

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH, COURT-VI

I.A. 5657/ND/2023

IN

C.P. No. IB- 150/ND/2022

(Under Section 30 (6) and 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

UNION BANK OF INDIA

.... FINANCIAL CREDITOR

VERSUS

M/S ORBITOL INTELLIGENCE PRIVATE LIMITED

..... CORPORATE DEBTOR

AND

AND IN THE MATTER OF:

MR. MADAN MOHAN DHUPAR
RESOLUTION PROFESSIONAL OF
M/S. ORBITOL INTELLIGENCE PRIVATE LIMITED.

.... APPLICANT

CORAM

SH. MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

PRESENT

For the RP

Mr. Vishal Hirawat and Mr. Abhishek Devan, Advs

For the SRA

Adv. Pradeep Kumar, Adv. Rishabh Jain, Adv.
Gaurav Gar

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

ORDER DELIVERED ON: 13.06.2024



1. The present application has been filed under Section 30(6) read with Section 31(1) of the Insolvency & Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations') by Mr. Madan Mohan Dhupar Resolution Professional (RP) of M/s. Orbitol Intelligence Private Limited ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by consortium of Subhlaxmi Investment Advisory Pvt. Ltd. and Swash Papertech Pvt. Ltd. Private Limited ('Successful Resolution Applicant') as approved by the Committee of Creditors ('CoC') in its 12th CoC Meeting held on 22.09.2023 with 100 % voting shares.

2. Briefly stated, the facts as averred by the applicant in the application are as follows:
 - a) That the Corporate Insolvency Resolution Process against the Corporate Debtor was initiated vide order dated 09.11.2022 and the applicant i.e., Mr. Madan Mohan Dhupar was appointed as IRP in the matter.
 - b) That the IRP prepared a list of Creditors after verification of claims received pursuant to the Public Announcement within 7 days from the last date of receipt of the claims and constituted Committee of Creditors.
 - c) The List of Financial Creditors constituting the Committee of Creditors, along with the amount claimed by them, the amount of their claim provisionally admitted is illustrated herein below:

	Name of Creditor	Category of Creditor	Amount Claimed in Rs.	Provisionally Admitted Claim in Rs.	Voting Share
1.	Union Bank of India	Secured Financial Creditor	45,03,10,594	45,03,10,594	100%

-
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-
- d) That the applicant after constitution of CoC, conducted 1st meeting of CoC on 09.12.2022, wherein, inter-alia, agenda for confirmation



of Interim Resolution Professional as Resolution Professional was proposed. The resolutions proposed in the meeting were put to vote through email voting and the members of COC unanimously resolved to appoint the Applicant, Mr. Madan Mohan Dhupar, Interim Resolution Professional as the Resolution Professional. The same was taken on record by this Adjudicating Authority vide order dated 21.12.2022.

- e) That the Applicant convened 2nd meeting of COC on 29.12.2022 wherein, the Applicant informed the CoC members about the latest developments in the CIRP and inter-alia, the resolution for approval of Eligibility Criteria for inviting Expression of Interest from Prospective Resolution Applicant, timelines and amount of refundable security deposit for submitting the EOI, for approval of evaluation matrix and for approval of request for resolution plan was discussed and deliberated. The resolutions proposed in the meeting were unanimously approved by the COC through email voting.
- f) That in terms of Section 25(2)(h) of the Code read with Regulation 36A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Applicant published Invitation for Expression of Interest in Form G dated 07.01.2023 incorporating timelines as approved by the Committee of Creditors in the second meeting in newspapers namely Financial Express (English) and Jansatta (Hindi), having circulation in Delhi NCR. The last date for submission for Expression of Interest was stipulated as 27.01.2023.
- g) Thereafter, Applicant convened 3rd COC meeting on 27.01.2023 and inter-alia apprised the COC that pursuant to the publication of FORM G, seventeen (17) prospective applicants had shown their interest in submitting EOI, however only two (2) EOIs were received. In order to seek more participation, COC discussed the desirability to extend the last date of submitting EOI by further 10 days and subsequently, COC approved the resolution for extending the last date for submission of EOI by 10 days and revised the timelines.
- h) That in accordance with the decision taken by the COC in 3rd COC meeting, Applicant issued corrigendum for FORM G dated 27.01.2023, indicating the revised timelines and the same was published on 28.01.2023 in two newspapers, i.e. Financial Express (English) and Jansatta (Hindi).
- i) That in the 4th COC meeting held on 06.03.2023, Applicant informed the members of COC that enquiries were received from twenty-two (22) prospective applicants, however only Six (6) prospective resolution applicants ('PRAs') submitted EOI till the last



