



**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**DIVISION BENCH, COURT NO.II**

**KOLKATA**

**I.A (IB)(Plan) NO. 19/KB/2024**

**Connected with**

**C.P. (IB) NO. 220/KB/2022**

***An Application under Section 30 and 31 of the Insolvency and  
Bankruptcy Code, 2016 read with Regulation 39 of the Insolvency and  
Bankruptcy Board of India (Insolvency Resolution Process for Corporate  
Person) 2016 as amended***

**IN THE MATTER OF:**

**Pixel Consultancy Private Limited**

**... Financial Creditor**

**Versus**

**M/s. Dreamvalley Projects Private Limited**

**... Corporate Debtor**

**And**

**Neeraj Kejriwal Resolution Professional of M/s Dreamvalley Projects  
Private Limited having its office at P-178 CIT Scheme VI M Phoolbagan,  
3<sup>rd</sup> Floor, Kolkata-700054**

**... Applicant**

**Date of Pronouncement of Order: 2<sup>nd</sup> January, 2025**

**CORAM:**

**Smt. Bidisha Banerjee, Member (Judicial)**

**Shri. D. Arvind, Member (Technical)**



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**APPEARANCE:**

<b>Ms. Rashmi Bothra, Adv.</b>	<b>] For the Financial Creditor</b>
<b>Ms. Manju Bhuteria, Adv.</b>	<b>] For the Resolution Professional</b>
<b>Mr. Neeraj Kejriwal, RP</b>	
<b>Mr. Dripto Majumdar, Adv.</b>	<b>] For the Intervenor</b>
<b>Mr. Pintu Ghosh, Adv.</b>	<b>]</b>
<b>Ms. S. Kar, Adv.</b>	<b>]</b>

**ORDER**

**Per: Bidisha Banerjee, Member (Judicial)**

1.The Court congregated through a hybrid mode.  
2.The Ld. Counsels of both the parties were heard.  
3. The instant application has been filed by **Mr. Neeraj Kejriwal**, the Resolution Professional, hereinafter referred to as the '**RP/Applicant**' of **M/s Dreamvalley Projects Private Limited**, the Corporate Debtor, for brevity '**CD**' to enable the Resolution Plan to complete the CIRP under the law in a time bound manner and to grant the following reliefs:

- a. Order be passed to approve the Resolution Plan submitted by Soneko Marketing Private Limited in respect of the Corporate Debtor.*
- b. Such further or other order or orders be passed and/ or directions be given as this Tribunal may deem fit and proper.*

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**4.Facts in Nutshell**

The present interlocutory application is the second application filed under section 30(6) of the Insolvency & Bankruptcy Code 2016, for brevity 'I&B Code' Previously, an interlocutory application bearing IA No. 5/KB/2024 was filed which was sent back by this Tribunal by an order dated 22nd August 2024 (Annexure D, Pg. Nos.).

The first application for approval of the resolution plan was filed by Mr. Neeraj Kejriwal, Resolution Professional of Ms Dreamvalley Projects Private Limited {U45208WB2009PTC133164} by invoking the provisions of section 30(6) of the Insolvency and Bankruptcy Code, 2016 read with regulation 39(4) of the Insolvency and the Code of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") for approval of a Resolution plan in respect of M/s Dreamvalley Projects Private Limited.

The underlying Company Petition in C.P. (IB) No. 220/KB/2022 was filed by Pixel Consultancy Private Limited the Financial Creditor against M/s Dreamvalley Projects Private Limited, the Corporate Debtor, to initiate Corporate Insolvency Resolution Process ("CIRP"), under section 7 of the Insolvency and Bankruptcy Code 2016, which was admitted vide order dated 18th July 2023. The Applicant was only appointed as the Interim Resolution Professional who was later confirmed as the Resolution Professional.

**Prologue**

**5. The Particulars of the Corporate Debtor**

**DREAMVALLEY PROJECTS PRIVATE LIMITED** is a Private Limited Company incorporated on 25.02.2009 bearing CIN: U45208WB2009PTC133164,



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registered office situated at Room No. 803B, Cabin No. A, Shaila Tower, 8<sup>th</sup> Floor, J1/16, EP Block, Saltlake, Sector V, Kolkata, West Bengal 700091. The company is engaged in Real Estate activities.

