (Page 36 of the resolution plan/ page 636 of the Application), it is stated that the supervision of the resolution plan as finally approved by the Adjudicating Authority is proposed to be done by the Monitoring Committee which shall comprise of the Resolution Professional, one representative of CoC and one member nominated by the Resolution Applicant (Clause 6.2).
- v.) Section 30(2) (e): In Clause 7.6.1 (Page No 48 of the resolution plan/ page 636 of the Application), it is stated that the resolution plan does not contravene any of the provisions of the law for the time being in force.

31. We are now examining the compliance of the proviso to Section 31(1) of the Code that the resolution plan has provisions for its effective implementation. The resolution plan in Clause 6 of the Resolution Plan (Page 36 of the resolution plan/ page 636 of the Application) states that the supervision of the resolution plan as

finally approved by the Adjudicating Authority is proposed to be done by the Monitoring Committee which shall comprise of the Resolution Professional, one representative of CoC and one member nominated by the Resolution Applicant (Clause 6.2). The Plan proposes an implementation Schedule of one year and 320 days from the date of approval of the resolution plan. It is stated that the implementation of the plan will be made by making payments towards the outstanding CIRP costs, financial creditors, operational creditors, government dues and payment of other dues and towards unsecured loans/deposits and by fulfilling all other terms laid out in this resolution plan.

32. We have discussed above that the requirements under Section 31(1) of the Code are satisfied in the present case. In para No. 4 of Form H (page 688 of the Application) the Resolution Professional has certified that the resolution plan complies with all the provisions of the Code and Regulations and does not contravene any of the provisions of the law for the time being in force. The Resolution Professional has also certified that the resolution applicant M/s UPL Limited has submitted affidavits dated 20.01.2021 (page 683 of the Application) pursuant to Section 30(1) of the Code confirming their eligibility under Section 29A of the Code to submit the resolution plan and the contents of the said affidavit are in order. The Resolution Professional has submitted that the resolution plan has been approved by the Committee of Creditors with 97.61% voting share in accordance with the provisions of the Code and CIRP Regulations made thereunder and after considering the feasibility and viability and other requirements specified by the CIRP Regulations.

33. We shall now discuss the requirements of Regulation 39(4) of the Regulations. In Clause 4.5 of the Resolution Plan (Page No. 31 of the resolution plan/ 630 of application), it is mentioned that the resolution applicant shall furnish a performance bank guarantee amounting to 10% of the upfront cash in accordance with the terms and conditions of RFRP (upfront cash PBG) and 10% of the deferred cash in accordance with the terms and conditions of RFRP (deferred cash PBG). As per the requirement of performance security, a Bank Guarantee issued by Bank of Baroda to Punjab National Bank for a sum of Rs. 23,70,00,000/- (Rupees Twenty Three Crore Seventy Lakhs Only) has been attached along with the Application (Page 710).

34. It has been observed that in the Resolution Plan which has been submitted by Resolution Applicant there is change in management and control of the corporate debtor and such change satisfies the conditions stipulated under Section 32A of the Code, therefore the benefit of immunity under Section 32A of the Code will be applicable to the Resolution Applicant and the attachment by the Directorate of Enforcement, if any, shall be vacated.

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

36. It is further submitted that in terms of the resolution plan, if any amount is received by the corporate debtor in view of the application filed under Section 43,

45, 47, 49, 50 or 66 of the Code, shall be solely for the benefit of the secured financial creditors subject to deduction of the costs, expenses and taxes incurred by the corporate debtor for such recovery.

37. In view of the above discussions, the resolution plan submitted by the Resolution Applicant- M/s UPL Limited, as approved by the Committee of Creditors under Section 30(6) of the Code read with regulation 39 of the CIRP Regulations, 2016, is hereby approved subject to comments made above regarding performance security. The resolution plan so approved shall be binding on the corporate debtor and its employees, members, creditors including the Central Government, State Government or Local Authority, to whom a debt in respect of the payment of dues arising under any law for the time being in force such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

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

- a. The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 05.07.2019 shall cease to have effect; and
- b. The Resolution Professional shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database.

Thus, IA No.335 of 2021 is disposed of.

Sd/-  
(Subrata Kumar Dash)  
Member (Technical)

Sd/-  
(Harnam Singh Thakur)  
Member (Judicial)

March 17<sup>th</sup>, 2022  
MK

IA No.335 of 2021  
In  
CP(IB) No.277/Chd/Pb/2018  
(Admitted)