date for submission of EOI, i.e. 06.02.2023. Subsequently, the Applicant after conducting due-diligence in accordance with the provisions of the Code, Regulations and conditions stipulated in the eligibility criteria accepted 3 EOIs. Subsequently, provisional list of PRAs including the names of three (3) PRAs was issued by the Applicant on 16.02.2023.

- j) Further, in terms of Regulation 36A(12) of CIRP Regulations, Applicant after considering the objections, issued the final list of eligible Prospective Resolution Applicants on 03.03.2023 including names of three (3) PRAs.
- k) That in the 5th COC meeting held on 27.03.2023, Applicant informed the COC that only one Resolution Plan was received till the last date for submission of Resolution Plan by the PRAs. Further, Applicant placed sealed envelope of the Resolution Plan before the COC and the Resolution Plan was opened with the permission & in the presence of COC member. Subsequently, plan was shared with the CoC members for their perusal.
- l) In the meanwhile, the Transaction Auditor submitted the Transaction Audit Report ('TAR') to the Applicant. On the basis of the TAR and available records, Applicant prepared determination report in compliance with Regulation 35A of CIRP Regulations. Applicant could not determine any transaction as avoidable transaction under Section 43, 45, 50 or 66 of the Code. TAR along with determination report were also shared with the COC members and the Resolution Applicant.
- m) That the Applicant convened 6th COC meeting on 12.04.2023, wherein the Resolution Applicant was invited to present its Resolution Plan before the COC and for COC to negotiate on the terms and condition of the Resolution Plan. Pursuant to the commercial negotiations, COC was of the view that the RA should reconsider the financial proposal and reduce the term of Resolution Plan. Accordingly, 7 days' time was granted to Applicant to respond and the members decided to adjourn the 6th meeting till 21.04.2023.
- n) That the adjourned 6th meeting of COC resumed on 21.04.2023, wherein the COC deliberated on the revised financial proposal. After, further negotiations, the Resolution Applicant confirmed that that the revised financial proposal is final and COC may only negotiate regarding the term of Resolution Plan. Thereafter, the COC deliberated over the Resolution Plan in details and keeping in view the final financial proposal of RA vis-à-vis Liquidation Value of the Corporate Debtor, the COC in its commercial wisdom decided to publish fresh form G for inviting expression of interest after



- annulling existing ongoing Resolution Process and requested the Applicant to place appropriate resolution for its approval.
- o) That in accordance with the request of COC, Applicant placed appropriate Resolution to seek extension of CIRP Period and to re-issue FORM G, for consideration of COC. The members of the COC requested the Applicant to put the resolution for e-mail voting. On conclusion of voting, it came to notice of the Applicant that COC has approved the Resolution for seeking extension of CIRP for publication of FORM G, however has rejected the resolution for re-issuance of FORM G.
 - p) That subsequently, Applicant convened 7th COC meeting on 04.05.2023 to decide way forward of the CIRP and seek clarification for rejecting the resolution for republication of FORM G, to which the COC informed that after conclusion of 6th COC meeting, representative of PRA met the bank officials and offered to increase the Resolution Plan Value and in order to consider the revised offer, COC did not approve the republication of fresh FORM G. Applicant informed the members that the ongoing resolution process was already annulled in 6th COC meeting on 21.04.2023. After detailed discussion, COC deferred the agenda item and requested the Applicant to convene fresh COC in 2-3 days to enable COC to take appropriate decision
 - q) That the Applicant convened 8th COC meeting on 06.05.2023 and recalled the discussion in the earlier meetings. Applicant apprised the COC that the CIRP period of 180 days is expiring on 08.05.2023 and requested COC to suggest way forward. After thorough deliberation, COC unanimously approved the resolution to publish fresh FORM G, to reissue the eligibility criteria, to approve amendment in RFRP and seek extension of CIRP Period by 90 days
 - r) That in accordance with the decision taken by the COC in 8th COC meeting, Applicant issued fresh FORM G dated 08.05.2023 and the same was published in two newspapers, i.e. Financial Express (English) and Jansatta (Hindi) on 09.05.2023. Last date for submission of EOI was 24.05.2023.
 - s) That pursuant to publication of FORM G on 09.05.2023, detailed EOI were shared with all the 22 prospective resolution applicants, who had earlier showed their interest to submit EOI, which also included the PRAs whose names appeared in the final list of PRA issued by the Applicant in the earlier round of Resolution Process. Out of 22, 8 PRAs submitted their EOI by the last date of submission i.e., 24.05.2023.