**6. Initiation of Corporate Insolvency Resolution Process**

The Financial Creditor, Pixel Consultancy Private Limited filed an application under Section 7 of the I&B Code, 2016 which was admitted on July 18, 2023, and the Applicant was appointed as the Interim Resolution Professional (IRP). Later, the Applicant was appointed as Resolution professional of the Corporate Debtor

**7. Public Announcement**

The Applicant submits that in terms of the provisions of section 25(2)(h) of the Code read with regulation 36A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, invitations in Form 'G' for Expressions of Interest ("**Eoi**") from potential resolution applicants was issued on 15th September 2023, 12th October 2023 and 01st December 2023 in **Financial Express** (English) and **Ek Din** (Bengali) (Kolkata edition) newspapers. The notices were also published on the website of the Insolvency and Bankruptcy Board of India (IBBI).

The provisional list of prospective Resolution Applicants were issued on 01<sup>st</sup> November, 2023. Subsequently in compliance with sub-regulation 12 of Regulation 36A of CIRP Regulations, the Applicant released the final list on 10<sup>th</sup> November, 2023 indicating no prospective resolution applicants was eligible to participate in the CIRP and hence, the third Form G was published after which

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four parties deposited Earnest Money Deposit ("EMD") of Rs. 5,00,000/- each into the designated bank account. The Applicant mentioned the date for issue of the Information Memorandum, Evaluation Matrix and Request for Resolution Plan ("RFRP") with the Prospective Resolution Applicants as 02nd January 2024 in the final Form G. The extended last date for submission of resolution plan was on 01st February 2024.

As per regulation 35(2) of the CIRP Regulations, after receipt of the Resolution Plan, the RP informed the fair value and liquidation value of the Corporate Debtor to the CoC.

**8. Constitution of CoC**

The CoC was constituted on 10th August 2023 with the sole member being Pixel Consultancy Private Limited. The list of creditors was updated from time to time uploaded in the IBBI website. The Applicant states that a total of eleven (11) CoC meetings have been held during the CIRP period, which are as follows:

<b>Particulars</b>	<b>Date of the CoC Meeting</b>
1 <sup>st</sup> CoC Meeting	17 <sup>th</sup> August, 2023
2 <sup>nd</sup> CoC Meeting	14 <sup>th</sup> September, 2023
3 <sup>rd</sup> CoC Meeting	09 <sup>th</sup> October, 2023
4 <sup>th</sup> CoC Meeting	17 <sup>th</sup> November, 2023
5 <sup>th</sup> CoC Meeting	28 <sup>th</sup> November, 2023
6 <sup>th</sup> CoC Meeting	28 <sup>th</sup> December, 2023
7 <sup>th</sup> CoC Meeting	22 <sup>nd</sup> January 2024
8 <sup>th</sup> CoC Meeting	15 <sup>th</sup> February 2024
9 <sup>th</sup> CoC Meeting	14 <sup>th</sup> March 2024



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10 <sup>th</sup> CoC Meeting	20 <sup>th</sup> March 2024
11 <sup>th</sup> CoC Meeting	28 <sup>th</sup> March 2024

### **9. Evaluation and Voting**

The Resolution Professional received two (2) resolution plans from Soneko Marketing Pvt. Ltd. and Intercity Ventures Pvt. Ltd. The resolution plans were opened during the 11<sup>th</sup> CoC meeting held on 28<sup>th</sup> March 2024. During the said 11<sup>th</sup> meeting, after elaborate discussions and deliberations, the plan of Soneko Marketing Pvt. Ltd. was approved by 100% voting share (Voting results at Pg. 134 which shows 100% voting).

### **10. Letter of Intent**

Pursuant to 11<sup>th</sup> CoC Meeting held on 28<sup>th</sup> March, 2024, the Letter of Intent (LOI) was issued on 03.04.2024 to Soneko Marketing Private Limited after the approval of Resolution Plan submitted by Soneko Marketing Private Limited and has been declared as the **Successful Resolution Applicant (SRA)**

### **11. Contents of Resolution Plan**

The Resolution Applicant has a net worth of Rs. 1098.88 Lakhs. The SRA proposes to fund the entire Resolution plan from fund of its own. The details of costs of Resolution Plan and its means are given hereunder:

<b>Cost of Plan</b>	<b>Total Amount (in Lacs)</b>
<b>Cost to be incurred</b>	
CIRP Cost (To be paid as per Actuals)	15.50
Payment to Secured Financial	NIL



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Creditors in full and Final Settlement (full value and not NPV)	
Payment to Unsecured Secured Financial Creditors in full and final Settlement (full value and not NPV)	36.00
Payment to Government Dues in full and final settlement (full value and not NPV)	5.00
Payment to other Operational Creditors in full and final settlement (full value and not NPV)	NIL
<b>Sub Total</b>	<b>56.50</b>
Total Payment to Existing Financial and Operational Creditors	56.50
Add: Working Capital	200.00
<b>TOTAL (Rs. In Lacs)</b>	<b>256.50</b>
<b>Means of Finance</b>	<b>Total Amount (In Lacs)</b>
Fresh Equity to be infused by the Resolution Applicant at the time of implementation of the Resolution Plan	<b>25.00</b>
Unsecured Loans by Applicant	<b>231.50</b>
<b>TOTAL (Rs. In Lacs)</b>	<b>256.50</b>

**Proposal for employees and workmen**

There are no dues towards employees and workmen, hence, no payment has been envisaged in the Resolution Plan. It is clarified that no further dues will



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be payable to workmen and employees under any head whatsoever and howsoever including but not limiting to the retrenchment compensation, gratuity etc. up to the date of approval of the Resolution Plan by the Adjudicating Authority.

**Proposal for Operational Creditors including Government Dues, Taxes**

The total claim received and admitted is **Rs. 212.91 Lacs** in respect of operational creditors of the Corporate Debtor due towards the statutory dues. The Operational Creditors of the CD has been divided in two classes, i.e, Operational Creditors in respect of Statutory Dues (OC-SD) and Operational Creditors in respect of others (OC-O)

<b>Class of OC</b>	<b>Admitted Claim as per Process Memorandum</b>	<b>Payment in full and final settlement (in Rs.)</b>	<b>Payment % of Claim</b>
OC-SD	2,12,91,000.00	5,00,000.00	2.35%
OC-O	NIL	NIL	0
<b>Total in Rs.</b>	2,12,91,000.00	5,00,000.00	2.35%

**Proposal for Financial Creditor**

The Resolution Applicant proposes payment of **Rs. 36.00 Lacs** to Financial Creditors towards full and final settlement of total admitted dues of Rs. 1047.59 Lacs of the Financial Creditors. The payment proposed to Financial Creditors shall be as under:





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**IA. Secured Financial Creditor**

<b>Name of Banks/FIs</b>	<b>Admitted Claim as per Process Memorandum</b>	<b>Paid by the RA</b>	<b>Payment % of Claim</b>
-	-	-	-

**IB. Unsecured Financial Creditor**

<b>Name of Banks/FIs</b>	<b>Admitted Claim as per Process Memorandum</b>	<b>Paid by the RA</b>	<b>Payment % of Claim</b>
Pixel Consultancy Private Limited	10,47,59,437.12	36,00,000.00	3.44%
Total in Rs.	10,47,59,437.12	36,00,000.00	3.44%

**12. Appointment of Registered Valuers**

The Applicant appointed registered valuers in accordance with Regulation 27 of the CIRP Regulations, 2016 to determine the fair value and liquidation value of the Corporate Debtor in accordance with Regulation 35 thereof. Such valuation exercise was completed on July 18, 2023. The average Fair value and the Liquidation value of the Company obtained from the appointed Registered Valuers are as follows:

**Fair Value : Rs. 0.15 Lakhs**

**Liquidation Value: 0.15 Lakhs**



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**13. Collation of admission of claims**

**IA. Secured Financial Creditor**

<b>Name of Banks/FIs</b>	<b>Admitted Claim as per Process memorandum</b>	<b>Paid by the RA</b>	<b>Payment % of Claim</b>
	-	-	-

**IB. Unsecured Financial Creditor**

<b>Name of Banks/FIs</b>	<b>Admitted Claim as per Process memorandum</b>	<b>Paid by the RA</b>	<b>Payment % of Claim</b>
Pixel Consultancy Private Limited	10,47,59,437.12	36,00,000.00	3.44%
<b>Total in Rs.</b>	10,47,59,437.12	36,00,000.00	3.44%