- t) Further, in terms of Regulation 36A(12) of CIRP Regulations, Applicant, issued the final list of eligible Prospective Resolution Applicants on 15.06.2023 including names of Six (6) PRAs
- u) That subsequently, two (2) Resolution Applicants ('RAs'), i.e. Auxein Medical Private Limited ("Auxein") and Consortium of Subhlaxmi Investment Advisory Private Limited & Swash Papertech Pvt. Ltd. ("Subhlaxmi & Swash"), whose names appeared in the final list of PRAs submitted their Resolution Plan within the prescribed timeline i.e. 05.07.2023
- v) Accordingly, Applicant convened 9th COC meeting on 06.07.2023 and apprised the members about the activities carried out by the Applicant and about the receipt of two Resolution Plans. Further, Applicant placed sealed envelope of the Resolution Plans before the COC and the Resolution Plans were opened with the permission & in the presence of COC member. Subsequently, plans were shared with the COC for their perusal
- w) That the Applicant convened 10th COC meeting on 18.07.2023, wherein the Applicant apprised the members about the activities carried out by the Applicant and about the queries/ observations raise by the Applicant and the replies received from the RAs. Further, with the permission of COC, RAs were individually invited to present their Resolution Plan before the COC and for COC to negotiate on the terms and condition of the Resolution Plan. Pursuant to the commercial negotiations, COC unanimously decided to grant equal opportunity to both the RAs to submit their revised financial proposal (if any) by 20.07.2023.
- x) That the Applicant convened 11th COC meeting of the Corporate Debtor on 01.08.2023, wherein Applicant informed the COC that pursuant to the discussion held in last COC meeting, Auxein had submitted revised financial proposal, wherein the total amount proposed for all the stakeholder has been increased from Rs. 12.95 Crore to 12.97 Crore. Applicant further, placed before the COC the request letter dated 31.07.2023 received from Subhlaxmi & Swash to seek 2 days' time to submit response to the queries/ observations raised by the Applicant. After thorough deliberation, COC allowed them further time upto 03.08.2023 as a last opportunity to make their plan compliant.
- y) That in the 11th meeting of CoC held on 07.08.2023 wherein the Applicant apprised the COC that Subhlaxmi & Swash submitted their revised Resolution Plan on 03.08.2023. Applicant informed the COC that the revised plan is compliant with the provision of Code and Regulations thereunder. Further, Applicant re-affirmed the COC that both the RAs are eligible under Section 29A of the Code and both the Resolution Plans are compliant. The Applicant



also placed the evaluation matrix before the COC. The committee evaluated both the plans, deliberated on the feasibility & viability of each Resolution Plan, and thereafter, asked the Applicant to put both the Resolution Plans for voting. Accordingly, both the Resolution Plans were put for e-voting. The voting period was proposed to remain open from 09.08.2023 till 31.08.2023 at 6:00PM.

- z) That immediately on the next day from conclusion of 11th COC, i.e. on 08.08.2023, Subhlaxmi & Swash sought an opportunity for submission of revised Resolution Plan, with increased bid amount. Subsequently, on 09.08.2023, Subhlaxmi & Swash submitted their Revised Resolution Plan. Applicant, immediately forwarded the email received from Subhlaxmi & Swash to COC, for their advice and necessary action.
- aa) That the Applicant did not receive any response from COC regarding the revised Resolution Plan dated 09.08.2023 submitted by Subhlaxmi & Swash, and voting on the Resolution Plans which were put for vote in 11th COC meeting continued. Further, Union Bank of India (sole COC member) vide email dated 29.08.2023 sought extension of voting window till 1 1.09.2023. Consequently, Applicant, after discussion with Union Bank of India extended the voting window till 05.09.2023. Thereafter, on 05.09.2023, Union Bank of India again sought extension of voting window till 15.09.2023 and accordingly, voting window was extended till 15.09.2023. Further, on 15.09.2023, Union Bank of India, requested to defer the voting and to immediately call for a COC meeting, in view of the revised plan submitted by Subhlaxmi & Swash. As per the request of COC, Applicant cancelled the voting and informed the COC.
- bb) That as per the request of Union Bank of India, Applicant convened 12th COC meeting on 19.09.2023, and apprised the COC regarding the sequence of events that had occurred post conclusion of 11th COC meeting. Further, COC informed that with a view of maximising the value of all stakeholders, the Committee has unanimously decided to grant equal opportunity to both the RAs to make revision (if any) in their financial proposals, by way of challenge mechanism in accordance with the provisions of RFRP. COC further decided that any change in the financial bid shall be submitted in form of an Addendum to their Resolution Plan already placed before COC in the 11th COC meeting.
- cc) Thereafter, both the RAs were invited to the meeting and were informed about the process to be adopted for value maximization. The Base Price, calculated on the basis of Net Present Value (NPV) with an incremental amount of Rs. 5 Lacs. Both the RAs



understood the process clearly and gave their consent to participate in the process in the meeting itself. First opportunity was given to Auxein and it decided not to increase its existing bid of Rs. 12.97 Cr. with NPV of total amount of Resolution Plan at Rs. 12.13 Cr. Subsequently, Subhlaxmi & Swash opted to increase their financial bid amount by Rs. 5.00 Lacs, making their Resolution Plan amount Rs. 13.45 Cr. Accordingly, the process of value maximization was concluded in the presence of both the RAs and no one had any objections upon the same. Subhlaxmi & Swash were asked to submit its addendum and the meeting was adjourned.

dd) That adjourned 12th COC meeting resumed on 22.09.2023, wherein both the Resolution Plans were placed before COC along with evaluation matrix. Value of both the Resolution Plans is as under: -

Resolution Applicant	Total Plan Value	Net Present Value (NPV)
Consortium of Subhlaxmi Investment Advisory Private Limited & Swash Papertech Private Limited	Rs. 13.45 Cr.	Rs. 13.16 Cr.
Auxein Medical Private Limited	Rs. 12.97 Cr.	Rs. 12.13 Cr.

ee) The COC after detailed discussion and deliberation, satisfied itself regarding the feasibility and viability of each of the plan and requested the Applicant to place requisite resolutions for consideration and approval of Resolution Plan. Accordingly, Resolution Plan submitted by Consortium of Subhlaxmi Investment Advisory Private Limited & Swash Papertech Private Limited was unanimously approved.

ff) That the Resolution Applicant has submitted an undertaking stating that the Resolution Applicant is eligible under Section 29A of the Code.

3. We have heard the submissions made by the Ld. Counsel for the applicant and have gone through the documents produced on record.

4. That some key features of the Resolution Plan are as follows:

BRIEF INTRODUCTION OF THE RESOLUTION APPLICANT



- a. This Resolution Plan is being submitted by Consortium of Subhlaxmi Investment Advisory Pvt. Ltd. having its Corporate Office at Unit No. 111, ACY-Aggarwal City Square, Plot No. 10, District Centre Manglam Place, Sector-3, Rohini, New Delhi- and Swash Papertech Pvt Ltd. having its registered office at Unit No. 502, 5th Floor P.P. Tower Netaji Subhash Place Delhi North West Delhi DL 110034.
- b. The Lead member of the Consortium is Subhlaxmi Investment Advisory Pvt. Ltd.
- c. Subhlaxmi Investment Advisory Pvt Ltd is a Private company with expertise in providing financial services, advisory and consultancy services on shares, stocks etc. and to purchase, sell, acquire, hold, dispose off in shares, stocks, securities, bonds etc.
- d. Swash Papertech Pvt Ltd is a fast-growing dynamic organization specialized in design, manufacture & supply of complete range of Transaction supplies, Office Stationery, Point Of Sale Supplies, Packing products, Food Packing, Labels, Tags. Tickets, Customer Application Forms, Shopping Bags & Allied Products; that are strategically developed and marketed all over the country.