**II. Operational Creditor**

<b>Name</b>	<b>Admitted Claim as per Process memorandum</b>	<b>Upfront Payment in full &amp; final settlement</b>	<b>Payment % of claim</b>
Income Tax Department	2,12,91,000.00	5,00,000.00	2.35%
	2,12,91,000.00	5,00,000.00	2.35%

**14. Compliance of the Resolution Plan submitted by the SRA with various provisions.**

The Applicant has submitted that in terms of Regulation 39(4) of the Insolvency and Bankruptcy Code (Insolvency Resolution Process for Corporate



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Persons) Regulations, 2016, the RP has filed a Compliance Certificate in prescribed form i.e., Form “H”, annexed at Pages 193 to 200 to the Application.

It is contended that the Successful Resolution Applicant has met the criteria approved by the CoC having regard to the complexity and scale of operations of the business of the Corporate Debtor in terms of Section 25(h)(2) of the I&B Code.

Further it is submitted that the Successful Resolution Applicant is eligible to submit a resolution plan in terms of Section 29A of the I&B Code and

Further, the Learned Counsel for the Resolution Professional would submit the details of various compliances as envisaged within the I&B Code and the CIRP Regulations to which a Resolution Plan has been adhered to. Further, it is submitted that the Resolution Applicant has submitted its eligibility in terms of Section 30(1) of the I&B Code, 2016.

It is further submitted that in terms of Section 30(2) of the I&B Code, 2016, (as amended vide Amendment dated August 16, 2019) the Resolution Plan, submitted by **Soneko Marketing Pvt. Ltd. (SRA)** provides the compliance as under

<b>Section of the Code / Regulation No.</b>	<b>Requirement with respect to Resolution Plan</b>	<b>Clause of Resolution Plan</b>	<b>Compliance (Yes / No)</b>
	Whether the Resolution		Yes



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25(2)(h)	Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?		
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Clause 2.6.2, Affidavit enclosed with the Resolution Plan	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating	Clause 2.6.1, Affidavit enclosed with the Resolution Plan	Yes



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	that it is eligible?		
Section 30(2)	Whether the Resolution Plan-		
	(a) provides for the payment of insolvency resolution process costs?	Clause 5.4	Yes
	(b) provides for the payment to the operational creditors?	Clause 5.6 Clause 5.9.1	Yes
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Clause 7.6	Yes
	(d) provides for the management of the affairs of	Clause 7	Yes



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	<p>the corporate debtor? (e) provides for the implementation and supervision of the resolution plan?  (f) contravenes any of the provisions of the law for the time being in force?]</p>	Clause 2.6.3	Yes
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	Clause 4.2 & 4.3 Plan has been approved by the CoC with 100% voting share	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective	Clause 7	Yes



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	implementation plan, according to the CoC?		
Section 38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Clause 5.6	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause 5	Yes
Regulation 38 (1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or	The RA or any of its related parties has not failed to implement or contributed to the failure of	Not Applicable



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	<p>contributed to the failure of implementation of any resolution plan approved under the Code.</p> <p>(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]</p>	<p>implementation of any resolution plan approved under the Code at any time in the past.</p>	
Regulation 38(2)	<p>Whether the Resolution Plan provides:</p> <p>(a) the term of the plan and its implementation schedule?</p> <p>(b) for the management and</p>	<p>a. Clause 7.7</p> <p>b. Clause 7.6</p>	Yes





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	control of the business of the corporate debtor during its term?  (c) adequate means for supervising its implementation?	Clause 7.6	
Regulation 38(3)	Whether the resolution plan demonstrates that –  (a) it addresses the cause of default?  (b) it is feasible and viable?  (c) it has provisions for its effective implementation?  (d) it has provisions for	a) Clause 4.1  b) Clause 4.2 and 4.3  c) Clause 4.3  d) Clause 7.8	Yes



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	approvals required and the timeline for the same?  (e) the resolution applicant has the capability to implement the resolution plan?	e) Net worth certificate enclosed with the plan	
Regulation 39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	No transactions observed, found or determined	Not applicable
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B	The SRA has submitted performance security of Rs. 5 Lakhs plus 5 lakhs submitted as EMD converted into performance security making	Yes



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		the total performance security deposit of Rs. 10 Lakhs	
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**15. Details of the Resolution Plan and/ or Payment Schedule**