Summary of list of Creditors

There is only one CoC member i.e., Union Bank of India. The detailed summary of List of Creditors as on date of filing of this Application is as under: -



ORBITOL INTELLIGENCE PRIVATE LIMITED (UNDER CIRP) (CIN : U33110DL2010PTC198060)					
Summary of List of Creditors as on 24.11.2022					
					Amount (in Rs.)
S. No.	Type of Creditors	Amount Claimed	Provisionally Admitted Claim	Voting %	Annexure
1	Financial Creditors				
	a. Unrelated Party	45,03,10,594	45,03,10,594	100.00%	A.
	b. Related Party	-	-	-	
Sub- total (a+b)		45,03,10,594	45,03,10,594	100.00%	
3	Operational Creditors (c)	1,93,62,231	1,40,53,786	NA	B
4	Workmen & Employees (d)	-	-	NA	C
5	Other Creditors (e)	-	-	NA	D
Sub- total (c+d+e)		1,93,62,231	1,40,53,786		
Grand Total (a+b+c+d+e)		46,96,72,825	46,43,64,380	100%	

AMOUNT PROPOSED AND TIMELINES

The SRA has proposed an amount of Rs. 13.45 Crores in the Resolution Plan. The Timeline of payment schedule is as under: -

<i>Particulars</i>	<i>Amount</i>	<i>Timeline</i>
<i>EMD with EOI</i>	<i>Rs. 1,00,000/-</i>	<i>Paid at time of EOI</i>
<i>EMD with Resolution Plan</i>	<i>Rs. 50,00,000/-</i>	<i>Paid at time of Resolution Plan</i>
<i>Performance Bank Guarantee (the same shall be replaced with cash consideration with in 30 days from approval date from NCLT)</i>	<i>Rs. 20,000,000/-</i>	<i>With in 10 days from receipt of LOI from COC</i>
<i>Upfront cash payment (1ST INSTALMENT)</i>	<i>Rs. 1,86,50,000/-</i>	<i>With in 30 days of Resolution plan approval from NCLT.</i>
<i>2ND INSTALMENT</i>	<i>Rs. 18,150,000/-</i>	<i>With in 60 days of approval date</i>
<i>3RD INSTALMENT</i>	<i>Rs. 18,150,000/-</i>	<i>With in 90 days of approval date</i>
<i>4TH INSTALMENT</i>	<i>Rs. 18,150,000/-</i>	<i>With in 120 days of approval date</i>
<i>5TH INSTALMENT</i>	<i>Rs. 18,150,000/-</i>	<i>With in 150 days of approval date</i>
<i>6TH INSTALMENT</i>	<i>Rs. 18,150,000/-</i>	<i>With in 180 days of approval date</i>
<i>TOTAL</i>	<i>Rs. 13,45,00,000/-</i>	<i>-</i>

FINANCIAL PROPOSAL OF THE RESOLUTION PLAN: -

There is only one CoC member that is Union Bank of India. The details of financial proposal are as under: -

FINANCIAL PROPOSAL SUMMARY:s

		As per IM & other communications/information uploaded on VDR thereto			Available Bank Balance as on Transfer Date
Sr No	Name of Creditor	Amount Claimed (INR)	Amount Admitted (INR)	Amount Proposed to be paid in Cash (INR)	
1	CIRP Cost* (Mentioned by RP via e-mail)	23,00,000	23,00,000	23,00,000/-	
2	Financial Creditors				
a.	Financial Creditors (Secured)	450,310,594	450,310,594	13,15,00,000/-	
b.	Financial Creditors (Un-Secured)	Nil	-	-	
3	Operational Creditors				
A	Workmen & Employee	Nil	-	-	
b	Other Employee related dues	Nil	-	-	
C	Govt Dues	19,362,231	14,053,786	7,00,000/-	
D	Operational Creditors (other than workmen, Employees and Govt Dues)	NIL	NIL	NIL	
	(1+2+3)	471,972,825	466,664,380	13,45,00,000/-	
4	Other Creditors	Nil	-	-	

SOURCES OF FUNDS

- The Resolution Applicant has certified net worth of Rs. 22.39 Crores. With leveraging capabilities to the extent of Rs. 40



Cröre, the financial resources of the Resolution Applicant and its proprietor are more than sufficient to provide funds required to meet the payments proposed the implementing the Resolution Plan. The RA has liquidity of owned funds.

- ii. That the final Resolution Plan submitted by SRA meets the requirements of Section 30(2) of the Code as under: -

Section	Provisions under Section 30(2) of the Code	Compliance under Resolution Plan
30(2)(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;	Yes Section 5 Para 5.1 of the Resolution Plan provides for payment of the Insolvency Resolution Process Cost.
30(2)(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	Yes Para 5.3.1 of the Resolution Plan read with addendum dated 21.09.2023



	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	
30(2)(c)	provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;	Yes Section 8.4 of the Resolution Plan provides for the management of the affairs of the Corporate Debtor.
30(2)(d)	the implementation and supervision of the resolution plan;	Yes Section 8.5 of the Resolution Plan provides for the implementation and supervision of the Resolution Plan.
30(2)(e)	does not contravene any of the provisions of the law for the time being in force	Yes Statement has been included in the Resolution Plan
30(2)(f)	conforms to such other requirements as may be specified by the Board.	Yes Statement has been included in the Resolution Plan



- iii. The Resolution Professional had appointed M/s. Lever Up Consultancy, to ascertain the eligibility of the Resolution Applicants under the Section 29A of the Code and the said Consultancy has confirmed the eligibility of the Resolution Applicants under Section 29A of the Code and the report has also been placed on record.
- iv. That the Resolution Applicant has also submitted an undertaking stating that the Resolution Applicant is eligible under Section 29A of the Code. Copy of undertaking submitted by the Resolution Applicant under Section 29A of the Code is annexed with this application.
- v. The average Fair Value and average Liquidation Value of Corporate Debtor is Rs. 19,52,78,641/- and Rs. 12,85,55,599/- respectively.
- vi. Mandatory Contents as specified under Regulation 38 of IBBI CIRP Regulations 2016 are as under: -

Regulation	Provisions under Regulation 38 of IBBI CIRP Regulations 2016.	Compliance under Resolution Plan
38(1)(a)	The amount payable under a resolution plan – (a) to the operational creditors shall be paid in priority over financial creditors; and (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.]	Yes Para 5.3.1 of the Resolution Plan
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.]	Yes Section 8.2 of the Resolution Plan read with Financial Proposal on page 2 of addendum dated 21.09.2023.
38(1B)	A resolution plan shall include a statement giving	Yes Statement has been



	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.]	made in the Resolution Plan that neither resolution applicant nor any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan.
38(2)(a)	A resolution plan shall provide the term of the plan and its implementation schedule;	Yes Section 8.3 of the Resolution Plan.
38(2)(b)	A resolution plan shall provide the management and control of the business of the corporate debtor during its term; and	Yes Section 7 read with 8.4 of the Resolution Plan.
38(2)(c)	A resolution plan shall provide adequate means for supervising its implementation	Yes Section 7 read with 8.5 of the Resolution Plan.
38(2)(d)	provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed:	Not applicable since no application w.r.t PUFETransactions have been filed
38(3)(a)	A resolution plan shall demonstrate that – it addresses the cause of default;	Yes Section 8.6 of the Resolution Plan
38(3)(b)	A resolution plan shall demonstrate that – it is feasible and viable;	Yes Section 8.7 of the Resolution Plan
38(3)(c)	A resolution plan shall demonstrate that –	Yes Section 8.5 of the



	it has provisions for its effective implementation;	Resolution Plan
38(3)(d)	A resolution plan shall demonstrate that – it has provisions for approvals required and the timeline for the same; and	Yes Section 8.8 of the Resolution Plan
38(3)(e)	A resolution plan shall demonstrate that – the resolution applicant has the capability to implement the resolution plan.]	Yes Section 8.9, 8.11 of the Resolution Plan

vii. The other requirements as specified under the IB Code and Regulations of IBBI CIRP Regulations 2016 are as under: -