The Learned Counsel for the Applicant herein has submitted that the total plan outlay/ value is of **Rs. 56.50 Lakhs** wherein the Financial Creditors of the CD are proposed to be paid an amount of **Rs. 36.00 Lakhs** against their admitted debts of Rs.10.48 Crores and in addition , the Resolution Applicant proposes to invest an amount of **Rs. 5 lakhs** against admitted claim of Rs. 2.12 Crores payable to operational creditor. In addition to above the RA proposes to invest an amount of **Rs. 200.00 Lakhs** towards working capital towards working capital , as and when required. Complete layout of distribution of Resolution Plan value has been captured in the table below:

<b>Particulars</b>	<b>Amount Claimed (in Rs.)</b>	<b>Amount Paid (in Rs.)</b>	<b>% of claim admitted</b>	
CIRP Costs	NA	15,50,000		
Payment of Operational Creditors	2, 12,91,000	5,00,000	2.35%	X+ 30days
Payment of Financial Creditors	10,47,59,437.12	36,00,000	3.44%	X being the date of approval by the



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				Adjudicating Authority
Takeover of the Corporate Debtor				X+35 days
Startup of the Unit				Immediately thereafter

**16.** In so far as the approval of **the Resolution dated 09.03.2024** submitted by **Soneko Marketing Private Limited** is concerned, this Adjudicating Authority is bound by the judgement of the Hon'ble Supreme Court of India in **K. Sashidhar vs. Indian Overseas Bank and Ors.** reported in **(2019) 12 SCC 150: MANU/SC/0189/2019**, wherein it is held that:

*“35. [...] 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.*

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[...]. 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.”

**(Emphasis Added)**

17 Further, the Hon’ble Apex Court in **Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBCC (India) Ltd. and Ors.** reported in (2022) 1 SCC 401: MANU/SC/0206/2021 at Para 216, has laid down that:

**“The Adjudicating Authority has limited jurisdiction in the matter of approval of a resolution plan, which is well-defined and circumscribed by Sections 30(2) and 31 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by Committee of Creditors. ... .”**

**(Emphasis Added)**

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18 .Further, in **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta** reported at (2020) 8 SCC 531: MANU/SC/1577/2019, the Hon'ble Apex Court has propounded that:

*“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.”*

**(Emphasis Added)**

**Our Inference**

**On the Conduct of CoC:**

19. Upon hearing, the submission made by the Learned Counsel appearing on behalf of the Resolution Professional of Corporate Debtor herein and perusing the record and/or documents placed before this Adjudicating Authority, we would find that the Resolution dated 09.03.2024 submitted by Soneko Marketing Private Limited, the Successful Resolution Applicant has been approved by the CoC of the Corporate Debtor by 100% voting share on 28<sup>th</sup> March, 2024 and Soneko Marketing Private Limited is declared as the “Successful Resolution Applicant”. As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. Preponderantly, all the compliances have been done by the Resolution Applicant for making the plan effective after approval by this Adjudicating Authority.

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**20.** In the course of the hearing, the Ld. Counsel for the applicant would submit that the Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code, 2016, read with relevant Regulations of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and does not contravene any of the provisions of law for the time being in force.

**21.** Upon perusal of the documents on record and/or documents, we are satisfied that the Resolution dated 9<sup>th</sup> March, 2024 submitted by Soneko Marketing Private Limited , the Successful Resolution Applicant, is in accordance with sections 30 and 31 of the I&B Code, 2016 and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

**On the Statutory Obligations or Seeking Approvals from the Authorities:**

**22.** As far as the question of granting time to comply with the statutory obligations or seeking approvals from authorities is concerned, the Resolution Applicant is directed to do so within one year from the date of this order, as prescribed under section 31(4) of the I&B Code

**On the Reliefs, Waivers and Concessions:**

**23.** We have perused the reliefs, waivers and concessions as sought and as provided in the Resolution Plan. It is evident that some of the reliefs, waivers and concessions sought by the Resolution Applicant come within the ambit of



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the I&B Code and the Companies Act 2013, while many others fall under the power and jurisdiction of different government authorities/departments. This Adjudicating Authority has the power to grant reliefs, waivers and concessions only concerning the reliefs, waivers and concessions that are directly with the I&B Code and the Companies Act (within the powers of the NCLT). The reliefs, waivers and concessions that pertain to other governmental authorities/departments may be dealt with by the respective competent authorities/forums/offices, Government or Semi-Government of the State or Central Government concerning the respective reliefs, waivers and concession, whenever sought for. The competent authorities including the Appellate authorities may consider granting such reliefs, waivers and concessions keeping in view the spirit of the I&B Code, 2016 and the Companies Act, 2013.