Section/ Regulation	Provisions under the said Regulation of IBBI CIRP Regulations 2016.	Compliance- Yes/No
Section 25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the COC having regard to the complexity and scale of operations of business of the CD?	Yes Annexure II of EOI
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 8.12 of the Resolution Plan
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Yes, affidavit has been submitted by the SRA
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]	Yes Rs. 4,12,500/- has been provided as Performance Security

viii. There are no objections to the Resolution Plan by any of the stakeholders.



ix. With respect of compliance regarding Regulation 39(4) of the CIRP Regulations, the applicant has filed compliance certificate in Form-H certifying that the Resolution Plan submitted by the successful resolution applicant meets the requirements as laid down in various sections of the Code and the CIRP Regulations and there are sufficient provisions in the Plan for its effective implementation as required under the Code. Further, an affidavit has been obtained from the Successful Resolution Applicant stating that he is not ineligible under the provisions of Section 29A of the Code, 2016.

5. The applicant has prayed for number of waivers in the Resolution Plan. As to the relief and concessions sought in the Resolution Plan, we may refer to judgement of Hon'ble Supreme Court in the matter of **Embassy Property Developments (P) Ltd. v. State of Karnataka, (2020) 13 SCC 308**, the relevant part of the judgement is reproduced herein below: -

39. Another important aspect is that under Section 25 (2) (b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:

“25. Duties of resolution professional –

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions:-

(a).....

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings.”

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).



40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”

In view of the aforesaid judgement of Hon’ble Supreme Court, we direct the Successful Resolution Applicant to file necessary application before the concerned forum/ authority in order to avail the necessary relief and concessions, in accordance with respective laws.

6. The Hon’ble Supreme Court vide its order dated 21.11.2023 in the matter of **Ramkrishna Forgings Ltd. v. Acil Ltd. (Resolution Professional), (2024) 2 SCC 122** had held as follows: -

“27. Having considered the matter in depth, the Court is unable to uphold the decisions rendered by the Adjudicating Authority-NCLT as also the NCLAT. The moot question involved is the extent of the jurisdiction and powers of the Adjudicating Authority to go on the issue of revaluation in the background of the admitted and undisputed factual position that no objection was raised by any quarter with regard to any deficiency/irregularity, either by the RP or the appellant or the CoC, in finally approving the Resolution Plan which was sent to the Adjudicating Authority-NCLT for approval. Further, the statutory requirement of the RP involving two approved valuers for giving reports apropos fair market value and liquidation value was duly complied with and the figures in both reports were not at great variance. Significantly, the same were then put up before the CoC, which is the decision-maker and in the driver's seat, so to say, of the Corporate Debtor. *K Sashidhar (supra)* and *Committee of Creditors of Essar Steel India Ltd. (supra)* are clear authorities that the CoC's decision is not to be subjected to unnecessary judicial scrutiny and intervention. This came to be reiterated in *Maharashtra Seamless Limited (supra)*, which also emphasised that the CoC's commercial analysis ought not to be qualitatively examined and the direction therein of the NCLAT to direct the successful Resolution Applicant to



enhance its fund flow was disapproved of by this Court. Thus, if the coc, including the FC(s) to whom money is due from the Corporate Debtor, had undertaken repeated negotiations with the appellant with regard to the Resolution Plan and thereafter, with a majority of 88.56% votes, approved the final negotiated Resolution Plan of the appellant, which the RP, in turn, presented to the Adjudicating Authority-NCLT for approval, unless the same was failing the tests of the provisions of the Code, especially Sections 30 & 31, no interference was warranted. In *Kalpraj Dharamshi v Kotak Investment Advisors Limited*, (2021) 10 SCC 401, the Court concluded that in view of the paramount importance given to the decision of CoC, which is to be taken on the basis of "commercial wisdom", NCLAT was not correct in law in interfering with the commercial decision taken by CoC by a thumping majority of 84.36%.”

7. In so far as the approval of the Resolution Plan is concerned, this Adjudicating Authority is duty bound to follow the judgement of the Hon'ble Supreme Court in the matter of **K.Sashidhar v. Indian Overseas Bank (2019) 12 SCC 150**, wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as follow:-

35. 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 percent 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.