**24.** It is almost trite and fairly well-settled that the Resolution Plan must be consistent with the extant law. The Resolution Applicant shall make necessary applications to the concerned regulatory or statutory authorities for the renewal of business permits and supply of essential services, if required, and all necessary forms along with filing fees etc. and such authority shall also consider the same keeping in mind the objectives of the Code, which is essentially the resolving the insolvency of the Corporate Debtor.

**25.** In this context, we would rely upon the judgment in ***Embassy Property Developments Pvt. Ltd. vs. State of Karnataka*** reported in ***MANU/SC/1661/2019: (2020) 13 SCC 308***, wherein, the Hon'ble Apex Court has laid down that:



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“39. If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(f)(vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, subject to the determination of ownership by a court or other authority. In fact an asset owned by a third party, but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition of the term "assets" under the Explanation to Section 18. This assumes significance in view of the language used in Sections 18 and 25 in contrast to the language employed in Section 20. Section 18 speaks about the duties of the interim resolution professional and Section 25 speaks about the duties of resolution professional. These two provisions use the word "assets", while Section 20(1) uses the word "property" together with the word "value". Sections 18 and 25 do not use the expression "property". 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.



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(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.”**

**(Emphasis Added)**

**On the Extinguishment of Claims:**

**27.** Concerning the waivers with regard to the extinguishment of claims which arose prior to the initiation of the CIR Process and which have not been

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claimed are granted in terms of the law laid down by the Hon'ble Apex Court in ***Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited reported in MANU/SC/0273/2021: (2021)9SCC657: [2021]13SCR737*** 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."  
(Emphasis Added)

52. Further, the relevant part of the Ghanshyam Mishra judgment (supra) in this regard is given below:

*"61. All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities, that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the Corporate Debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stake-holders after it gets the seal of approval from the Adjudicating Authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in Sub-section (2) of Section 30 is, that*

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*after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is, that he should start with fresh slate on the basis of the resolution plan approved.'*

*"62. This aspect has been aptly explained by this Court in the case of Committee of Creditors of Essar Steel India Limited through Authorised Signatory (supra).'*

*"107. For the same reason, the impugned NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta] in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us*



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*hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.”*

**(Emphasis Added)**

**28.** In this regard we also rely on the judgement of the Hon’ble High Court of Rajasthan in the matter of ***EMC v. State of Rajasthan, Civil Writ Petition No. 6048/2020 with 6204/2020*** reported in ***(2023) ibclaw.in42 HC***, wherein it has been inter-alia held that:

*“Law is well-settled that with the finalization of insolvency resolution plan and the approval thereof by the NCLT, all dues of creditors, Corporate, Statutory and others stand extinguished and no demand can be raised for the period prior to the specified date.”*

**(Emphasis Added)**

**29.** Authority, all such claims, that are not a part of the 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. The Hon’ble Supreme Court of India further laid down that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period before the date on which the Adjudicating Authority grants its approval under Section 31 of the I&B Code could be continued.

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**On Inquiries, Litigations, Investigations, and Proceedings:**

**30.** For the reliefs and waivers sought for all inquiries, litigations, investigations, and proceedings shall be granted strictly as per section 32A of the I&B Code, 2016 and the provisions of the law as may be applicable.

**31.** In this context, we would infer that upon the approval of the Resolution Plan, the Corporate Debtor avails the limbs of new management to revive its business. Thus, all the past liabilities of the Corporate Debtor including criminal liability prior to the initiation of the CIR Process shall stand effaced and the new management will step into the shoes of the company with a fresh or clean slate. Hence, the old management shall be liable to face all the offences committed prior to the commencement of the CIR Process. At this junction, we would rely upon the judgment rendered by the Hon'ble Apex Court in ***Ajay Kumar Radheyshyam Goenka vs. Tourism Finance Corporation of India Ltd.*** reported in **MANU/SC/0244/2023: (2023) 10 SCC 545** that:

**“67. Thus, Section 32A broadly leads to:**

***a. Extinguishment of the criminal liability of the corporate debtor, if the control of the corporate debtor goes in the hands of the new management which is different from the original old management.***

***b. The prosecution in relation to "every person who was a "designated partner" as defined in Clause (j) of Section 2 of the Limited Liability Partnership Act 2008 (6 of 2009), or an "officer who is in default", as defined in Clause (60) of Section 2 of the Companies Act. 2013 (18 of 2013), or was in any manner in charge of, or responsible to the corporate debtor for the conduct of its business or associated with the***



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*corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence" shall be proceeded and the law will take it's own course. Only the corporate debtor (with new management) as held in Para 42 of P. Mohanraj will be safeguarded.*

*c. If the old management takes over the corporate debtor (for MSME Section 29A does not apply (see 240A), hence for MSME old management can takeover) the corporate debtor itself is also not safeguarded from prosecution Under Section 138 or any other offences.”*

**(Emphasis Added)**

**32.** Further, in a very recent judgment rendered by the **Hon'ble High Court of Madras** in **Vasan Healthcare Pvt. Ltd. vs. The Deputy Director of Income Tax (Investigation), Unit 3(2)** reported in **MANU/TN/0243/2024: (2024) ibclaw.in 80 HC** that:

*“9. In the above judgement, the Apex Court after dealing with the provision in detail, came to a categoric conclusion that insofar as the criminal prosecution is concerned, the criminal liability of the corporate debtor viz., company gets completely wiped off and the new management is allowed to take over the company on a clean slate. However, the Apex Court also made it clear that the persons who are involved in the day today affairs of the company and were incharge and responsible for running of the company, will be liable to face all the **offence committed prior to the commencement of the Corporate Insolvency Resolution Process. There is no escape for***



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***those persons from criminal liability even though the corporate debtor is given a clean slate and is handed over to the new Management.***

10. Useful reference can also be made to the judgement of ***the Calcutta High Court in Tantia Constructions Limited Vs. Krishna Hi-Tech Infrastructure P Ltd]*** in CRP No. 172 of 2022. The relevant portions in the order are extracted hereunder :-

4. For the ***application of Section 32A of IBC, 2016*** and in light of the present matter, it is pertinent to determine the following two issues, i.e.,

***i. Whether the offence as complained in the impugned criminal proceedings has been alleged to be committed before the initiation of corporate insolvency resolution process or during such process?***

***ii. Whether the resolution plan has resulted in change in the management or corporate debtor in consonance with the provisions of Section 32A(1) of IBC, 2016?***

5. With respect to Issue No. 1, it is pertinent to note that the corporate insolvency resolution process as against the Petitioner/Corporate Debtor was initiated on 13.03.2019 when the application was accepted and the Order of Moratorium under Section 14 of the IBC, 2016 was imposed by NCLT, Kolkata in the aforementioned case. The complaint





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*that commenced the impugned criminal proceedings was filed on 22.07.2019 before the concerned court by the opposite party. Whereby, said alleged offence so complained, took place before or during the corporate insolvency resolution process and is covered under the ambit of Section 32A of IBC, 2016.*

*6. With respect to Issue No. 2, it is observed that the petitioner has not made specific submission in this regard. However, it is the submission of the opposite party that the **impugned complaint case does not concern itself with the new directors that were appointed after takeover by the Resolution Applicant in line with the Resolution Plan so approved by NCLT dated 24.02.2022. It is their submission that they are primarily aggrieved by the actions of petitioner when it was in control of erstwhile Directors***

*11. The above judgement clearly lays down the law on the subject. The moment the Corporate Insolvency Resolution Process is initiated against the corporate debtor and the application is accepted by the NCLT, the moratorium comes into operation. **Once the resolution plan is accepted by the NCLT and orders are passed and the Corporate debtor gets into hands of the new management, all the past liabilities including the criminal liability of the Corporate debtor gets wiped off and the new Management takes over the company with clean slate.***

**(Emphasis Added)**



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**33.** We note that Sanghi Steel Private Limited filed its claim on 27<sup>th</sup> August, 2024 which is evident from Annexure E, Pg 49 to 111 of the Application. Thereafter on 2<sup>nd</sup> August 2024, the RP sent an email seeking for certain clarification in respect of the claim filed (Annexure F, Pg No. 112) However, no clarification was received regarding the queries raised by the RP.

**34.** We further note that the said claim was also forwarded to the CoC . The sole Financial Creditor, i.e, Pixel Consultancy Private Limited raised objection to the claim as there was no acknowledgement of the CD for more than 3 years and hence the claim of the Applicant has become time barred. The Financial Creditor further observed that there are admitted disputes between Sanghi Steel Private Limited and the CD from both ends. In view of the order of Hon'ble Supreme Court in ***Essar Steel India Limited v. Satish Kumar Gupta & Ors. (2020)8 SCC 531*** the claim of Sanghi Steel Private Limited can be admitted for Rs.1/-

**35.** The RP called for the 12<sup>th</sup> CoC meeting on 7<sup>th</sup> September, 2024 wherein the sole CoC Member rejected the claim of Sanghi Steel Private Limited as the same was barred by limitation. The rejection of the claim was duly intimated to Sanghi Steel Private Limited on 10<sup>th</sup> September, 2024 and no objection regarding the same was raised by Sanghi Steel Private Limited. Reference can be made to Annexure I, Pg no. 137.

**36.** In the case at hand, we would note that **the Resolution dated 9<sup>th</sup> March, 2024** submitted by **Soneko Marketing Private Limited** has been approved by the Committee of Creditors of the Corporate Debtor by **100%** voting share on



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We have further noted that the LoI was issued which has been unconditionally accepted by the SRA. Accordingly, **the Resolution dated 9<sup>TH</sup> March, 2023**, submitted by **Soneko Marketing Private Limited**, defeats all other plans submitted before the applicant and **Soneko Marketing Private Limited** has unanimously declared as a **“Successful Resolution Applicant”**. Hence, given the aforesaid decisions of the Hon’ble Apex Court as well as in light of the overall facts and circumstances of the present case, this Adjudicating Authority has not interfered with the viability of the Commercial Wisdom as exercised by the Committee of Creditors of the Corporate Debtor

**37.** Subject to the observations made in this Order, **the Resolution dated 9<sup>th</sup> March, 2024** submitted by **Soneko Marketing Private Limited the Successful Resolution Applicant**, is hereby **APPROVED** and **FINALLY SANCTIONED** by this Adjudicating Authority

**PUFE Transactions**

**38.** We further note that with regard to the non-filing of any application regarding the PUFÉ Transaction, the Applicant has filed a supplementary Affidavit on 18<sup>th</sup> July, 2024 and stated that very few transaction took place during the period and as such transaction audit was not recommended by the Applicant. Further, there was no transaction of the CD during two years preceding the initiation of CIRP, which could arise any suspicion of fraud. It was further stated that no personal guarantee was provided by the directors of the CD to the FC.



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**39.**The Resolution Plan thus approved shall be binding on the Corporate Debtor and all other stakeholders involved in terms of Section 31 of the I&B Code, so that the revival of the Corporate Debtor Company shall come into force with immediate effect without any delay.

**40.** The Moratorium imposed under section 14 of the Code by virtue of the order initiating the CIR Process, shall cease to have effect from the date of this order.

**41.**The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return them to the Resolution Applicant or New Promoters

**42.** Liberty is hereby granted for moving any application, if required, in connection with the successful implementation of this Resolution Plan.

**43.** A copy of this Order is to be submitted to the Registrar of Companies (RoC) to whom the company is registered, by the Resolution Professional

**44.**The Resolution Professional shall stand discharged from his duties with effect from the date of this Order

**45.** The Resolution Professional is further directed to hand over all records, premises/ factories/ documents to the Resolution Applicant to finalise the further line of action required for starting the operation. The Resolution Applicant shall have access to all the records/ premises factories/ documents



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through the Resolution Professional to finalise the further line of action required for starting the operation

**46.** The **Registry of this Adjudicating Authority** is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsels for information and for taking necessary steps

**47.** In terms of the view above, the interlocutory application being **I.A. (IB) (Plan) No. 19/KB/2024** along with the main company petition being **C.P. (IB) No. 220/KB/2022** shall stand **disposed of** accordingly.

**48.** Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

**49.** File be consigned to the record.

**D.Arvind**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

**This Order is signed on this, the 2<sup>nd</sup> Day of January, 2025**

Oindrila, K. (LRA)