8. Further, we would rely upon the judgment rendered by the NCLAT in **Roshan Lal Mittal v. Rishabh Jain, 2023 SCC OnLine NCLAT 2398** wherein it was held that:

7. “The Resolution Plan does not absolve the personal guarantors from their guarantee. The law well settled by the Hon’ble Supreme Court in the matter of “Lalit Kumar Jain v. Union of India - (2021) 9 SCC 321), that by approval of resolution plan the guarantees are not ipso facto discharged.”

9. Also, the Hon’ble Supreme Court of India in the matter of **Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531**, vide its judgement dated 15.11.2019 has observed as follows:

“38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with Prospective resolution applicants.”

10. Thus, from the judgements cited supra, it is amply clear that only limited judicial review is available to the Adjudicating Authority under



Section 30(2) read with Section 31 of the Code, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the committee of the creditors.

As far as compliances under the Insolvency and Bankruptcy Code, 2016 and IBBI (Insolvency Resolution Process for Corporate Persons), 2016 are concerned, we are satisfied that all the compliances have been done in accordance with law and the Successful Resolution Applicant (SRA) meets all the requirements as laid down in various sections of the Code and the Regulations made thereunder.

12. In the Resolution Plan at Section 5.2.3.2.7 it is stated as under: -

5.2.3.2.7 On approval of this resolution plan by Hon'ble Adjudicating Authority and release of committed payment by Resolution Applicant, Creditors who (in terms of provisions of IBC) are required to / eligible to file claims under this category on account of any kind of liability which could arise towards such creditor which is due or contingent, asserted or unasserted, crystallized or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, in relation to the period upto the Insolvency Commencement Date and have not filed the claim with the Resolution Professional OR whose claim has been rejected by the Resolution Professional, if there are any, dues towards such creditor if reflected / not reflected as due / contingent in the books of account / annual accounts any other document of the Corporate Debtor shall stand extinguished permanently without any liability on the Corporate Debtor / Resolution Applicant and shall be written off in the books of account / annual accounts of the Corporate Debtor. In case any such creditor has initiated any legal action by filing a suit / invoking arbitration etc., such suit arbitration etc shall become redundant and shall cease to have its legal force and will be closed by the concerned authority without any liability on the Resolution Applicant/Corporate Debtor.



In this regard, we would like to rely upon the judgement of Hon'ble Supreme Court in **Ghanshyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. 2021 SCC Online SC 313** wherein it was held that approval of the resolution plan has a clean slate effect and all claims that were not part of the resolution process 'stand extinguished' on approval of the resolution plan. Relevant extract of the aforesaid judgement is as under: -

102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan."

13. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan. Accordingly, we hereby approve the Resolution Plan along with the addendum to the Resolution Plan, which shall be binding on the Corporate Debtor and its employees, shareholders of corporate debtor, creditors including the Central Government, any State Government or any local authority to whom statutory dues are owed, guarantors, successful resolution applicant and other stakeholders involved. In view of the above, **I.A. 5657/ND/2023 stands allowed.**
14. It is declared that the moratorium order passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of pronouncement of this order.



15. However, the resolution plan shall not be construed as waiver to any statutory obligations/liabilities arising out of the approved resolution plan and the same shall be dealt in accordance with the appropriate authorities concerned as per relevant laws. We are of the considered view that if any waiver is sought in the resolution plan, the same shall be subject to approval by the concerned authorities as stated in para 5 of this order.
16. Accordingly, MoA and AoA of the Corporate Debtor shall be amended and filed with the RoC for information and record as prescribed. While approving the 'resolution plan' as mentioned above, it is clarified that the resolution applicant shall pursuant to the resolution plan approved under section 31(1) of the Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for such in law.
17. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the corporate debtor and the Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code. The Resolution Professional is further directed to handover all the records, premises, properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.
18. The approved 'Resolution Plan' shall become effective from the date of passing of this order. The Approved Resolution Plan shall be part of this order.

Let the copy of the order be served to the parties concerned.

SD/-

(RAHUL BHATNAGAR)
MEMBER TECHNICAL

SD/-

(MAHENDRA KHANDELWAL)
MEMBER JUDICIAL